

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.CHITAMBARESH

MONDAY, THE 9TH DAY OF MARCH 2015/18TH PHALGUNA, 1936

WP(C).No. 33470 of 2014 (G)

PETITIONER(S)/PETITIONERS:

1. SIMON PATHROS MATTHAI, AGED 71 YEARS
301, SIVA MANSION, ROAD NO 10 C
M.L.A & M.P.COLONY, JUBILEE HILLS, HYDERABAD-500033
2. M PATROS MATTHAI
SENIOR ADVOCATE, 59/2368, BANERJI ROAD
COCHIN-682018
3. DR.THOMAS PATHROS MATTHAI
MAZHUVANCHERI MADOM, C M S COLLEGE ROAD
KOTTAYAM-686001

BY ADVS.SRI.JACOB P.ALEX
SRI.JOSEPH P.ALEX

RESPONDENT(S)/RESPONDENTS:

1. THE CHIEF SECRETARY, GOVT OF KERALA
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695001
2. THE DISTRICT COLLECTOR, PATHANAMTHITTA-689645
3. PATHANAMTHITTA MUNICIPALITY
REP BY ITS SECRETARY, PATHANAMTHITTA 689645

R2 BY ADV. GOVERNMENT PLEADER SRI.T.R.RAJESH
R BY SRI.V.K.SUNIL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
09-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 33470 of 2014 (G)

APPENDIX

PETITIONER(S)' EXHIBITS

P1:-TRUE COPY OF COMMON JUDGMENT IN LAR DTD 31/3/2000 OF THE COURT OF
THE SUBORDINATE JUDGE, PATHANAMTHITTA

P2:-TRUE COPY OF STATEMENT IN EP 82/07 IN LAR 82/1989

P2(A):-TRUE COPY OF STATEMENT IN EP 79/07 IN LAR 83/1989

P2(B):-TRUE COPY OF STATEMENT IN EP 80/07 IN LAR 11/89

P2(C):-TRUE COPY OF STATEMENT IN EP 47/11 IN LAR 382/1988

P2(D):-TRUE COPY OF STATEMENT SUBMITTED IN EP 78/07 UB LAR 376/1988

RESPONDENT(S)' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE.

'C.R.'

V.CHITAMBARESH, J.

W.P (C) No.33470 of 2014

Dated this the 9th day of March, 2015

J U D G M E N T

Is this Court precluded from directing the State Government or the authority on whose behalf was the land acquired to deposit the amount of compensation even while the proceedings in execution of the Award for compensation are pending ?

2. Large tracts of land belonging to the petitioners were acquired under the Land Acquisition Act, 1894 ['the Act' for short] under the requisition of the Pathanamthitta Municipality. The same is covered by two notifications issued under Section 4(1) of the Act dated 24.1.1984 and 8.11.1986 and the acquisition is for the municipal stadium. Awards were passed under Section 11 of the Act on 20.7.1987 and 7.11.1988 which gave rise to references under Section 18 of the Act for enhancement of the compensation. The court of the Subordinate Judge of Pathanamthitta answered the references by judgment dated 22.12.1993 which were however set aside in appeals. The court of the Subordinate Judge passed a revised judgment on

31.3.2000 and proceedings in execution are pending for realisation of the amount due.

3. The following are the details of the Execution Petitions in the Land Acquisition References and the approximate amount due to be realised therein by the petitioners.

<i>Sl. No.</i>	<i>Case No.</i>	<i>Execution Petition No.</i>	<i>Amount (in Rs.)</i>
1	LAR.No.82/1989	EP.No.82/2009	9,16,441.50
2	LAR.No.83/1989	EP.No.79/2007	7,41,761.00
3	LAR.No.11/1989	EP.No.80/2007	14,39,826.00
4	LAR.No.382/1988	EP.No.47/2011	37,592.50
5	LAR.No.376/1988	EP.No.78/2007	7,43,511.20

The parties are ofcourse at variance as regards the exact amounts still to be realised in the above Execution Petitions which are however a matter to be probed into by the Execution Court only.

4. The writ Petition has been filed seeking a direction to the respondents - the Government of Kerala, District Collector and the Pathanamthitta Municipality - to deposit the compensation amount. The amounts detailed above are sought to be deposited in the Execution Petitions pending on the file of the

court of the Subordinate Judge of Pathanamthitta. The Government Pleader stoutly opposes the plea contending that the petitioners having levied the execution proceedings cannot maintain a writ petition.

5. I heard Mr.Jacob.P.Alex, Advocate on behalf of the petitioners and Mr.T.R.Rajesh, Government Pleader on behalf of the respondents.

6. More than two decades have elapsed since the initiation of the proceedings for land acquisition and about a quarter of century has rolled on since the Awards were originally passed. About 15 years have passed since the revised judgment of the Reference Court and the present execution petitions have been pending for about 7 years. The petitioners assert that no amount can easily be realised from the attachment of the property of the respondents since the same are under attachment in many other claims also. The tardy progress in the execution petitions is solely due to the fact that the respondents have not deposited the amount in the Execution Court in full. The District Collector has filed a statement in the Writ Petition expressing his inability to satisfy the decrees for

want of allotment by the State Government. The averment therein is to the following effect:-

“Necessary request have already been submitted to Government and the requisitioning authorities for allotment of balance amount to satisfy the decree in the above cases. But this respondent has not received any allotments till date. This respondent has taken all possible measures to see that the funds are allotted and the amounts due be deposited in the Execution Court.”

7. The primary obligation to pay the compensation is on the State Government alone notwithstanding the fact that the acquisition is made on behalf of the Municipality. This is the mandate of Section 31 of the Act as has been held in Corporation of Kochi v. Michael Luiz [1995 (2) KLT 320] and the following excerpt is apposite:-

“6. Once a decree is made for enhanced compensation by the Reference Court, there is a duty plain and simple, on the State to deposit that compensation into court, for being disbursed to the claimant. Now, what happens is that, inspite of the decree for enhancement the

claimant has to wait for years to get the amount awarded by the decree. It appears to me that it is time for the State to rectify this situation, bearing in mind the spirit with which the Amendment Act of 1984 was enacted, providing for enhanced benefits to a deprived land owner. Though deprived of his land against his wishes, an anxiety is evinced by the Amendment Act, to compensate that owner to the extent possible. That object will certainly not be achieved, by merely granting him a decree. That can be achieved, only by making available to him, the additional amounts, immediately on the passing of the award decree. The submission of the learned Government Pleader that it is the failure of the local authority to make available the amounts needed promptly, that leads to delay in satisfying the decree, cannot be appreciated. It is for the State, while it is undertaking the acquisition on the basis of a requisition, to ensure that the requisitioning authority makes available the amounts that has to be paid as compensation under the Act both at the time of the award and at

the time of the decree, by the Reference court.”

A larger Bench of the High Court of Andhra Pradesh in *Bhimidipati Annapoorna Bhavani v. The Land Acquisition Officer, Peddapuram and others* [AIR 2005 AP 365] had occasion to observe as follows:-

“.....that in cases arising out of the Act where the amount of compensation, finally determined has not been paid, a person must first resort to the alternate efficacious remedy of taking out execution and when despite taking out execution proceedings, if there is any delay caused on the part of authorities, resort can be had to filing of a writ petition in this Court and this Court while exercising its discretionary jurisdiction, in appropriate cases, may issue directions for immediate deposit of the amount of compensation or the authorities on whose behalf the land has been acquired.”

8. The petitioners who are Septuagenarians throw their arms in despair contending that amounts have to be realised soon lest they be not alive to enjoy the fruits of the decree. Only the Award amount

and a portion of the enhanced compensation have been realised so far and fresh Execution Petitions would be barred by limitation. The long delay in satisfying the decrees for enhanced compensation and the pendency of the execution petitions without any appreciable progress in the realisation of the amounts disturbs me. The deprivation of the valuable property of the petitioners without paying the compensation due to them in full infact infringes Article 300A of the Constitution of India. This Court cannot be a mute spectator to the inaction on the part of the State Government or the Municipality in not depositing the requisite amounts to satisfy the decrees. Mere direction to the Execution Court to expedite the proceedings in execution may not be fruitful in view of subsisting attachments as aforesaid. The only way to tide over the situation would be to direct the State Government to deposit the requisite amount in the Execution Court. I should however be not misunderstood as issuing a Writ under Article 226 of the Constitution of India in a challenge against the orders of the Subordinate Court. I do feel that this is an

appropriate case where directions have to be issued to the State of Kerala to deposit the amount in the Execution Court within a time frame. I therefore direct respondents 1 and 2 to deposit the amount due in the Execution Petitions filed by the petitioners within a period of five months from today.

The writ Petition is allowed. No costs.

Sd/-
V.CHITAMBARESH,
Judge.

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