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B.Jayalekshmi Vs. P.Sugunan and Others

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Court : Kerala

Decided On : Aug-13-2015

Judge : Honourable Mr.Justice v.Chitambaresh

Appellant : B.Jayalekshmi

Respondent : P.Sugunan and Others

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE V.CHITAMBARESH THURSDAY, THE13H DAY OF AUGUST201522ND SRAVANA, 1937 WP(C).No. 15632 of 2010 (D) ---------- AGAINST THE

JUDGMENT
IN LAR91998 of II ADDL.SUB COURT,TRIVANDRUM DATED241.2004 PETITIONER(S): ---------- B.JAYALEKSHMI T.C.17/1592(1), CHENKALLOOR, POOJAPPURA, THIRUVANANTHAPURAM NOW RESIDING AT5D, HEERA GATE DPI JUNCTION, THYCAUD.P.O, THIRUVANANTHAPURAM-14. BY ADV. SRI.PIRAPPANCODE V.S.SUDHIR RESPONDENT(S): ---------- 1. P.SUGUNAN S/O.PACHAN, VELLAR ROADARIKATHU VEEDU, KOVALAM.P.O, THIRUVALLOM VILLAGE THIRUVANANTHAPURAM DISTRICT.

2. SARASAMMA PADMINI,KADAYIL VEEDU, VELLAR, KOVALAM.P.O.

3. KUNJAN PANICKER KUNJUKRISHNAN, (DIED) NALUTHATTU VEEDU, VELLAR, KOVALAM.P.O.

4. CHELLAMMA LEELAMONY, CHARUVILA PUTHEN VEEDU, KALIYAMKULAM, CHATHANNOOR.P.O.

5. YASODA,D/O.LATE SREEDHARAN, KADAYIL VEEDU, VELLAR, KOVALAM.P.O THIRUVALLOM VILLAGE, THIRUVANANTHAPURAM DISTRICT.

6. MURUKESAN,S/O.LATE SREEDHARAN, KADAYIL VEEDU, VELLAR, KOVALAM.P.O THIRUVALLOM VILLAGE, THIRUVANANTHAPURAM DISTRICT.

7. KUSALA KUMARI, D/O.LATE SREEDHARAN, KADAYIL VEEDU, VELLAR, KOVALAM.P.O THIRUVALLOM, VILLAGE, THIRUVANANTHAPURAM DISTRICT. WP(C) No.15632 of 2010 :

2. :

8. DISTRICT COLLECTOR,THIRUVANANTHAPURAM. ADDL.9. MINI.K.L., D/O.LATE KUNJUKRISHNAN AGED31YEARS, RESIDING AT CHARUVILA PUTHEN VEEDU KALIYAMKULAM, CHATHANNOOR P.O., KOLLAM DISTRICT. ADDL.10. AJEEVA.K.L., S/O.LATE KUNJUKRISHNAN, AGED30YEARS, RESIDING AT CHARUVILA PUTHEN VEEDU KALIYAMKULAM, CHATHANNOOR P.O. KOLLAM DISTRICT. (ADDL.R9 AND R10 ARE IMPLEADED AS PER

ORDER
DATED237.2015 IN IA.NO.10236/2015) R1,R4,R7 BY ADV. SRI.BASANT BALAJI R BY SR.GOVERNMENT PLEADER SRI.THOMAS JOHN AMBOOKEN. THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON1308-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: APPENDIX IN W.P.(C) No.15632 of 2010 PETITIONER(S) EXHIBITS EXHIBIT P1 : TRUE COPY OF THE

JUDGMENT

IN LAR.NO.9/98 OF THE SECOND ADDITIONAL SUB COURT, THIRUVANANTHAPURAM. EXHIBIT P2 : TRUE COPY OF THE

JUDGMENT
IN LAA.NO.1189/2005 EXHIBIT P3 : TRUE COPY OF THE

ORDER
DATED157.2008 IN I.A.NO.1455/2008 IN LAR.NO.9/98 EXHIBIT P4 : TRUE COPY OF THE NOTICE NO.RC.7/08 DATED163.2010 EXHIBIT P5 : TRUE COPY OF THE

ORDER
DATED313.2010 OF THIS HON'BLE COURT IN IA.NO.1316/2010 IN LAA.NO.317/2010 EXHIBIT P6 : TRUE COPY OF THE REPRESENTATION DATED172.1995 SUBMITTED BY THE PETITIONER BEFORE THE SPECIAL TAHSILDAR. EXHIBIT P7 : TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE PETITIONER IN LAR.NO.85/1998 EXHIBIT P8 : TRUE COPY OF THE ENCUMBRANCE CERTIFICATE DATED275.2008 ISSUED FROM THE SUB REGISTRAR OFFICE, THIRUVALLOM. EXHIBIT P9 : TRUE COPY OF THE TAX RECEIPT DATED2312.1995. EXHIBIT P10 : TRUE COPY OF THE

JUDGMENT
DATED17.2010 OF THIS HON'BLE COURT IN LAA.NO.317/2010. RESPONDENT(S) EXHIBITS EXT.R1(a) TRUE COPY OF THE PARTITION DEED EXECUTED AS DOCUMENT NO.1801/72, BY WHICH PETITIONER OBTAINED A SHARE. EXT.R1(b) TRUE COPY OF THE MEMORANDUM OF APPEAL DATED293.2010 IN L.A.A.NO.317/2010. //TRUE COPY// P.S. TO JUDGE. 'C.R.' V.CHITAMBARESH, J.

---------- W.P (C) NO. 15632 of 2010 ---------- Dated this the 13th day of August, 2015

JUDGMENT

Is the Court answering a reference under Section 30 of the Land Acquisition Act, 1894 ['the LA Act' for short] obliged to make a further reference to the Land

Tribunal under Section 125(3) of the Kerala Land Reforms Act, 1963 ['the KLR Act' for short] This interesting question has been posed by Mr.Pirappancode V.S.Sudheer, Advocate on behalf of the petitioners and answered by Mr.Basant Balaji, Advocate on behalf of the contesting respondents and also Mr.Thomas John Ambooken, Senior Government Pleader.

2. The dispute pertains to the apportionment of compensation in relation to the acquisition of an extent of 2.80 Ares of land in R.S.No.232/14 of Venganoor Village in Thiruvananthapuram District. The Land Acquisition Officer fixed the compensation at ` 1,46,952/- and the same was deposited in court under Section 31(2) of the LA Act. The dispute was between claimant No.1 on the one hand and claimant Nos.7, 9, 10 and 11 on the other hand asserting rival title over the property acquired. Claimant No.1 contended that he has WP(C) No.15632/2010 2 absolute title over the property by virtue of a partition deed (Document No.1801/1972, SRO, Thiruvallom) executed in the family. Claimant Nos.7, 9, 10 and 11 on the other hand contended that they are entitled to fixity of tenure having kudikidappu right over the property. The Land Acquisition Court by judgment dated 29.1.2004 in LAR.No.9/1998 held that the compensation amount is liable to be divided amongst claimant Nos.7, 9, 10 and 11 only. This was set aside in appeal by claimant No.1 by judgment dated 3.12.2007 in L.A.A.No.1189/2005 by this Court and the matter remanded to the Land Acquisition Court.

3. It was during the midst of proceedings in the Land Acquisition Court did claimant Nos.7, 9, 10 and 11 file I.A.No.1455/2008 in L.A.R.No.9/1998 under Section 125(3) of the KLR Act. They contended that the question of kudikidappu raised by them in respect of the property be referred to the Land Tribunal having jurisdiction over the area. The Land Acquisition Court by order dated 15.7.2008 allowed I.A.No.1455/2008 and directed the question of kudikidappu to be referred to the Land Tribunal for a finding. This order is WP(C) No.15632/2010 3 challenged by claimant No.1 contending that a further reference to the Land Tribunal is unwarranted by the scheme of the LA Act. Claimant Nos.7, 9, 10 and 11 maintained that the Land Acquisition Court is obliged to refer the question of kudikidappu to the Land Tribunal by the scheme of the KLR Act.

4. The court answering a reference under Section 30 of the LA Act gets jurisdiction by the terms of reference in the light of the objections raised by the various claimants. The Land Acquisition Court cannot stay the reference made to it under Section 30 of the LA Act and refer the question of kudikidappu or tenancy under Section 125(3) of the KLR Act. A further reference to the Land Tribunal for a finding on the question of kudikidappu by the Land Acquisition Court is unwarranted by law. Even the definition of the expression 'Court' under Section 3(d) of the LA Act and Section 2(6) of the KLR Act differs indicating the width and amplitude of the jurisdiction. The Land Acquisition Court cannot enlarge its jurisdiction and rely on the finding of the Land Tribunal to decide the entitlement of compensation. Things would be different WP(C) No.15632/2010 4 if the persons claiming kudikidappu have obtained certificate of purchase from the Land Tribunal with the rival claimant on the party array.

5. I am fortified in this view by the following observations in Prayag Upnivesh Awas Evam Nirman Sahkiri Samiti Ltd. v. Allahabad Vikas Pradhikaran [(2003) 5 SCC561: "It is well established that the Reference Court gets jurisdiction only if the matter is referred to it under Section 18 or 30 of the Act by the Land Acquisition Officer and that the Civil Court has got the jurisdiction and authority only to decide the objections referred to it. The Reference Court cannot widen the scope of its jurisdiction or decide matters which are not referred to it." The Supreme Court again in Shyamali Das v. Illa Chowdhry [(2006) 12 SCC300 observed as follows:- "The Act is a complete Code by itself. It provides for remedies not only to those whose lands have been acquired but also to those who claim the awarded amount or any apportionment thereof. A Land Acquisition Judge derives its jurisdiction from the order of WP(C) No.15632/2010 5 reference. It is bound thereby. His jurisdiction is to determine adequacy or otherwise of the amount of compensation paid under the award made by the Collector. It is not within his domain to entertain any application of pro interesse suo or in the nature thereof." The above decisions have been quoted with approval in Ram Prakash Agarwal v. Gopi Krishnan [(2013) 11 SCC296.

6. There is yet another reason as to why the impugned order of the Land Acquisition Court is liable to be set aside in exercise of the powers under Article

227 of the Constitution of India. The judgment of remand of this Court in LAA.No.1189/2005 did not direct the Land Acquisition Court to make a further reference to the Land Tribunal for a finding. The Land Acquisition Court is bound by the directions in the judgment of remand and cannot transgress beyond under Section 105(2) of the Code of Civil Procedure, 1908. This Court in Seethalakshmi v. Chembakammal [1979 KLT SN.44.Case No.92] has held that a reference to the Land Tribunal under Section 125(3) of the KLR Act is WP(C) No.15632/2010 6 unnecessary after a remand in appeal. I do feel that the Land Acquisition Court has exceeded its jurisdiction in referring the question of kudikidappu to the Land Tribunal in the circumstances.

7. The order in I.A.No.1455/2008 in LAR.No.9/1998 on the file of the court of the II Additional Subordinate Judge, Thiruvananthapuram is set aside and I.A.No.1455/2008 is dismissed. The Land Acquisition Court shall itself consider the question of kudikidappu raised in relation to the property and decide the entitlement of compensation. The proceedings shall be expedited and every endeavour shall be made to pass final orders within a period of four months from today. The Writ Petition is allowed. No costs. Sd/- V.CHITAMBARESH, Judge. nj.

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