

**(1975) 07 KL CK 0007**

**In the High Court Of Kerala**

**Case No :** Original Petition No. 2121 of 1973

Ourupuvil Mathew Ouseph

APPELLANT

Vs

The District Collector, Ernakulam and Others

RESPONDENT

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**Date of Decision :** 17-07-1975

**Acts Referred:**

Kerala Land Acquisition Act, 1961 — Section 33(2)

**Citation :** AIR 1976 Ker 118

**Hon'ble Judges :** P. Subramonian Poti, J

**Bench :** Single Bench

**Advocate :** Ittiera Kalliath, for the Appellant; Govt. Pleader, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

P. Subramonian Poti, J.—The complaint of the petitioner in the Original Petition is that in spite of an application for reference made by him u/s 20 of the Land Acquisition Act, 1961, the District Collector, Ernakulam has taken the stand that petitioner is not competent to claim reference. That is not because there has been any order on that application. But the stand of the District Collector is evident from Ext. P. 4, a reply to the suit notice issued to the petitioner. Therein it is mentioned that the compensation was received by the party without protest on 30-4-1966 and no reference application was filed before the Special Tahsildar as alleged. In the original petition mention is made of the filing of the reference application dt. 30-4-1968 and it is said it was sent by registered post. The acknowledgment of this is also produced along with the Original Petition, marked Ext. P-2. In the light of the circumstance that the Special Tahsildar Land Acquisition, who has filed the counter-affidavit has not chosen to deny the receipt of the reference application, I take it that the reference application has been filed.

2. The only question therefore is whether the amount was received without protest and if so for that reason the reference application was incompetent. Section 20 of the Kerala Land Acquisition Act deals with "reference to court" and

that section reads:

"20. Reference to Court--(1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the person to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken:

Provided that every such application shall be made -

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;

(b) in other cases, within six weeks of the receipt of the notice from the Collector under Sub-section (2) of Section 12 or within six months from the date of the Collector's award whichever period shall first expire."

It may be necessary to refer in this context to Section 33 of the Act, which deals with payment of compensation or deposit of the same in Court. That section reads:

"33. Payment of compensation or deposit of the same in Court.--(1) On making an award u/s 11 or Section 16, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award and shall pay it to them unless prevented by any one or more of the contingencies mentioned in Sub-section (2).

(2) If they do not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the court to which a reference u/s 20 would be submitted:

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount:

Provided further that no person who has received the amount otherwise than under protest shall be entitled to make any application u/s 20:

Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.

(3) Notwithstanding anything in this section, the Collector may, with the sanction of the government, instead of awarding a money compensation in respect of any land, make any arrangement with a person having a limited interest in such

other way as may be equitable having regard to the interest of the parties concerned.

(4) Nothing in Sub-section (3) shall be construed to interfere with or limit the power of the Collector to enter into any arrangement with any person interested in the land and competent to contract in respect thereof." Proviso (1) to Sub-section (2) enables any person who questions the sufficiency of the amount awarded as compensation by the Collector to receive such payment under protest. It is the 2nd proviso that is relevant for our purpose. That prohibits any person who has received the amount otherwise than under protest from making an application u/s 20. Therefore when an application u/s 20 is sought to be held incompetent it is for the Collector to satisfy himself that the amount had been received otherwise than under protest. It is very significant that the Section does not mention how the protest must be made. There is no requirement that the protest should be in writing. The protest may be made orally. It need not necessarily be in the nature of a memo of protest. It may take any form. In short if the materials before the District Collector showed that the applicant for reference was in a state of mind of reconciliation with the award at the time of receiving the amount there is no case for a reference. That must necessarily depend upon an assessment of all the circumstances of the case. If simultaneous with the receipt of the amount of compensation an application of reference is moved, it goes without saying that it would amount to protest, for the very fact that the petitioner questions the quantum of compensation indicated that he is not satisfied with the compensation determined in the award. So long as no particular form of protest is specified that would be sufficient to show that there was protest.

3. The "Collector" in this case had evidently not considered the circumstances relating to the receipt of the amount under protest. Evidently he has not even adverted to the existence of a reference application in which specific mention was made that the compensation awarded was inadequate. That reference application was sent on the same day the compensation was received. That would show that at the time when the petitioner received the amount he was not satisfied with the amount awarded as compensation. The circumstances therefore indicate that the amount was received under protest. In view of the fact that the reference petition is seen to have been filed the reference ought to have been made. I direct that the original of Ext. P. 1 reference application will be referred by the authority competent to refer this matter to the court expeditiously.