

(1999) 06 KL CK 0012
In the High Court Of Kerala
Case No : W.A. No. 1186/97

Kannan

APPELLANT

Vs

The Land Acquisition Officer

RESPONDENT

Date of Decision : 24-06-1999

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 31(2)

Citation : (1999) 06 KL CK 0012

Hon'ble Judges : T.M. Hassan Pillai, J;K. Narayana Kurup, J

Bench : Division Bench

Advocate : E.V. Nayanar, for the Appellant; P.K. Santhamma, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

K. Narayana Kurup, J.—The Petitioner is the Appellant. In connection with the re-alignment of N.H. 17 an extent of 0.1619 hectares of land comprised in R.S. No. 23/3A of Muzhappilangad amsom desom belonging to the Appellant was acquired under the Land Acquisition Act, 1894 (for short "the Act") along with some other properties as per award No. 2/96 dated 15th April 1996. The notice of award was issued on 15th April 1996 and it was got served on the Appellant on 16th May 1996. He handed over possession of the property acquired on 18th May 1996 and received the compensation on 20th May 1996 without lodging any written protest. On 22nd May 1996 a petition sent by registered post on 21st May 1996 by the Appellant was received by the Tahsildar's Office claiming a total compensation of Rs. 26,60,000 for the property acquired and requesting to refer the matter to the competent Court for re-determination of compensation. Ext. P-1 is the application preferred by the Appellant claiming re-determination of compensation. The said application stands rejected as per Ext. P-2 proceedings of the Respondent Tahsildar on the ground that u/s 18 of the Act read with proviso to Section 31(2) of the said Act, no person who has received the amount otherwise than under protest shall be entitled to make any application for re-

determination of compensation u/s 18. According to the Tahsildar, the compensation amount of Rs. 4,17,719 awarded for the holding acquired from the Appellant was received by him on 20th May 1996 without lodging or recording any protest and consequently the application for reference to the Court received from the Appellant on 22nd May 1996 is not entertainable as per the provisions of the Act. Ext. P-2 was challenged before the District Collector as per Ext. P-3 petition which in turn was forwarded to the Respondent herein who passed Ext. P-4 rejecting Ext. P-3 upholding the findings contained in Ext. P-2. Aggrieved thereby, the Petitioner moved this Court in O.P. 3558/97 out of which this Writ Appeal arises. A learned Single Judge of this Court dismissed the O.P. on the ground that the Appellant having received the compensation amount without any protest has forfeited his right of reference. Hence this appeal.

2. Having heard learned Counsel for the Appellant and learned Government Pleader, we are of the opinion that the judgment of the learned Single Judge cannot be legally sustained. Basic facts are not in dispute. The date of issuance of award is 15th April 1996 which was served on the Appellant on 16th May 1996. Possession of the property was handed over on 18th May 1996 and the Appellant received compensation on 20th May 1996 without lodging any written protest. However, it is not disputed that the very next day, i.e., on 21st May 1996 the Appellant sent Ext. P-1 application u/s 18 of the Act for referring the matter to the Court for re-determination of compensation which is seen received by the Respondent on 22nd May 1996. The question then is whether the rejection of Ext. P-1 on the specious plea that u/s 18 of the Act read with proviso to Section 31(2) no person who has received the amount otherwise than under protest shall be entitled to make any application for re-determination of compensation deserves scrutiny of law. The specific case set up by the Appellant in the Original Petition is that he received the compensation amount on 20th May 1996 under oral protest. However, this is denied by the Respondent. But, the mere fact that the Respondent has denied the fact that the Appellant has lodged any protest at the time of receiving the compensation does not inspire confidence in us having regard to the fact that the very next day itself the Appellant has sent Ext. P-1 application u/s 18 of the Act for referring the matter to the competent Court for determination of just compensation for the property acquired from him. The fact that the Appellant has sent Ext. P-1 on the very next day itself amply proves that he would not have received the amount on 20th May 1996 without any protest. Inasmuch as the Appellant has filed the application for reference the very next day of receiving the compensation amount will manifest his intention. Therefore, as held by the Apex Court in the decision reported in *Ajit Singh and Others Vs. State of Punjab and Others*, protest against the award of the Collector is implied notwithstanding the acceptance of compensation. The Learned Single Judge therefore fell into a manifest error in dismissing the Original Petition relying on the decision reported in *Wardington Lyngdoh and others Vs. The Collector, Mawkyrwat*, . Having bestowed our anxious consideration, we are of the opinion that the principle laid down therein cannot have any application to the factual

matrix of the present case. There is a clear finding that the plea of oral protest set up is belied by the written agreement. Besides, the persons interested received compensation under agreement which distinguishes the facts of that case from the present case.

In the result, we set aside the judgment of the learned Single Judge and quash Exts. P-2 and P-4 orders and issue a writ in the nature of mandamus directing the Respondent to make a reference of Ext. P-1 application to the Sub Court, Talassery u/s 18 of the Act.

Appeal is allowed as above.