

George Paul vs State of Kerala

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Court : Kerala

Decided On : Aug-02-2023

Judge : Honourable Mr. Justice T.R.Ravi

Appeal No. : RSA/611/2021

Appellant : George Paul

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE T.R.RAVI WEDNESDAY, THE 2ND DAY OF AUGUST 2023 / 11TH SRAVANA, 1945 AGAINST THE JUDGMENT DATED 23.03.2019 PASSED BY THE ADDITIONAL DISTRICT JUDGE-VIII, ERNAKULAM IN A.S.NO.63/2015 ARISING FROM THE

JUDGMENT DATED 01.04.2015 IN O.S.NO.429/2015 BY THE IInd ADDITIONAL

MUNSIFF COURT, ERNAKULAM APPELLANTS/LRs OF 1ST APPELLANT/1ST PLAINTIFF: 1 GEORGE PAUL AGED 65 YEARS S/O. LATE GEORGE NILAVARETH, NILAVARETH HOUSE., P.C ROAD, KALOOR, KOCHI 682 017 2 REGEENA JOSE AGED 62 YEARS D/O. LATE GEORGE NILAVARETH,

KARUTHEDATH, CHOVVARA, ERNAKULAM DIST 683571 3 BETSY PAPPACHAN AGED 59 YEARS D/O. LATE GEORGE NILAVARETH, KOTTOOR HOUSE, UDAYAMPEROOR P.O, ERNAKULAM DIST 682 307 4 ELBY ANDREWS AGED 55 YEARS D/O. LATE GEORGE NILAVARETH, EDAYALIL HOUSE, ALUVA 683108 5 SONY GEORGE, AGED 51 YEARS S/O. LATE GEORGE NILAVARETH., NILAVARETH HOUSE, P.C ROAD, KALOOR, KOCHI 682 017 6 JENSON GEORGE AGED 46 YEARS S/O. LATE GEORGE NILAVARETH, NILAVARETH HOUSE, P.C ROAD, KALOOR, KOCHI 682 017 BY ADVS. K.SANDESH RAJA SHANKAR V. RESPONDENTS/RESPONDENTS/APPELLANTS 2 TO 5/ PLAINTIFFS 2 TO 5: 1 STATE OF KERALA REPRESENTED BY THE PRINCIPAL SECRETARY, LAND REVENUE DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM 695 001 2 THE DISTRICT COLLECTOR, ERNAKULAM COLLECTORATE, KAKKANAD, KOCHI 682 030 3 THE SPECIAL TAHASILDAR (LA) NO. 1 KOCHI METRO RAIL PROJECT, CIVIL STATION , KAKKANAD , KOCHI 682 030 4 KOCHI METRO RAIL CORPORATION LTD REPRESENTED BY ITS MANAGING DIRECTOR, REVENUE TOWER, KOCHI 682 011

5 MOHAMMED ALI, (DELETED) S/O.ABOOBACKER HAJI,AGED 71 YEARS,SEIKO,KOLPARAMBIL HOUSE,CHACKALAPADOM ROAD,KALOOR,KOCHI-682 017, ELAMKULAM VILLAGE,KANAYANNUR TALUK. 6 YOUSIFF ALI, (DELETED) S/O.ABOOBACKER HAJI,AGED 78 YEARS,SEIKO,KOLPARAMBIL HOUSE,CHACKALAPADOM ROAD,KALOOR,KOCHI-682 017, ELAMKULAM VILLAGE,KANAYANNUR TALUK. 7 HUSSAINKUTTY, (DELETED) S/O.ABOOBACKER HAJI,AGED 73 YEARS,SEIKO,KOLPARAMBIL HOUSE,CHACKALAPADOM ROAD,KALOOR,KOCHI-682 017, ELAMKULAM VILLAGE,KANAYANNUR TALUK. 8 N.A.ABDUL REHAMAN, (DELETED) S/O.ABOOBACKER,AGED 73, RESIDING AT NAMBOODHIRIMADATHIL, FREEDOM ROAD,KALOOR, DESHABHIMANI, KOCHI-682 017. (RESPONDENTS 5 TO 8 ARE DELETED FROM PARTY ARRAY AS PER

ORDER DATED 08.10.2021 IN IA.2/2021.)

BY ADVS. MANU VYASAN PETER - R4 P.B.KRISHNAN(K/1193/1994)- R4
P.B.SUBRAMANYAN(K/1145/2009)- R4 SABU GEORGE(K/000711/1998)- R4

SMT. K. B. SONY. GP. SRI. JAJU BABU, SR. SMT. M.U. VIJAYALAKSHMI, SC.
THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON
02.08.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:
T. R.RAVI ,J. --- ---- RSA No. 611 of 2021 - -- Dat ed t hist he 02nd day of August
, 2023 J U D G M E N T The appeal i s fil ed by t iff agai nst t he di smi ssal of a sui t
on t he gr ound t hat i t i s not mai nabl e. The fir st appeal at e Cour t has al
so confirmed t he deci sion. The sui tis fil ed pr ayi ng f or a decl arat ion t hat t he pl
sai n ei n ex cl usi ve possessi on and enj oyment of t aint schedul e pr ties and t o
pass a decr ee of per manent pr ohi bi t or y i njunct ion r est rai ni ng t he def endant
sfr om t aki ng possessi on of t aint schedul e pr ties wi thout gi vi ng pr oper noti ce
and wi thout ascer tai ni ng t he act ual ext ent of l and i n possessi on and enj
oyment of t iff sand f or t he r eli efs. I t can be seen f rom t he r eli efs pr ayed f or t
hatt he pet iti oner i s not chal lengi ng any acqui si ti on pr ngs as such i n t he sui t.
The gr ievance appear s to be t hat t he pr ties whi ch wer e i n t he i r possessi on
wer e bei ng t aken possessi on of even wi thout any pr ngs f or acqui si ti on. 2. Thi
s Cour t has di rect ed t he St andi ng Counsel f or t he Kochi Met ro Rai l Cor por ati
on t o get i nst ruct ions ast o whet her t hey have t aken possessi on of t he l and i n
Sy 1 whi ch accor ding t o t he appeal lant i s pr ivat e pr ty and not ' pur amboke'. The
counsel on i nst ruct ion submi tted hatt her e has been no pr ngs f or acqui si ti on and al
l t hat has been t aken possessi on of i s t he l and whi ch had been surr ender ed by t
he appeal lant , as admi tted i n t he pl . A commi ssi on had been t aken out bef ore t
he appeal lant e Cour t and t he Commi ssi oner has fil ed a r epor t showi ng por
ti ons bel ongi ng t o t he appeal lant son t he basi s of t he t itl e deeds, whi ch have
been t aken possessi on of . However , t he r epor t shows t he sur vey number s as
di ffer ent f rom Sy 1. I t i s not cl ear whet her t he sur vey number s ar e number s
al lot ted af ter t aki ng possessi on, by subdi vi di ng Sy

1. Those ar

e al l mat ter s whi ch may r equi r e t aki ng of f ur t her evi dence. The t rial Cour t as
wel l as t he fir st appeal lant e Cour t have pr oceeded on t he basi s t hat t he chal

lenge i s agai nst acqui sit ionandi tisonat hatbasi stheCour thasf oundt hat t he sui tis notmai nabl e. The or deroft he appel lat e taswel last het rialCour tcannotbesust ained si nce t hequest ionofmai nabi li tydoesnotar iseatt hisst age, ast her eisnopr ayeragai nstacqui sit ion.Thecont ent ioni s onl ythatt hepr tiesbel ongi ngtotheappel lant scanbe t aken onl yon t hebasi sofpr ngsi nit iat ed undert he LandAcqui sit ion Act . 3.Rel iancei spl acedonaDi visi onBenchj udgmentof t his Cour tin Keral a St ate Housi ng Board, Tvm v. R. Omana and Ot hers[2017 (2)KHC 50],wher eint his t had hel dthat i mpl ied bar ofj uri sdi cti on ofCi vil ttot akecogni zancewoul d appl yonl yfordi sput esi n r elat iont omeasur ementandmar kingoft heboundar iesof t he l and pr oposed t o be acqui red undert he Actand t hat t hel andpr oposedt obeacqui redcanobvi ousl ybet heone f orwhi ch a not ificat ion underSect ion 4 oft he Actand a decl arat ion underSect ion 9 oft he Actwer e publ ished as perl aw.The si tuat ion i nthi s case i s notone wher ethe measur ement and mar king of boundar ies of t he l and pr oposed t o be acqui red i schal lenged.The case i tsel fis t hatt her eisnopr oposalt oacqui re,whi ch i saf actwhi ch hasbeen admi tted by t he KMRL,when t hey submi ttthat t her e i s no not ificat ion f or acqui sit ion of l and f rom Sy 1. I nthel above ci rcumst ances,t his appeali s al lowed. The j udgment s oft he t rialCour tand t he fir stappel lat e tar e setasi de.The mat teri sremanded back t othe t rialCour tforconsi der ati onoft hepr ayer sint hesui t.The sui tishel dtobemai nabl e. Sd/ - T. R.RAVI J UDGE sn

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