

Anilkumar, vs State of Kerala,

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Court : Kerala

Decided On : May-29-2020

Judge : Honourable Dr. Justice a.K.Jayasankaran Nambiar

Appeal No. : WP(C)/7035/2020

Appellant : Anilkumar,

Respondent : State of Kerala,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR FRIDAY, THE 29TH DAY OF MAY 2020 / 8TH JYAISHTA, 1942 WP(C).No.7035 OF 2020(D) PETITIONER: ANILKUMAR, AGED 58 YEARS S/O. GEORGE, PALATHINKAL HOUSE, TRIPUNITHURA KARA, NADAMA VILLAGE, ERNAKULAM. BY ADVS. SRI.C.P.WILSON SMT.ROSE MICHAEL RESPONDENTS:

1 STATE OF KERALA, REPRESENTED BY THE SECRETARY, DEPARTMENT OF REVENUE, STATE SECRETARIAT, THIRUVANANTHAPURAM-695001. 2 THE DISTRICT COLLECTOR, ERNAKULAM-682032. 3 THE LAND ACQUISITION OFFICER,

(SPECIAL TAHSILDAR), LA NO.1, CIVIL STATION, KAKKANAD, ERNAKULAM-682030. 4 THE MANAGING DIRECTOR , KOCHI METRO RAIL LIMITED, REVENUE TOWER, ERNAKULAM, 4TH FLOOR, JLN STADIUM METRO STATION, KALOOR, KOCHI-682017. R4 BY ADV. SRI.K.JAJU BABU (SR.) R4 BY SMT.M.U.VIJAYALAKSHMI, SC, KOCHI METRO RAIL LTD. BY GOVERNMENT PLEADER SRI.K.P.HARISH,SR. THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON

29.05.2020, ALONG WITH WP(C).8049/2020(E), THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: & W.P.(C).No.8049 of 2020
2

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR FRIDAY, THE 29TH DAY OF MAY 2020 / 8TH JYAISHTA, 1942 WP(C).No.8049 OF 2020(E) PETITIONER: ANILKUMAR, AGED 59 YEARS S/O. GEORGE, PALATHINKAL HOUSE, TRIPUNITHURA KARA, NADAMA VILLAGE, ERNAKULAM. BY ADVS. SRI.C.P.WILSON SMT.ROSE MICHAEL RESPONDENTS:

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3

JUDGMENT

As both these writ petitions involve a common issue, they are taken up for consideration together and disposed by this common

judgment.

2. The petitioner in both these Writ Petitions is the same and in

these Writ Petitions he is aggrieved by the action taken by the requisitioning authorities in acquiring only portions of a building, that in partly under his ownership and refusing to accede to his request for acquiring the balance portion of the building. After the Writ Petitions were admitted, and on receipt of a notice asking him to surrender the portions that were acquired, he preferred Interlocutory Applications seeking for a stay of dispossession from the portions of the building that were acquired from him by the respondents.

3. Through a statement/counter affidavit filed on behalf of the

3rd and 4th respondents, it is brought to the notice of this Court that what was acquired was a part of the building in which the petitioner herein and his brother Sri.Shaji Kumar had rights over separate portions. In other words, the two rooms on either side of the acquired part of the building are in the ownership of the petitioner & W.P.(C).No.8049 of 2020 4 and the room in the centre is owned by Sri.Shaji Kumar. The petitioner seeks to invoke the provisions of Section 94 of the Right to

Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the 2013 Act) to contend that, inasmuch as acquisition of only a portion of the property under his ownership will deprive him of the benefit of the entire property owned by him, the respondents should be directed to acquire the entire portion of the building under his

ownership. He relies on the decision of a Full Bench of this Court in *Saramma Itticheriya v. State of Kerala* [2008 (1) KLT 6] to contend that once a desire is exercised by the owner of a building to acquire the entire building, then the only option for the Land Acquisition Officer is either to acquire the entire building or to withdraw from the acquisition.

4. I have heard Sri.C.P.Wilson, the learned counsel for the

petitioner, Sri.Jaju Babu, the learned Senior counsel for the 4th respondent and the learned Senior Government Pleader for the official respondents of the State. On a consideration of the facts and circumstances of the case and & W.P.(C).No.8049 of 2020 5

the submissions made across the Bar, I am of the view that for the reasons that are to follow the Writ Petitions must necessarily fail. The provisions of Section 94 of the 2013 Act clearly stipulate that where a building under the ownership of an owner is partly acquired, the owner can request that the whole building be acquired, and if there is any dispute as regards whether any land proposed to be taken does not form part of the building, the Collector shall refer the determination of such question to the authority concerned and possession of such land shall not be taken till such time as the question has been determined. On a reading of the provision, it is apparent that the beneficial provision under the 2013 Act in favour of an owner of a building is intended to operate only if the request for acquiring the whole building is made by the owner of the building concerned or, if the building is under ownership of several persons, by all such owners. In the instant case, the building is under the joint ownership of both, the petitioner as well as his brother Sri.Shaji Kumar. While the petitioner seeks to exercise the option under Section 94, there is nothing on record to suggest that the other owner of the building, namely, Sri.Shaji Kumar has any such interest. Under the said circumstances, if the requisitioning authority is directed to acquire the entire building on the sole request of the petitioner it would lead to the undesirable situation of the portion of the building owned by Sri.Shaji Kumar also being taken over by the &

W.P.(C).No.8049 of 2020 6 acquisition authority without his consent. This cannot be the legislative intent under Section 94 of the Act. I, therefore, find that the

prayer sought for by the petitioner cannot be granted. The Writ Petitions therefore fail and are accordingly dismissed.

Sd/- A.K.JAYASANKARAN NAMBIAR JUDGE mns/29.5.2020 & W.P.(C).No.8049 of 2020 7 APPENDIX OF WP(C) 7035/2020 PETITIONER'S/S EXHIBITS: EXHIBIT P1 TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER TO THE 3RD RESPONDENT DATED 09/07/2019. EXHIBIT P2 TRUE COPY OF THE AWARD NOTICE ISSUED IN FAVOUR OF THE 1ST PETITIONER DATED EXHIBIT P3 TRUE COPY OF THE NOTICE TAKING OVER POSSESSION OF THE LAND ISSUED TO THE PETITIONER. & W.P.(C).No.8049 of 2020 8 APPENDIX OF WP(C) 8049/2020 PETITIONER'S/S EXHIBITS: EXHIBIT P1 TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER TO THE 3RD RESPONDENT DATED 9.7.2019. EXHIBIT P2 TRUE COPY OF THE AWARD NOTICE ISSUED IN FAVOUR OF THE PETITIONER DATED 23.09.2019. EXHIBIT P3 TRUE COPY OF THE NOTICE OF TAKING OVER POSSESSION OF THE LAND AND BUILDING DATED 10.10.2019 ISSUED TO THE PETITIONER.

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