

The State of Kerala vs Jose

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Court : Kerala

Decided On : Jul-18-2022

Judge : Honourable Mr. Justice Anil K.Narendran,Honourable Mr.Justice P.G. Ajithkumar

Appeal No. : RP/185/2020

Appellant : The State of Kerala

Respondent : JOSE

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN & THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR MONDAY, THE 18TH DAY OF JULY 2022 / 27TH ASHADHA, 1944 REVIEW PETITION NO. 154 OF 2020 AGAINST THE JUDGMENT DATED 03.08.2015 IN L.A.A.NO.595 OF 2012 OF HIGH COURT OF KERALA REVIEW PETITIONERS/RESPONDENTS 1 & 2 IN LAA: 1 THE STATE OF KERALA REPRESENTED BY THE DISTRICT COLLECTOR, IDUKKI-685 603. 2 THE EXECUTIVE ENGINEER, PWD ROADS DIVISION, IDUKKI-685 603. BY ADVS. SRI.RANJITH THAMPAN,ADDL.ADVOCATE GENERAL SMT N.SUDHADEVI- SPL GOVERNMENT PLEADER (LAND ACQUISITION) RESPONDENTS/APPELLANTS 1 TO 5 IN LAA: 1 JOSE S/O THOMAS,

KOTTARATHARA HOUSE, THUDANGANADU, MUTTAM, THODUPUZHA, PIN-685 587. 2 CHARLES, S/O THOMAS, KOTTARATHARA, THUDANGANADU, MUTTAM, THODUPUZHA, PIN-685 587. 3 JAIMON, S/O MATHEW, KEEPPARAPPUTHENPURAYIL, AREKKARA, PIN-685 584. 4 MATHEW, S/O ABRAHAM, AZHIKANNICKAL, OTTALLOOR, PIN-685 586. 5 V.V.THOMAS, S/O VARKEY, VEETTIYANKAL, THODUPUZHA, PIN-685 584. BY ADV SHRI.T.J.MICHAEL THIS REVIEW PETITION HAVING COME UP FOR FINAL HEARING ON 23.06.2022, ALONG WITH R.P.NO.185 OF 2020, THE COURT ON 18.07.2022 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA & THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR MONDAY, THE 18TH DAY OF JULY 2022 / 27TH ASHADHA, 1944 REVIEW PETITION NO. 185 OF 2020 AGAINST THE JUDGMENT DATED 03.08.2015 IN L.A.A.NO.719 OF 2012 OF HIGH COURT OF KERALA REVIEW PETITIONERS/APPELLANTS 1 & 2 IN LAA: 1 THE STATE OF KERALA REPRESENTED BY THE DISTRICT COLLECTOR, IDUKKI-685603. 2 THE EXECUTIVE ENGINEER, PUBLIC WORKS DEPARTMENT, ROADS DIVISION, IDUKKI-685603. BY ADVS. SRI.RANJITH THAMPAN,ADDL.ADVOCATE GENERAL SMT N.SUDHADEVI- SPL GOVERNMENT PLEADER (LAND ACQUISITION) RESPONDENTS/RESPONDENTS 1 TO 5 IN LAA: 1 JOSE S/O.THOMAS, KOTTARATHARA HOUSE, THUDANGANADU, MUTTAM, THODUPUZHA, PIN-685587. 2 CHARLES, S/O.THOMAS, KOTTARATHARA HOUSE, THUDANGANADU, MUTTAM, THODUPUZHA, PIN-685587. 3 JAIMON, S/O.MATHEW, KEEPPARAPPUTHENPURAYIL, AREKKARA, PIN-685584. 4 MATHEW, S/O.ABRAHAM, AZHIKANNICKAL, OTTALLOOR, PIN-685586. 5 V.V.THOMAS, S/O.VARKEY, VEETTIYANKAL, THODUPUZHA, PIN-685584. BY ADV SHRI.T.J.MICHAEL THIS REVIEW PETITION HAVING COME UP FOR FINAL HEARING ON 23.06.2022, ALONG WITH RP.154/2020, THE COURT ON 18.07.2022 DELIVERED THE FOLLOWING:

ORDER

Ajithkumar, J.

These review petitions are related to the common judgment

dated 3.8.2015 in L.A.A.Nos.595 and 719 of 2012. The appeals were filed by the claimants and the State, respectively with respect to the judgment and decree in L.A.R.No.46 of 2010 of the Sub Court, Thodupuzha.

2. An area of 7.24 Ares of land belonging to the

respondents herein was acquired for the construction of the approach road to Irrukkumpuzha bridge, for which notification under Section 4(1) of the Land Acquisition Act, 1894, was issued on 24.10.2008. Annexure 2 award was passed on 10.02.2010. Possession of the property was soon taken over. An amount of Rs.11,36,801/- was awarded as compensation by the Land

Acquisition Officer. The respondents protested against the sufficiency of the compensation, and therefore, the matter was referred to the Sub Court, Thodupuzha. The Reference Court as per judgment dated 28.1.2012 in L.A.R.No.46 of 2010 granted enhanced compensation. Dissatisfied with that the claimants filed L.A.A.No.519 of 2012 and the State filed L.A.A.No.719 of 2012. As per judgment dated 03.08.2015 this Court refixed the land value of the acquired property of 7.24 Ares at Rs.6,20,000/- per Are.

3. The State has filed the review petitions invoking the

provisions of Section 114 and Order XLVII Rule 1 of the Code of Civil Procedure, 1908, alleging that the respondents committed fraud while they staked claim of title to 5.44 Ares of land comprised in Sy.No.313/7-4 and 0.17 Ares in Sy.Nos.313/6-2 and 313/6-4. In fact, they have title to only 1.63 Ares of land, out of the total acquired land of 7.24 Ares. The contentions are that after acquisition and receipt of compensation and also getting the amount of compensation enhanced by this Court as per the impugned judgment, one of the respondents submitted Annexure-7 application before the District Collector, Idukki, claiming that 5.44 Ares of land

acquired by the Government does

not actually comprise in Sy.No.313/7-1, but a wrong endorsement was made in their title deed. Accordingly, the said applicant claimed to correct the endorsement in their title deed. From that, it was revealed that the respondents received compensation for the property, which does not belong to them. On the said premises, the review petitioners seek to review the

judgment dated 03.08.2015 and set aside the same.

4. The respondents filed counter affidavit refuting the

allegations in the review petitions. It is contended that they claimed compensation for their land covered by Annexure-1 document alone. In fact, the property, regarding which now the petitioners raised dispute, is comprised in Sy.No.313/7A. The revenue authorities took mistakenly the number as 313/7 and that created the whole mess in the matter. They contend that the review petitions were filed without any basis.

5. A reply affidavit was filed on behalf of the petitioners producing therewith Annexures 9 to 12.

6. Heard the Special Government Pleader (Land Acquisition) and also the learned counsel appearing for the respondents.

7. Section 4(1) notification was issued on 24.10.2008. Obviously, after considering the objections, if any, with respect to

the acquisition, a declaration under Section 6 of the Act was published. After giving individual notice to the claimants as provided under Section 9 of the Act, the Acquisition Officer would have conducted the mandatory enquiry regarding the title to the property, possession of the same and the other necessary details. It was thereafter, the Acquisition Officer passed Annexure-2 award, following which possession of 7.24 Ares of land from the possession of the respondents was taken over. The petitioners would contend that in that process the respondents furnished false claim regarding title to that property to claim compensation for the acquired

land. According to them that is a sufficient reason to review the

judgment of this Court dated 03.08.2015. The precise case of the

review petitioners has been stated in paragraph No.5 in the reply affidavit. Paragraph No.5 is as follows: 5. It is submitted that the following extent of properties have been acquired from each survey number: Sl.No. Sy.No. Extent 1 313/7-4.. 5.44 Ares 2 313/6-2.. 0.44 Ares 3 313/6-4.. 0.38 Ares 4 313/2-6.. 0.98 Ares Among these the respondents have title as per Annexure- 1 document in the following extent only: Sl.No. Sy.No. Extent 1 313/7A-1.. 5.97 Ares 2 316/2.. 9.30 Ares 3 313/6.. 0.65 Ares

Hence it is submitted that the respondents had title only over 1.63 Ares or property out of the total 7.24 Ares acquired. It is clear that they are not entitled to any amount as per the award passed in respect of 5.44 Ares in Sy.313/7-4 and 0.17 Ares in 313/6-2 and 313/6-4. A total extent of 0.82 Ares had been acquired from 313/6-2 and 313/6-4. But the respondents had title only over 0.65 Ares in the above survey numbers. Hence it is clear that the respondents had no title over the above extent and they are not entitled to get any amount.

8. The learned Special Government Pleader pointed out

that either from Annexure-1 title deed or from Annexure-3 the thandaper register, it cannot be seen that the respondents did have title to the properties comprised in Sy.Nos.313/7-4, 313/6- 2 and 313/6-4, and therefore, their claim for compensation to the said properties (area of which is $5.44+0.17=5.61$ Ares of land) is false. In fact, the respondents have stated such a claim fraudulently and obtained the compensation without establishing

their title. On the said premise, the learned Special Government Pleader would submit that not only the judgment of this Court dated 03.08.2015, but also the judgment of the Reference Court dated 28.01.2012 and Annexure-2 award are vitiated by fraud. Another document, which is placed reliance by the Special Government Pleader in support of that contention is Annexure- 11, which is Form

No.7 sub-division statement with respect to the properties in question.

9. The learned counsel appearing for the respondents, on

the other hand, contended that following the acquisition, the Revenue authorities effected demarcation by assigning different sub-division numbers to the acquired land and quoting such new sub-division numbers the petitioners have now been trying to deny the title of the respondents. The learned counsel would contend, although it is true that there occurred some mistake in the sub-division numbers, but it is totally a baseless contention, after acquiring 7.24 Ares of land from the exclusive possession of the respondents, that they have no title to 5.61 Ares of land out of the same. Of course, that contention could have been given

some weight, if the petitioners would point out to whom such properties belong. The petitioners have no contention also that it is Puramboke land, rather there is no evidence in that line also. In the said circumstances, the attempt of the petitioners is to mislead the court. The respondents already have filed a suit as O.S.No.146 of 2019 before the competent civil court in order to get the title of the respondents to the property in their possession declared, which was necessitated only because of mis-description in the survey number. It is therefore contended that the petitioners being parties to the said suit, they should not have come forward with this baseless petition.

10. The tenor of the plea of the petitioners is that title to

the land acquired from the possession of the respondents is to be decided on the basis of the revenue records. At the same time they themselves would allege that survey demarcation in the instant case itself carry errors. The law to be borne in mind when such a plea is raised is quite clear. The Apex Court in *Suraj Bhan v. Financial Commissioner* [(2007) 6 SCC 186] held:

"9. xx xx It is well settled that an entry in revenue records does not confer title on a person whose name appears in record-of-rights. It is settled law that entries in the revenue records or jamabandi have only "fiscal purpose" i.e. payment of land revenue, and no ownership is conferred on the basis of such entries. So far as title

to the property is concerned, it can only be decided by a competent civil court.

11. A Constitution Bench of the Apex Court approved and

reiterated the said proposition of law in Siddiq M. (D) Thr LRs v. Mahant Suresh Das and others [(2020) 1 SCC 1]. The documents produced in this case have to be analysed bearing in mind the said principle of law.

12. Annexure-12 is a copy of the survey plan issued by

the Taluk Surveyor on 11.10.2013. By that time, the acquisition for establishment of the Irrukkumpuzha bridge approach road was already over. Annexure-1, which is the title deed of the respondent, is dated 24.05.1996. As per this document, the respondents obtained the land as described below: Sy.No. Extent

13. Annexure-3 is the thandaper register with respect to

the said property. The property described in Annexure-1 was seen settled in the name of the respondents in the revenue records with thandaper No.3397. It cannot be assumed that revenue authorities maintain such a record without ascertaining possession of such an extent of land with the respondents, especially in the light of Annexure-1.

14. The petitioners placed reliance on Annexure-11 to show that the respondents did not have title to the properties

comprised in Sy.No.313/7-4, 313/6-2 and 313/6-4. From Annexure-2 award, it can be seen that no item of the properties acquired from the possession of the respondents is shown comprised in the survey numbers mentioned in Annexure-1 title deed. The reason is obvious. After measurement of the land by the Acquisition Officer under Section 8 of the Land Acquisition Act for the purpose of acquisition, new survey sub-divisions are made by the authorities. The survey numbers of the acquired land reflected in Annexure-2 award are such new sub-division numbers assigned by the authorities. The properties carved out

from the existing survey numbers are given such new sub- division numbers and included in the settlement register. This fact is amply clear from Annexure-11-

Form No.7, sub-division statement. Annexure-11 is of the year 2008. The entries in

Annexure-11 vividly say that the new sub-division was occasioned on account of the acquisition, and also as to what are the sub-division numbers newly assigned for lands converted as Government lands. 5.44 Ares of land was thus got included in Sy.No.313/7-4 by carving out from existing Sy.No.313/7. The remaining area of the land in the said survey number was retained in the name of the respondents itself under the same thandaper number, ie., 3397. When the documents produced by the petitioners show such facts, how could the petitioners come forward with this kind of a review petition?

15. In *Kamlesh Verma v. Mayawati and others* [(2013) 8 SCC 320], the Apex Court while considering the scope of the review jurisdiction has held: "20.1. When the review will be maintainable:

- (i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;
- (ii) Mistake or error apparent on the face of the record;
- (iii) Any other sufficient reason.

16. The words "any other sufficient reason" have been

interpreted in *Chhajju Ram v. Neki* [AIR 1922 PC 112] and approved by the Apex Court in *Moran Mar Basselios Catholicos v. Most Rev Mar Poulouse Athanasius* [AIR 1954 SC 526] to mean "a reason sufficient on grounds at least analogous to those specified in the rule. The petitioners would contend that the respondents garnered compensation for 5.61 Ares of acquired land by playing fraud upon the Land Acquisition Officers, and also on Court. Such a reason can be a reason for review. The law laid down by the Apex Court in the following decisions also supports such a view.

17. In *S.P. Chengalvaraya Naidu (Dead) by LRs. v. Jagannath (dead) by LRs. and others* [(1994) 1 SCC 1], the Apex Court held that,-

A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party. xx xx It is the settled proposition of law that a

judgment or decree obtained by playing fraud on the court

is a nullity and non est in the eyes of law. Such a judgment/decreed - by the first court or by the highest court - has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings."

18. The Apex Court in *Hamza Haji v. State of Kerala & another* [AIR 2006 SC 3028] and *Meghmala and others v. G.Narasimha Reddy and others* [(2010) 8 SCC 383], reiterated the above principle.

19. In *Kelvin Jute Co.Ltd. Workers Provident Fund and another v. Krishna Kumar Agarwala and others* [(2019) 12 SCC 689], the Apex Court held that,-

14. xx xx The main contention of the applicants seems to be that writ petitioners had played fraud on Court and that the basis of the judgment of the High Court has been obtained by misleading that Court. If that be the position, nothing prevents the applicants from approaching the High Court and seeking a review of the judgment. We make it clear that in the event of such a review being filed on the ground of fraud, the High Court will be free to examine the same.

20. What is, however, important is, whether such grounds

exist in this case. As pointed out above, the acquisition authorities held sufficient enquiry, measurement and verification of documents before acquisition. The

petitioners have no case that 5.44 Ares of land and 0.17 Ares of land out of the acquired area from the possession of the respondents belonged to anybody else or the Government. No property can be there without having an owner. But, without pointing out as to who is that owner of that property, the petitioners have come forward contending that the respondents staked false claims. It is true that after conclusion of the acquisition proceedings, one of the respondents approached the District Collector with Annexure-9

application for getting the entry regarding acquisition in Annexure-1 title deed corrected. As a sequel to that, a suit as O.S.No.146 of 2019 was filed by the respondents. A copy of the plaint in that suit is Annexure-R4. In the light of such developments and also the undisputed fact that 7.24 Ares of land which was in the possession of the claimants was acquired, how can it be said that the impugned judgments of this Court,

Reference Court and Annexure-2 Award were all products of fraud. The dispute, to the maximum, is with reference to the survey number and not one pertaining to proprietary title. That is a matter to be resolved by the civil court.

21. Taking all such aspects into account, we are of the view that this petition would not come within the contours of

Order XLVII, Rule 1 of the Code. Had the revenue and acquisition

authorities concerned duly discharged their duties, this kind of an obvious lapse would not have occurred which precipitated into filing of this review petition. Hence, we hold that these petitions are devoid of any merit and liable only to be dismissed. Accordingly, these review petitions are dismissed.

Sd/- ANIL K. NARENDRAN, JUDGE Sd/- P.G. AJITHKUMAR, JUDGE dkr
APPENDIX OF RP 154/2020 PETITIONER ANNEXURES ANNEXURE 1 TRUE
COPY OF THE DOCUMENT NO.2101//1996 OF SRO, THODUPUZHA.
ANNEXURE 2 TRUE COPY OF THE AWARD PASSED BY THE LAND
ACQUISITION DATED 10.02.2010. ANNEXURE 3 TRUE COPY OF THE
RELEVANT PAGE OF THE THANDAPER REGISTER. ANNEXURE 4 TRUE

COPY OF THE JUDGMENT AND DECREE IN LAR NO.46/2010 DATED 28.01.2012 OF THE SUB COURT, THODUPUZHA. ANNEXURE 5 TRUE COPY OF THE EP NO.24/2017. ANNEXURE 6 TRUE COPY OF THE RELEVANT PAGE MARKING THE ENDORSEMENT IN ANNEXURE-1. ANNEXURE 7 THE TRUE COPY OF THE APPLICATION DATED 16.01.2018 FILED BY THE RESPONDENT. ANNEXURE 8 THE TRUE COPY OF THE SURVEY SKETCH. ANNEXURE 9 TRUE COPY OF THE LETTER SUBMITTED TO THE DISTRICT COLLECTOR ON 16.02.2016. ANNEXURE 10 TRUE COPY OF THE FILED MEASUREMENT SKETCH (AN EXTRACT FROM THE FBM) WITH RESPECT TO SY.NO.313/7. ANNEXURE 11 TRUE COPY OF FORM NO.7 SUB DIVISION STATEMENT. ANNEXURE 12 TRUE COPY OF SURVEY PLAN ISSUED BY THE TALUK SURVEYOR, THODUPUZHA. RESPONDENT ANNEXURES ANNEXURE R3 TRUE COPY OF THE COMMON REPORT AND PLAN

SUBMITTED BY ADV.JOHN JOSEPH, ADVOCATE COMMISSIONER IN I.A.3 OF 2021 IN O.S.NO.146 OF 2019 ON THE FILE OF THE MUNISFF COURT, THODUPUZHA DATED 27.01.2022.

ANNEXURE R4 TRUE COPY OF THE PLAINT IN O.S.NO.146 OF 2019 OF MUNSIFF'S COURT, THODUPUZHA, DATED 23.05.2019. APPENDIX OF RP 185/2020 PETITIONER ANNEXURES ANNEXURE 1 THE TRUE COPY OF THE DOCUMENT NO.2101//1996 OF SRO, THODUPUZHA. ANNEXURE 2 THE TRUE COPY OF THE AWARD PASSED BY THE LAND ACQUISITION DATED 10.02.2010. ANNEXURE 3 TRUE COPY OF THE RELEVANT PAGE OF THE THANDAPER REGISTER. ANNEXURE 4 TRUE COPY OF THE JUDGMENT AND DECREE IN LAR NO.46/2010 DATED 28.01.2012 OF THE SUB COURT, THODUPUZHA. ANNEXURE 5 TRUE COPY OF THE EP NO.24/2017. ANNEXURE 6 TRUE COPY OF THE RELEVANT PAGE MARKING THE ENDORSEMENT IN ANNEXURE-1. ANNEXURE 7 THE TRUE COPY OF THE APPLICATION DATED 16.01.2018 FILED BY THE RESPONDENT. ANNEXURE 8 THE TRUE COPY OF THE SURVEY SKETCH. RESPONDENT ANNEXURES ANNEXURE A1 TRUE COPY OF THE ORIGINAL SURVEY PLAN IN SY.NO.313/7A OF THODUPUZHA VILLAGE ISSUED BY THE TAHSILDAR (LR), THODUPUZHA DATED NIL. ANNEXURE A2 TRUE COPY OF THE FORM NO.7

SUB DIVISION STATEMENT PREPARED BY THE LA AUTHORITIES AFTER ACQUISITION.

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