

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

WEDNESDAY, THE 31ST OCTOBER 2007 / 9TH KARTHIKA 1929

WP(C).No. 23773 of 2007(E)

PETITIONER:

**1. P.SARADHA,
D/O LATE PANAKKARATHY KUNJIKUMBA @ MANIKKAM,
KUNHIMANGALAM AMSOM, KANNUR.**

**2. P.SURENDRAN,
S/O.LATE PANAKKARATHY KUNJIKUMBA @ MANIKKAM,
KUNHIMANGALAM AMSOM, KANNUR.**

**BY ADV. SRI.O.RAMACHANDRAN NAMBIAR
SRI.GEEN T.MATHEW**

RESPONDENTS:

**1. STATE OF KERALA, REPRESENTED BY
CHIEF SECRETARY, SECRETARIAT, THIRUVANANTHAPURAM.**

2. THE DISTRICT COLLECTOR, KANNUR.

3. THE SPECIAL TAHSILDAR, L.A.(NH),KANNUR.

**4. P.KALLYANI, D/O.LATE PANAKKARATHY
KUNJIKUMBA @ MANIKKAM, KUNHIMANGALAM AMSOM,
KANNUR.**

**5. P.NALINI,
D/O.LATE PANAKKARATHY KUNJIKUMBA @ MANIKKAM,
KUNHIMANGALAM AMSOM, KANNUR.**

BY GOVERNMENT PLEADER SHRI BASANT BALAJI R1 TO 3

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ALONG
WITH W.P(C) NO.28743 OF 2007 ON 31/10/2007, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:**

W.P(C) NO. 23773 OF 2007

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1 TRUE COPY OF APPLICATION DATED 8.1.1998 FILED BY PANAKKARATHY KUNJIKUMBA @ MANIKKAM DATED 8.1.1998.

EXHIBIT P2 TRUE COPIES OF LETTER DATED 23.1.2007 SENT BY THIRD RESPONDENT TO THE PETITIONER AND RESPONDENTS 4 AND 5.

EXHIBIT P3 TRUE COPY OF THE PETITION DATED 1.3.2007 FILED BY THE PETITIONERS AND RESPONDENTS 4 & 5 BEFORE THE THIRD RESPONDENT.

EXHIBIT P4 TRUE COPIES OF THE ORDER DATED 22.3.2007 ISSUED BY THE THIRD RESPONDENT AS REFERENCE NO.D.481/07/L.D.

EXHIBIT P5 TRUE COPY OF THE COUNTER STATEMENT DATED 12.1.1996 IN LAR NO.60 OF 1995.

RESPONDENTS' EXHIBITS:

NIL

K. PADMANABHAN NAIR, J.

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AND

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Dated this the 31st day of October, 2007

J U D G M E N T

Heard. Admitted. Learned Government Pleader takes notice for respondents 1 to 3.

2. Reliefs sought for in these Writ Petitions are identical. Properties belonging to the petitioners were acquired for a public purpose. They were given compensation also. They did not file any application under Section 18 of the Land Acquisition Act claiming enhanced compensation. In both these cases petitioners filed applications under Section 28A of the Act claiming redetermination of the compensation already awarded. The request of the petitioners in Writ Petition No.23773 of 2007 was rejected by the Land Acquisition Officer on the ground that the land acquired from the petitioners in that Writ Petition and the land covered by LAR No.60 of 1995 are different categories of lands. In Writ Petition No.28743 of 2007, the reasons for rejecting the application filed by the

petitioner are: (1) the first reference application is a time barred application (Filed after a period of 6 years), (2) an O.P. (O.P. No.12242/97) is pending before the Honourable High Court on the same matter and (3) the 2nd reference application is not admissible.

3. The petitioners filed applications under Section 28A(3) for the Act for referring the matter to the competent court for adjudication. In Writ Petition No.23773 of 2007 application was rejected on the ground that there was no award under Section 28A of the Act. In Writ Petition No.28743 of 2007 the application was dismissed on the ground that there was no award and reference can be made only in case where an award is passed by the Land Acquisition Officer under Section 28A(2) of the Act.

4. The matter was considered in Savithry Amma v. State of Kerala (1990 (2) KLT 365) in which it was held as follows:

“The order refusing to redetermine the compensation payable to the affected party on the basis of the amount of compensation awarded by the court will also be an award within the meaning of sub-sections 2 and 3. The order refusing

to redetermine the compensation by the Land Acquisition Officer is also an award within the meaning of Sub-section 2 of S.28A and if that be so, the person who is aggrieved by such an order also has the right to approach the Land Acquisition Officer to have the matter referred to the Civil Court and on such application being made, the Land Acquisition Officer is bound to refer the same to the Civil Court for disposal in accordance with law”.

Counsel has also relied on a decision reported in K.R.Somasundaran v. Special Tahsildar (2003 (1) LACC 23) in support of his case. It was held as follows:

“The fact that the District Collector has dismissed the application on the latter ground by itself will not take away the jurisdiction of the Court when the matter is ultimately referred to it since the correctness or otherwise of the decision of the District Collector is at large before the reference Court. Suppose in a case the District Collector dismissed the application on the ground that it is beyond time that is also a matter which could be referred to the reference Court in case the party seeks for such a reference under sub-section 3 of Section 28A. Therefore, the Court has necessarily to consider as to whether the application is barred by limitation as provided for under Section 28A in such cases. Therefore, the provision under Section 28A enables a reference Court to re-

examine the question and also to examine the correctness or otherwise of the decision rendered by the District Collector”.

5. So an order rejecting an application filed under Section 28A is also in substance an award. In case any person is aggrieved by the order rejecting an application for redetermination approaches the Land Acquisition Officer within the time allowed with a petition under Section 28A(3) of the Act, the Land Acquisition Officer cannot reject that application on the ground that he did not redetermine the compensation. Whether such a person is entitled to redetermination of the compensation, etc., are matters for the Civil Court to decide under a proper reference. So the impugned orders are liable to be quashed.

In the result, Writ Petitions are allowed. Exhibit P4 order passed by the Special Tahsildar in W.P(C) No.23773 of 2007 and Exhibit P6 order in W.P(C) No.28743 of 2007 are hereby quashed. The Land Acquisition Officers concerned are directed to reconsider the matter and pass appropriate orders in accordance with law as stated above, as expeditiously as

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possible, at any rate, within two months from the date of receipt of a copy of this judgment.

K. PADMANABHAN NAIR, JUDGE.

VSV

K. PADMANABHAN NAIR, J.

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J U D G M E N T

31ST OCTOBER, 2007