
(2000) 06 KL CK 0045
In the High Court Of Kerala
Case No : W.A. No. 1166 of 2000

S. Shamsudeen

APPELLANT

Vs

District Collector and Others

RESPONDENT

Date of Decision : 27-06-2000

Acts Referred:

Land Acquisition Act, 1894 — Section 49

Citation : (2000) 06 KL CK 0045

Hon'ble Judges : T.M. Hassan Pillai, J;P.K. Balasubramanyan, J

Bench : Division Bench

Advocate : Rajashekharan Nayar, John K. Joseph and Rajani, K.N, for the Appellant;

Judgement

P.K. Balasubramanyan, J.—The Appellant is the Petitioner in the Original Petition. He is the tenant of the building. Part of the building was acquired. The owner thereupon exercised his right u/s 49 of the Land Acquisition Act. The entire building was therefore decided to be acquired. At that stage the tenant of the building sought to raise a contention that the building; in his possession was not part of the building that was acquired and that question has to be decided by the civil Court in terms of the second proviso to Section 49 of the Land Acquisition Act. Complaining that his claim for reference was not being acceded to, he filed O.P. 8105 of 2000 before this Court. The learned Single Judge following the decision of a Division Bench of this Court in Mohammed v. Project Director 1993 (1) KLT 730 took the view that the tenant of a building was not an owner within the meaning of Section 49 of the Land Acquisition Act and hence the Petitioner-tenant had no right to seek a reference under the second proviso to Section 49 of the Act or to raise any objection regarding the exercise of option by the owner of the property. The learned Single Judge dismissed the Original Petition.

2. Challenging this dismissal learned Counsel for the Appellant submitted that the Division Bench relied on by the learned Single Judge has not properly understood the ratio of the decision of the Calcutta High Court in Province of

Bengal Vs. Mahes Missir and Others, . According to counsel the decision of the Calcutta High Court indicates that in such circumstances even the tenant of a building can raise a dispute coming within the purview of the second proviso to Section 49 of the Land Acquisition Act. But on an examination of the decision in Mohammed's case 1993 (1) KLT 730 it could be seen that the decision of the Calcutta High Court was dealt with elaborately in paragraph 16 of that judgment and their Lordships have quoted the portion from the Calcutta High Court judgment reading:

To hold that the opposite parties (tenants) are owners of the blue land and owners of houses on the pink land within Section 49 would lead to absurdity.

The Division Bench thus correctly understood the decision of the Calcutta High Court and held that the tenant of a building had no right to put forward any claim in terms of Section 49 of the Land Acquisition Act. With respect, we feel that the learned Single Judge has correctly understood the ratio of the decision of the Division Bench and has rightly held that the tenant of the building, the Appellant cannot seek an adjudication of his alleged claim by invoking second proviso to Section 49 of the Land Acquisition Act. In our view, the tenant of a building protected from eviction only by the Kerala Buildings (Lease and Rent Control) Act is not an owner of the building and he is also a person who is not entitled to invoke Section 49 of the Land Acquisition Act. With respect, we agree with the ratio of the decision in Mohammed's case 1993 (1) KLT 730.

We thus find no reason to interfere with the decision of the learned Single Judge. We therefore decline to admit this Writ Appeal. The Writ Appeal is dismissed.