

R.D.O. Vs. Kurian

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Court : Kerala

Decided On : Mar-09-2005

Reported in : 2005(2)KLT863

Judge : K.S. Radhakrishnan and; M.N. Krishnan, JJ.

Acts : Kerala Land Acquisition Act, 1894 - Sections 18; ; [Income Tax Act, 1961](#); ; [Code of Civil Procedure \(CPC\) , 1908](#) - Order 21, Rule 1

Appeal No. : W.A. Nos. 2706 and 2728 of 2000 etc.

Appellant : R.D.O.

Respondent : Kurian

Advocate for Def. : V. Ramachandran,; P.M. Kunjumoideenkutty, ; A.V. Thom

Advocate for Pet/Ap. : Mohan C. Menon, Sr. Government Pleader

Disposition : Appeal dismissed

Judgement :

K.S. Radhakrishnan, J.

1. Both these appeals and contempt case arise out of the judgment in O.P.19470 of 2000. Original Petition was preferred by the first respondent in W.A.2706 of 2000 for a writ of mandamus directing the State and others to release an amount

of Rs. 5,51,785/- together with bank interest from 29.6.1999 and also for a writ of certiorari to quash Exts.P11 and P12 letters. Learned Single Judge allowed the Writ Petition and directed the State Government to release the amount claimed by the writ petitioner.

2. State Government initiated proceedings under the Kerala Land Acquisition Act for acquiring 103 acres of land for the purpose of Cochin Export Processing Zone, which is an instrumentality of the Government of India, Ministry of Commerce. Proceedings were initiated against various land owners including the Writ Petitioner. Award No. 3786 dt. 25.2.1986 was passed by the land acquisition officer in favour of the claimants in the instant case for acquisition of 87.33 acres of land at the rate of Rs. 11,000/- per are. Dissatisfied by the amount awarded by the Land Acquisition Officer first claimant filed an application under Section 18 of the Land Acquisition Act seeking reference to the Sub Court, Ernakulam. Reference was numbered as LAR.No. 440 of 1988. Sub Court, Ernakulam enhanced the land value at the rate of Rs. 21,004/- per are. State of Kerala aggrieved by the judgment filed LAA. No. 833 of 1994 before this Court. State also filed various other connected appeals before this Court.

3. Government of India, requisitioning authority, during the pendency of the appeals, released money to the State Government in order to meet generally the demands for compensation and other expenses. Money released by the Government of India was in the custody of the land acquisition department without accruing any interest. Claimants however, would get interest as per the provisions of the Land Acquisition Act. To meet a portion of the interest that is likely to accrue during the pendency of the appeal and also for other purposes it was felt that rather than keeping the money in the locker in the Treasury the amount released by the Government of India be put in a nationalised bank so as to bear maximum interest. State as such cannot deposit the money in a nationalised bank without getting special direction from the Government of India or direction from the Court. State Government in consultation with the Advocate General thought that it would be appropriate that a direction be obtained from the High Court to put the money in a nationalised bank so that, interests of the State could be safeguarded. State of Kerala then filed CMP.2425/95 in LAA. 833 of 1994 before this Court seeking

permission of the Court to deposit the amount in a nationalised bank. A Division Bench of this Court of which one of us, K.S. Radhakrishnan, J. was a party, passed the following order on 23.6.1995;

'Government offers to deposit Rs. 28,47,544/-. We permit the Government Pleader to put this amount in Fixed Deposit with a Nationalised Bank for such period as to accrue the maximum rate of interest. Until further orders are passed, no amount shall be with drawn by the claimants'.

State Government deposited the amount in the Union Bank of India so as to accrue maximum interest. Land acquisition appeal 833 of 1994 was later heard and partly allowed reducing the land value awarded by the Sub Court, Ernakulam to Rs. 17,297/- per are instead of Rs. 21,001/- per are originally awarded by the land acquisition Court.

4. State Government later passed an order dated 4.5.1999 according sanction for making payment of an amount of Rs. 23,06,024/- for full satisfaction of the decree in LAR. 440 of 1988 of Sub Court, Ernakulam to the claimants. For releasing the said amount claimants filed application before the Land Acquisition Officer. Government later found that petitioner is not entitled to get an amount of Rs. 23,06,624/- but only an amount of Rs. 17,54,839/- and therefore released that amount to the claimants. Claimants filed a petition before the District Collector stating that they are entitled to get an amount of Rs. 23,06,024/- instead of Rs. 17,54,839/-. Application was rejected by the District Collector vide letter dated 2.5.2000. District Collector informed the petitioner that as per Government letter the petitioner is not entitled to get the entire amount. Government letter reads as follows:

'I am to invite your attention to the reference cited and to inform you that the decretal amount should go to the party who got the decree in his favour. But interest, if accrued is State's property and should not given to the decree holder.'

5. The only question to be considered is as to whether the petitioner is entitled to get the interest accrued for the amount 'deposited by the State in the nationalised bank. Learned Senior Government Pleader Sri. Mohan C. Menon submitted that

the State has paid the entire amount due to the claimant calculating 30% solatium and the legitimate interest as provided under the Land Acquisition Act. Counsel submitted claimants are claiming interest over and above the interest prescribed under the Land Acquisition Act. Counsel appearing for the writ petitioner Sri. V. Ramachandran on the other hand, contended that since amount has been deposited in a nationalised bank on a direction given by this Court in the land acquisition appeal he is entitled to get interest on the amount as well. We have already narrated the circumstances under which the amount was deposited in the nationalised bank. It is not a deposit as contemplated under Order XXI Rule 1 which refers to modes of paying money under a decree. The provision is extracted below for easy reference:

'1. Modes of paying money under decree--

(1) All money payable under a decree shall be paid as follows, namely:

(a) by deposit into the Court whose duty is to execute the decree, or sent to that Court by postal money order or through a bank; or

(b) out of Court, to the decree-holder by postal money order or through a bank or by any other mode wherein payment is evidenced in writing; or

(c) otherwise, as the Court which made the decree, directs.

Before making payment under Order XXI Rule 1 various procedures have to be complied with. Deposit made in a nationalised bank after obtaining orders from this Court in our view is not a payment contemplated under Order XXI Rule 1 C.P.C. The State Government had the option either to keep the amount in treasury or not. The question is whether claimant can stake a claim for that amount. Petitioner has no case that he has not received the amount legitimately due to him under the Land Acquisition Act. Counsel for the writ petitioner submitted that interest on the solatium was not granted to the petitioner. Such a contention was not raised in the Writ Petition and not a subject matter in this appeal. Learned Single Judge has proceeded on the basis that the amount deposited on the basis of the directions of this Court is an amount legitimately due to the petitioner under the Land

Acquisition Act. Whatever amount legitimately due to the writ petitioner, solatium, 12% additional land value from 31.1.85 to 17.4.1985, 9% interest from 17.4.85 to 16.4.86 and 15% interest from 17.4.86 to 23.7.95 were already paid to the petitioner. No further amount is due to the petitioner under the provisions of the Land Acquisition Act.

6. We are of the firm view that claimant is not entitled to get any amount over and above the amount due to him under the provisions of the Land Acquisition Act and if any amount is granted to him apart from the amount legitimately due to him, in our view, would amount to unjust enrichment. Learned Single Judge has committed a mistake in directing release of the balance amount. The amount deducted by the Land Acquisition Officer under the provisions of the Income Tax Act by way of deduction at source would also form part of the amount ordered to be released to the claimant. Income Tax Act has authorised the Land Acquisition Officer to deduct amount at source and that amount is directed to be released by the learned Single Judge. Land Acquisition Officer is bound to deduct at source the income tax due on the amount. This legal position is settled by a decision of a learned Single Judge of this Court which is reported in *State of Kerala v. Mariamma*, 2005 (1) KLT 173 = (2005) 1 ILR 40 with which we fully concur.

7. Under the above mentioned circumstance we are inclined to allow both the appeals and set aside the judgment of the learned Single Judge. We are of the view the interest received by the State Government on the deposit made in the nationalised bank is State property for which claimant cannot lay any claim. Since we are allowing the Writ Appeals contempt case would stand dismissed. Petitioner has got a case that he has not received interest on solatium, a matter he can take up before the appropriate authority with which we express no opinion.