

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.CHITAMBARESH

THURSDAY, THE 28TH DAY OF MAY 2015/7TH JYAISHTA, 1937

WP(C).No. 31291 of 2010 (J)

PETITIONER:

- *1. V.SAMPOORNAM AMMAL, AGED 73 YEARS,
W/O.G.S.RADHAKRISHNAN, NOW RESIDING AT FLAT NO.9
1ST FLOOR, CAPITAL SAFFRON, WEST NADA
GURUVAYOOR. (DECEASED)**
- ** ADDL. PETITIONERS 2 TO 4**
- 2. G.S.RADHAKRISHNAN
S/O.LATE SANKARANARAYANAN, AGED 75 YEARS
RETIRED CLERK, APARTMENT NO.9 & 10, 1ST FLOOR
CAPITAL SAFFRON, WEST NADA, GURUVAYOOR
PIN 680 101.**
- 3. R.MEENAKSHI
D/O.G.S.RADHAKRISHNAN & LATE V.SAMPOORNAM AMMAL
AGED 44 YEARS, HOUSEWIFE, W/O.R.KRISHNAN
ASWATHI, PRA 31, EAST PALLIPARAMBUKAVU
TRIPUNITHURA, PIN 682 301.**
- 4. R.USHA
D/O.G.S.RADHAKRISHNA IYER & LATE V.SAMPOORNAM AMMAL
AGED 39 YEARS, HOUSEWIFE, W/O.N.R.GOPAL
1ST FLOOR 'C', SURYA APARTMENTS, SANSKRIT COLLEGE ROAD
TRIPUNITHURA, PIN -682 301.**
- ** ARE THE LEGAL HEIRS OF THE DECEASED 1ST PETITIONER
AND ARE IMPEADED AS ADDL. PETITIONERS 2 TO 4 AS PER
ORDER DATED 11.06.2013 IN IA NO. 5163/2013.**

**BY ADVS.SRI.M.P.RAMNATH
SRI.PRAJESH (KOTTAKKAL)**

RESPONDENT:

**THE SPECIAL TAHSILDAR (LA),
GURUVAYOOR DEWASWOM,
GURUVAYOOR.**

BY GOVERNMENT PLEADER SRI. GIKKU JACOB

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
28-05-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

DCS

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT. P1:** THE TRUE PHOTOSTAT COPY OF THE SURVEY SKETCH OF FIELD NO. 111 OF GURUVAYOOR VILLAGE SPECIFICALLY HIGHLIGHTING SUB DIVISION NO. 9 OF THE PETITIONER WHICH WAS ACQUIRED AND HANDED OVER TO THE DEVASWOM BY THE RESPONDENT – SURVEY NO. 111/9-0.0331 HECTORS
- EXT. P2:** THE TRUE PHOTOSTAT COPY OF FORM NO. 93 IN AWARD NO. 2/2008 IN LAC NO. 23/2008 SPECIFICALLY SHOWING THE SURVEY NO. 111/9 AND THE EXTENT AS 0.0331 ISSUED BY THE DISTRICT SURVEY SUPDT THRISSUR
- EXT. P3:** THE TRUE PHOTOSTAT COPY OF THE CHARGE LIST IN RESPECT OF THE PETITIONER'S PROPERTY IN LAC NO. 23/2008 DATED 24.10.2008 ISSUED WHEN THE PROPERTY WAS HANDED OVER TO THE RESPONDENT
- EXT. P4:** THE TRUE PHOTOSTAT COPY OF THE MAHAZAR PREPARED BY THE RESPONDENT ON 24.10.2008 IN LAC NO. 23/2008 WHEN THE PETITIONER'S PROPERTY WAS TAKEN POSSESSION
- EXT. P5:** THE TRUE PHOTOSTAT COPY OF THE NOTIFICATION IN FORM NO. 9(b) AS PER SECTION 9(3) OF THE LAND ACQUISITION ACT, 1894 ISSUED IN RESPECT OF THE SAID ACQUISITION INCULSIVE OF THE PROPERTY OF THE PETITIONER IN SURVEY NO. 111/9 – 0.0331 HECTORS
- EXT. P6:** THE RELEVANT PORTION OF THE AWARD IN LAC NO. 23/2008 IN RESPECT OF THE PETITIONER'S PROPERTY IN SURVEY NO. 111/9-0.0331 HECTORS
- EXT. P7:** THE TRUE PHOTOSTAT COPY OF THE REPRESENTATION/ REQUESTED DATED 18.07.2010 GIVEN BY THE PETITIONER TO THE RESPONDENT
- EXT. P8:** THE TRUE PHOTOSTAT COPY OF THE REPLY DATED 28.07.2010 ISSUED BY THE RESPONDENT TO THE PETITIONER BEARING NO. B310/2005
- EXT. P9:** THE TRUE PHOTOSTAT COPY OF THE SALE DEED NO. 216/1981 SRO KOTTAPADY EXECUTED BY NARAYANI IN FAVOUR OF PETITIONER
- EXT. P10:** THE TRUE PHOTOSTAT COPY OF SALE DEED NO. 222/1981 SRO. KOTTAPADY EXECUTED BY DORAISWAMY IN FAVOUR OF PETITIONER

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**EXT. P11: THE TRUE PHOTOSTAT COPY OF THE DETAILED APPLICATION
DATED 7.9.2010 MADE BY THE PETITIONER TO THE RESPONDENT
SEEKING RELEASE OF THE WITHHELD COMPENSATION AMOUNT
OF RS. 1,09,824.72/- TO HER WITH THE POSTAL REGISTERED
RECEIPT (8.9.2010) APPENDED THERETO**

**EXT. P12: THE TRUE PHOTOCOPY OF THE LETTER DATED 12.10.2010
BEARING NO. B310/2005 ISSUED BY THE RESPONDENT TO THE
PETITIONER**

RESPONDENT'S EXHIBITS:- NIL

/TRUE COPY/

P.A TO JUDGE

DCS

V. CHITAMBARESH, J

W.P.(C). NO. 31291 OF 2010

Dated this the 28th day of May, 2015

JUDGMENT

The following land acquisition documents reflect that an extent of 0.0331 hectares of land has been acquired from the petitioner:-

- i) Ext. P1 survey sketch
- ii) Ext. P2 Form No. 93 in Award No. 2/2008
- iii) Charge list of the property in question
- iv) Site Mahazar while assuming possession
- v) Notification under Section 9(3) of the Land Acquisition Act, 1894.

2. There is no rival claimant as seen from Ext. P6 award in LAC No. 23/2008. It is beyond any pale of doubt that an extent of 0.0331 hectares of land has been taken possession of. The petitioner is then entitled to the compensation for the entire extent (see:- **State of Kerala v. Kuruvila [2005(3) KLT 580]**). But compensation was released only for an extent of 0.0320 hectares. The

compensation for an extent of 0.0011 hectares is still retained. This is on the premise that Ext. P10 document of title also mentions 8 cents. It is trite law that boundaries will prevail over the extent when there is a conflict. The material on record is sufficient and more to hold that the petitioner is entitled to compensation for the extent of 0.0331 hectares.

3. The respondent has issued Ext. P12 letter expressing his willingness to release the whole amount. This is ofcourse subject to the condition that a court of law permits that exercise. I am convinced that the petitioner is entitled to compensation for the whole extent of 0.0331 hectares. The balance amount in deposit can also be encashed by the petitioner on proper application. The legal heirs of the petitioner (since dead) who are additional petitioners 2 to 4 can avail this benefit.

The writ petition is disposed of.

**V. CHITAMBARESH
JUDGE**

DCS