

Joseph Mathew Vs. Superintending Engineer

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Court : Kerala

Decided On : Feb-14-2014

Judge : Honourable Mr.Justice P.N.Ravindran

Appellant : Joseph Mathew

Respondent : Superintending Engineer

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI FRIDAY, THE 14TH DAY OF FEBRUARY 2014 25TH MAGHA, 1935 WP(C).No. 30463 of 2011 (G) ----- PETITIONER: ----- T.M.MATHEW, THIRUNALATHIL HOUSE, ARIVAYAL, PAZHUPATHOOR.P.O, WAYANAD DISTRICT. BY ADV. SRI.S.M.PRASANTH. RESPONDENT: ----- THE MEENANGADI GRAMA PANCHAYATH, REPRESENTED BY ITS SECRETARY, MEENANGADY.P.O, WAYANAD DISTRICT, PIN - 673 591. BY ADVS. SRI.ASOK M.CHERIAN, SMT.K.S.SANGEETHA. THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29-01-2014, THE COURT ON 14-02-2014 DELIVERED THE FOLLOWING: Prv. W.P.(C).NO.30463/2011-G: APPENDIX PETITIONER'S EXHIBITS: EXT.P.1: COPY OF THE AGREEMENT ENTERED INTO BETWEEN THE PETITIONER AND THE RESPONDENT. EXT.P.2: COPY OF THE LETTER DTD. 02/04/2011 TO THE RESPONDENT. EXT.P.3: COPY OF THE COMMUNICATION DTD. 30/04/2011. RESPONDENT'S EXHIBITS: EXT.R1.(A): COPY OF THE CERTIFICATE OF VALUATION OF THE LAND DATED 01/10/2010

ISSUED BY THE DISTRICT COLLECTOR, WAYANAD. EXT.R1.(B): COPY OF THE LETTER OF THE SECRETARY OF RESPONDENT GRAMA PANCHAYAT, ADDRESSED TO THE PETITIONER, DTD. 15/03/2011. //TRUE COPY// P.A. TO JUDGE. Prv. 'C.R' A.V.RAMAKRISHNA PILLAI, J.

===== W.P(C) No.30463 of 2011 =====
===== Dated this the 14th day of February, 2014 =====

JUDGMENT

The petitioner has approached this Court for a direction against the respondent Panchayat to fulfill its part in Ext.P1 agreement for transferring the land in the name of the respondent for consideration of not less than 50,000/- per cent forthwith.

2. The petitioner owns 50 cents of land in Re-Survey No.340/4 in Block No.19 of Krishnagiri Village of Sulthan Bathery Taluk. Out of the aforesaid, 10 cents of land was agreed to be assigned to the respondent Panchayat for construction of a tank under Drinking Water Scheme, implemented by the NABARD. It was also agreed that the consideration would be 50,000/- per cent or at the rate to be fixed by the Government in that regard. The said clause was incorporated in Ext.P1 agreement on a clear understanding between the parties that the amount to be fixed by the Government, at any rate, would be more than 50,000/- per cent; it is alleged.

3. At the time of filing of this writ petition, the project was at the stage of completion, awaiting commission. The grievance of WP(C).30463/11 :-2:- the petitioner is that the respondent has not only paid the compensation for the land agreed to be purchased, but also disputed the consideration for sale as stated in Ext.P1. It is in this context, the petitioner has come up before this Court.

4. In the counter affidavit filed by the respondent Panchayat, they have maintained the stand that the District Collector, Wayanad has fixed the value of the land in question at 30,000/- per cent and thus, certified the value on 01.10.2010 vide Ext.R1 (a). The stand taken by them is that as the value of the land had to be finally decided by the Government as per Ext.P1 and not by the Panchayat, the Panchayat is not in a position to pay off the value other than what was fixed by the

District Collector.

5. I have heard the learned counsel for the petitioner and the learned counsel for the respondent Panchayat.

6. On a specific query put by me during the course of argument, the learned counsel on both sides submitted that the project has been completed and it has been commissioned. That means, the petitioner had parted with the possession of the property and the purpose for which the property was taken possession of was achieved. However, the petitioner has not received any sum towards the value of the property. Ext.P1 is the WP(C).30463/11 -:3:- copy of the agreement executed by the petitioner and the respondent Panchayat. This is not at all denied by the respondent.

7. It is stated in Ext.P1 that the consideration would be 50,000/- per cent or at the rate to be fixed by the Government. To avoid ambiguity, the petitioner could have added the words "or such higher rates fixed by the Government". It was not done. This, according to the learned counsel for the petitioner, was on the clear understanding between the parties that the amount to be fixed by the Government, at any rate, would be more than 50,000/- per cent.

8. Had it been in the contemplation of the parties at the time of making Ext.P1, that the amount to be fixed by the Government is less than 50,000/-, there was no necessity to mention the said amount in Ext.P1 agreement and it could have been left to the complete discretion of the Government. Therefore, it was pointed out by the learned counsel for the petitioner that no prudent man would have agreed to such a term in an agreement giving absolute discretion to the Government to decide what the consideration is. I see force in the submission made by the learned counsel for the petitioner. WP(C).30463/11 -:4:- 9. A plain reading of Ext.P1 agreement would make it clear that the minimum price agreed to by the parties was 50,000/- per cent. The only inference that could be drawn from the terms of Ext.P1 agreement is that the price for the land, at any rate, would be 50,000/- per cent or more than that.

10. It was argued by the learned counsel for the respondent Panchayat that the agreement itself is void for uncertainty. It is true that under Section 29 of the Indian Contract Act, 1872 an agreement, the meaning of which is certain or capable of being made certain is void. Here, the petitioner has agreed to sell the property for an amount of 50,000/- per cent or at the rate to be fixed by the Government. There is no uncertainty in the terms in Ext.P1 agreement regarding the minimum price at which the property could be sold, as it can be discerned from the agreement that it was understood between the parties that the rate fixed by the Government would be higher than 50,000/- per cent. Therefore, there was certainty regarding the minimum price.

11. The principle of business efficacy (the power to produce the intended results) can be invoked to read a term in an agreement so as to achieve the result intended by the parties at the time of making the same. The following passage from the WP(C).30463/11 -:5:- decision of Bowen, L. J.

in Moorcock [(1889) LR14PD64(CA) at p.68]] express the test of business efficacy: ".....In the business transactions such as this, what the law desires to effect by the implication is to give such business efficacy to the transaction as must have been intended at all events by both parties who are businessmen; not to impose on one side all the perils of the transaction, or to emancipate one side from all the chances of failure, but to make each party promise in law as much, at all events, as it must have been in the contemplation of both parties that he should be responsible for in respect of those perils or chances." 12. The respondent, which is a State within the meaning of Part III of the Constitution, was bound to be always fair and reasonable in its dealings with the citizens of the country. If it acts arbitrarily and in an unreasonable manner, every such action would be hit by the mandate of Article 14 of the Constitution of India. In this case, the petitioner was compelled to sell the land in question to the respondent. If it is at the rate to be fixed by the Government at its discretion, the same would be again hit by the mandate of Article 300A of the Constitution. The expression "procedure" established by law, which appears in Article 300A has to be understood in the light of the interpretation given by the Courts to Articles 14 and 21 of the Constitution of India. WP(C).30463/11 -:6:- 13. If the petitioner is compelled to register the land in

the name of the respondent Panchayat, for any amount less than 50,000/- per cent, he would be put to irreparable injury and manifest injustice and any such action would be in violation of his fundamental right, guaranteed under Articles 14, 19(1)(g) and Article 21 of the Constitution of India, in addition to the Constitutional right under Article 300A of the Constitution. Therefore, the writ petition is allowed. The respondent Panchayat is directed to fulfill their part in Ext.P1 agreement for transferring the land in the name of the petitioner, for a consideration of not less than 50,000/- per cent. This exercise shall be completed within a period of three months from today. To facilitate this, the petitioner shall produce a copy of this judgment before the respondent Panchayat within one month from today. Sd/- A.V.RAMAKRISHNA PILLAI JUDGE krj /True Copy/ P.A to Judge

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