

Mary Vs. State of Kerala

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Court : Kerala

Decided On : Feb-23-2015

Judge : Honourable Mr.Justice a.M.Shaffique

Appellant : Mary

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE A.M.SHAFIQU MONDAY, THE 23D DAY OF FEBRUARY 2015 4TH PHALGUNA, 1936 WP(C).NO. 19916 OF 2014(L) ----- PETITIONER(S): ----- 1. MARY, WIFE OF MATHEW, AGED 60 YEARS, PARUTHI KADU, CHERANELLOOR P.O., KOCHI-34.

2. SUDHAKARAN, SON OF KRISHNAN, AGED 65 YEARS, PULLAMVELIL, SREEKRISHNA, CHERANELLOOR P.O, KOCHI -34. BY ADVS.SRI LEO GEORGE, SRI.K.N.SASIDHARAN NAIR, SRI.M.SUNIL. RESPONDENT(S): ----- 1. STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM- 695 001.

2. THE PRINCIPAL SECRETARY (REVENUE), DEPARTMENT OF REVENUE, GOVERNMENT OF KERALA, GOVERNMENT

SECRETARIAT, THIRUVANANTHAPURAM- 695 001.

3. THE DISTRICT COLLECTOR, ERNAKULAM- 682 030.

4. THE SPECIAL TAHSILDAR (LAND ACQUISITION), VALLARPADAM INTERNATIONAL CONTAINER TRANSSHIPMENT TERMINAL PROJECT, COLLECTORATE, KAKKANAD, ERNAKULAM -682 030. BY SR. GOVT.PLEADER SMT.M.J.

RAJASREE. THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23/02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: rs. WP(C).NO. 19916 OF 2014(L) APPENDIX PETITIONER'S EXHIBITS:- EXHIBIT P1 TRUE COPY OF THE

JUDGMENT

IN WP(C).NO.11556/2008 DATED 20/06/2008. EXHIBIT P2 TRUE COPY OF THE

JUDGMENT

IN R.P NO.677/2008 DATED 02/07/2008. EXHIBIT P3 TRUE COPY OF GOVERNMENT

ORDER

G.O(MS) NO.163/2008/RD DATED 26/05/2008. EXHIBIT P4 TRUE COPY OF GOVERNMENT

ORDER

G.O(MS) NO.5469/2011/RD DATED 23/11/2011. EXHIBIT P5 TRUE COPY OF THE PETITION SUBMITTED TO THE THIRD RESPONDENT BY THE FIRST PETITIONER DATED 02/01/2012. EXHIBIT P5(A) TRUE COPY OF THE PETITION SUBMITTED TO THE THIRD RESPONDENT BY THE SECOND PETITIONER DATED 02/01/2012. EXHIBIT P6 TRUE COPY OF THE REPLY OF THE THIRD RESPONDENT ADDRESSED TO THE FIRST PETITIONER DATED 23/07/2014. EXHIBIT P6(A) TRUE COPY OF THE REPLY OF THE THIRD RESPONDENT ADDRESSED TO THE SECOND PETITIONER DATED 23/07/2014. EXHIBIT P7 TRUE COPY OF THE G.O.(MS) NO.331/2004/RD DATED 05/11/2004 ALONG WITH THE REHABILITATION AND

RESETTLEMENT PRINCIPLES AND POLICY FRAMEWORK ISSUED BY REVENUE (B) DEPARTMENT. EXHIBIT P8 COPY OF THE LAND ASSIGNMENT

ORDER

NO.L1/51178/11(9) ASSIGNING 162 ARES OF LAND TO THE FIRST PETITIONER IN VAZHAKKALA VILLAGE DATED 12/09/2011. EXHIBIT P9 COPY OF THE LAND ASSIGNMENT

ORDER

NO.L1/51178/11(8) ASSIGNING 162 ARES OF LAND TO THE SECOND PETITIONER IN VAZHAKKALA VILLAGE DATED 12/09/2011. EXHIBIT P10 COPY OF THE LAND TAX RECEIPT IN RESPECT OF THE FIRST PETITIONER DATED 02/05/2014. EXHIBIT P10A COPY OF THE LAND TAX RECEIPT IN RESPECT OF THE SECOND PETITIONER DATED 02/05/2013. RESPONDENT'S ANNEXURE:- ANNEXURE R3A COPY OF THE G.O.(RT) NO.3849/08/RD DATED 01/12/2008. //TRUE COPY// P.A. TO JUDGE rs. A.M.SHAFFIQUE, J * * * *
* * * * * W.P.C.No.19916 of 2014 ----- Dated this the 23rd day of February 2015

JUDGMENT

Petitioners have approached this Court challenging Ext.P6, an order passed by the District Collector refusing to grant benefits under the DLPC Rehabilitation and Resettlement Scheme on the ground that the petitioner had objected to the award and the matter is pending before the Reference Court in LAR case.

2. Petitioners rely upon Ext.P1 judgment dated 20/06/2008 in W.P.C.No.11556/2008 and clarification issued by way of Ext.P2 order issued in R.P.No.677/2008. Paragraph 5 of the judgment in R.P.No.677/2008 is relied upon by the learned counsel which reads as under: "Having anxiously considered the rival submissions made at the bar, I am of the view that it was never the intention of this Court to deny the rehabilitation benefits to the evictees in whose cases awards under the Land Acquisition Act have W.P.C.No.19916/2014 2 been passed. A careful reading of the judgment will show that this court became inclined to accept the claim of the petitioners for rehabilitation benefits to a considerable

extent on the basis of the resettlement and rehabilitation policy declared by the Government of India in 2003 and also by the principles laid down by the Supreme Court in the judgment referred to in the judgment. Though option has been given to the parties under clause (a) of paragraph 30, the same has been given only in the context of the monetary compensation to be paid to the persons who are being deprived of their properties whether such compensation should be determined in terms of Section 23 of the Land Acquisition Act or in terms of the land value rates fixed by the DLPC. In my opinion clause (c) of paragraph 30 which specifically deals with rehabilitation benefits is clear enough to indicate that eligibility for rehabilitation benefits will be independent of the party opting for DLPC rates." 3. The petitioners therefore claim that even though the petitioners had sought for a reference under Section 18 of the Land Acquisition Act objecting to the award passed, W.P.C.No.19916/2014 3 still the petitioners are entitled for various benefits that had been offered to certain others as per the rehabilitation allowance/scheme approved by the District Collector as referred to in the judgment aforesaid.

4. In the statement filed by the 3rd respondent, it is inter alia stated that an extent of 2.25 Ares of land out of 4.19 Ares of land and a nominal portion of the residential building, that is 20% of the total building was acquired for four lane road connectivity of ICTT, Vallarpadom. It is stated that the land owner has not been deprived of her dwelling house whereas only a nominal portion of the building is affected. The 2nd petitioner was in possession of 4.87 Ares in Survey No.99/2 of Cheranalloor Village, out of which 0.61 Ares of land and a nominal portion of the residential building i.e. less than 19% of the total building were acquired for the same purpose. It is stated that the petitioners were not deprived of any building and they are still in occupation. Further, it is stated that the acquisition of property W.P.C.No.19916/2014 4 belonging to the petitioners were under the Land Acquisition Act and the entire amount of Land Acquisition compensation including part of the building as per the award passed by the Land Acquisition Officer have been paid. On the basis of the reference application submitted by the petitioners under Section 18 of the Act, the matter has been referred to the Sub Court Ernakulam as L.A.R.No.124/09 and 125/09. In one case, decree debt has been deposited and in other case, it is pending execution. Respondents refer to

Government Order dated 01/12/2008 as per Annexure R3(a) in which it is indicated that the rehabilitation benefits will not be available to those parties in whose case award has been passed under the Land Acquisition Act.

5. Apparently, the judgment and order aforesaid considered the cases where rehabilitation package was announced by the Government in respect of persons who had agreed with the compensation fixed by the DLPC. However, certain persons who had also objected to the W.P.C.No.19916/2014 5 award, claimed the benefits of the DLPC scheme. Such persons who had objected to the award were also permitted to approach the DLPC for various benefits but in such cases definitely one, agreeing to DLPC scheme and benefits, has to withdraw the benefits under the Land Acquisition Act. A person who is availing DLPC rehabilitation scheme and the benefits under DLPC cannot seek reference and thereafter get the compensation fixed by the Court under the LA Act. Such an eventuality was never contemplated by this Court while deciding the aforesaid cases. If such eventuality was in contemplation, this Court would have specifically stated that those persons who had opted for the benefit of DLPC were also entitled for seeking the reliefs under Section 18 of the Act and that the compensation will be decided by the Reference Court. There is no such finding by this Court in the aforesaid judgment. Under such circumstances, I do not think that the petitioners are entitled for the benefit of the aforesaid judgment as they have already approached W.P.C.No.19916/2014 6 Reference Court and a decree has been passed in their favour. Under such circumstances, there is no basis for the aforesaid writ petition and the same is dismissed. (sd/-) (A.M.SHAFIQU, JUDGE) jsr W.P.C.No.19916/2014 7 W.P.C.No.19916/2014 8

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