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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE VIJU ABRAHAM

WEDNESDAY, THE 19TH DAY OF MARCH 2025 / 28TH PHALGUNA, 1946

WP(C) NO. 11492 OF 2022

PETITIONERS:

- 1 THOMAS MATHEW
 AGED 72 YEARS
 S/O.N.L.THOMAS, NELLUVELIL HOUSE, NADAKKAL P.O.,
 ERATTUPETTA, KOTTAYAM DISTRICT, PIN-686 122
 - 2 MARIAMMA MATHEW
 AGED 57 YEARS
 W/O. THOMAS MATHEW, NELLUVELIL HOUSE, NADAKKAL P.O.,
 ERATTUPETTA, KOTTAYAM DISTRICT, PIN-686 122
 - 3 PRADEEP JOSEPH,
 AGED 41 YEARS
 S/O. JOSEPH P.V., VADAKKEPUTHENPURAYIL HOUSE, NADAKKAL
 P.O., ERATTUPETTA, KOTTAYAM DISTRICT, PIN-686 122
- BY ADVS.
ANEESH JAMES
ELIZEBATH GEORGE
RAJEE P MATHEWS

RESPONDENTS:

- 1 STATE OF KERALA
 REPRESENTED BY THE SECRETARY TO THE GOVERNMENT,
 GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001
- 2 THE DISTRICT COLLECTOR,
 KOZHIKODE CIVIL STATION, ERANHIPALAM, KOZHIKODE-673 020
- 3 THE SPECIAL TAHSILDAR (LAND ACQUISITION),
 KOYILANDY, KOZHIKODE-673 305



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**4 THE KERALA STATE INDUSTRIES DEVELOPMENT CORPORATION,
TC 11/266, KESTON ROAD, KOWDIAR, THIRUVANANTHAPURAM-
695 003, REPRESENTED BY ITS MANAGING DIRECTOR

SRI. K.P. JAYACHANDRAN, ADDL ADVOCATE GENERAL
S.RENJITH, SPECIAL GOVT.PLEADER TO AG
BY ADV P.U.SHAILAJAN
BY GP- RIYAL DEVASSY
SC - P.U. SHAILAJAM**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 19.03.2025, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

**JUDGMENT**

Dated this the 19th day of March, 2025

Above writ petition is filed seeking to quash Ext.P16 series of proceedings and Ext.P17 series of awards and for a consequential direction to respondents 2 and 3 to pass a fresh award as per the provisions of the Land Acquisition Act, 1894 (hereinafter referred to as the 'Act, 1894') in respect of the properties of the petitioners acquired by the 1st respondent strictly in accordance with the findings of this Court in Exts.P6, P12 and P13 judgments.

2. Brief facts necessary for the disposal of the writ petition are as follows:-

Petitioners 1 and 2 are husband and wife and the 3rd petitioner is the nephew of the 1st petitioner, and the petitioners jointly own rubber plantation known as manimala estate in Kozhikode District. An extent of 46.5944 hectares of land out of the said rubber plantation was acquired by the State Government under the requisition of the 4th respondent Kerala State Industrial Development Corporation for the purpose of establishing a coconut industrial park. Out of the land acquired 0.1740 hectare was owned by the 1st petitioner, 34.2071 hectares by the 2nd petitioner and 12.2133 hectares by the 3rd petitioner. The land was acquired invoking the emergency provision



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under Section 17(4) of the Act, 1894 and included in the 'Fast Track Project'.

3. A District level purchase committee was constituted for a negotiated purchase and after several rounds of discussion the amount was negotiated and finalised for Rs.10,750/- per cent along with value of improvements in the property, on condition that the compensation amount will be paid within a period of three months. The District level purchase committee agreed to provide compensation at the rate of Rs.10,750/- per cent for land and compensation for improvement, and Ext.P1 Government order was issued and the compensation was agreed to be fixed on the basis of Ext.P1 Government order. It was also approved by the Government as per decision dated 07.07.2011. On the basis of the same petitioners agreed to hand over advance possession of the land to the respondents on payment of 80% of the compensation. Later land was taken over on 15.02.2012 and an amount of Rs.9,90,15,986/- was disbursed to the petitioners on 16.02.2012 claiming to be 80% of the compensation amount. On receipt of the said amount petitioners realized that the fixation of the amount was not in accordance with Ext.P1 Government order and as agreed between the parties, and the compensation paid was considerably less and the petitioners informed the authorities that they are not willing to



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give away the land on negotiated purchase and that the land should be acquired as per the provisions of the Act, 1894. While so, petitioners were served with Ext.P2 series of notices intimating that the 2nd respondent has given prior approval for passing of award with respect to acquisition of petitioners' properties and directing the petitioners to produce necessary document before the 3rd respondent. Since the compensation amount mentioned in Ext.P2 series was less than one approved as per the proceedings dated 29.05.2013 of the 2nd respondent, petitioners obtained copy of Ext.P3 award as per the provisions of the Right to Information Act, and on finding that the awards passed were not as agreed between the parties and that only the timber value alone was paid towards value of improvements, filed Ext.P4 objection to Ext.P2 series of recommendations objecting to the quantum of compensation fixed by the Land Acquisition Officer and intimating the 3rd respondent that they are willing to receive the amount now awarded subject to condition that a reference be preferred to the appropriate Court under Section 18 of the Act, 1894 for determination of the correct amount of compensation to be paid to the petitioners. In spite of the receipt of Ext.P4 series of objection no steps were taken by the 3rd respondent in this regard.



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4. Thereupon, the matter was taken up before this Court in WP(C) No.32066/2013 and this Court as per Ext.P5 judgment allowed the writ petition directing respondents 1 and 3 to pass award under Section 11(1) of the Act, 1894 and to pay the petitioners compensation as approved in the proceedings No.B3-40436/2009 dated 29.05.2013. The respondents 1 to 3 and the 4th respondent challenged Ext.P5 judgment in WA Nos.1327/2016, 1326/2016 and 977/2016 respectively and the Division Bench of this Court allowed the appeal by Ext.P6 judgment. But in Ext.P6 judgment this Court has concluded that there was consensus ad idem between the petitioners and the respondents for acquiring the properties of the petitioners by paying land value at the rate of Rs.10,750/- per cent and value of improvements in terms of Ext.P1 Government order. Further as regards the quantum of compensation awarded in Ext.P3 series of awards this Court in Ext.P6 judgment found that value of improvements was not calculated as provided for in Ext.P1 Government order, which was agreed between the parties. Therefore the Division Bench directed to modify the award by calculating the value of improvements in tune with what is provided in Ext.P1 Government order. Further taking note of the fact that there has been considerable delay in paying compensation to the petitioners, the Court further held that the petitioners are entitled for interest at



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the rate of 12% per annum on the unpaid part of the compensation on the date of taking possession till the date of payment. An SLP was preferred before the above Court which was ultimately dismissed as withdrawn granting liberty to the appellants to file review application as per Ext.P7 order in SLP No.12459-60/17. Thereafter RP No.580/2017 was filed which was dismissed and the SLP preferred by the petitioners against the same was also dismissed as per Ext.P10. On the basis of the same it is the contention of the petitioners that findings in Ext.P6 judgment has become final and as per Ext.P6 judgment the 3rd respondent was bound to modify the award so far it relates to compensation for improvement, and further that petitioners are entitled for interest at the rate of 12% per annum on the unpaid amount of compensation from the date of taking possession till the date of payment.

5. Thereafter revised awards were passed as Ext.P10 series. Petitioners contend that Ext.P10 series of awards were also not prepared in accordance with the direction of this Court in Ext.P6 judgment. The value of improvements were not calculated in accordance with the stipulations in Ext.P1. In the original Ext.P3 series of awards the value of timber alone was granted under the head of value of improvement, but in Ext.P10 series of award the value of timber already awarded was taken away and the petitioner



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was awarded annual produce value for the usufructs alone. Petitioners would submit that annual produce value was not calculated as per Ext.P1 Government order as the calculation was made based on agriculture income tax return of the petitioners alone. The said situation has resulted in considerable reduction in the compensation awarded to the petitioners. Aggrieved by Ext.P10 series of awards petitioners approached this Court filing WP(C) No.7930/2018 and the said writ petition was disposed of as per Ext.P11 judgment directing the 2nd respondent to consider the objection preferred by the petitioners and pass appropriate orders thereon after hearing the petitioners. Without advertent to any of the objections raised by the petitioners an order dated 21.03.2019 was issued concluding that no interference is needed in Ext.P10 series of awards. The said order was again challenged in WP(C) No.10869/2019 and this Court was pleased to allow the said writ petition as per Ext.P12 judgment. In Ext.P12 judgment it was found that petitioners are entitled for both timber value as well as annual produce value of the timber, and further directed that annual produce value of the trees will have to be reworked after obtaining necessary views from the competent authority. Ext.P12 judgment was challenged by the 4th respondent filing WA No.935/2020 which was dismissed by this Court as per Ext.P13. In Ext.P13 judgment the



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Division Bench also specifically affirmed the findings in Ext.P12 judgment that annual produce value is to be assessed on the basis of actual valuation taken by a competent person and not on the basis of the agriculture income tax return provided by the petitioners. Though the same was challenged filing SLP (Civil) No.1241/2021 before the Apex Court the same was dismissed as per Ext.P14 order. Even thereafter no awards were passed as directed in Exts.P12 and P13 judgments and only after filing of contempt of Court case as CO(C) No.452/2021 Ext.P15 series of awards were passed.

6. Petitioners contended that Ext.P15 series of awards were prepared in the most negligent and irresponsible manner with glaring calculation errors. Thereupon a memo was filed by the Special Government Pleader in the contempt of Court case intimating that 2nd respondent has cancelled Ext.P15 series of awards and that rectified award dated 06.08.2021 has been passed by the 3rd respondent as evident from Ext.P16 series of proceedings. Thereafter Ext.P17 series of rectified awards dated 06.08.2021 were passed. The contention of the petitioners is that even Ext.P17 series of awards were passed by the 3rd respondent in contravention of the express findings of this Court in Exts.P6, P12 and P13 judgments. It is contended that this Court in Ext.P6 judgment has taken note of



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the long delay on the part of the respondents in paying compensation to the petitioners and has expressly directed the respondents to pay interest at the rate of 12% on the unpaid amount of compensation from the date of taking possession to the actual payment. But respondents 2 and 3 while issuing Ext.P16 series of proceedings and Ext.P17 series of awards have restricted the interest to 06.09.2013 stating that the petitioners have declined to receive the amount despite service of notice under Section 12(2) of the Act, 1894. It is contended that this restriction on payment of interest only upto 06.09.2013 is in violation of the specific direction issued by this Court in Ext.P6 judgment. Petitioners would contend that no notice has been served on them as provided under Section 12(2) of the Act, 1894. Only communication issued to the petitioners is Ext.P2 series of communication which is not one issued under Section 12(1)(2) of the Act, 1894. Further it is contended that though respondents 1 and 3 have averred in the counter affidavit and additional counter affidavit filed in WP(C) No.32066/2013 regarding the factum of deposit of compensation amount and revenue deposits, this Court in Ext.P6 judgment, notwithstanding the deposit of amount awarded as per Ext.P3 series of awards by the respondent in revenue deposit directed payment of 12% interest from the date of possession to the date of payment. Ext.P6 judgment has not been



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challenged till date and findings in Ext.P6 judgment with respect to payment of interest has become final, and therefore the respondents have no right to limit interest till the date of passing of Ext.P3 series of awards.

7. Petitioners denied the fact that the 3rd respondent has made revenue deposit of the amount covered by Ext.P3 series of awards. Further it is contended that the alleged notice under Section 12(2) of the Act to be issued in Form No.10(b) has not been produced before this Court. Another contention raised by the petitioners is that in Exts.P12 and P13 judgments this Court has specifically found that the annual produce value shall not be calculated on the basis of the agriculture income tax returns of the petitioners, and that the respondents were bound to call for a report from the expert body in this regard, and the Rubber Board has given Ext.P18 report, but in Ext.P17 series of awards the annual produce value was again calculated based on the agriculture income tax return, completely ignoring Ext.P18 report. It is further contended that while calculating annual produce value in Ext.P17 series of awards value of 'ottupal' (scrap rubber) was not included by respondents 2 and 3. Petitioners would contend that the price of the scrap rubber contributes to a sizeable portion of the income earned out from a rubber plantation, and on an average for every kilogram



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of rubber sheet produce by a rubber plantation 200 grams of scrap rubber is also collected for sale. Yet another contention raised by the petitioners is that in Ext.P12 judgment this Court after interpreting clause 7.7 and clause 2(c) of Ext.P1 Government order has specifically found that petitioners are entitled for annual produce value for the last three years. Admittedly the property was taken possession on 15.02.2012 during the fag end of the financial year 2011-12. Hence it is contended that the petitioners are entitled for compensation taking into consideration annual produce value for the years 2011-12, 2010-11 and 2009-10. But in Ext.P17 series of awards the 3rd respondent has left out the year 2011-12 and took into consideration annual produce value only for the years 2010-11, 2009-10 and 2008-09, which the petitioners submit that has been done purposefully to reduce the amount of compensation payable to the petitioners as the price of rubber during 2011-12 was higher when compared to the previous years. Ext.P19 is the report of the price of the rubber during 2011-12 issued by the Rubber Board, Kottayam. It is aggrieved by these factual situation that the present writ petition has been filed.

8. A statement has been filed by respondent No.4 KSIDC, wherein it is contended that petitioners have already received the amount duly entitled to them. The 4th respondent has filed an application for receiving the additional documents, wherein a copy of



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the writ petition filed by the petitioner herein as WP(C) No.7930/2018 is produced as Ext.R4(e) and the 4th respondent relying on Ext.P19 document dated 24.12.2013 produced in the said writ petition, submits that notice under Section 12(2) of the Act, 1894 has already been issued to the petitioners on 24.12.2013 and therefore, the contention of the petitioners that no notice under Section 12(2) of the Act, 1894 was received by them is without any basis. A detailed statement as well as counter affidavit has been filed by the 4th respondent refuting the contentions in the writ petition. It is also contended that whatever amount due has already been duly paid as agreed upon and Ext.R4(c) report of the Rubber Board cannot be accepted and they have filed Ext.R4(d) objection to the same and the only reliable method for calculating the annual produce value is considering the agriculture income tax return submitted by the petitioners. On the basis of Ext.R3(a) notice issued under Section 12(2) of the Act, 1894 the petitioners are not entitled for any interest from 2013 onwards.

9. A detailed counter affidavit has been filed by the 3rd respondent Tahsildar (LA), wherein it is admitted that this Court has directed to give 12% interest per annum on the unpaid portion of the compensation from the date of taking of possession till payment. But it is contended that petitioners have purposefully refused to receive



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the compensation award amount which has been kept as revenue deposit. The land value of Rs.10,750/- per cent was approved by the DLPC and advance amount was paid and the possession was handed over and the compensation for perennial crops and trees were calculated based on annual produce value for the last three years. It is admitted that yield from the rubber trees was finalised on the basis of the agriculture income tax return which is admitted by the parties before the Commercial Tax Officer, Perambra. The contention of the petitioners that they have not been served with any notice under Section 12(2) is denied and contended that the petitioners were served with notice under Section 12(2) of the Act, 1894 on 24.12.2013, and the same was acknowledged by the petitioners as is evident from Ext.R3(a), and the same was received by Thomas Mathew as evident from Ext.R3(b) and Mariamma Mathew has received the same as per Ext.R3(c) and the acknowledgment card of the 3rd petitioner has not been received back from the postal authorities. Thereupon the amount was decided to be kept in revenue deposit as evident from Ext.R3(d). It is further submitted that since notice was issued and thereafter the amount was transferred to revenue deposit, petitioners are not eligible for further interest from September/October 2013.



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10. On the specific contention raised by the petitioners that they have not received notice under Section 12(2) of the Act, 1894, this Court has directed the 3rd respondent to file an affidavit explaining the same. In the affidavit it is contended that Ext.P19 produced in Ext.R4(e) writ petition in WP(C) No.7930/2018 the notice issued to the petitioners under Form 10(b) would reveal that they have received the same on 24.12.2013. After fresh awards were passed amounts were remitted to the petitioners' account and also acknowledged by the petitioners as evident by Exts.R3(e), R3(f) and R3(g) respectively. In view of the above it is contended that the petitioners are not entitled for interest for the period from 2012 to 2017.

11. Petitioners have also produced Ext.P25 request submitted by them dated 19.10.2015, wherein they have requested for release of the amount due to them as shown in the notice dated 13.10.2013, i.e. Ext.P2(a) which has already been deposited in the revenue account, and contend that inspite of such request being made, the amount has not been disbursed.

12. I have heard the rival contentions on both sides.

13. After hearing the contentions on both sides, the grievance raised by the petitioners in respect of Ext.P16 series of proceedings and Ext.P17 series of awards could be summarised as follows:-



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1. Ext.P17 series of awards were passed in violation of the findings in Exts.P6, P12 and P13 judgments.
2. In Ext.P6 judgment taking note of the long delay on the part of the respondents to pay compensation to the petitioners, the Court has expressly directed the respondents to pay interest at the rate of 12% on the unpaid amount of compensation from the date of taking possession till actual payment, but while issuing Ext.P16 series of proceedings and Ext.P17 series of awards the 3rd respondent had restricted the interest upto 06.09.2013, the date of passing of Ext.P3 series of awards contending that the petitioners have declined to receive the amount despite service of notice under Section 12(2) of the Act, 1894.
3. Petitioners were never served with any notice under Section 12(2) of the Act, 1894. The only communication which they have received is Ext.P2 series of communication which cannot be termed as a notice under Section 12(2) of the Act, 1894 which has to be issued in Form No.10(b) appended to the Land Acquisition (Kerala) Rules, 1990.
4. In Exts.P12 and P13 judgments this Court has specifically found that annual produce value should not be calculated on the basis of agriculture income tax return of the petitioners and



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that the respondents are bound to call for report from the expert body regarding the same, and though Ext.P18 report was filed the same was not taken into consideration while issuing Ext.P17 series of awards.

5. While calculating the annual produce value in Ext.P17 series of awards, the value of 'ottupal' (scap rubber) was not included.
6. In Ext.P12 judgment this Court after interpreting clause 7.7 and 2(c) of Ext.P1 Government order has specifically found that petitioners are entitled for annual produce value for the last three years, and as the property was taken possession only on 15.02.2012 i.e. during the fag end of the financial year 2011-12, the petitioners are entitled for annual produce value for the year 2011-12, 2010-11 and 2009-10, but the value was calculated based on the annual produce value for the year 2011-10, 2009-10 and 2008-09, and the year 2011-12 has been left out only for the reason that the value of the rubber was high during the said period as evident from Ext.P19.
7. The calculations in Ext.P17(a) are also erroneous.

14. Let me first consider whether the restriction of payment of interest to 06.09.2013 in Ext.P17 series of awards is proper. In Ext.P6 judgment this Court has specifically found that it is agreed between the parties that as regards the delay in payment of the



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unpaid compensation, interest will be paid at the rate of 12% per annum from the date of taking possession till date of payment. Paragraph 21 of Ext.P6 judgment reads as follows:-

“From the discussions as above, there cannot be any doubt that there has been an agreement between the land owners and the Acquisition Authority regarding voluntary acquisition of land and passing of awards on consent. We hold that there has been agreement between the land owners and the Acquisition Authority that the compensation for the land would be payable at the rate of Rs.10,7850/- per cent and the compensation for the improvements on the land would be paid in accordance with G.O(Rt.) No.331/2004/RD dated 05.11.2004, and regarding delayed payment of compensation, interest at the rate of 12% per annum would be paid on the unpaid part of the compensation from the date of taking possession till date of payment. We cannot agree with the reasoning given by the learned single Judge to discard the agreement arrived at between the parties.”

The said finding in Ext.P6 judgment has become final and has not been challenged by any of the respondents therein. Yet another contention raised by the respondents to deny interest till actual disbursement of the amount is that the petitioners were issued with Ext.P2 series of notices, Ext.R3(a) notice dated 27.12.2013 and Ext.P19 notice dated 24.12.2013 produced along with Ext.R4(e) writ petition filed by the petitioner herein as WP(C) No.7930/2018. The stand of the learned Government Pleader in the counter affidavit is



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that Ext.R3(a) notice is a notice under Section 12(2) of the Act, 1894 which was duly received by the petitioners. Whereas the stand taken by the 4th respondent is that petitioners were issued with Ext.P19 notice produced in WP(C) No.7930/2018, a copy of which is produced as Ext.R4(e). Interestingly, in the affidavit filed by the 3rd respondent on 29.07.2023, it is claimed that Ext.P19 produced along with Ext.R4(e) writ petition is the Form 10B notice issued to the petitioners.

15. Before considering the contentions raised based on service of notice under Section 12(b) it is profitable to scan through the relevant portions. Section 12 of the Land Acquisition Act, 1894 provides when the award of the Collector could be treated as final. Section 12(2) mandates that the Collector shall give immediate notice of the award to such of the persons interested as are not present personally or by the legal representatives when the award is made. Section 12 is extracted below:-

***“12. Award of Collector when to be final. - (1) Such award shall be filed in the Collector’s office and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and the apportionment of the compensation among the persons interested.*”**



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(2) The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made.”

16. Section 13 of the Land Acquisition Kerala Rules, 1990 mandates notice of award and payment, which provides that immediately after the award is made the Land Acquisition Officer shall issue notice of award in Form No.10(b) and the said notice shall be served on the awardees as well as other persons interested in the land in the manner prescribed in Section 45. Rule (2a) mandates that if an awardee or an authorised agent have any protest on the amount of compensation awarded they may receive the amount by recording with the endorsement ‘received under protest’ on the counterfoil of the cheque disbursing the amount, and Rule 13(2) mandates that in case the awardees or their authorised agent fail to appear and accept the award or fail to apply for a reference report under Section 18, the amount due shall be paid to the Treasury as revenue deposit payable to the person to whom it is respectively due. Rule 13 of the Land Acquisition (Kerala) Rules, 1990 is extracted below:-

“13.Notice of award and payment. - (1) Immediately, after the award is made, the Land Acquisition Officer shall issue a notice of award in Form No.10(b). The said notice shall be served on the awardees as well as other persons interested in the land in the manner prescribed in Section 45.



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[(2a) If the awardees or their authorised agents have any protest on the amount of compensation awarded, they may receive the amount by recording with the endorsement "Received under Protest" on the counterfoil of the cheque disbursing the amount.]

(2) In case the awardees or their authorised agents fail to appear and accept the award or fail to apply for a reference to Court under Section 18, the amount due shall be paid into the treasury as Revenue Deposit payable to the persons to whom it is respectively due and vouched for in Form E. A notice intimating the deposit of the amount into the Treasury shall also be served on all the awardees and interested persons in Form No.11.

(3) As soon as the payment or deposit of the award is completed, a subsidiary statement in Form 'B' showing the acceptance of award shall be sent to the Accountant General in duplicate.

(4) Where an award has been made by a Court under Section 25, a second award statement shall be prepared in Form 'C' by the Land Acquisition Officer and a copy thereof sent to the Accountant General in duplicate.

(5) The Accountant General will forward one copy each of the completed A, B and C statements to the Board of Revenue which will be filed there and retained permanently."

So going by Rule 13 notice of award is to be given in Form No.10(b).

The appendix to the Rules, Land Acquisition (Kerala) Rules, 1990 Form No.10(b) in its appendix. Form No.10(b) as provided in Rule 13 is extracted below:-

"Form No.10(b)



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[See Rule 13]

NOTICE

The following award has been passed by the under signed in the matter of the acquisition of the lands noted below and situated inDistrict.....Village.....Taluk.

<i>Survey Number and sub Division No.</i>	<i>Extent Are. in Sq.M.</i>	<i>Amount awarded Rs.</i>	<i>Persons to whom award is made</i>
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You are hereby informed that you should appear either in person or by an authorised agent before the undersigned on..... at..... to receive the amount specified above, failing which the said sum of money will be kept in Revenue Deposit and will bear no interest. If you have any protest on the amount of compensation the words "Received under Protest" shall be recorded on the counterfoil of the cheque and make an application for reference to court under section 18 of the Land Acquisition Act within the period specified therein.]"

A perusal of the said Form reveals that it is an intimation to the person in whose favour the award has been made to receive the amount and in failure to receive the same, the amount will be kept in revenue deposit and the same will not bear any interest. It is in the said background that Ext.P2 series of notice, Ext.R3(a) and Ext.P19 notice in Ext.R4(e) is to be considered. Ext.P2 series of notices were issued on 30.10.2013 and 22.10.2013 respectively. That is only an



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intimation to the petitioners that an award has been passed and therefore petitioners should produce necessary documents in support of their claim. To Ext.P2 series of notices after receiving copies of Ext.P3 award, Ext.P4 series of reply was given by the petitioners dated 31.10.2013, wherein they have intimated the authorities that they are ready to accept the amount, if the same is paid recording their objection and on condition that the matter will be referred to the Court under Section 18 of the Act and that if such an intimation is received in this regard they are ready to accept the amount. A perusal of Ext.P2 series of notice reveal that the same is not a notice as contemplated as per the Act and the Rules, or in the notice form and contend specified in Form No.10(b).

17. Now let me refer to Ext.R3(a) notice which is claimed by the Government be the notice under Section 12(2). A perusal of Ext.R3(a) reveals that that is a notice which is issued to the petitioners intimating that an award has been passed in respect of the acquired property. It is seen that the said notice has been despatched on 27.12.2013. Ext.R3(d) is claimed to be the revenue deposit receipt before the treasury as the petitioner has not responded to Ext.R3(a) notice. Now let me refer to Exts.P19 referred to in Ext.R4(e) which is claimed to be the notice under Section 10(b). Ext.P19 notice referred to in Ext.R4(e) which is dated 24.12.2013



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shows that an award has been passed and as the amount was not received on or before 13.10.2013, the amount has been deposited in the revenue deposit and for the said amount the petitioners are not entitled for interest. The notice what is contemplated as per Rule 13 which is in Form No.10(b) is a notice intimating the petitioners that an award has been passed and the claimant shall receive the amount on a particular date and on failure of receipt of the said amount the amount will be kept in revenue deposit and the same will not bear any interest. Ext.P2 series is only an intimation which is admittedly not in the Form 10(2). In Ext.R3(a) it is stated that it is a notice under Section 12(2) of the Act, 1894 which is an intimation regarding the passing of the award, which is seen despatched on 27.12.2013. The said notice also does not contain the date on which the petitioners have to appear for receipt of the amount, and admittedly the said notice is also not in the form as provided as per the Act and the Rules. The learned Government Pleader contends that this is the notice issued to the petitioners under Section 12(2) of the Act, 1894 which was despatched only on 27.12.2013. Ext.P19 notice in Ext.R4(e) which is relied on by the 4th respondent to be notice under Section 12(2) of the Act, 1894 is dated 24.12.2013, wherein the petitioners were intimated that as they have not received the amount, the amount has already been deposited in the



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revenue deposit. The date of Ext.P19 produced along with Ext.R4(e) is 24.12.2013. If in fact the amount was deposited in the revenue deposit and such intimation was given to the petitioners on 24.12.2013 there is no sanctity in issuing Ext.R3(a) notice which is despatched only on 27.12.2013 to contend that it is a notice under Section 12(2) of the Act. Therefore, I am of the view that even these notices which are relied on by the respondents cannot be treated as a notice under Section 12(2) of the Act, 1894 so as to deny the petitioners their claim for interest.

18. The Apex Court has considered the effect of issuance of an improper notice in **Commissioner of Sales Tax and Others v. Subhash and Co. [(2003) 3 SCC 454]** and held that issuance of a notice as prescribed in the Rules constitutes a part of reasonable opportunity of being heard. In view of the above, when no proper notice as contemplated in Section 12(2) read with the Rules and the Form appended to the Rules has not been issued it cannot be said that a proper intimation regarding passing of award is issued to the petitioner. **The Apex Court in Food Corporation of India Ltd. v. State of Punjab [(2001) 1 SCC 291]** while considering the question of validity of notice held that notice to the affected person mandated in the Section is not an empty formality and it is meant for a purpose, and that a vague and unreasoned notice will not



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provide reasonable opportunity to the party to file objection meeting the reasons/grounds on which the action is proposed. The Punjab and Haryana High Court in **Gurcharan Singh v. Chairman, Delhi Improvement Trust [1995 AIR Punjab and Haryana 34]** has held that when the statute requires a notice to be given in a particular form it should be in that form. The Karnataka High Court in **Mr. S.N. Sinha v. State of Karnataka, by Secretary Department of Revenue and Others [2012 ILR Karnataka 448]** has held that a notice to be valid same should be clear and precise so as to give the party concerned adequate information of the case he has to give.

19. In the light of the above facts and circumstances and the declaration of law as stated above, I am of the view that the notices which are relied on by the respondents to be notice under Section 12(2) of the Act, 1894 cannot be accepted. In view of the above it is to be held that no notice under Section 12(2) of the Act, 1894 was served on the petitioners. The lack of proper notice coupled with the direction in Ext.P6 judgment of the Division Bench, wherein specific direction was issued to the respondent to pay interest at the rate of 12% on the unpaid amount of compensation from the date of taking possession till actual payment, I am of the opinion that the petitioners are entitled for 12% interest on the unpaid amount of



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compensation from the date of taking possession till actual payment is made. The stand taken in Ext.P16(d) series of proceedings and Ext.P17(a) series of awards denying the same is liable to be interfered with.

20. The next contention raised by the petitioners is regarding calculation of the annual produce value based on the agriculture income tax return of the petitioners as done in Ext.P17 series of awards. In Ext.P12 judgment of this Court, this Court has specifically considered the said issue and has categorically held that the petitioners are entitled for the timber value as well as annual produce value of the trees which has to be reworked after obtaining necessary inputs from the competent authority. Paragraphs 11, 12 and 13 of Ext.P12 judgment reads as follows:-

“11. The term compensation has to be given normal meaning. One would be entitled to timber value as well as produce value as compensation in normal circumstances. In the contract if nothing indicates as to the contrary, such a compensation cannot be denied to the owner of the land. In regard to rubber tree after the age of yield is over, one would get timber value.

12. On interpretation of the agreement, this Court find as per the Government order, that the petitioners are entitled for both the timber value as well as the annual produce value of the timber, on a conjoined reading of Clause 7.7 and Clause 2C in the Annexure II. In such circumstances, the writ petition has to be allowed.



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13. The petitioners should be given the timber value as originally calculated. The annual produce value of the trees will have to be re-worked after obtaining necessary inputs from the competent authority. It shall be done within a period of two months. The compensation amount shall be re-worked and paid within a further period of two months. Accordingly, the impugned orders are set aside."

Further in Ext.P13 judgment of the Division Bench which was filed challenging Ext.P12 judgment the Division Bench has repelled the challenge against the direction in Ext.P12 that the annual produce value is to be assessed on the basis of actual valuation taken by the competent person and not on the basis of the agriculture income tax return provided by the writ petitioners. Paragraph 27 of the said judgment reads as follows:-

"27. Learned counsel for the appellant submitted that once the market value of the trees is taken in terms of clause 7.7, then the produce value cannot be given. The learned single Judge found that in terms of the provisions contained under the Government order, the writ petitioners are entitled to get the market value of the timber and annual produce value, to which we agree absolutely. We are also of the firm opinion that there is no illegality or other legal infirmities in the matter of exercise of discretion by the learned single Judge. Above all, the appellant has also questioned the direction given by the learned single Judge that the annual produce value is to be assessed on the basis of the actual valuation taken by a competent person and not on the basis of the agricultural income tax return provided by the writ



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petitioners. We do not find any reason to interfere with the said finding also, because it was done taking into account the method prescribed under clause 2C of the order dated 05.11.2004 and not on the basis of the income tax return as done by the awarding officer.”

21. Though SLP was preferred against Ext.P13 judgment the same was dismissed as per Ext.P14 order. After being conclusively found by this Court in Exts.P12 and P13 and dismissal of the challenge against Exts.P12 and P13 by the Apex Court as per Ext.P14 order, the respondents are clearly in violation of the orders of this Court while issuing Ext.P17 series of awards, wherein annual product value has been calculated based on the agriculture income tax return submitted by the petitioners. Therefore, I am of the view that the said part of the award is also liable to be interfered with.

22. The further contention of the petitioners that ‘ottupal’ (scrap rubber) was not included by respondents 2 and 3, while calculating the annual produce value is to be considered next. It is a common knowledge that ‘ottupal’ (scrap rubber) also contributes to the sizeable portion of the income earned out of a rubber plantation. Yet another contention of the petitioners that the annual produce value for the year 2011-12, 2010-11 and 2009-10 was to be taken into consideration for calculating the annual produce value is also liable to be reconsidered by the respondents 2 and 3, especially



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taking into consideration the fact that the property was taken possession only in the fag end of the financial year of 2011-12, i.e. only on 15.02.2012. Therefore, the said aspect is liable to be reconsidered by the 3rd respondent taking into consideration Exts.P18 and P19 report submitted by the Rubber Board.

23. A disturbing aspect to be noted in this case is that though interest at the rate of 12% was awarded by the Division Bench of this Court as per Ext.P6 judgment and the said order has become final, the basis on which a different stand was taken overlooking the direction of the Division Bench of this Court is not stated in Ext.P16 series of proceedings or in Ext.P17 series of awards. I have also found that the notices under Section 12(2) claimed to have been issued to the petitioners also cannot be accepted as a proper notice in terms of the Act and Rules. Further it is confirmed in Exts.P12 and P14 that the annual produce value is to be assessed on the basis of actual valuation taken by a competent person and not on the basis of the agriculture income tax return. Inspite of Exts.P12, P13 and P14 while issuing Ext.P17 series of awards the annual product value was calculated based on the agriculture incomte tax return. The stand taken in Ext.P16 series proceedings and Ext.P17 series of awards overlooking the specific finding and direction by this Court and by



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the Apex Court is nothing but clear violation of the directions issued by the Courts.

In the light of the above, I am inclined to dispose of the writ petition as follows:-

1. Ext.P16(a) series of proceedings and Ext.P17(a) series of awards are quashed.
2. There will be a direction to respondents 2 and 3 to pass fresh awards strictly in accordance with the directions in Exts.P6, P12 and P13 judgment and the observation made in this judgment.
3. While passing the fresh award the value of 'ottupal' (scrap rubber) shall also be taken into consideration for calculating the annual produce value after obtaining necessary report in this regard from the Rubber Board.
4. While reconsidering the annual produce value taking into consideration the value of 'ottupal' (scrap rubber), the respondents 2 and 3 shall take into consideration Exts.P8 and P19 reports of the Rubber Board and consider the claim of the petitioners that the annual produce value for the year 2011-12, 2010-11 and 2009-10 has to be taken into consideration as the property was taken possession from the petitioners only on 15.02.2012 i.e. during the fag end of the financial year 2011-12.



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5. The respondents 2 and 3 shall pay interest at the rate of 12% per annum to the petitioners on the unpaid amount of compensation from 15.02.2012 i.e. the date of taking possession of the petitioners' property till actual payment.
6. A fresh award shall be passed in this regard within an outer limit of four months from the date of receipt of a copy of this judgment.

Sd/-
VIJU ABRAHAM
JUDGE

sbk/-



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APPENDIX OF WP(C) 11492/2022

PETITIONER EXHIBITS

- | | |
|--------------------|--|
| Exhibit P1 | A TRUE COPY OF GO(RT) NO.331/2004/RD DATED 05.11.2004 |
| Exhibit P2A | A TRUE COPY OF THE COMMUNICATION DATED 30.10.2013 ISSUED BY THE 3RD RESPONDENT TO THE 1ST PETITIONER |
| Exhibit P2B | A TRUE COPY OF THE COMMUNICATION DATED 22.10.2013 ISSUED BY THE 3RD RESPONDENT TO THE 2ND PETITIONER |
| Exhibit P2C | A TRUE COPY OF THE COMMUNICATION DATED 22.10.2013 ISSUED BY THE 3RD RESPONDENT |
| Exhibit P3A | A TRUE COPY OF THE AWARD ALLEGEDLY PASSED IN RESPECT OF THE PROPERTY OF THE 1ST PETITIONER IN THE YEAR 2013 |
| Exhibit P3B | A TRUE COPY OF THE AWARD ALLEGEDLY PASSED IN RESPECT OF THE PROPERTY OF THE 2ND PETITIONER IN THE YEAR 2013 |
| Exhibit P3C | A TRUE COPY OF THE AWARD ALLEGEDLY PASSED IN RESPECT OF THE PROPERTY OF THE 3RD PETITIONER IN THE YEAR 2013 |
| Exhibit P4A | A TRUE COPY OF THE OBJECTION DATED 31.10.2013 SUBMITTED BY THE 1ST PETITIONER BEFORE THE 3RD RESPONDENT |
| Exhibit P4B | A TRUE COPY OF THE OBJECTION DATED 31.10.2013 SUBMITTED BY THE 2ND PETITIONER BEFORE THE 3RD RESPONDENT |
| Exhibit P4C | A TRUE COPY OF THE OBJECTION DATED 31.10.2013 SUBMITTED BY THE 3RD PETITIONER BEFORE THE 3RD RESPONDENT |
| Exhibit P5 | A TRUE COPY OF THE JUDGMENT DATED 07.10.2013 OF THIS HON'BLE COURT IN WPC NO.32066 OF 2013 |



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- Exhibit P6** **A TRUE COPY OF THE COMMON JUDGMENT DATED 16.12.2016 IN WA NO.1327 OF 2016 AND WA NO.977 OF 2016**
- Exhibit P7** **A TRUE COPY OF THE ORDER DATED 04.05.2017 OF THIS HON'BLE SUPREME COURT OF INDIA IN S.L.P.(C) NO.12459-60/17**
- Exhibit P8** **A TRUE COPY OF THE COMMON ORDER DATED 05.01.2018 IN RP BO.580/2017 AND RP NO.574/2017**
- Exhibit P9** **A TRUE COPY OF THE ORDER DATED 17.05.2018 OF THE HON'BLE SUPREME COURT OF INDIA IN SLP(C) NO.13914/2018**
- Exhibit P10A** **A TRUE COPY OF THE REVISED AWARD DATED 21.02.2017 PASSED BY THE 3RD RESPONDENT IN RESPECT OF THE PROPERTY OF THE 1ST PETITIONER**
- Exhibit P10B** **A TRUE COPY OF THE REVISED AWARD DATED 21.02.2017 PASSED BY THE 3RD RESPONDENT IN RESPECT OF THE PROPERTY OF THE 2ND PETITIONER**
- Exhibit P10C** **A TRUE COPY OF THE REVISED AWARD DATED 21.02.2017 PASSED BY THE 3RD RESPONDENT IN RESPECT OF THE PROPERTY OF THE 3RD PETITIONER**
- Exhibit P11** **A TRUE COPY OF THE JUDGMENT DATED 05.10.2018 OF THIS HON'BLE COURT IN WPC NO.7930 OF 2019**
- Exhibit P12** **A TRUE COPY OF THE JUDGMENT DATED 11.03.2020 OF THIS HON'BLE COURT IN WPC NO.10869 OF 2019**
- Exhibit P13** **A TRUE COPY OF THE JUDGMENT DATED 01.12.2020 OF THIS HON'BLE COURT IN WA NO.935 OF 2020**
- Exhibit P14** **A TUE COPY OF THE ORDER DATED 03.03.2021 OF THE HON'BLE SUPREME COURT OF INDIA IN S.L.P(CIVIL) 1241 OF 2021**



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- Exhibit P15A** **A TRUE COPY OF THE AWARD DATED 06.08.2021 PASSED BY THE 3RD RESPONDENT IN RESPECT OF THE PROPERTY OF THE 1ST PETITIONER**
- Exhibit P15B** **A TRUE COPY OF THE AWARD DATED 06.08.2021 PASSED BY THE 3RD RESPONDENT IN RESPECT OF THE PROPERTY OF THE 2ND PETITIONER**
- Exhibit P15C** **A TRUE COPY OF THE AWARD DATED 06.08.2021 PASSED BY THE 3RD RESPONDENT IN RESPECT OF THE PROPERTY OF THE 3RD PETITIONER**
- Exhibit P16A** **A TRUE COPY OF THE PROCEEDINGS NO.DCKKD/9348/2017-B3(1) DATED 16.11.2021 OF THE 2ND RESPONDENT**
- Exhibit P16B** **A TRUE COPY OF THE PROCEEDINGS NO.DCKKD/9348/2017-B3(2) DATED 16.11.2021 OF THE 2ND RESPONDENT**
- Exhibit P16C** **A TRUE COPY OF THE PROCEEDINGS NO.DCKKD/9348/2017-B3(3) DATED 16.11.2021 OF THE 2ND RESPONDENT**
- Exhibit P17A** **A TRUE COPY OF THE RECTIFIED AWARD DATED 06.08.2021 PASSED BY THE 3RD RESPONDENT IN RESPECT OF THE PROPERTY OF THE 1ST PETITIONER**
- Exhibit P17B** **A TRUE COPY OF THE RECTIFIED AWARD DATED 06.08.2021 PASSED BY THE 3RD RESPONDENT IN RESPECT OF THE PROPERTY OF THE 2ND PETITIONER**
- Exhibit P17C** **A TRUE COPY OF THE RECTIFIED AWARD DATED 06.08.2021 PASSED BY THE 3RD RESPONDENT IN RESPECT OF THE PROPERTY OF THE 2ND PETITIONER**
- Exhibit P18** **A TRUE COPY OF THE COMMUNICATION DATED 05.08.2021 ISSUED BY THE JOINT RUBBER PRODUCTION COMMISSIONER RUBBER BOARD, MINISTRY OF COMMERCE AND INDUSTRY, GOVERNMENT OF INDIA TO THE 3RD RESPONDENT**
- Exhibit P19** **A TRUE COPY OF THE REPORT DATED 07.01.2021**



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**FILED BY THE DIRECTOR, RUBBER RESEARCH
INSTITUTE OF INDIA, RUBBER BOARD, KOTTAYAM
BEFORE THIS HON'BLE COURT IN WPC
NO.10869/2019**

Exhibit P20	A TRUE COPY OF THE ORDER DATED 09.02.2022 OF THIS HON'BLE COURT IN CONT.CASE (CIVIL) NO.452 OF 2021
Exhibit P21A	CALCULATION STATEMENT SHOWING THE AMOUNTS DUE TO THE 1ST PETITIONER
Exhibit P21B	CALCULATION STATEMENT SHOWING THE AMOUNTS DUE TO THE 2ND PETITIONER
Exhibit P21C	CALCULATION STATEMENT SHOWING THE AMOUNTS DUE TO THE 3RD PETITIONER

RESPONDENT EXHIBITS

EXHIBIT R3(a)	TRUE COPY OF THE NOTICE DATED 24.12.2013.
EXHIBIT R3(b)	TRUE COPY OF THE ACKNOWLEDGMENT CARD DATED NIL SIGNED BY THOMAS MATHEW.
EXHIBIT R3(c)	TRUE COPY OF THE ACKNOWLEDGMENT CARD DATED NIL SIGNED BY MARIAMMA MATHEW.
EXHIBIT R3(d)	TRUE COPY OF THE REVENUE DEPOSIT RECEIPT.
Exhibit R4(a)	TRUE COPY OF THE ORDER DATED 14/7/2021 IN CONTEMPT CASE (CIVIL) NO.452 OF 2021 IN WPC NO.10869 OF 2019 OF THIS HON'BLE COURT
Exhibit R4(b)	TRUE COPY OF THE JUDGMENT DATED 9/2/2022 IN CON.CASE (C) NO.452/2021 OF THIS HON'BLE COURT
Exhibit R4(c)	TRUE COPY OF THE REPORT DATED 7/1/2020 FILED BY THE DIRECTOR (RESEARCH) OF RUBBER RESEARCH INSTITUTE OF INDIA, RUBBER BOARD, KOTTAYAM BEFORE THIS HON'BLE COURT IN I.A.NO.1/2019 IN WP (C) NO.10869/2019
Exhibit R4(d)	TRUE COPY OF THE OBJECTION DATED 25/1/2020



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**FILED BY THE RESPONDENT NO.4 BEFORE THIS
HON'BLE COURT IN I.A.NO.1/2010 IN WPC NO.
10869/2019**

**Exhibit R4(e) THE TRUE COPY OF THE W.P(C) 7930/2018
ALONG WITH EXHIBIT P19 WITHOUT THE OTHER
DOCUMENTS DT.28.2.2018**

PETITIONER EXHIBITS

**Exhibit P22 TRUE COPY OF THE MEMORANDUM OF WRIT
PETITION IN WP(C) NO. 32066 OF 2013 DATED
18-12-2013 (WITHOUT EXHIBITS)**

**Exhibit P23 TRUE COPY OF THE COUNTER AFFIDAVIT
(WITHOUT EXHIBITS) DATED 05-06-2014 FILED
BY THE 2ND RESPONDENT IN WP(C) NO. 32066
OF 2013**

**Exhibit P24 TRUE COPY OF THE REPLY AFFIDAVIT (WITHOUT
EXHIBITS) DATED 29-07-2014 FILED BY THE
PETITIONERS TO THE COUNTER AFFIDAVIT FILED
BY THE RESPONDENTS 2 & 4 IN WP(C) NO.
32066 OF 2013**

RESPONDENT EXHIBITS

**Exhibit R4(f) THE TRUE COPY OF THE CHALLAN RECEIPT WITH
NO.146 DATED 19.12.2013**

**EXHIBIT R3(e) TRUE COPY OF THE ACKNOWLEDGEMENT RECEIPT
DATED 21.03.2017, EVIDENCING THE PAYMENT
OF RS.2,02,135/- TO THE 1ST PETITIONER.**

**EXHIBIT R3(f) TRUE COPY OF THE ACKNOWLEDGEMENT RECEIPT
DATED 21.03.2017 EVIDENCING THE PAYMENT OF
RS. 2,59,17,847/- TO THE 2ND PETITIONER.**

**EXHIBIT R3(g) TRUE COPY OF THE ACKNOWLEDGEMENT RECEIPT
DATED 21.03.2017 EVIDENCING THE PAYMENT OF
RS. 123570/- TO THE 3RD PETITIONER.**

PETITIONER EXHIBITS

**Exhibit P25 TRUE COPY OF THE LETTER DATED 19-10-2015
SUBMITTED BY THE PETITIONERS TO THE 2ND
RESPONDENT**