
(2023) 03 KL CK 0114

In the High Court Of Kerala

Case No : Writ Petition (C) No.36100 Of 2022

Radhakrishnan Nair

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 01-03-2023

Acts Referred:

Citation : (2023) 03 KL CK 0114

Hon'ble Judges : Gopinath P, J

Bench : Single Bench

Advocate : C.Harindramohan Nair, Sebastian Joseph, Bimal K Nath, S Manu

Final Decision : Disposed Of

Judgement

Gopinath P., J

1. The petitioners in this writ petition claim to be legal heirs of one Chellappan Nair and Maheswari Amma, who died intestate. The aforesaid Chellappan Nair owned 3.95 Ares of land and the aforesaid Maheswari Amma owned another 7.43 Ares of land. These lands have been acquired for the purposes of widening of the NH-66. The 1st petitioner had filed a suit for partition as O.S.No.209/2009 before the Sub Court, Attingal where a preliminary decree was passed regarding the partition of the aforesaid items of property. Aggrieved by the preliminary decree, petitioners 3 and 5 had taken up the matter in appeal as A.S.No.163/2015 before the Additional District Court-III, Thiruvananthapuram where the trial Court decree was modified in so far as it relates to the 7.43 Ares of land belonging to late Maheswari Amma is concerned. The said order of the Appellate Court has become final.

2. At present, the petitioners appear to have no dispute between them regarding the manner in which the properties in question are to be partitioned or to the share which each of them are entitled to in the property of late Chellappan Nair and Maheswari Amma. The 2nd respondent competent authority has issued Ext.P3 communication to the petitioners stating that since no final decree has

been passed in terms of the judgment and decree of the Appellate Court, it is not possible at present to pay compensation to the petitioners. It is aggrieved by the said communication that the petitioners have approached this Court.

3. Having heard the learned counsel appearing for the petitioners, the learned senior Government Pleader appearing for the competent authority and the learned Deputy Solicitor General appearing for the National Highways Authority of India, I am of the view that the fact that there is no final decree passed on the basis of the Appellate Court decree need not in any manner delay the payment of compensation to the petitioners as it appears that, at present, there is no dispute amongst them as to the manner in which they will succeed to the properties of late Chellappan Nair and late Maheswari Amma. This may be in terms of the Appellate Court decree or otherwise. If the petitioners are the only legal heirs of the late Chellappan Nair and late Maheswari Amma, the petitioners can be paid the compensation provided they execute a notarized affidavit before the competent authority regarding the manner in which they are entitled to claim compensation in respect of the land acquired. I am of this view on account of the fact that even de-hors the partition suit, it is open to the petitioners to decide between themselves as to the manner in which they would take share in the properties of their late parents.

Accordingly, this writ petition will stand disposed of directing that on the petitioners executing a duly notarized affidavit before the competent authority setting out the manner in which they will take share in the compensation to be awarded in respect of the acquisition of the land in question, together with proof that they are the only legal heirs of late Chellappan Nair and Maheswari Amma, the competent authority shall take into consideration the said affidavit and shall order for the payment of compensation in the manner set out in the affidavit. This shall be done within a period of one month from the date of receipt of a certified copy of this judgment.