

Jeevan Vs. State of Kerala

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Court : Kerala

Decided On : Jul-29-2015

Judge : Honourable Mr.Justice v.Chitambaresh

Appellant : Jeevan

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE V.CHITAMBARESH WEDNESDAY, THE 29TH DAY OF JULY 2015 7TH SRAVANA, 1937 WP(C).No. 11476 of 2011 (H)

----- PETITIONERS: ----- 1.
M.M.JEEVAN, AGED 58 YEARS, S/O.P.K.MADHAVAN, RESIDING AT 'ARUNA' PERUMBAYIKKAD P.O., NEELIMANGALAM, KOTTAYAM-28.

2. SUSHAMA JEEVAN, AGED 51 YEARS, RESIDING AT 'ARUNA', PERUMBAYIKKAD P.O., NEELIMANGALAM KOTTAYAM-28. BY ADV. SRI.K.JAGADEESCHANDRAN NAIR RESPONDENTS: ----- 1.
STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY, TO GOVERNMENT OF KERALA THIRUVANANTHAPURAM-695001.

2. THE DISTRICT COLLECTOR, KOTTAYAM- 686002.

3. SPECIAL TAHSILDAR, LAND ACQUISITION, KOTTAYAM-686002.

4. THE ASSISTANT EXECUTIVE ENGINEER, BRIDGES SUB DIVISION, KOTTAYAM-686002 (PUBLIC WORKS DEPARTMENT). R1-R4 BY SR. GOVERNMENT PLEADER SRI. C.S. MANILAL THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29-07-2015, ALONG WITH W.P.(C). NO.20865/2011, W.P.(C). NO.16224/2012 AND W.P.(C). NO.31256/2012, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: DCS WP(C).No. 11476 of 2011 (H) APPENDIX PETITIONER(S)' EXHIBITS -----

P1:- COPY OF THE SALE DEED NO. 3649 DATED 512.1986 P2:- COPY OF THE SALE DEED NO. 3002 DATED 29.10.1994 P3:- COPY OF THE SKETCH PLAN AS PREPARED BY THE 4TH RESPONDENT DATED 39.2010 P4:- COPY OF THE PLAN OF THE EXISTING PANCHAYAT ROAD ON THE WEST BANK OF THE RIVER AND LEADING FROM MC ROAD TO THE FERRY AND FORMS PART OF THE 2ND PROPOSAL P5:- COPY OF THE ESTIMATE PREPARED BY THE ASSISTANT EXECUTIVE ENGINEER WITH THE ESTIMATED WITH ROUGH COST OF RS. 9 CRORES P6:- COPY OF THE LETTER ISSUED TO THE 1ST PETITIONER BY THE 4TH RESPONDENT DATED 39.2010 FORWARDING EXT. P3 P7:- COPY OF THE GAZETTE NOTIFICATION DATED 52.2011 UNDER SECTION 41) OF LAND ACQUISITION ACT, 1894 P8:- COPY OF THE LATEST SKETCH AND PLAN TO ACQUIRE LAND AS OBTAINED BY THE PETITIONERS FROM THE 4TH RESPONDENT'S OFFICE P9:- COPY OF THE NEWS REPORT PUBLISHED IN KOTTAYAM EDITION OF MALAYALA MANORAMA DAILY NEWS PAPER DATED 24TH SEPTEMBER 2011 ON THE 2ND PAGE P10: SKETCH OF NEW PROPOSAL AS STATED IN EXT. P9 AND EXISTING ROAD AND EXISTING BRIDGES ON AN ALTERNATE ROUTE P11: COPY OF THE LETTER DATED 24.01.2012 FROM M.M. JEEVAN TO KOTTAYAM MUNICIPALITY P12: COPY OF REPLY TO THE ABOVE DATED 25.02.2012 P13: COPY OF LETTER BY MM JEEVAN TO THE OFFICE OF PWD ASSISTANT EXECUTIVE ENGINEER, KOTTAYAM DATED 09.02.2012 P14: COPY OF REPLY TO ABOVE DATED 25.02.2012 P15: COPY OF LETTER BY RAJ JEEVAN TO OFFICE OF THE LAND REVENUE COMMISSIONER, DATED 13.2012 P16: COPY OF REPLY TO ABOVE (ENCLOSING LETTER FROM DISTRICT COLLECTOR, KOTTAYAM) DATED 02.03.2012 P17: NEWSPAPER EXTRACT PAGE 2 MANGALAM DAILY

DATED 2002.2012 P18:

ORDER

OF LAND REVENUE COMMISSIONER DATED 2201.2011 WP(C).No. 11476 of 2011 (H) P19: COPY OF NOTIFICATION DATED 1310.2011 RESPONDENT(S)' EXHIBITS:- ----- R4(a):- SKETCH OF THE PROPOSED ALIGNMENT R4(b):- COPY OF THE AWARD NO. 4/2012 (7,8) DATED 1012.2012 R4(c):- COPY OF THE AWARD NO. 4/2012 (9) DATED 1012.2012 R4(d):- COPY OF THE AWARD NO. 4/2012 (10) DATED 1012.2012 R4(e):- COPY OF THE AWARD NO. 4/2012 (11) DATED 1012.2012 R4(f):- COPY OF THE AWARD NO. 4/2012 (12) DATED 1012.2012 RESPONDENT'S ANNEXURES:- ANNEXURE A:- COPY OF REQUEST DATED 0208.2014 ANNEXURE B:- COPY OF 1T PLAN SUBMITTED BY SRI. M.M. JEEVAN ANNEXURE C:- COPY OF 2D PLAN SUBMITTED BY SRI. M.M. JEEVAN ANNEXURE D:- COPY OF THE REQUEST DATED 0108.2014 ANNEXURE E:- COPY OF THE 1T ALTERNATIVE PLAN ANNEXURE F:- COPY OF THE 2D ALTERNATIVE PLAN ANNEXURE G:- COPY OF PLAN REGARDING THE OFFICIALLY APPROVED ALIGNMENT ANNEXURE H:- COPY OF 1T SUGGESTION/PROPOSAL OF PETITIONERS DOTTED IN RED INK IN THE PLAN ANNEXURE I:- COPY OF 2D SUGGESTION OF PETITIONER DOTTED IN RED INK IN THE PLAN /TRUE COPY/ P.A. TO JUDGE DCS "C.R" V.CHITAMBARESH, J.

----- W.P (C) Nos.11476/2011, 20865/2011, 16224/2012 & 31256/2012 ----- Dated this the 29th day of July, 2015

JUDGMENT

It was a treat to hear Mr.K.Jagadeesachandran Nair and Mr.K.Ramakumar who are doyens of the Bar as well as Mr.K.Manilal, Senior Government Pleader.

2. The effect of the proviso to Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (the 'Act' for short) falls for consideration. The statutory provision is extracted hereunder:-

"4. Land acquisition process under Act No.1 of 1894 shall be deemed to have lapsed in certain cases:-

(1) x x x x

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the W.P(C) Nos.11476/2011, 20865/2011, 16224/2012 & 31256/2012 2 proceedings of such land acquisition afresh in accordance with the provisions of this Act: Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under Section 4 of the Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act." The following conditions should be satisfied for Section 24(2) of the Act to apply in which case only can the proceedings under the Land Acquisition Act, 1894 be deemed to have been lapsed: i) The land acquisition proceedings should have been initiated under the Land Acquisition Act, 1894. ii) An award under Section 11 thereof should have been passed five years or more prior to the commencement of the Act (01.01.2014) iii) The physical possession of the land should not have been taken or the compensation should not have been paid. W.P(C) Nos.11476/2011, 20865/2011, 16224/2012 & 31256/2012 3

3. The proviso only confers the benefit of Section 24(2) of the Act to the minority of land holders who have been paid the compensation when the majority of land holders have not been paid. The minority and the majority of the land holders covered by the same notification would then be entitled to compensation in accordance with the Act. This is to iron out the anomaly in the payment of compensation in respect of the lands covered by the same notification under Section 4 of the Land Acquisition Act, 1894. Nevertheless the award under Section

11 of the Land Acquisition Act, 1894 should have been passed five years or more before 01.01.2014 for the proviso to apply. The words 'where an award has been made' occurring in the proviso has to be understood as where an award has been made five years or more prior to the commencement of the Act. This is the intent and purpose of the proviso when read in conjunction with Section 24

(2) of the Act even if the effect is to carve out an exception in law. The proviso cannot dangle in the air without reference to Section 24(2) of the Act and cannot operate independently as is argued by the counsel for the petitioners. The award in the instant W.P(C) Nos.11476/2011, 20865/2011, 16224/2012 & 31256/2012 4 case was passed under Section 11 of the Land Acquisition Act, 1894 on 10.12.2012 well within the period of five years from 01.01.2014. Therefore the petitioners are not entitled to compensation under the Act in accordance with the proviso to Section 24(2) of the Act even if no compensation was paid.

4. I am guided in this conclusion by the following excerpt from Maxwell on the Interpretation of Statutes:- Difficulties some times arise in construing provisos. It will, however, generally be found that inconsistencies can be avoided by applying the general rule that the words of a proviso are not to be taken 'absolutely in their strict literal sense', but that a proviso is 'of necessity limited in its operation to the ambit of the Section which it qualifies'. And, so far as that Section itself is concerned, the proviso again receives a restricted construction: where the section confers powers, 'it would be contrary to the ordinary operation of a proviso to give it an effect which would cut down those powers beyond what compliance with the proviso renders necessary'. Thus a proviso only embraces the field which is covered W.P(C) Nos.11476/2011, 20865/2011, 16224/2012 & 31256/2012 5 by the main provision and it carves out an exception to the main provision to which it has been enacted as a proviso and to no other. The petitioners are disentitled to the benefit of the proviso to Section 24 (2) of the Act on the allegation that compensation amount was not deposited in their account.

5. The acquisition is for the purpose of construction of approach roads to Vattamoodu Bridge across the Meenachil River and the property of the petitioners would be consumed. Section 17(2) of the Land Acquisition Act, 1894 permits

invocation of the urgency clause for taking immediate possession of any land for road communication. The legal consequence is dispensing with the enquiry under Section 5A of the Land Acquisition Act, 1894 about which the petitioners cannot lament. Still this Court by interim order dated 24.07.2014 granted liberty to the petitioners to put forward their suggestions regarding the re-alignment of the approach road. The Assistant Executive Engineer (Bridges Division) was directed to consider the viability of the suggestions and file a detailed report. A detailed report after consideration of the suggestions has since been filed on 12.08.2014 W.P(C) Nos.11476/2011, 20865/2011, 16224/2012 & 31256/2012 6 supplying three sketches - the proposed alignment and the suggested alignments. The report reflects that the alternate alignments suggested necessitate sharp curves at the places where the approach roads are linked to the bridge. The Assistant Executive Engineer has also opined that such sharp curves are not allowable as per IRC Standards and will hinder the vehicular traffic. I am not to sit in judgment over the expertise of the officials when the alignment has been finalised taking note of technical feasibility and economic viability. I am not satisfied that the proceedings which started on 03.01.2011 by the issue of notification under Section 4 (1) of the Land Acquisition Act, 1894 are vitiated. The writ petitions alleging mala fides in the alignment and acquisition and in the alternative claiming compensation under the Act are misconceived. The writ petitions fail. Dismissed. No costs. Sd/- V.CHITAMBARESH, Judge. DCS.

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