

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 5TH APRIL 2006 / 15TH CHAITHRA, 1928

**CRP.No. 7 of 2006()**

AGAINST THE ORDER DATED 31/08/2005 IN IA. 1234 /2005 IN  
LAR.44/1986 of II ADDL.SUB COURT, THRISSUR

REVN. PETITIONER: PETITIONER/LEGAL HEIR OF CLAIMANT:

K.G. KURUVILA,  
KAYYALACKAKOM, KURAVANKONAM JN.,  
THIRUVANANTHAPURAM-03.

BY ADV. SRI.S.ANANTHAKRISHNAN  
SRI.N.K.SUBRAMANIAN

RESPONDENTS: RESPONDENTS/RESPONDENTS:

1. DY. COLLECTOR (L.A),  
KERALA STATE ELECTRICITY BOARD, THIRUVANANTHAPURAM.
2. THE DIVISIONAL FOREST OFFICER, THRISSUR.

ADDL.R3 IMPEADED:

3. MARIAMMA MATHAI, W/O.LATE K.M.MATHAI,  
KAYYALAKKAKOM, PALAI.

ADDL.R3 IS IMPEADED AS PER ORDER DATED 31.1.2006  
IN I.A.NO.298/2006.

BY ADV. SRI.JOSE J.MATHEIKEL, SC, KSEB  
ADDL.R3 BY ADV. SRI.P.S.BIJU  
SRI.SAJI VARGHESE KAKKATTUMATTATHIL  
SRI.P.SANTHALINGAM, SC, KSEB

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON  
05/04/2006, ALONG WITH CRP NO. 32 OF 2006 THE COURT ON THE  
SAME DAY PASSED THE FOLLOWING:

**I.A.NO. 24/2006 IN C.R.P.NO.7/2006**

DISMISSED

5/4/2006

SD/- K.T.SANKARAN, JUDGE

//TRUE COPY//

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**K.T. SANKARAN, J.**

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**C.R.P. NOs. 7 & 32 OF 2006**  
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**Dated this the 5<sup>th</sup> day of April, 2006**

**ORDER**

Applications submitted by the revision petitioner before the court below to declare that the common judgment in L.A.A.Nos.595 of 1992 and 603 of 1992 dated 23.5.2003 is a nullity in the eye of law and to drop further proceedings in L.A.R.Nos.44 of 1986 and 45 of 1986, were dismissed by the court below by the common order dated 31.8.2005, which is under challenge in these revisions.

2. Property belonging to seven persons was acquired for the purpose of establishing a 400 KV Sub Station for the Kerala State Electricity Board. Section 4(1) notification was issued on 7.10.1980 and award Nos.8 of 1984 and 9 of 1984 were passed on 6.10.1984. During the award enquiry, one of the co-owners, namely, K.M.Thomas died on 1.1.1984. The matter was referred to the Land

Acquisition Court for determining the question of apportionment of compensation and also on the question of enhancement of compensation as the claimants filed applications for reference dissatisfied with the amount awarded. The cases were numbered as L.A.R.Nos.44 of 1986 and 45 of 1986. The Land Acquisition Officer had awarded compensation on the basis of capitalization method. The claimants contended that the compensation calculated on the basis of capitalization method was improper and that it should have been based on land value and the value of timber. The Land Acquisition References were disposed of on 5.3.1991. The reference court held that capitalization method was not proper and the contention put forward by the claimants was accepted. The State filed L.A.A.No.595 of 1992 and 603 of 1992 before the High Court challenging the judgment and decree in the Land Acquisition Reference cases. The appeals were allowed in part and the matter was remanded to the reference court. However, the finding of the reference court in respect of land

value was confirmed by the High Court. The Land Acquisition Court was directed to decide the matter afresh and to fix the compensation based on the probable quantity of timber, on the basis of the evidence already on record as well as on additional evidence. After remand, the parties appeared before the Land Acquisition Court and the proceedings are pending from 21.7.2003 onwards.

3. After remand, the revision petitioner got himself impleaded before the reference court as per the order in I.A.No.5731 of 2004 and 5732 of 2004. He claimed that he is one of the legal representatives of late K.M.George, who was one of the legal representatives of the deceased K.M.Thomas, a co-owner of the property. Thereafter, in 2005, the revision petitioner filed I.A.Nos.1234 of 2005 and 1236 of 2005 to drop the proceedings before the reference court on the ground that the decrees passed by the High Court in the Land Acquisition Appeals are void. The

reference court negated the contentions put forward by the revision petitioner and dismissed the applications.

4. The property in question belonged to seven persons, namely, K.M.Augustine, K.M.Thomas, K.M.Ignatious, Mrs.Tressyamma Joseph, Mrs.Annamma Chacko, Mrs.Mariamamma Mathai and Mrs.Mary George (wife of K.M.George). Out of the seven co-owners, K.M.Thomas died on 1.1.1984 during the award proceedings. His legal representatives are K.M.Joseph, K.M.Chacko, K.M.Mathai, K.M.George, K.M.Augustine and K.M.Ignatious. K.M.George got himself impleaded before the reference court in his capacity as the legal representative of K.M.Thomas as per the order dated 10.10.1986. Subsequently, K.M.George died on 25.9.2000. The legal representatives of K.M.George are his widow Mary George and children K.G.Kuruvilla (revision petitioner), Mathew and Augustine. Mary George, one of the legal representatives of K.M.George was already in the party

array, she being one among the seven persons to whom the property belonged. It is to be noted that some of the legal representatives of K.M.Thomas were already on the party array and the other legal representatives of K.M.Thomas got themselves impleaded in the proceedings before the reference court.

5. The contention of the revision petitioner, who is one of the legal representatives of K.M.George, who in turn was one of the legal representatives of K.M.Thomas, was that the legal representatives of K.M.George were not impleaded in the Land Acquisition Appeals, and therefore, the Appeals had abated. The contesting respondents, on the other hand, contended that there was no abatement at all since the estate to be represented was that of K.M.Thomas and all his legal representatives were impleaded. The revision petitioner is the legal representative of one of the legal representatives of K.M.Thomas. It is contended that since there was substantial representation of the estate of the deceased

K.M.Thomas, the Appeals had not abated. It is also contended by the contesting respondents that the wife of K.M.George was already in the party array as one among the seven co-owners and on the death of K.M.George, she continued to represent the estate of K.M.George as his widow. In short, the contention is that Mary George had dual capacity in the land acquisition proceedings, one as one of the co-owners and the other as one of the legal representatives of a legal representative of one of the co-owners.

6. In Mahabir Prasad v. Jage Ram and others (AIR 1971 SC 742), it was held that:

“Where in a proceeding a party dies and one of the legal representatives is already on the record in another capacity, it is only necessary that he should be described by an appropriate application made in that behalf that he is also on the record, as an heir and legal representative. Even if there are other heirs and legal representatives and no application for impleading them is made within the period of limitation prescribed by the Limitation Act the proceeding will not abate.”



The Supreme Court in Collector of 24 Parganas and others v. Lalith Mohan Mullick and others (AIR 1988 SC 2121), considered the question whether a judgment passed by it was liable to be reviewed on the ground that the legal representatives of two of the respondents who died during the pendency of the proceedings were not brought on record. It was held that there was no abatement, since the estate of the deceased was substantially represented before the court as some of the legal representatives of the deceased were already on the party array.

7. In Hameed v. Sumithra and others (1987 (1) KLT 308), the principle of substantial representation was considered and it was held thus:

“9. When a plaintiff or an appellant after bonafide enquiry ascertains the legal representatives of a deceased defendant or respondent and impleads them, the impleaded representatives sufficiently represent the estate of the deceased and the decision with them on record will bind the entire estate including those legal representatives not brought on record in the

absence of fraud or collusion or circumstances indicating that there has not been a fair or real trial or that against the absent heir there was a special case which was not and could not be tried in the proceeding. See *Daya Ram v. Shyam Sundari* (AIR 1955 SC 1040) and *Harihar Prasad v. Balmiki Prasad* (AIR 1975 SC 733). Ordinarily the court does not regard a decree binding upon a person who was not impleaded eo nomine in the action. But, there are certain exceptions to this recognised rule. In a suit where by the personal law governing the absent heir the heir impleaded represent his interest in the estate of the deceased or in cases where no prejudice is shown to the absent heir, the decree is an action where the plaintiff has after bonafide enquiry impleaded all the heirs known to him will ordinarily bind all persons interested in the estate. But this is also subject to the condition that vitiating circumstances like fraud or collusion are absent. The court will also enquire whether there was a real contest and for that purpose ascertain whether any special defence was available to the absent heir which was not put forward. So also where due to a bona fide mistake the plaintiff files a suit against a person who is not representing the estate of the deceased, in the absence of fraud or collusion or other vitiating circumstances a decree passed against the person impleaded as heir will bind the estate eventhough other persons interested in the estate are not brought on the record. (See *Mond. Sulaiman v. Mohd. Ismail* (AIR 1966 SC 792). The first two cases relate to death after suit and the subsequent one is a case of wrong institution, Principle is the same.”

8. The counsel for the revision petitioner relied on the decisions in Shahazada Bi and others v. Halimabi ((2004) 7 SCC 354 = AIR 2004 SC 3942); State of Punjab v. Nathu Ram (AIR 1962 SC 89); Easwara Iyer v. Vella Muthan (1998 (2) KLT 661); Badni v. Siri Chand (AIR 1999 SC 1077) and Amba Bai and others v. Gopal and others (AIR 2001 SC 2003). I do not think that the principles laid down in those decisions are applicable to the questions involved in this case.

9. Learned counsel for the revision petitioner further contended that Mary George was not even recorded as legal representative of K.M.George and, therefore, the principle that there would be no abatement if one of the legal heirs is already on the party array, is not applicable. I do not think that this submission is correct. The question is not whether a person was recorded as a legal representative to avoid abatement. The question is otherwise. If one of the legal representatives of the

deceased respondent is already on the party array, there is no abatement at all. Even if there is no formal recording of a person as the legal representative of the deceased, that would not be a sufficient ground to hold that there was abatement, if really there was no abatement in law. The question of recording is a matter of procedure and any irregularity in the matter of procedure would not affect the principle of law as to abatement. In AIR 1971 SC 742 (supra), it was held that there would be no abatement merely because no formal application was made to record the legal representative of the deceased, who was in the array of parties.

10. The contention of the revision petitioner is liable to be rejected on another ground as well. The point to be considered is whether the estate of K.M.Thomas was represented. K.M.Thomas was one among the seven co-owners. On his death, all his legal representatives were impleaded, one among whom was K.M.George. K.M.George died on 25.9.2000 and at that time, his

widow Mary George was already on the party array, she being one among the seven co-owners. K.M.George was only one among the six legal representatives of K.M.Thomas. The estate of K.M.Thomas was properly represented since all his legal representatives were on the party array. On the death of K.M.George, his estate was also substantially represented by the presence of his widow Mary George as one of the parties in the proceeding. Therefore, considering the question in any angle, there was no question of any abatement caused on the death of K.M.George, one among the legal representatives of the deceased co-owner K.M.Thomas. Legal representatives of the deceased parties are to be impleaded in a proceeding so as to afford them an opportunity of being heard in the matter. If a person is not eo nomine a party to the proceedings, any decision thereon would not bind him. If the legal representatives of the deceased are not brought on record, any decision with the dead man on the party array would be void, provided there is abatement. If there is no

abatement of the proceedings, even if all the legal representatives of the deceased are not brought on record, it cannot be said that the decision is void.

11. There is another ground on which the contention of the revision petitioner is liable to be rejected. In the applications filed by him, he has made the Kerala State Electricity Board alone as the respondent. The case of the revision petitioner is that the judgment of the High Court in the Land Acquisition Appeals is void. What about the interests of the persons in whose favour the judgment was rendered? Should they not be impleaded as parties to the applications? I am sure that the applications are not maintainable since the other claimants who were parties in the Land Acquisition Appeals were not made parties to the applications. If the applications were to be allowed, necessarily the Court has to hold that the decision rendered by this Court in favour of the persons who are not made parties to the applications is void.

Interests of the persons who are not made parties to the applications would be in peril if such a decision is taken. The result is that the applications are bad for non-jointer of necessary parties. The Civil Revision Petitions are also not maintainable since the affected parties are not made parties. It is true that one of the affected claimant, namely, Mariamma Mathai who was D Claimant in L.A.R.No.44 of 1986 and F Claimant in L.A.R.No.45 of 1986, has come forward with an impleading petition to get herself impleaded in the Civil Revision Petition. That is not a ground to say that the defect is cured. There are other claimants as well who are benefited by the decision made in the Land Acquisition Appeals. The Civil Revision Petitions are, therefore, not maintainable as the affected parties are not made parties either in the revisions or in the applications from which the revisions arose. At this juncture, learned counsel for the revision petitioner pointed out that all the other claimants are already parties in the reference proceedings before the court below and the court below has noticed in

paragraph 3 of the judgment that no other person raised any objection. How could a person who was not made a party to the proceedings raise objection? Therefore, I reject the contention raised by the revision petitioner.

For the foregoing reasons, I hold that the applications filed by the revision petitioner before the court below are not maintainable and they lack merits. The Civil Revision Petitions are dismissed. However, there will be no order as to costs.

**(K.T.SANKARAN)**  
**Judge**

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**K.T.SANKARAN, J.**

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**C.R.P.NOS.7 & 32 OF 2006**

**ORDER**

5<sup>th</sup> April, 2006

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