

Sunanda P vs the Union of India

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Court : Kerala

Decided On : Apr-07-2022

Judge : Honourable Mr. Justice Devan Ramachandran

Appeal No. : WP(C)/1672/2022

Appellant : Sunanda P

Respondent : The Union of India

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN THURSDAY, THE 7TH DAY OF APRIL 2022 / 17TH CHAITHRA, 1944 PETITIONERS: 1 SUNANDA P AGED 73 YEARS D/O. BHAVAN, LILLY BHAVAN, PARIPPALLY (POO, KOLLAM DISTRICT 691 574 2 LILLY G.S AGED 50 YEARS D/O. GANGADHARAN, LILLY BHAVAN, PARIPPALLY (POO, KOLLAM DISTRICT 691 574 BY ADVS. CIBI THOMAS G.PRATHAP CHANDRA RESPONDENT/S:

1 THE UNION OF INDIA REPRESENTED BY ITS SECRETARY, MINISTRY OF ROAD TRANSPORT AND HIGHWAYS, TRANSPORT

BHAVAN,1 PARLIAMENT STREET, NEW DELHI 110 075 2 THE NATIONAL HIGHWAY AUTHORITY OF INDIA REPRESENTED BY ITS CHAIRPERSON, NO. G- 5 AND 6, DABRI GURGAON ROAD, DWARAKA SECTOR 10 NEW DELHI 110 075 3 THE SPECIAL DEPUTY DIRECTYOR AND COMPETENT AUTHORITY LAND ACQUISITION, NATIONAL HIGHWAY AUTHORITY OF INDIA, COLLECTORATE, KOLLAM DISTRICT 691 013 4 THE SPECIAL DEPUTY THAHASILDAR LANH UNIT NO. 1, CHATHANNUR P.O, KOLLAM DISTRICT 691 572 5 BABY PRAVEEN S/O. BABYKUTTY, PANDAKASHALA HOUSE, PARIPPALLY P.O, KOLLAM 691 574 BY ADVS. SMT.MINI GOPINATH, CGC K.A.SALIL NARAYANAN ANIL S.RAJ K.N.RAJANI(K/001295/1999) RADHIKA RAJASEKHARAN P.(R-718) ANILA PETER(K/660/2006)

AADIL NAZARUDEEN(K/001488/2018) MUHAMMED HARIS K.K.(K/561/2021) SIMI S. ALI(K/2275/2021) OTHER PRESENT: SMT.MABLE.C.KURIAN.SR.G.P. THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 07.04.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioners say that they are the owners of certain extents of land, which have been now acquired for the purposes of the National Highway Authority of India (NHAI). They say that therefore, they have a right to be heard by the Competent Authority for Land Acquisition (CALA) at the time when determination of compensation with respect to it is finalized under the provisions of Section 3G of the National Highways Act (NH Act); but that instead of doing so, said Authority is now proceeding to award the compensation exclusively to respondent No.5.

2. The petitioners, therefore, pray that 3 rd respondent be directed to take up Ext.P6 application preferred by them and to disburse their eligible compensation, based on the documents, without any further delay.

3. The afore submissions of Sri.Siby Thomas - learned

counsel for the petitioners, were, however, opposed by Sri.Anil S. Raj, learned counsel appearing for the 5th respondent saying that only a person who had impelled claim over the property at the time when Section 3G proceedings were taken forward, can be allowed to make further claim under Section 3H of the NH Act. His argument was that unless the person interested in the compensation makes a

claim of title over the property in question at the time when the CALA determines it under the provisions of Section 3G of the NH Act, he cannot be allowed to make any contest against disbursement of the amounts covered by the Award, through the procedure under Section 3H thereof. He thus prayed that this writ petition be dismissed.

4. Sri.Salil Narayanan - learned Standing Counsel for the

NHAI, on the contrary, argued that the afore stand of the 5 th respondent is not tenable because, even if a person does not participate in the proceedings under Section 3G of the NH Act, he/she obtains the right to impel a claim for the amount of compensation under Section 3H(3), which will then lead to proceedings under Section 3H(4) thereof.

5. The learned Senior Government Pleader - Smt.Mable C.

Kurian, submitted that contentions of the 5 th respondent are unnecessary to be considered by this Court on its merits, because for one, the Award in question has not been issued, though determination of the compensation has been finalised; and for the second, that petitioners have preferred an application on 26.08.2020 before the CALA staking claim over certain extents of the property acquired. She, therefore, prayed that CALA may be allowed to complete proceedings under Section 3E of the NH Act; for which

purpose, the petitioners and the respondent may be directed to approach him with all their documents.

6. The afore submissions of the learned Senior Government

Pleader certainly makes it ineluctable that this Court need not go into the contentions relating to the interplay of Sections 3G and 3H of the NH Act at this stage. This would have been necessary only had the Award been issued, but since it has not been so, certainly, the right of the petitioners to have approached the CALA during Section 3G process is irrefutable.

7. Of course, the further issue whether petitioners are

entitled to any right over the property, or if the 5th respondent is exclusively the owner of the same, is a matter which will have to be decided by the CALA based on the documents to be produced in substantiation of their rival plea, thus leading to issuance of the Award.

In the afore circumstances and recording the submissions of the learned Senior Government Pleader that petitioners had approached the CALA through an objection under Section 3G of the NH Act on 26.08.2020, I order this writ petition, leaving liberty to the said Authority to complete proceedings with respect to issuance of Award without any avoidable delay. For the afore purpose, the parties shall appear before the

CALA, with all documents in substantiation of their respective plea, at 11.00 am on 25.04.2022; on which day, said Authority will either hear them or fix another convenient date for such purpose and complete proceedings leading to the issuance of an appropriate Award in terms of the NH Act. Needless to say, if any of the parties is dissatisfied with the Award, their remedy to challenge the same and to proceed under Section 3H(3) of the NH Act is left open.

Sd/- DEVAN RAMACHANDRAN JUDGE rp APPENDIX OF WP(C) 1672/2022
PETITIONER EXHIBITS Exhibit P1 TRUE COPY OF THE PARTITION DEED NO. 4179 OF 1982 OF SRO CHATHANUR DATED 09-11-1982 Exhibit P2 TRUE COPY OF THE SETTLEMENT DEED NO. 634/2005 Exhibit P3 TRUE COPY OF

THE RELEVANT PAGES OF THE DECLARATION DATED 04-02-2019 ISSUED U/S 3D OF THE NATIONAL HIGHWAYS ACT Exhibit P4 TRUE COPY OF THE REPRESENTATION DATED 15-12-2021 Exhibit P4a TRUE COPY OF THE ACKNOWLEDGMENT CARD EVIDENCING RECEIPT OF EXT P4 Exhibit P5 TRUE COPY OF THE COMMUNICATION DATED 22-10-2021 ISSUED BY THE THAHASILDAR, LAND RECORDS Exhibit P6 TRUE COPY OF THE APPLICATION FILED BY THE PETITIONERS U/S. 3H (4) OF THE ACT Exhibit P7 TRUE COPY OF THE OBJECTION DATED 25.8.2020 SUBMITTED BY THE 1ST PETITIONER BEFORE THE DISTRICT COLLECTOR Exhibit P8 TRUE COPY OF THE COMMUNICATION DATED 9.9.2020 RESPONDENT'S EXHIBITS: Exhibit R5(A) TRUE COPY OF THE SALE DEED NO.1266/1972 OF CHATHANNOOR SRO PURCHASED BY BABYKUTTY Exhibit R5(B) TRUE COPY OF THE SALE DEED NO.2006/2007 OF CHATHANNOOR SRO EXECUTED BY SMT.SHUSHEELA IN FAVOUR OF MR.BABAY PRAVEEN DATED 21.05.2007. Exhibit R5(C) TRUE COPY OF THE SALE DEED NO.990/1983 OF CHATHANNOOR SRO DATED 19.03.1983 WHEREBY SMT.SUBADRA SOLD HER 4 CENTS TO SRI.BABYKUTTY. Exhibit R5(D) TRUE COPY OF THE SALE DEED NO.2543/1984 OF CHATHANNOOR SRO DATED 16.06.1984 WHEREBY SMT.SUKESHINI SOLD HER 4 CENTS TO SRI.BABYKUTTY. Exhibit R5(E) TRUE COPY OF THE RECEIPT BEARING

NO.KL02032003358/2021 DATED 12.04.2021 ISSUED BY THE PARIPALLY VILLAGE OFFICE EVIDENCING PAYMENT OF LAND TAX BY (ME) THE 5TH RESPONDENT.

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