

Aboobacker Vs. District Collector

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Court : Kerala

Decided On : Aug-19-2011

Judge : Pius C. Kuriakose & C.K. Abdul Rehim

Appeal No. : W.P.(C) No.551 of 2010

Appellant : Aboobacker

Respondent : District Collector

Judgement :

This reference is made by the learned Judge for an authoritative pronouncement of the Division Bench in view of the conflicting views taken by this court in Jameson V. State of Kerala (2006 (3) KLT 186) and in Narayani Amma V. Special Tahsildar (2008 (2) KLT 206).

2. In Jameson's case (cited supra) this court decided that R.16A of the Land Acquisition (Kerala) Rules, 1990 is ultra vires to the extent it insists that every application for reference to the courts, both under S.18(1) and 28A(3), shall be made in Form No.22A. In Narayani Amma's case (cited supra) a learned Judge of this Court took the view that, from 1.9.2008 onwards the Land Acquisition Officers shall insist that application under S.18(1) and 22A(3) shall be submitted in Form No.22A, supported by informations prescribed by the Schedules in Form Nos.16 and 17. Since the above views are conflicting each other, pronouncement of a Division Bench is sought for.

3. In Jameson's case the learned Judge had taken note of the fact that S.18 does not provide for any form in which an application for reference is to be made. In other words an application for reference could be submitted in any form the claimant chooses, provided that necessary ingredients constituting a reason for reference is to be made out in the application. With respect to R.16A which insist for filing of such applications in Form 22A, the learned Judge had examined the scope of the rule making power conferred to the appropriate Governments. Referring to S.55 of the Land Acquisition Act, it was observed that the appropriate Government shall have power to make rules consistent with the Act for guidance of the officers in all matters connected with its enforcement. Analysing that the insistence of a particular form with respect to an application for reference is against the provisions of S. 18 of the Act, particular against sub.s.(2) of S.18 of the Act, it was observed that even if an application for reference does not conform to Form 22A, it cannot be said that the application for reference is defective. It is found that the rule making authority has not been conferred with power to prescribe such a form in view of the specific provisions of S.18. The insistence in R.16A to the extent that the applications should be filed in Form 22A is ultra vires of S.18 of the Land Acquisition Act and that the rule making power under S.55 does not empower the Government to make such a rule, is the finding.

4. In Narayani Amma's case another learned Judge of this Court was considering an issue regarding reference of an application filed under S.28A(3). Without noticing Jameson's case in which R.16A was held as ultra vires, the learned Judge quoted the provisions of R.16A and observed that "if the application filed is not in accordance with R.16A of the Rules, the application shall be returned to the applicant for curing the defect and for filing the same within a time limit fixed by the Land Acquisition Officer. If the application is represented within the time granted it shall be treated as application filed on the date of the original filing". After dealing with various other provisions relating to processing of the applications, re-determination of the amount of compensation etc. the Court emphasized the need for dealing with applications under Ss.18, 28A(3) on an expeditious manner. In the operative portion of the judgment, directions were issued to the effect that "from 1.9.2008 onwards, the Land Acquisition Officers shall insist that applications filed under Ss.18 and 28A(3) of the Act shall be in Form No.22A supported by the

informations prescribed by the Schedules in Form Nos.16 and 17”

5. We notice that in Narayani Amma’s case, no question relating to validity of R.16A is decided, nor the direction was issued after taking note of the legal dictum laid by this court in Jameson’s case. Nobody has challenged the judgment in Jameson’s case and the findings arrived to the effect that R.16A is ultra vires of the Act to the extent it insists in filing of application in Form No.22A, remains settled. We are not sitting in an appellate jurisdiction considering sustainability of the judgment in Jameson’s case. Prima Facie we do not find any material to take a different view also. In strict sense the two decisions have not taken any conflicting view. Narayani Amma’s case can only be considered as per incuriam since the direction contained therein was issued without noticing the dictum laid in Jameson’s case.

6. Under such circumstance, we have no hesitation to hold that the finding in Jameson’s case that R.16A is ultra vires of the Act to the extent to which it provides that application should be filed under Form 22A, will prevail. The reference is answered accordingly.

Registry is directed to post the case before the court dealing with the subject, as per the roaster.

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