

**Jameson Vs. State of Kerala**

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**Court :** Kerala

**Decided On :** Mar-29-2006

**Reported in :** 2006(3)KLT186

**Judge :** K.T. Sankaran, J.

**Acts :** [Land Acquisition Act, 1894](#) - Sections 5, 12(2), 11, 17, 17(3A), 18, 18(2), 19, 19(1), 28A(2), 28A(3), 30 and 55; Kerala Land Acquisition Rules - Rule 16, 16A, 16A(2), 16A(3) and 18; Kerala Civil Practice Rules - Rules 377 to 379

**Appeal No. :** W.P. (C) No. 5525 of 2006

**Appellant :** Jameson

**Respondent :** State of Kerala

**Advocate for Def. :** Alosious Thomas, Government Pleader

**Advocate for Pet/Ap. :** T.R. Balakrishnan and; Rakhit R., Advs.

**Disposition :** Petition allowed

**Judgement :**

**K.T. Sankaran, J.**

1. Lands belonging to the petitioners were acquired under the Land Acquisition Act. Dissatisfied with the award, the petitioners filed Exts.P? to P11 applications

before the third respondent for reference to the appropriate court under Section 18 of the Land Acquisition Act. The grievance voiced by the petitioners is that the third respondent has not taken any positive steps to refer the matter to the Land Acquisition Court. The petitioners prayed for the issue of a writ of mandamus commanding the third respondent to refer Exts.P7 to P11 applications to the Land Acquisition Court under Section 18 of the Land Acquisition Act.

2. Heard the learned Counsel for the petitioners and the learned Government Pleader. Learned Government Pleader, on instructions, submits that the reference applications submitted by the petitioners were received on 23.1.2002. The Land Acquisition Officer approved the reference applications on 11.9.2002. The despatch seal was affixed on the office copies as on 6.11.2002 and entries were made in the local delivery book. The reference applications in thirteen cases namely, LAC.Nos. 1 to 13 along with the connected records were submitted to the Sub Court, Ernakulam on 6.11.2002. It is further submitted that the Sub Court, Ernakulam did not accept the same on the ground that award attached with the reference was not the original of the award. It is also submitted that the District Government Pleader accepted the records on 7.11.2002 and the reference papers were sent to the Sub Court again on 8.5.2003 by unregistered parcel. The further submission is that thereafter no communication was received regarding reference made to the Sub Court, Ernakulam.

3. It is not disputed that the award was passed on 21.12.2001. It is also not disputed that Exts.P7 to P11 reference applications were submitted by the petitioners well within time. The reference was actually made to the Sub Court, Ernakulam on 6.11.2002. So far as the petitioners are concerned, they have fulfilled the statutory requirements. They need appear before the Land Acquisition Court only on getting notice. But the fact remains that the petitioners have not received any notice from the Land Acquisition Court and the third respondent is absolutely unaware of any proceedings pending before the Sub Court. The matter should not end there. When the Land Acquisition Act provides for a remedy to the aggrieved party, he should have an effective opportunity to put forward his case as provided in the Act, Because of the procedural hazards and laches on the part of the Land Acquisition Officer, the petitioners should not suffer.

4. Now let us see the relevant provisions of the Act and the Land Acquisition (Kerala) Rules. Section 18 of the Land Acquisition Act provides that any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the person to whom it is payable, or the apportionment of the compensation among the persons interested. Sub-section (2) of Section 18 provides that the application shall state the grounds on which objection to the award is taken. Proviso to Sub-section (2) of Section 18 says that every such application shall be made, (a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award; and (b) in other cases, within six weeks of the receipt of the notice from the Collector under Section 12(2) of the Act or within six months from the date of the Collector's award, whichever period shall first expire. Section 18 does not provide for any particular form or manner in which the application for reference should be submitted by the aggrieved party. Section 19 of the Act provides for the information to be furnished by the Collector to the Court while making the reference. Section 19 reads thus:

19. Collector's statement to the Court:--

(1) In making the reference, the Collector shall state for the information of the Court, in writing under his hand,-

(a) the situation and extent of the land, with particulars of any trees, buildings or standing crops thereon;

(b) the names of the persons whom he has reason to think interested in such land;

(c) the amount awarded for damages and paid or tendered under Sections 5 and 17, or either of them, and the amount of compensation awarded under Section 11;

(cc) the amount paid or deposited under Sub-section (3-A) of Section 17; and

(d) if the objection be to the amount of the compensation, the grounds on which the amount of compensation was determined.

(2) To the said statement shall be attached a schedule giving the particulars of the notices served upon, and of the statements in writing made or delivered by, the parties interested respectively.

5. Rule 16 of the Land Acquisition (Kerala) Rules reads thus:

16. Reference to Court.-- Reference to Court under Section 18 or Sub-section (3) of Section 28A or Section 30 of the Act shall be made by the Land Acquisition Officer in Form No. 15 supported by information in the prescribed schedule in Form Nos. 16 and 17.

Provided that in the case of application presented to the Land Acquisition Officer for reference to Court it shall be referred within a period of six months from the date of receipt of the application.

Rule 18 of the Land Acquisition (Kerala) Rules provides for maintenance of registers. Clause (e) therein provides that a register of reference applications filed by awardees shall be maintained in Form No. 23. Rule 16A states that every application for reference shall be in Form No. 22A, in triplicate, and shall be filed within the time limit prescribed for the purpose. Rule 16A(2) states that as soon as the reference application is received, the Land Acquisition Officer shall make necessary entries in the Register in Form Nos. 21 and 23. Sub-rule (3) of Rule 16A stipulates that one copy of the application shall be returned to the applicant duly acknowledging its receipt with the Office seal and dated signature of the Land Acquisition Officer, immediately on receipt and the other copies shall be used for reference to Court and for office records. Form 22A contains nine columns and it should be signed by the applicant. An acknowledgement is to be signed by the Land Acquisition Officer with date as provided. Rules 377 to 379 of the Civil Rules of Practice, Kerala provide for the land acquisition reference. Rule 377 therein provides that when a reference is made by the Collector, the reference shall be accompanied by the records which form the basis of the reference. It is also provided therein that when such records are not sent up, the Judge shall call for the records from the Collector before issuing notice to the parties on the reference. Rule 378(3) of the Civil Rules of Practice states that the application before the Collector for reference shall be treated as the plaint, and the investigation shall be

with reference to the claim made therein.

6. The third respondent having made the reference to the Court, the Reference Court should have accepted the reference instead of returning the papers. If the records were not sent up with the reference, the Court could call for the records from the Collector before issuing notice to the parties. Non-production of the relevant records by the Collector should not affect the rights of the claimants. The application submitted by the claimant before the Collector being treated as plaint under Rule 378 of the Civil Rules of Practice, non-submission of the records by the Collector should not prejudice the claimant at all. When the matter comes up before the Land Acquisition Court, the Collector and the claimant would be parties contesting against each other and the failure of such an opponent or opposite party of the claimant to submit the records to the Reference Court should not be at the cost of the claimant. Sub-rule (5) of Rule 377 of the Civil Rules of Practice provides that the parties to a reference other than the Collector, a company and a local authority, shall be shown as claimants and designated as Claimant A, Claimant B and so on and the Collector, the company and local authority shall be shown as respondents and designated as Respondent A, Respondent B and so on. This makes the position clear that the claimant and the Collector would be parties contesting against the claim of each other. The claimant being in the position of a plaintiff, he has to prove his contentions to get enhancement of compensation as claimed by him in the reference application. It is not the claimant who has to submit before the Court the original records available before the Land Acquisition Officer, but the Collector, who naturally would oppose the claim of the claimant.

7. In *Ram Kumar and Ors. v. Union of India and Ors.* : [1991]1SCR649 , the Supreme Court held thus:

Under Section 18 of the Act the only requirement for the person interested who had not accepted the award was to move a written application to the Collector requiring that the matter be referred for the determination of the court. One of the grounds for not accepting the award was the amount of compensation. Once such application was moved it was the duty of the Collector to make a reference to the

court. Under Section 19 of the Act while making the reference the Collector was required to state for the information of the court the particulars as mentioned in clauses (a) to (d) of Sub-section (1) of Section 19 of the Act. Thus it was the duty of the Collector to mention not only the situation and extent of land but even particulars of any trees, buildings or standing crops thereon. The agriculturist whose land is acquired may not be fully conversant with the khasra No. or area as entered in the revenue records and the Union of India or the State acquiring such land should not be allowed to take any advantage of such ignorance of the agriculturists. Once an application is moved for making a reference under Section 18 of the Act it becomes the duty of the Collector to send full information to the court regarding the entire land acquired and it is thereafter the duty of the court to decide the matter in accordance with law.

8. This Court in *State of Kerala v. Ramachandran Nair* 1996 (1) KLT 658, held thus:

But we take this opportunity to alert District Collectors to take more care while drawing up reference statement and to follow the requirements contained in Section 19(1) of the Land Acquisition Act. If the statement of reference is not in accordance with Section 19(1), it is open to the office of the subordinate courts to return the same on the ground that the reference statement is not in accordance with law.

Furnishing the statement under Section 19 is different from non production of the original of the award. In the present case, the defect noted was that the original of the award was not produced. The reference court could deal with that situation under Rule 377 of the Civil Rules of Practice, Kerala.

9. Since Section 18 of the Land Acquisition Act does not provide for any form in which an application for reference is to be made, it is to be taken that an application for reference could be submitted in any form the claimant likes, provided that necessary ingredients to constitute a request for reference are made out in the application. It is true that the Land Acquisition (Kerala) Rules provides for submission of an application for reference in Form 22A as provided under Rule 16A. Section 55 of the Land Acquisition Act states that the appropriate

Government shall have power to make rules consistent with the Act for the guidance of officers in all matters connected with its enforcement, and may from time to time alter and add to the rules so made. The rule making power of the appropriate Government does not extend to insisting on a particular form of application for reference, since it would be against the provisions of Section 18 of the Act. Sub-section (2) of Section 18 provides that the application for reference shall state the grounds on which objection to the award is taken. Column 8 in Form 22A specifies that requirement. The other columns in Form 22A are the following: Name and address of the applicant, Land Acquisition Case number, Award number and date of award, amount of compensation awarded, date of receipt of notice of award in Form No. 10(b) by the applicant, date of receipt of compensation by the applicant, whether the compensation amount was received under protest or not; and if the application is under Sub-section (3) of Section 28A the details regarding (1) number and date of Award under Sub-section (2) of Section 28A of the Act, (2) whether the compensation was re-determined, (3) whether protest was recorded on the decision of the Collector, and (4) grounds on which the objection to the Award is filed. Column 9 provides for the details to be furnished in an application under Sub-section (3) of Section 28A. Even if an application for reference does not conform to Form 22A, it cannot be said that the application for reference is defective, since the rule making authority has no power to prescribe for such a form in view of the specific provisions in Section 18 of the Act. Section 55 of the Act enjoins the Rule making authority to make rules for the guidance of officers. Rule 16-A to the extent to which it provides that an application should be filed in Form 22-A for reference to Court, is ultra vires the Land Acquisition Act. The Rule making power under Section 55 does not empower the Government to make such a Rule.

10. In view of the fact that the Collector may not be very much interested in pursuing the application for reference made by the claimants, disputes arise in several cases as to whether application for reference has been made. The claimants are put to great hardship in cases where reference applications are not properly dealt with. In the present case, after submitting the reference once and resubmitting it by sending it by unregistered parcel to the Court, the Land Acquisition Officer did not make any enquiry, and this would show lack of interest

on the part of the Land Acquisition Authorities in the matter of the claim made by the petitioners. Whenever a reference is made, the Court must see that it is recorded as reference case and if the Collector has not forwarded the records, the Court must see that the records are produced by the Collector before the Court expeditiously. The interest of the claimants should not suffer due to the lack of interest shown by the Land Acquisition Authority.

11. In this context, it is apposite to refer to the decision of the Supreme Court in *Mangat Ram Tanwar and Anr. v. Union of India* : AIR 1991 SC1080 , wherein it is held as follows:

We therefore, direct that the States should ensure disposal of applications for reference to the Court when moved before the Land Acquisition Collector and though the statute has not given a period for disposing of such applications, these applications should be disposed of within three months of being made and the outer limit should not exceed six months. The Land Acquisition Officers should owe explanation to the superiors in the event of delay beyond three months and States should take appropriate care to issue clean and strict orders to the Land Acquisition Officers inviting their attention to the liability that might arise due to delay in disposal of such applications and State should occasionally even consider sharing of the liability with the Land Acquisition Officers personally either so that the responsibility of the Land Acquisition Officers in the matter may be appropriately realised.

Land Acquisition (Kerala) Rules provides for a period of six months for making the reference, vide: proviso to Rule 16, In the present case, the reference was made by the Land Acquisition Officer after a period of nine months and even then relevant papers were not submitted to the Court. Again, the Land Acquisition Officer has taken six months' time to send the records to the Court, after the reference was returned by the Court.

12. The third respondent shall verify whether the reference applications submitted by the petitioners have actually reached the Court and if not, shall forward the necessary records and copies of the reference applications to the Court within a period of two months from the date of receipt of a copy of this judgment. A copy of

this judgment shall be forwarded to the Sub Court, Ernakulam. The Registry shall forward copies of this judgment to the Chief Secretary to the Government of Kerala, and to all the District Collectors in the State of Kerala for necessary action.

The Writ Petition is allowed as above.

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