IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

MONDAY, THE 24TH DAY OF AUGUST 2020 / 2TH BHADRA, 1942

WP(C).No.35020 OF 2019(B)

PETITIONERS:

1 SHINE A SATHAR
AGED 42 YEARS
S/O.ABDUL SATHAR,SHINES VILLA,MAMATHA NAGAR,H.NO.23,KAZHAKUTTOM,PRESIDENT, KERALA VYAPARI VYAVASAYI EKOPANA SAMITHI,REG.NO.262/81,KAZHAKUTTOM UNIT, VYAPARA BHAVAN,KAZHAKUTTOM.P.O, THIRUVANANTHAPURAM-695582.

2 SULAIMAN.M,
AGED 47 YEARS
S/O.M.K.MYTHEEN,HIRA GENTS AND LADIES WEAR,KAZHAKUTTOM.P.O,THIRUVANANTHAPURAM-695582.

3 ANIL KUMAR.V,
AGED 55 YEARS
S/O.VISWANATHAN,NATH COMMUNICATION,NATH SHOPPING COMPLEX,NH ROAD,KAZHAKUTTOM.P.O, THIRUVANANTHAPURAM-695582.

4 REEJA.M,
AGED 45 YEARS
W/O.MEERASAHIB,BOOTS FOOT WEAR,KAZHAKUTTOM.P.O, THIRUVANANTHAPURAM-695582.

5 SATHYADAS,
AGED 48 YEARS
S/O NALLA THAMPI.S,DELTA ELETRICALS,N.H.ROAD, KAZHAKUTTOM.P.O,THIRUVANANTHAPURAM-695582.

6 V.VIKRAMAN NAIR,
AGED 70 YEARS
S/O R.VASUDEVAN PILLAI,R.V.P.CHAITHANYA BAKERY AND FRUIT STALL,KAZHAKUTTOM.P.O,THIRUVANANTHAPURAM-695582.

7 MOHAN.S,
AGED 39 YEARS
S/O.SIVASANKARAN NAIR,SAI VAHINI TOURS AND TRAVELS AND D.T.P.CENTRE,KAZHAKUTTOM.P.O, THIRUVANANTHAPURAM-695582.

BY ADV. SRI.P.SATHISAN

RESPONDENTS:

1 UNION OF INDIA
REP.BY SECRETARY,MINISTRY OF ROAD TRANSPORT AND HIGHWAYS,GOVERNMENT OF INDIA,NEW DELHI-110001.

2 PROJECT DIRECTOR,
NATIONAL HIGHWAYS AUTHORITY OF INDIA(HEAD OFFICE),DWARKA SECTOR 10,
NEW DELHI-110001

3 DIRECTOR GENERAL (ROAD DEVELOPMENT), AND SPECIAL SECRETARY, ROOM NO.213,MINISTRY OF ROAD TRANSPORT AND HIGHWAYS,TRANSPORT BHAVAN,1,PARLIAMENT STREET,NEW DELHI-11001.

4 CHAIRMAN,NHAI,
G-5 AND 6,SECTOR-10,DWARAKA,
NEW DELHI-110075.

5 SPECIAL DEPUTY COLLECTOR(LA) AND COMPETENT AUTHORITY, OFFICE OF NH 17,KAZHAKOOTTAM,
TRIVANDRUM-695 007.

6 DISTRICT COLLECTOR,
COLLECTORATE,2ND FLOOR,CIVIL STAITION ROAD,THIRUVANANTHAPURAM-695043.

R1, R3 BY SMT.I. SHEELA DEVI, CGC
R2, R4 BY ADV. DR.K.P.SATHEESAN (SR.)
R2, R4 BY ADV. SRI.P.MOHANDAS (ERNAKULAM)
R2, R4 BY ADV. SRI.S.VIBHEESHANAN
R2, R4 BY ADV. SRI.K.SUDHINKUMAR
R2, R4 BY ADV. SRI.S.K.ADHITHYAN
R2, R4 BY ADV. SRI.SABU PULLAN
R2, R4 BY ADV. SRI.GOKUL D. SUDHAKARAN
ADV.SRI.JAFARKHAN GP

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24.08.2020, ALONG WITH WP(C).1658/2020(F), THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

MONDAY, THE 24TH DAY OF AUGUST 2020 / 2TH BHADRA, 1942

WP(C).No.1658 OF 2020(F)

PETITIONERS:

1 MOHAMMED MYDEEN.M.S
AGED 44 YEARS
S/O. SHAIK ABDUL KHADHERE, F. STUFF, BYPASS ROAD, OPPOSITE CSI MISSION HOSPITAL, KAZHAKUTTAM P.O TRIVANDRUM 695 582.

2 DEEPAS V.S.,
AGED 44 YEARS
VARNAM PAINTS AND HARWARES, KRISHNA KRIPA BUILDING, N.H. ROAD, KAZHAKUTTOM P.O. TRIVANDRUM 695 582.

3 V. BHAGAVATH KUMAR,
AGED 52 YEARS
S/O. VELAYUDHAN ACHARI, R.V. AUTO ELECTRICAL WORKS, N. H. ROAD, OPPOSITE IOC PETROL PUMP, KAZHAKUTTOM P.O. TRIVANDRUM 695 582.

4 SUFITH K.H.,
AGED 35 YEARS
S/O.K.A. HANEEFA, THE PROFESSIONAL COURIERS, KAZHAKKUTTAM BRANCH, SREEPARVATHY, DEVANAGAR, KAZHAKUTTOM P.O. TRIVANDRUM 695 582.

5 S. HARIHARAPUTHRAN,
AGED 71 YEARS
S/O. SUBRAMANYAN ACHARY, M.S. GLASS HOUSE, N.H. ROAD, KAZHAKUTTOM P.O. TRIVANDRUM 695 582.

6 VIVEK V.S.,
AGED 32 YEARS
S/O. VASUDEVAN NAIR.D., SMILE 'N'SHINE, SPECIALITY DENTAL CLINIC, SREERAM BUILDING, N.H ROAD, KAZHAKUTTOM P.O. TRIVANDRUM 695 582.

7 VEENA.V.S.,
AGED 38 YEARS
D/O. VASUDEVAN NAIR, VISWAS COMMUNITY FAIR, PRICE MEDICAL SERVICES, SREERAM BUILDING, N.H. ROAD, KAZHAKUTTOM P.O. TRIVANDRUM 695 582.

8 B.S. SASIKUMAR ,
AGED 58 YEARS
S/O. N. BHASKARA PILLAI, AMAL COMMUNICATION, SREESASTHA BUILDING, N.H ROAD, KAZHAKUTTOM P.O. TRIVANDRUM 695 582.

9 HAFIZ AHMED.A.,
AGED 53 YEARS
S/O. AHMED KANNU, KAIPPALLY COMMUNICATION KAZHAKUTTOM P.O. TRIVANDRUM 695 582.

10 VIJAYAKUMAR V.,
AGED 55 YEARS
S/O. R. VASUDEVAN PILLAI, MAHADEVA TEA SHOP, NIRMALYAM, KSNRA A -38, VADAKKUM BHAGAM, KAZHAKUTTOM P.O. TRIVANDRUM 695 582.

11 V. REGUNATHAN NAIR,
AGED 65 YEARS
S/O. R. VASUDEVAN PILLAI, MAHADEVA STORE, OPP. A.J. HOSPITAL, KAZHAKUTTOM P.O. TRIVANDRUM 695 582.

12 VIJAYALAKSHMI L.G.,
AGED 57 YEARS
D/O. GOPALAKRISHNAN.K. KOTTAKKAL ARYA VAIDHYA SALA, AUTHORISED DEALER, SREERAM BUILDING, KAZHAKUTTOM P.O. TRIVANDRUM 695 582.

13 ASOKA KUMAR.B.,
AGED 54 YEARS
S/O. P. BHASKARAN, ENVY TRADERS, BYPASS JN. KAZHAKUTTOM P.O. TRIVANDRUM 695 582.

14 ROY JOSEPH,
AGED 45 YEARS
S/O. JOSEPH, MANAGING DIRECTOR OF M/S. ASWATHY STUDIO AND LAZER COLOR LAB, NATH SHOPPING COMPLEX, N. H ROAD, KAZHAKUTTOM P.O. TRIVANDRUM 695 582.

15 USHA.S.,
AGED 57 YEARS
D/O. AYYAPPAN NAIR.V., SREE KRISHNA EXIDE SHOPE, NEAR IOC PUMP, KAZHAKUTTOM P.O. TRIVANDRUM 695 582.

16 A. ABDUL MANAF,
AGED 78 YEARS
S/O. ABDUL RAHMANKUNJU,
HASANA AUTO POLLUTION TESTING CENTRE, NEAR HIGH WAY FUEL, KAZHAKUTTOM P.O. TRIVANDRUM 695 582.

17 ANAS A.M.,
AGED 32 YEARS
S/O. MUHAMMED KARIM, FACE BOOK MENS WEAR, NEAR AL-SAJ CONVENTION CENTRE, KAZHAKUTTOM P.O. TRIVANDRUM 695 582.

18 AKHIL SURENDRAN,
AGED 30 YEARS
S/O. SURENDRAN.C., URBAN GARAGE, SREERAM BUILDING, KAZHAKUTTOM P.O. TRIVANDRUM 695 582.

19 SABU. B.
AGED 48 YEARS
S/O. BAVA, HOT CHILLY CHICKEN CORNER, KAZHAKUTTOM P.O. TRIVANDRUM 695 582.

20 AKHIL GEORGE,
AGED 30 YEARS
S/O. N.C. GEORGE, COCHIN CHARPET EMPORIUM, NEAR HOTEL KARTHIKA PARK, KAZHAKUTTOM P.O. TRIVANDRUM 695 582.

21 ANOOP MOHAN,
AGED 44 YEARS
S/O. MOHANA CHANDRAN NAIR, SIGNATURE MARGIN FREE SUPER MARKET, PANICKER AND PANICKER BUILDING, KAZHAKUTTOM P.O. TRIVANDRUM 695 582.

22 SHAFEEK MUHAMMED,
AGED 38 YEARS
S/O. ABDUL AZEEZ, BIGMART SUPERMARKET, CNS BUILDING, NO. 288/289, N.H ROAD, KAZHAKUTTOM P.O. TRIVANDRUM 695 582.

BY ADV. SRI.P.SATHISAN

RESPONDENTS:

1 UNION OF INDIA
REP.BY SECRETARY,MINISTRY OF ROAD TRANSPORT AND HIGHWAYS,GOVERNMENT OF INDIA,NEW DELHI-110001.

2 PROJECT DIRECTOR,
NATIONAL HIGHWAYS AUTHORITY OF INDIA (HEAD OFFICE),
DWARKA SECTOR 10, NEW DELHI-110001.

3 DIRECTOR GENERAL
(ROAD DEVELOPMENT) AND SPECIAL SECRETARY, ROOM NO. 213, MINISTRY OF ROAD TRANSPORT AND HIGHWAYS,
TRANSPORT BHAVAN 1, PARLIAMENT STREET, NEW DELHI-110001.

4 CHAIRMAN,
NHAI, G-5 AND 6, SECTOR 10, DWARAKA, NEW DELHI 110 075.

5 SPECIAL DEPUTY COLLECTOR
(LA) AND COMPETENT AUTHORITY,
OFFICE OF NH 17, KAZHAKOOTTAM, TRIVANDRUM.

6 DISTRICT COLLECTOR,
COLLECTORATE , 2ND FLOOR, CIVIL STATION ROAD,
THIRUVANANTHAPURAM 695 043.

R1 BY SMT.H.SUBHALEKSHMI, CGC
R2, R4 BY ADV. SRI.K.SUDHINKUMAR
BY SMT.I. SHEELA DEVI, SC NHAI

BY ADV. DR.K.P.SATHEESAN (SR.)

ADV. SRI.JAFARKHAN GP

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24.08.2020, ALONG WITH WP(C).35020/2019(B), THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 24th day of August 2020

The petitioners in all these writ petitions are tenants. The building in their occupation has been acquired for the National Highway. They approached this Court claiming benefits under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act 30 of 2013). Their case is that they are also entitled for compensation.

2. As far as the tenants are concerned, this Court in ***Sasidharan v. Union of India*** [2020 (4) KLT 329] upheld the claim for compensation by the tenant. It is appropriate to refer paragraphs 8 and 9 of the above judgment which reads thus:-

> *"8. The rent agreement confers a possessory interest to the tenant. Therefore, a building tenant is also having an interest in the land. To what extent he is entitled to claim compensation is a matter for determination by the competent authority. The tenant's claim has to be considered within the four corners of Section 3G(7). He would be also entitled to claim for his loss of earnings. He*

can also raise a claim under Section 3G(7) (d) for shifting his place of business and incidental expenses thereon. The competent authority has to consider his claim independently that of claim made by the landlord who is the title owner of the land. There is no hard and fast rule laid in the National Highways Act to determine the compensation. The tenant's claim would depend upon the nature of use, period of occupation, nature of an improvement made etc. If any tenant had carried out any improvements, constructions or any other interior decorations etc, these components will have to be taken into account while determining the compensation. It is also to be noted that unlike the land acquisition Act, 1894, there is no restriction for competent authority in awarding the compensation taking account of varied factors in appropriate cases. The competent authority has to be guided general factors based on the loss one would suffer consequent upon the involuntary acquisition. The component referred as under Section 3G(7) are not exhaustive. The compensation, in ordinary parlance means equivalent to the loss suffered by one. See the definition of compensation under 6th Edition of 'Black's Law Dictionary', page No.283:

"Compensation, equivalent given for property taken."

9. The Central Government issued an order dated 28.08.2015, under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (the Act 30 of 2013), extending the

> *application of the aforesaid Act, in regard to the determination of compensation in accordance with the First Schedule, rehabilitation and resettlement in accordance with the Second Schedule and infrastructure amenities in accordance with the Third Schedule. By this order, the provisions as above are made applicable for acquisition under the National Highways Act."*

3. The learned Senior Counsel appearing for the National Highway submits that on account of the pendency of the writ petitions as well as the interim orders passed in these matters, possession of the land could not be taken over by the National Highway.

4. The petitioners, who are tenants are entitled to claim compensation. Their claim has to be decided by the competent authority.

5. If the petitioners have a case that inventory existing in the building will have to be taken into account, they are free to move the competent authority. That shall be done within a period of two weeks. If request is made as above, inventory shall be taken.

6. In the light of ***Sasidharan's*** case (*supra)*, the landlord shall be paid 75% of the compensation deposited without any delay.

The National Highway is free to take possession in accordance with law. The claim of the tenants shall be considered by the competent authority after notice to the petitioners-tenants and landlord within a further period of two months.

These writ petitions are disposed of as above.

Sd/-

A.MUHAMED MUSTAQUE

JUDGE

SAS/24/08/2020

APPENDIX OF WP(C) 35020/2019

PETITIONERS' EXHIBITS:

EXHIBIT P1	**TRUE COPY OF THE LICENSE ISSUED BY TRIVANDRUM CORPORATION TO 3RD PETITIONER.**
EXHIBIT P1 A	**TRUE COPY OF THE LICENSE ISSUED BY TRIVANDRUM CORPORATION TO 4TH PETITIONER.**
EXHIBIT P2	**TRUE COPY OF THE RELEVANT EXTRACT OF NOTIFICATION IN MATHRUBHUMI DAILY DATED 15.02.2018**
EXHIBIT P3	**TRUE COPY OF THE RELEVANT EXTRACT OF NOTIFICATION IN MATHRUBHUMI DAILY DATED 24.01.2019.**
EXHIBIT P4	**TRUE COPY OF THE NOTICE ISSUED BY 5TH RESPONDENT DATED 03.12.2019**
EXHIBIT P4 A	**TRUE COPY OF THE NOTICE ISSUED BY 5TH RESPONDENT DATED 03.12.2019**
EXHIBIT P4 B	**TRUE COPY OF THE NOTICE ISSUED BY 5TH RESPONDENT DATED 04.12.2019**
EXHIBIT P5	**TRUE COPY OF THE REPRESENTATION FILED BY THE 1ST PETITIONER DATED 12.12.2019 BEFORE THE 5TH RESPONDENT AND ITS ACKNOWLEDGMENT**
EXHIBIT P5 A	**TRUE COPY OF REPRESENTATION FILED BY THE 1ST PETITIONER DATED 12.12.2019 BEFORE THE CHIEF MINISTER OF KERALA AND ITS ACKNOWLEDGEMENT.**
EXHIBIT P6	**TRUE COPY OF RELEVANT EXTRACT OF NOTIFICATION DATED 05.03.2014.**
EXHIBIT P7	**TRUE COPY OF RELEVANT EXTRACT OF NOTIFICATION DATED 28.08.2015**
EXHIBIT P8	**TRUE COPY OF THE INITERIM ORDER IN W.P(C)N0.14912/2019 DATED 30.05.2019**
EXHIBIT P8 A	**TRUE COPY OF THE INTERIM ORDER IN W.P(C)NO.22789/2019 DATED 21.08.2019.**

EXHIBIT P8 B	**TRUE COPY OF THE INTERIM ORDER IN W.P(C)NO.30120/2019 DATED 12.11.2019.**
EXHIBIT P9	**TRUE COPY OF THE RELEVANT EXTRACT OF PROJECT REPORT/FINAL FEASIBILITY STUDY REPORT (MARCH 2017)**
EXHIBIT P10	**TRUE COPY OF THE JUDGEMENT IN WPC 34704 OF 2019 DATED 13/3/2020**
EXHIBIT P11	**TRUE COPY OF THE RELEVANT EXTRACT OF NOTIFICATION ISSUED BY MINISTRY OF ENVIRONMENT AND FORESTS DATED 14/9/2006**
EXHIBIT P12	**TRUE COPY OF THE NOTIFICATION ISSUED BY MINISTRY OF ENVIRONMENT AND FORESTS DATED 22/8/2013**

RESPONDENTS' EXHIBITS: NIL

APPENDIX OF WP(C) 1658/2020

PETITIONERS' EXHIBITS:

EXHIBIT P1	**TRUE COPY OF THE LICENSE ISSUED BY TRIVANDRUM CORPORATION TO 1ST PETITIONER.**
EXHIBIT P1(A)	**TRUE COPY OF THE LICENSE ISSUED BY TRIVANDRUM CORPORATION TO 8TH PETITIONER.**
EXHIBIT P2	**TRUE COPY OF THE RELEVANT EXTRACT OF NOTIFICATION IN MATHRUBHUMI DAILY DAD 15.02.2018.**
EXHIBIT P3	**TRUE COPY OF THE RELEVANT EXTRACT OF NOTIFICATION IN MATHURBHUMI DAILY DATED 24.01.2019.**
EXHIBIT P4	**TRUE COPY OF THE NOTICE NO.LAC. 25/2018 DATED 03.12.2019 ISSUED BY THE 5TH RESPONDENT.**
EXHIBIT P4(A)	**TRUE COPY OF THE NOTICE NO. LAC 26/2018 ISSUED BY THE 5TH RESPONDENT.DATED 03.12.2019**
EXHIBIT P4(B)	**TRUE COPY OF THE NOTICE NO. 199/2018 ISSUED BY THE 5TH RESPONDENT.DATED 04.12.2019**
EXHIBIT P5	**TRUE COPY OF THE REPRESENTATION FILED BY THE KERALA VYAPARA VYAVASAYI EKOPANA SAMITHY. DATED 12.12.2019 BEFORE THE 5TH RESPONDENT.**
EXHIBITP5(A)	**TRUE COPY OF THE REPRESENTATION FILED BY THE KERALA VYAPARA VYAVASAYI EKOPANA SAMITHY. DATED 12.12.2019 BEFORE THE CHIEF MINISTER OF KERALA.**
EXHIBIT P6	**TRUE COPY OF RELEVANT EXTRACT OF NOTIFICATION DATED 5.03.2014.**
EXHIBIT P7	**TRUE COPY OF RELEVANT EXTRACT OF NOTIFICATION DATED 28.08.2015.**
EXHIBIT P8	**TRUE COPY OF THE INTERIM ORDER IN WPC NO. 14912/2019 DATED 30.05.2019.**

EXHIBIT P8(A)	**TRUE COPY OF THE INTERIM ORDER IN WPC NO. 22789/2019 DATED 21.08.2019.**
EXHIBIT P8(B)	**TRUE COPY OF THE INTERIM ORDER IN WPC NO. 30120/2019 DATED 12.11.2019.**
EXHIBIT P8(C)	**TRUE COPY OF THE INTERIM ORDER IN WPC NO. 35020/2019 DATED 19.12.2019.**

RESPONDENTS' EXHIBITS: **NIL**

//TRUE COPY//
P.A. TO JUDGE