

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE T.R.RAVI

TUESDAY, THE 30TH DAY OF APRIL 2024 / 10TH VAISAKHA, 1946

RSA NO. 1503 OF 2012

(AGAINST THE JUDGMENT AND DECREE DATED 18.06.2012 IN A.S
159/2008 OF THE DISTRICT COURT, PATHANAMTHITTA, FROM JUDGMENT
AND DECREE DATED 7.11.2008 IN O.S 485/04 ON THE FILE OF
MUNSIF'S COURT, PATHANAMTHITTA)

APPELLANTS/APPELLANTS/DEFENDANTS:

- 1 HAMEEDA BEEVI
W/O.ABDUL KHADER, MURUPPEL VEEDU,
EDAMON MURI, EDAMON VILLAGE.
- 2 MEERAMMAL BEEVI
W/O.HANEEFA RAWTHER,
UTHIVILA PUTHEN VEEDU,
KALANJOOR MURI, KALANJOOR VILLAGE.
- 3 HUSSAINA BEEVI
W/O.IBRAHIM RAWTHER,
KALLIYIL PADINJATTETHIL VEEDU,
ARUKALIKKAL WEST MURI,
EZHAMKULAM VILLAGE.
- 4 V.S.GEETHA
W/O.M.R.BHARGAVAN,
MOHINI HOUSE, MYLAPRA MURI,
MYLAPRA VILLAGE.

BY ADVS.

SRI.P.VIJAYAKUMAR
SRI.M.V.ASHIM
SRI.C.R.REGHUNATHAN

RESPONDENTS/RESPONDENTS/PLAINTIFFS:

- 1 THE PATHANAMTHITTA MUNICIPALITY
REPRESENTED BY ITS SECRETARY, MUNICIPAL OFFICE,
PATHANAMTHITTA-689645.

2 THE STATE OF KERALA
 REPRESENTED BY THE DISTRICT COLLECTOR,
 PATHANAMTHITTA, PIN 689645.

BY ADVS
R1 BY SRI V.K.SUNIL
R2 BY SMT.K.G.SAROJINI, GOVT.PLEADER
SRI EBIN MATHEW, ADV. COMMISSIONER

THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD
ON 8.4.2024, ALONG WITH RSA.1504/2012, THE COURT ON
30.04.2024 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE T.R.RAVI

TUESDAY, THE 30TH DAY OF APRIL 2024 / 10TH VAISAKHA, 1946

RSA NO. 1504 OF 2012

(AGAINST THE JUDGMENT AND DECREE DATED 18.06.2012 IN A.S.
160/2008 ON THE FILES OF THE DISTRICT COURT, PATHANAMTHITTA
JUDGMENT AND DECREE DATED 7.11.2008 IN O.S 484/04 OF THE
MUNSIFF'S COURT, PATHANAMTHITTA)

APPELLANTS/APPELLANTS/DEFENDANTS:

- 1 HAMEEDA BEEVI
W/O.ABDUL KHADER, MURUPPEL VEEDU, EDAMON MURI,
EDAMON VILLAGE.
- 2 MEERAMMAL BEEVI
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- 3 HUSSAINA BEEVI
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ARUKALIKKAL WEST MURI, EZHAMKULAM VILLAGE.
- 4 M.R.BHARGAVAN
MOHINI HOUSE, MYLAPRA MURI, MYLAPRA VILLAGE.

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SRI.EBIN MATHEW, ADV. COMMISSIONER

THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD ON
8.4.2024, ALONG WITH RSA.1503/2012, THE COURT ON 30.04.2024
DELIVERED THE FOLLOWING:

T.R. RAVI, J.

R.S.A. Nos.1503 & 1504 of 2012

Dated this the 30th day of April, 2024

JUDGMENT

The defendants 2 to 5 in O.S.No.484/2004 & 485/2004 on the file of the Munsiff's Court, Pathanamthitta are the appellants in these second appeals.

2. The respondents filed O.S.No.484/2004 challenging the validity of registered sale deed No.1801/2004 dated 03.06.2004 of Pathanamthitta SRO executed by the original defendants 1 to 4 in favour of the 5th defendant. On the same day, they also filed O.S.No.485/2004 challenging the validity of registered sale deed No.2006/2004 dated 14.06.2004 of Pathanamthitta SRO executed by the original defendants 1 to 4 in favour of the 5th defendant. Both the suits were filed with a prayer for recovery of the plaint schedule properties. Four years later, the suit was amended stating that the plaint schedule properties were already in the possession of the plaintiffs and seeking to delete the prayer for recovery and add a prayer for a declaration that the documents executed in favour of the 5th defendant will not bind the plaintiffs

and the plaint schedule property.

3. The case of the plaintiffs was that the properties involved in the suits were requisitioned by them for the formation of the Municipal Bus Stand. The properties originally belonged to the predecessor-in-interest of appellants 1 to 3, the late Mohammed Meera Nagur. Admittedly land acquisition proceedings were completed *ex parte* and as there was no claim for compensation, the amount was deposited before the Sub Court, Pathanamthitta, for proceeding under Section 31(4) of the Land Acquisition Act for appropriation. According to the plaint, the possession of the property was assumed and the land was reclaimed to the height of 2 meters and construction of the Municipal Bus Stand was started over the entire property acquired **including the plaint schedule property**. The suit came to be filed on the allegation that defendants 1 to 4 had created sale deeds in favour of the 5th defendant and hence a declaration of title was required after invalidating the sale deeds. It is also stated that the 1st respondent was paying tax after effecting mutation.

4. The defendants filed a written statement contending that after the requisition for acquisition by the 1st respondent, the properties lying on the western side of the ring road including the

plaint schedule property were excluded from further acquisition proceedings on the request of the 1st respondent Municipality. It was stated that the plaint schedule property was not involved in the acquisition proceedings and was not notified for acquisition. According to the defendants, 36 cents of property belonging to defendants 1 to 4 were left out of the acquisition proceedings. It is further submitted that while the properties acquired for the Municipal Bus Stand on the eastern side of the ring road were reclaimed and the bus stand constructed, the property belonging to the defendants which was lying on the western side of the ring road remained in its original state without any reclamation. It is also stated that the properties were sold to the 5th defendant and since then the 5th defendant has been in exclusive ownership and possession of the properties after effecting mutation in the revenue records and paying basic tax. It is stated that the defendants were not aware of any compensation awarded nor were they put on any notice about the same. It is also stated that even if there was an award, that was vitiated on account of a mistake of facts since there was neither any public purpose nor any necessity for the acquisition of the property on the western side of the ring road. The defendants also sought a counterclaim for a decree of

declaration of title and possession in favour of the 5th defendant/4th appellant.

5. Exts.A1 to A5 were marked on the side of the plaintiffs and Exts.B1 series and B2 series were marked on the side of the defendants. Exts.C1 to C5 series were marked as court exhibits, which include the commission reports filed by the Advocate Commissioners. Exts.X1 to X14 are third-party exhibits that relate to the acquisition proceedings initiated. PW1 to PW3 were examined on the side of the plaintiffs and DW1 and DW2 were examined on the side of the defendants. The trial court decreed the suit on the premise that the acquisition proceedings were completed in respect of the plaint scheduled properties. The appeals filed by the defendants were dismissed and the defendants have preferred these second appeals in the above circumstances. At the time of admission, the following substantial questions of law were formulated in these second appeals.

- (i) Whether the courts below were justified finding in favour of a valid acquisition, when under Exhibit B1 as well as on the preceding communication issued by Municipality it was clear that in spite of launching acquisition proceedings related to plaint schedule property the same were not completed and the property stood excluded subsequently and title was

never vested with the government and Municipality?

- (ii) When the plaint averments clearly stated that the plaint schedule property formed part of the Bus stand complex after acquisition and remained in a developed stage and the report of the commissioner, which was also accepted by the courts, clearly found that the plaint schedule property remained as original wet land without any improvements on the western side of the Ring road, were the courts below justified in ignoring those facts ?
- (iii) Being an ex-proprietary legislation affecting the valuable rights of individual, whether the courts below were justified in giving legal sanction to alleged acquisition proceedings in the light of various lapses including non services of notice on owners, publication of Sec.4 Notification in two name sake papers of no circulation in the locality, the failure to comply with other statutory requirements like non-preparation of plans, absence of personal service of notice on the owners, absence of physical act of taking possession etc.

6. Heard Sri P Vijayakumar, learned counsel for the appellants, Sri.Ebin Mathew, learned Standing Counsel for the 1st respondent and Smt.K.G.Sarojini, learned Government Pleader for the 2nd respondent.

7. Before proceeding further, it is necessary to state the scope of interference in a second appeal filed under Section 100 of

the Code of Civil Procedure. In **Vidhyadhar v. Manikrao [(1999) 3 SCC 573]**, the Hon'ble Supreme Court held that the findings of fact concurrently recorded by the trial court as also by the lower appellate court could not have been legally upset by the High Court in a second appeal under Section 100 CPC unless it was shown that the findings were perverse, being based on no evidence or that on the evidence on record, no reasonable person could have come to that conclusion. In **Yadarao Dajiba Shrawane v. Nanilal Harakchand Shah [(2002) 6 SCC 404]**, the Hon'ble Supreme Court held that the position is well settled that when the judgment of the final court of fact is based on a misinterpretation of documentary evidence or a consideration of inadmissible evidence or ignoring material evidence, the High Court in second appeal is entitled to interfere with the judgment. The position is also well settled that the admission of parties or their witnesses are relevant pieces of evidence and should be given due weightage by courts. The Apex Court held that a finding of fact ignoring such admissions or concessions is vitiated in law and can be interfered with by the High Court in a second appeal. In **BSES Rajdhani Power Ltd. v. Delhi Electricity Regulatory Commission, (2023) 4 SCC 788**, the Hon'ble Supreme Court held that in a second appeal, the

appellant is entitled to point out that the order impugned is bad in law because it is dehors the pleadings, or it was based on no evidence or it was based on misreading of material documentary evidence or it was recorded against the provision of law or the decision is one which no Judge acting judicially could reasonably have reached.

8. Keeping the above legal position in mind, I shall consider the issues involved in these appeals. The plaintiff Municipality has filed the suits for declaration of their title and possession over the plaint schedule properties. The basis for the claim of title is an alleged acquisition of the properties for the construction of the Municipal Bus Stand. The main contention of the appellants is that their property had not been acquired for the Municipal Bus Stand and even going by the averments in the plaint, the properties described in the plaint cannot be the properties that had been acquired on the requisition of the plaintiff. The appellants rely on the specific averment in the plaint that the plaint schedule properties were acquired along with other properties, reclaimed by filling up by 2 metres, and construction was ongoing over the entire acquired property including the plaint scheduled property. The specific case of the defendants

was that the properties of the defendants were on the western side of the ring road and had neither been reclaimed by filling up upto 2 metres nor any constructions made in the property. Since there were considerable disputes on the above aspect, this Court had deputed an Advocate Commissioner to report on the present condition of the suit property. In March 2018, which was much after the date of filing the suit, the Advocate Commissioner in his report, found that the suit properties remained unfilled wetland with wild growth and are located about 25 metres to the west of the private bus stand and is lying on the western side of the ring road and the Bus Stand Complex in the developed state is on the eastern side of the ring road. The Commissioner has categorically reported that the plaint schedule properties do not form part of the Bus Stand Complex. Photographs of the properties have also been produced along with the report proving the above fact. It is hence contended that the description of the properties scheduled to the plaint and the properties of the appellants, does not tally.

9. The appellants had filed I.A.No.2384/2016 before this Court seeking to produce two documents as Exts.B3 and B4. Ext.B3 is a letter dated 21.05.2004 issued by the Secretary of the

1st respondent wherein it is admitted that the property of the appellants was not acquired for the ring road and seeking a clarification that the property can be de-freezed. It is contended based on the above documents, that even during May 2004, the plaintiff did not deem the appellants' property as part of the Municipal Bus Stand. Ext.B4 is the copy of the demand notice issued by the Sub Registrar, Pathanamthitta to the 4th appellant directing her to remit the deficit stamp duty in respect of the sale deed in her favour. Based on the said document, it is contended that despite the alleged acquisition in 1995-96, the Government authorities had treated the 4th appellant as the owner of the property. No objections had been filed either by the Government or the Municipality to I.A.No.2384/2016 and the said applications have been allowed by a separate order.

10. Apart from the description of the property based on the contentions raised in the plaint, another contention raised by the appellants is that the plaint schedule properties which are comprised in Survey No.259/2A/2 have not been included in the entire acquisition proceedings as can be seen from Ext.X series documents. It is also contended that there is nothing to show that physical possession of the plaint schedule property situated in

Sy.No.259/2A/2 was ever taken over by the revenue authorities. It is pointed out that the commission report read with paragraphs 3, 4 and 5 of the plaint would show that possession was never taken by the Government or the Municipality and it remained with the appellants/defendants in the original state. This Court had, during the hearing of the case, on 16.08.2023, in order to arrive at the truth of the contentions, directed the respondents to get instructions as to whether the property of the appellants which is shown to be in Sy.No.259/2A/2 was included in the land acquisition proceedings. The counsel appearing for the respondents could not give any definite answer to the said question and the only submission made was that instead of Sy.No.259/2A/2, Sy.No.259/2-1 was shown by mistake. On 04.10.2023, this Court again directed the Government Pleader to get instructions as to when sub-division 2A of Sy.No.259 came into existence, and whether the plaint schedule property which was identified to be in Sy.No.259/2A/2, was available with the same description even at the time of the acquisition proceedings for the private bus stand.

11. A memo was filed by the Government Pleader on 01.11.2023 stating that the municipal authorities had shown the location of the plaint schedule property as abutting the KSRTC bus

stand (on the western side of the ring road) lying as a wetland in an undeveloped state and it formed part of Sy.No.259/2A/2. However, admittedly and as revealed by the reports submitted by the Advocate Commissioners before the trial court and this Court, the Municipal Bus Stand Complex is located on the eastern side of the ring road and is more than 25 metres away from the plaint schedule property and further away from KSRTC Bus Stand Complex. In order to establish the fact that Sy.No.259/2A was in existence even at the time of issuance of the notification for acquisition, the appellants had produced certified copies of four registered documents relating to the properties, which are mortgage redemption deeds executed in 1119 Malayalam Era (corresponding to 1944), registered mortgage deeds of 1976, and registered redemption deeds of 1977. The said documents would show the existence of Sy.No.259/2A even in 1944. It would appear that Sy.No.259/2A had not been sub-divided at that stage. However, the 1976 documents would show the existence of Sy.No.259/2A/2. It is also significant that the identification of the boundaries of the documents of 1976 produced by the appellants tally with the description in Exts.A1 and A2 documents of title in favour of the 4th appellant except concerning the eastern boundary

where the ring road had been formed subsequently. The respondents have not raised any objection regarding the above registered documents.

12. The trial court had raised as an issue, the question whether the acquisition proceedings initiated by the Government with respect to the plaint schedule properties was a result of a mistake of fact or fraud perpetrated by any officials, along with other issues relating to the prayers made in the plaint. The trial court had proceeded on the basis that the acquisition proceedings cover the plaint schedule property also and that the appellants did not prove their case about the mistake or fraud by letting in necessary evidence. The trial court as well as the first appellate court have relied on the documents produced as Ext.X1 series to find that the plaint schedule properties are part of the properties that were acquired for the Municipal Bus Stand. The contention of the appellants have been negated stating that the appellants did not prove the exclusion of these properties from the acquisition, thus casting the entire burden on the appellants to prove the negative rather than examine whether the plaintiff had proved the case regarding acquisition of the properties, which alone will vest title in the Municipality. Neither the trial court nor the first

appellate court, have considered the question whether the properties as described in the plaint, were ever part of the properties acquired for the Municipal Bus Stand, from the correct perspective and it has become necessary for this Court to consider the evidence on record and their purport.

13. I have verified Ext.X1 series of documents. By notification dated 10.03.1995, properties were acquired for the purpose of Municipal Bus stand. The properties included in the notification are properties forming part of Sy.Nos.215, 259, 262. The notification does not specifically show the sub-divisions of Sy.No.259 which have been included in the acquisition. The notification was published on 13.03.1995 in the newspaper and the said publication also does not show the sub-division of the Sy.No.259. The declaration under Section 6 of the Land Acquisition Act was issued on 29.05.1996 and in form D issued under Rule 8(5) of the Land Acquisition Rules, the properties have been specifically shown with their survey sub-divisions. **It can be seen from Ext.X5 dated 29.05.1996 that the properties in Sy.No.259/2A/2 have not been included in the acquisition even though several other sub divisions coming under Sy.No.259 have been included** (emphasis supplied). Ext.X7 is

the notice issued under Section 9(3) of the Land Acquisition Act, 1894 putting the land owners on notice regarding the taking of possession. The said notice only refers to Sy.No.259/2-1. The predecessor of the appellants 1 to 3 has been shown as the Thandaper holder and defendants 1 to 4 have been shown as persons in possession. It is seen that the said notice has been served on the 1st defendant. Ext.X9 is the award, wherein it is stated that the defendants 1 to 4 did not appear before the Officer and that they have not produced any document to prove their claim over the land and the amount of compensation is hence deposited in the Sub Court, Pathanamthitta. If the appellants do not own any property in Sy.No.259/2-1, it cannot be their fault, if they did not respond to Ext.X7 and appear at the time of passing of the award, since it is apparent that they cannot prove their ownership of the properties which have been described in the notices. Ext.X11 notice of taking over possession in Form No.12, issued under Rule 15(3) in 1998, also does not show any property in Sy.No.259/2A/2. Ext.X12 is the mahazar prepared for taking possession where again the Survey Number is 259/2-1. Ext.X13 notice of award also shows only 259/2-1. It is thus clear that the plaint schedule properties which are admittedly situated in

Sy.No.259/2A/2 have neither been notified nor specifically shown in any of the notices issued under the provisions of the Land Acquisition Act, 1894. The only document in the X series documents that tallies to a certain extent with the plaint schedule properties is the mahazar prepared while taking possession, wherein the location of the property has been shown correctly but survey numbers are shown wrongly.

14. It is trite law that a person can be deprived of his property only as per the procedure laid down by law. It is evident that the plaint schedule properties have never been notified under the Land Acquisition Act for acquisition and even the declaration under Section 6 of the Land Acquisition Act does not include the plaint schedule properties. The award documents do not show the correct survey number and issuing notice to a person asking them to produce proof regarding the properties in a survey number in which they do not have properties, cannot by itself be a proof of acquisition of the plaint schedule properties.

15. On going through the entire evidence on record and on hearing the counsel on either side, the following aspects are evident.

(1) The properties as described in the plaint were not

the subject matter of acquisition as per Ext.X series documents relating to the acquisition.

- (2) While the plaintiffs claim that the properties have been reclaimed by filling up upto 2 metres and constructions were also going on, the report of the advocate commissioners on inspection of the plaint schedule properties, shows that the properties are remaining in their original state as a wetland, in a lower level than the ring road, without any reclamation and construction, as has been contended by the appellants.
- (3) There is nothing to show that the possession of properties situated in Sy.No.259/2A/2 have been taken over by either the Government or the Municipality. There has also been no act of possession over the properties by the plaintiffs at any point in time from 1995-96, till the filing of the suit in 2004.
- (4) The acquisition was during 1995-96 and by the time the suit was filed, the entire work of the Municipal Bus Stand was over and the plaint

schedule property did not form any part of the entire municipality bus stand complex.

- (5) The suit has been filed, thus, for declaration of title over an undeveloped low-lying wetland, situated 25 metres away from the Municipal Bus Stand Complex, on the averment that the same has been acquired, developed and constructions have been effected.
- (6) Except, after deposit of amount of compensation in the Court, there had never been any attempt to serve notice on the owners of the plaint schedule properties at any stage. The documents produced would show that there was only service of notice by affixture, in a property where none of the owners were residing. It is not that the appellants could not be served in spite of all efforts. This is evident from the fact that when notices were issued by registered post after deposit of amount in court, the appellants received the same.
- (7) The suit itself appears to have been filed based on the misconception that the properties involved in

Sy.No.259/2A/2 have been acquired and have been taken possession of and are in the possession of the Municipality while the fact remains that no such land has ever been acquired or at any time developed for the purpose of Municipal Bus Stand.

- (8) It is also evident that the Municipal Bus Stand and the land in question are on the two sides of the ring road. In this context, it is relevant to note that the plaint as originally filed contained a prayer for recovery of possession which was later omitted by an amendment.
- (9) Going by the factual report regarding the nature and lie of the plaint schedule properties, the very basis of the suit that the plaint schedule properties were filled up and formed part of the Municipality Bus Stand complex falls to the ground.
- (10) Plaint Schedule property comprised in Sy.No.259/2A was existing with said survey number in 1944 and after further subdivision held

prior to 1976, it came under Sy.No. 259/2A/2. So it remained, even while executing Exts.A1 and A2 sale deeds in favour of the 5th appellant in the appeals.

(11) At the time of acquisition proceedings in 1995-96, the plaint schedule properties were in Sy.No.259/2A/2 and the said survey number is absent in the notifications and notices relating to the acquisition.(see X series)

16. The trial court as well as the First Appellate Court, have not considered the evidence on record from the correct perspective. The fact that there were no proceedings initiated for the acquisition of the properties belonging to the petitioners, as is evident from Ext.X series documents has not been considered, from the perspective of the laws relating to the acquisition of properties and the fundamental requirements to be fulfilled while acquiring properties.

17. It is settled law that parties should be confined to their pleadings and cannot be permitted to deviate except by the known process of amendment of the pleadings. [See **S.S.Sharma & Ors. v. Union of India & Ors. (1981) 1 SCC 397** and **M.N.Saji v.**

K.R.Krishnakumar 2023 SCC OnLine Ker.8531]. In the case on hand, the specific pleading of the plaintiff is that the plaintiff schedule properties were reclaimed by filling up by 2 metres and formed part of the Municipal Bus Stand Complex, which has been proved to be wrong by the reports of the Advocate Commissioners. Even the identity of the property over which the declaration of title is sought is thus compromised. The trial court as well as the First Appellate Court went wrong in decreeing the suit particularly when the claim over the property is not supported even by the pleadings.

18. The Land Acquisition Act, 1894, is an expropriatory legislation and it is settled law that there should be strict compliance with the procedure prescribed in the statute, for acquiring the property of an individual, which alone would ensure the protection of the right conferred under Article 300A of the Constitution of India. The right to property is not only a constitutional right or a statutory right, but is also a human right. [See **State of Haryana v. Mukesh Kumar & Ors. (2011) 10 SCC 404**, **Vidya Devi v. State of Himachal Pradesh & Ors. (2020) 2 SCC 569** and **Kalyani (Dead) Through LRs & Ors. v. Sulthan Bathery Municipality & Ors. 2022 SCC OnLine SC 516**]. Applying the above principles, it is evident that the plaintiff

schedule properties have never been notified for acquisition, as required under the Land Acquisition Act, 1894. As such, the properties can never be stated to have been validly acquired. The mere deposit of compensation for a property situated in another survey number, cannot be a reason to presume that, what was intended was the acquisition of the plaint schedule properties. The Land Acquisition Act, 1894, does not permit notifying a particular land and taking possession of a different land. If such actions are permitted, it would result in a travesty of justice. It is in evidence that notice was attempted to be served only by affixture and there was no attempt for personal service on the land owners. It is only if service on the person is impracticable, that the alternate method of service can be resorted to. It can thus be seen that even the notices which referred to a different parcel of land going by the survey number, were never personally served on the appellants. It is also clear from Ext.X series that notice for taking possession had also not been served on the land owners and there is nothing to show that possession was taken over and handed over to the Municipality. Going by the provisions of the Land Acquisition Act, the vesting of the land takes place upon taking over possession after passing an award under Section 10. No award has been

passed regarding the property situated in Sy.No.259/2A/2 and as such there was no question of any taking over of possession of such land, much less a vesting of the land in the Government. The counsel for the appellants contended that even if it were to be assumed that the properties situated in Sy.No.259/2A/2 were the subject matter of the acquisition, as the possession had not been taken over even after so many years, the acquisition proceedings should have been treated to have lapsed going by the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. I do not think it necessary to go into the said question since I have already found that the plaint schedule properties were not the subject matter of the acquisition. The counsel for the appellants also relied on the judgment of the Hon'ble Supreme Court in **Mehar Chand Das v. Lal Babu Siddique & Ors. (Civil Appeal No.6413 of 2000)** to submit that the plaintiff Municipality ought to have been non-suited for the reason that only a declaratory relief had been sought without any consequential relief for recovery of possession. The above submission is made in the light of the fact that, though recovery of possession was initially prayed for, the prayer was given up by way of an amendment of the plaint. The

said question also need not be gone into since the case of the plaintiff is that there is no requirement for recovery of possession as they are already in possession.

19. The substantial questions of law formulated are hence answered in favour of the appellants. The Second Appeals are allowed. The judgments and decrees of the First Appellate Court and the trial court are set aside. O.S.Nos.484/2004 and 485/2004 on the file of the Munsiff Court, Pathanamthitta are dismissed. There will be no order as to costs.

Sd/-
T.R. RAVI
JUDGE

Pn

APPENDIX OF RSA 1504/2012

PETITIONER EXHIBITS

- Exhibit B3** TRUE COPY OF THE LETTER No.E1-1160/04
DATED 21.05.2004 FROM THE MUNICIPAL
SECRETARY TO SPECIAL TAHSILDAR (LA) ,
PATHANAMTHITTA
- Exhibit B4** TRUE COPY OF THE LETTER No.U.V.No.2006/04
DATED 12.08.2016 ISSUED BY DISTRICT
REGISTRAR, PATHANAMTHITTA
- Exhibit B5** CERTIFIED COPY OF REGISTERED REDEMPTION
DEED 3437/1119 (ME) MAY BE RECEIVED ON
EVIDENCE AND MAY BE PROVISIONALLY.
- Exhibit B6** CERTIFIED COPY OF REGISTERED MORTGAGE
DEED 736/1119 (ME) OF KONNI SRO
- Exhibit B7** REGISTERED MORTGAGE DEED NO. 741/1976 OF
SRO, PATHANAMTHITTA
- Exhibit B8** REGISTERED REDEMPTION DEED NO. 2796/1977
OF SRO, PATHANAMTHITTA

RESPONDENTS EXHIBITS

- ANNEXURE C-1** TRUE COPY OF THE COMMISSION NOTICE DATED
09.08.2018
- ANNEXURE C-2** TRUE COPY OF THE COMMISSION NOTICE DATED
05.09.2018
- ANNEXURE C-3** TRUE COPY OF THE WORK MEMO SUBMITTED BY THE
APPELLANT
- ANNEXURE C-4** THE PHOTOGRAPH TAKEN FROM THE NORTHERN SIDE
OF THE PLAINT SCHEDULE PROPERTIES
- ANNEXURE C-5** PHOTOGRPAH TAKEN FROM THE SOUTHERN EASTERN
CORNER OF PLAINT SCHEDULE PROPERTY

- ANNEXURE C-6 PHOTOGRAPH TAKEN FROM THE TOP OF MUNICIPAL BUS
STAND COMPLEX (EASTERN SIDE OF THE PLAINT
SCHEDULE PROPERTY)
- ANNEXURE C-7 PHOTOGRAPH TAKEN FROM THE KSRTC BUS DEPOT
(WESTERN SIDE OF THE PLAINT SCHEDULE
PROPERTY)
- ANNEXURE C-8 PHOTOGRAPH TAKEN FROM THE HIND SIDE/WESTERN
SIDE OF THE APPEAL PROPERTIES
- ANNEXURE C-9 ROUGH SKETCH SHOWING THE LYE AND LOCATION OF
PLAINT SCHEULE PROPERTIES
- ANEXURE R4 THE PLAN OF THE MUNICIPAL BUS COMPLEX
INCLUDING THE BUS STAND AND RELATED FEATURES.