
(2015) 07 KL CK 0074

In the High Court Of Kerala

Case No : W.A. No. 1506 of 2015 in W.P.(C) 10137 of 2014

Suresh Babu Kurien

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 27-07-2015

Acts Referred:

Land Acquisition Act, 1894 — Section 13A, 18, 4, 6, 9

Citation : (2015) 4 KHC 233

Hon'ble Judges : Ashok Bhushan, C.J;A.M. Shaffique, J

Bench : Division Bench

Advocate : R. Venugopal, for the Appellant; C.R. Syamkumar, Sr. Government Pleader, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Ashok Bhushan, C.J—Heard the learned counsel for the appellant as well as the learned Government Pleader.

2. This writ appeal has been filed against the judgment dated 23.2.2015 in W.P. (C) No. 10137 of 2014. The petitioner had filed the writ petition seeking for the following reliefs:-

"(a) Issue a Writ of Mandamus or other appropriate Writ, Order or direction, directing the respondents to pass an award in the name of the petitioner if the petitioner's property is to be acquired by the respondents;

(b) Declare that the acquisition of the petitioner's property viz. 0.0030 hectares in Sy. No. 60/2-8 of Block No. 30 of Ettumanoor Village is bad and is not binding on the petitioner.

3. Proceedings under the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") were initiated by publication of notification under Sec. 4 of the Act dated 28.11.2004. The declaration was also issued under Sec. 6 of the Act. Notice under Sec. 9 of the Act was issued and proceedings for award was also

initiated and it is stated that the award was passed on 5.4.2008 in the name of the earlier owner of the property. Petitioner's case is that he had already purchased the property by Sale deeds dated 1.10.1973 and 2.7.1977. The petitioner, after came to know about the award in favour of the previous owner of the property, had filed an application on 14.7.2012 for award amount. The application was replied by letter of Tahsildar, Ext. P3, that the award amount was collected by Abdul Raheem and others and the petitioner's application cannot be considered. Subsequently, another letter was issued on 18.1.2013, Ext. P4, to the earlier owners, who have received the amount under the award with regard to petitioner's property asking them to deposit back the excess amount, failing which, recovery by way of revenue recovery proceedings shall be initiated. The award was subsequently rectified on 17.8.2012 and notice was issued to the petitioner to receive the amount. Thereafter, the petitioner had filed the writ petition praying for the aforesaid reliefs.

4. Learned counsel for the petitioner/appellant submits that the award could not have been rectified after six months, which is provided under Sec. 13A of the Act. He further submits that the award ought to have passed in the name of the petitioner, who was the real owner of the property. It is submitted that it was the obligatory duty of the Land Acquisition Officer to have examined the title of the land. Learned counsel has placed reliance on the judgment of this Court in Vallikunnil Janaki Amma and Others Vs. Sree Amruthamangalam Kshethram Moorthi and Another, (2014) 1 KHC 57 : (2014) 1 KLJ 367 .

5. We have considered the submissions made by the parties and perused the records.

6. In the writ petition, a counter affidavit was filed by the second respondent. It was mentioned therein that after receipt of the application of the petitioner on 14.7.2012, the award was rectified on 17.8.2012.

7. The petitioner relied on Sec. 13A of the Act, which is to the following effect:-

"13A. Correction of clerical errors, etc.- (1) The Collector may, at any time but not later than six months from the date of the award, or where he has been required under Sec. 18 to make a reference to the court, before the making of such reference, by order, correct any clerical or arithmetical mistakes in the award or errors arising therein either on his own motion or on the application of any person interested or a local authority:

Provided that no correction which is likely to affect prejudicially any person shall be made unless such person has been given a reasonable opportunity of making a representation in the matter.

(2) The Collector shall give immediate notice of any correction made in the award to all the persons interested.

(3) Where any excess amount is proved to have been paid to any person as a result of the correction made under sub-sec. (1), the excess amount so paid shall

be liable to be refunded and in the case of any default or refusal to pay, the same may be recovered as an arrear of land revenue)."

Sec. 13A permits rectification of clerical or arithmetical mistakes in the award. Present is not a case, where correction of arithmetical error in the award. Thus, Sec. 13A has no application in the present case.

8. Though notification under Sec. 4 and declaration under Sec. 6 as well as publication in the news paper in the locality have been made, in which, the plot in area of the petitioner was also mentioned, the petitioner did not file any objection till the award was issued for the land. Further, after the petitioner submitted his application, the award was rectified and notice was issued to the petitioner to receive the amount. Under such circumstances, we are of the view that since the award had already been rectified, the petitioner's prayer to pass a fresh award in his name could not be accepted. Petitioner's second relief to challenge the acquisition also cannot be entertained when the petitioner failed to file objection at the proper time. However, the petitioner is entitled for the compensation along with the interest, which has also been accepted by the respondents, while rectifying the award on 17.8.2012. We are of the view that petitioner's writ petition ought to have been disposed with a direction to the respondents to make payment of compensation along with interest to the petitioner.

9. In the above view of the matter, we modify the judgment of the learned Single Judge dated 23.2.2015 directing the 2nd respondent to make payment of amount of award along with interest as per the Land Acquisition Act, 1894. It is also submitted by the petitioner that he has not received copy of the rectified amount. In any event, if the petitioner appears before the 2nd respondent and produces certified copy of this judgment within two weeks from today, a copy of the rectified award shall be provided to him. The petitioner, after receipt of the certified copy of the award, shall be entitled to withdraw the amount along with interest, which, according to the learned Government Pleader, had already been deposited by the State.

This writ appeal is disposed of as above.