

THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

MONDAY, THE 31ST JANUARY 2011 / 11TH MAGHA 1932

WP(C).No. 3663 of 2007(J)

PETITIONER:

KONTHAN NAIR, S/O.CHERIYAMMA AMMA,
MANTHANATH CHALIL HOUSE, CHEVAYOOR AMSOM DESOM,
KOZHIKODE DISTRICT.

BY ADV. SRI.R.BINDU (SASTHAMANGALAM)
SRI.PRASANTH M.P

RESPONDENTS:

1. THE SPECIAL TAHSILDAR (LAND ACQUISITION)
KOZHIKODE.
2. THE DISTRICT COLLECTOR, KOZHIKODE.
3. STATE OF KERALA, REPRESENTED BY THE
SECRETARY TO GOVERNMENT, DEPARTMENT OF REVENUE,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER, SRI.ANTONY MUKKATH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 31/01/2011, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

WP(C).No. 3663 of 2007(J)

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 : TRUE COPY OF THE AWARD PASSED BY THE 1ST RESPONDENT DATED NIL.

EXT.P2 : TRUE COPY OF THE TAX RECEIPTS ISSUED TO THE PETITIONER.

EXT.P3 : TRUE COPY OF THE SURVEY PLAN OF THE PROPERTY OF THE PETITIONER.

/TRUE COPY/

PA TO JUDGE

S.SIRI JAGAN, J

W.P(C).No. 3663 of 2007

Dated this the 31st day of January, 2011

JUDGMENT

Certain properties which belonged to the petitioner were acquired by the Government for the purpose of construction of a road. According to the petitioner, even after expiry of 35 years from the date of notification for acquisition, the land has not been taken possession of, although Exhibit P1 award has been passed. The petitioner submits that in the above circumstances, the petitioner is entitled to restoration of the land, on the petitioner repaying the award amount with interest. According to the petitioner, the Supreme Court in the decision reported in ***T.N.Housing Board v. L.Chandrasekharan*** (2010(2) SCC 786) has held that land can be released by the State Government, if (i) the same is not required for the purpose for which it was acquired, or for any other public purpose, and (ii) the land continues to vest in State Government. The petitioner now submits that in view of the said decision, the petitioner is entitled to return of the land on repayment of compensation amount.

2. The first respondent has filed a counter affidavit wherein they have disputed the contentions of the petitioner. According to the first respondent, the acquired land has already been taken possession of and handed over to the Calicut Corporation and the land is in the

possession of the Calicut Corporation. It is also stated in the counter affidavit that the property has been duly demarcated and subdivided with the approval of the authorities under Section 6 of the Land Acquisition Act.

3. I have considered the rival contentions in detail.

4. In ***State of Kerala v. M.Bhaskaran Pillai*** ((1997) 5 SCC 432) the Supreme Court has held thus:

“In view of the admitted position that the land in question was acquired under the Land Acquisition Act, 1894 by operation of Section 16 of the Land Acquisition Act, it stood vested in the State free from all encumbrances. The question emerges whether the Government can assign the land to the erstwhile owners? It is settled law that if the land is acquired for a public purpose, after the public purpose was achieved, the rest of the land could be used for any other public purpose. In case there is no other public purpose for which the land is needed, then instead of disposal by way of sale to the erstwhile owner, the land should be put to public auction and the amount fetched in the public auction can be better utilised for the public purpose envisaged in the Directive Principles of the Constitution. In the present case, what we find is that the executive order is not in consonance with the provisions of the Act and is, therefore, invalid. Under these circumstances, the Division Bench is well justified in declaring the executive order as invalid. Whatever assignment is made, should be for a public purpose. Otherwise, the land of the Government should be sold only through the public auctions so that the public also gets benefited by getting a higher value.”

5. Therefore, that decision covers the field and the petitioner is not entitled to the prayers in the Writ Petition. The decision referred to by the petitioner is clearly distinguishable in so far as in that case there was a specific provision for such return of land on specific conditions in the Tamilnadu Act. That decision cannot be applied in this case where there is no similar provision in so far as the Central Act is in force in Kerala. That being so, in view of the decision of the Supreme Court in ***Bhaskaran Pillai's Case*** (supra), the petitioner is not entitled to the reliefs prayed for. Accordingly, the Writ Petition is dismissed.

S.SIRI JAGAN, JUDGE

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