

Bijoy Mathews vs State of Kerala

Bijoy Mathews vs State of Kerala

SooperKanoon Citation : sooperkanoon.com/1443983

Court : Kerala

Decided On : Mar-30-2022

Judge : Honourable Mr. Justice Devan Ramachandran

Appeal No. : WP(C)/1853/2022

Appellant : Bijoy Mathews

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN WEDNESDAY, THE 30TH DAY OF MARCH 2022 / 9TH CHAITHRA, 1944 PETITIONERS: 1 BIJOY MATHEWS AGED 63 YEARS S/O. P.M.MATHEWS (LATE), 4B, PERIYAR BLOSSOM, 8, PALACE ROAD, ALUVA - 683 101, ERNAKULAM DISTRICT. 2 SUSAN B. MATHEWS AGED 60 YEARS W/O. BIJOY MATHEWS, 4B, PERIYAR BLOSSOM, 8, PALACE ROAD, ALUVA - 683 101, ERNAKULAM DISTRICT. BY ADVS. T.R.S.KUMAR DEENA JOSEPH DEEPA R MENON MITHUN C THOMAS AKSHAY JOSEPH ADHIKARAM SWARNA THOMAS RESPONDENTS:

1 STATE OF KERALA REPRESENTED BY ITS CHIEF SECRETARY, SECRETARIAT, THIRUVANANTHAPURAM - 695 001. 2 THE LAND REVENUE COMMISSIONER SECRETARIAT, THIRUVANANTHAPURAM - 695 001. 3 THE DISTRICT COLLECTOR, ERNAKULAM COLLECTRATE, KAKKANAD, ERNAKULAM - 682 030. 4 THE SPECIAL TAHSILDAR (L.A.) KOCHI METRO NO.1, COLLECTRATE, KAKKANAD, ERNAKULAM - 682 030. 5 KOCHI METRO RAIL LTD. REPRESENTED BY ITS MANAGING DIRECTOR, JLN TOWER, 4TH FLOOR, KALOOR, KOCHI - 682 017, ERNAKULAM. 6 THE MANAGER ESSENCE CONSULTANTS KOCHI (P) LTD., PALARIVATTOM, KOCHI - 682025, ERNAKULAM. BY ADVS. K.JAJU BABU (SR.) SMT.M.U.VIJAYALAKSHMI, SC, KOCHI METRO RAIL LTD.

OTHER PRESENT: SRI. JAFAR KHAN SR.G.P. THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 30.03.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioners allege that the acquisition now made by the official respondents for the purpose of Kerala Metro Rail Ltd. (KMRL) is vitiated because it has been done contrary to the mandate of Section 94 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as 'the Act' for short).

2. Shri.T.R.S.Kumar, learned counsel for the petitioners, assert that, as is evident from the

Award - namely Ext.P5, only a portio

directed to take over the entire building of the property, to confirm with the spirit of the afore mentioned provisions and issue an additional Award, within a time frame to be fixed by this Court.

3. In response, the learned Senior Counsel, Shri.Jaju Babu, instructed by Smt.M.U. Vijayalakshmi - learned Standing Counsel for the KMRL, submitted that petitioners' property has been

taken over in part as per their request. He explains that the original proposal was to take over 20 percent of the petitioners' building, but that at their request, it was enhanced up to 50 percent and the requisite amounts included in Ext.P5 Award. He argued that, therefore, this writ petition is not maintainable and that petitioners ought to have invoked their alternative remedies under Section 64 of the Act.

4. After submitting as afore, the learned Senior Counsel added that, in deference to the discussion made at the Bar when this matter was earlier considered, his client has suggested two alternatives in Paragraph 7 of the Counter

Affidavit filed by the 5th respondent dated 17.02.2022. He submitted that, therefore, if the petitioners are willing to accept any of the afore two suggestions, then the matter can be resolved amicably. He made a further submission that a 3rd alternative can be suggested, namely, that if the petitioners refund the value of the portion of the building recorded in Ext.P5 Award, the entire structure can be saved and only the land taken.

5. The learned Senior Government Pleader - Shri.Jaffar Khan, submitted that the issue as to

whether the acquisition of the petitioners' building has been made in violation of Section 94 of the Act may not be considered by this Court because there are several disputed facts involved.

He argued that when the KMRL asserts petition of this nature is not maintainable.

6. In reply, Shri.T.R.S.Kumar submitted that

the afore submissions of the learned Senior Counsel and the Senior Government Pleader are completely without basis, since his clients have not conceded to any acquisition, except for the whole building, so as to adhere with Section 94 of the

Act. He then added that the suggestions made by the 5th respondent in Paragraph 7 of their Counter Affidavit, as also the 3rd suggestion made by the learned Senior Counsel at the Bar, are not acceptable to his clients.

7. When I consider the afore submissions, it is evident that there is a clear disputation of fact as to whether the acquisition of part of the petitioners' building was made as per their request

or otherwise. Since this disputation is in the factual realm, it is well settled that this Court is proscribed from entering into it on its merits, while acting under Article 226 of the Constitution of India.

8. That said, the petitioners have an efficacious, statutory remedy under Section 64 of

the Act and since various essential facts and materials will have to be assessed, I am of the firm view that liberty must be reserved to them to invoke such remedy in terms of law. In the afore circumstances, I order this writ petition to the limited extent of leaving liberty to the petitioners to invoke and pursue their statutory remedies under Section 64 of the Act; and if this is done by them within a period of two weeks from the date of receipt of a copy of this judgment, the third respondent - District Collector, who is the competent Authority, shall place the file before the Reference Authority, who will then take a decision, after hearing the petitioners as well as the competent official of

the KMRL; thus culminating in an appropriate order

and necessary action thereon, as expeditiously as is possible, but not later than four months from the date of receipt of a copy of this judgment. Needless to say, until such time as the afore

exercise is completed and the resultant order

communicated to the petitioners, action to demolish any portion of the building shall stand deferred, though I record that it is conceded by the petitioners that the said land has already been taken possession of.

Sd/- DEVAN RAMACHANDRAN JUDGE MC/30.3 APPENDIX OF WP(C) 1853/2022 PETITIONER EXHIBITS Exhibit P1 TRUE COPY OF TAX RECEIPT DATED 28.06.2021 ISSUED BY VILLAGE OFFICER, VAZHAKKALA. Exhibit P2 TRUE COPY OF THE CONSENT APPLICATIONS DATED 15.11.2019. Exhibit P3 TRUE COPY OF THE CONSENT APPLICATIONS DATED 22.03.2021. Exhibit P4 TRUE COPY OF THE CONSENT APPLICATIONS DATED 15.07.2021. Exhibit P5 TRUE COPY OF AWARD NO.187/2021 DATED 05.11.2021 IN LAC NO.157/2021A. Exhibit P6 TRUE COPY OF SKETCH PREPARED BY THE PETITIONERS. EXHIBIT P7 TRUE COPY OF THE AWARD NUMBERED 170/2021 DATED 16.06.2021 ISSUED BY 4TH RESPONDENT IN LACNO.77/2021. RESPONDENT EXHIBITS Exhibit R5(A) TRUE COPY OF THE DIAGRAMS SHOWING THE A AND B PROPOSALS

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com