



S.A.NO.811/1980 & RSA 302/2005

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(CR)

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE M.A.ABDUL HAKHIM

WEDNESDAY, THE 31ST DAY OF JULY 2024 / 9TH SRAVANA, 1946

SA NO. 811 OF 1980

AGAINST THE ORDER/JUDGMENT IN AS NO.153 OF 1976 OF DISTRICT COURT,

KOZHIKODE

ARISING OUT OF THE ORDER/JUDGMENT IN OS NO.193 OF 1972 OF PRINCIPAL

MUNSIFF COURT, KOZHIKODE-II

APPELLANT/APPELLANT/DEFENDANT:

CALICUT CORPORATION,
REPRESENTED BY ITS COMMISSIONER, KOZHIKODE.

BY ADVS.
SANTHOSH KUMAR G
T.KRISHNANUNNI (SR.) (K/280/1973)

RESPONDENTS/RESPONDENT/PLAINTIFF:

1 MANALODY MOIDEEN KOYA HAJI, (DIED LRS IMPEADED)
SON OF KUTTIYAN KOYA HAJI, T.S.NO.731, PANNIYANKARA,
CALICUT-3.

ADDL.R2 ABDUL JALEEL,
S/O.MANALODY MOIDEEN KOYA HAJI, MANALODI, P.O.POKKUNU,
THOTTUMMARAM, KOZHIKODE.



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ADDL.R3 ABDUL GAFOOR,
S/O.MANALODY MOIDEEN KOYA HAJI, MANALODI, P.O.POKKUNU,
THOTTUMMARAM, KOZHIKODE.
(ADDITIONAL RESPONDENTS 2 AND 3 ARE IMPEADED AS THE LEGAL
REPRESENTATIVES OF THE DECEASED FIRST RESPONDENT AS PER
ORDER DATED 18.02.2020 IN IA.NO.768/2008.)

ADDL.R4 M/S. P.V.S. APARTMENTS
REPRESENTED BY ITS MANAGING PARTNER
P.V.GANGADHARAN,S/O.PV.SAMI, AGED 71 YEARS,Y.M.C.A.ROAD,
CALICUT,PIN-673 001.
(THE LEGAL REPRESENTATIVES OF THE DECEASED FIRST RESPONDENT
IS IMPEADED AS SUPPLEMENTAL FOURTH RESPONDENT AS PER ORDER
DATE 19.01.2023 IN IA.NO.2/2020.)

BY ADVS.
BIJU ABRAHAM
LAKSHMI MOHAN

THIS SECOND APPEAL HAVING BEEN FINALLY HEARD ON 31.07.2024, ALONG
WITH RSA.302/2005, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE M.A.ABDUL HAKHIM

WEDNESDAY, THE 31ST DAY OF JULY 2024 / 9TH SRAVANA, 1946

RSA NO. 302 OF 2005

AGAINST THE JUDGMENT AND DECREE DATED 31.10.2003 IN AS NO.17 OF
2001 & CROSS OBJECTION IN A.S.17/2001 OF III ADDITIONAL SUB COURT,

KOZHIKODE

ARISING OUT OF THE ORDER DATED 21.01.2000 IN OS NO.605 OF 1995 OF

PRINCIPAL MUNSIF COURT, KOZHIKODE

APPELLANT/DEFENDANT/APPELLANT:

CORPORATION OF CALICUT
REP. BY ITS SECRETARY, NAGARAM AMSOM DESOM OF KOZHIKODE
TALUK.

RESPONDENT/RESPONDENT/PLAINTIFF/RESPONDENT:

M/S.P.V.S.APARTMENTS
REP. BY ITS MANAGING PARTNER, P.V.GANGADHARAN, S/O.P.V.SAMI,
AGED 56 YEARS, Y.M.C.A ROAD, CALICUT.

BY ADVS.
SRI.M.KRISHNAKUMAR
SMT.PRABHA R.MENON

THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD ON 31.07.2024,
ALONG WITH SA.811/1980, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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JUDGMENT

(CR)

[SA Nos.811/1980, RSA 302/2005]

1. S.A.No.811/1980 arises from O.S.No.193/1972 filed by Manalody Moideen Koya Hajee before the Principal Munsiff's Court II, Kozhikode.
2. R.S.A.No.302/2005 arises from O.S.No.605/1995 filed by M/s. P.V.S. Apartments before the Principal Munsiff's Court II, Kozhikode.
3. The Plaintiff schedule property in O.S.No.193/1972 is 49 cents of land. The Plaintiff schedule property in O.S.No.605/1995 is 32 cents of land which is part of the plaintiff schedule property in O.S.No.193/1972.
4. According to the plaintiff in O.S.No.605/1995, it obtained title and possession of the plaintiff scheduled property therein as per Sale Deeds Nos.2271/1994 & 2276/1994 of SRO Chalappuram, executed by the two sons of the plaintiff in O.S.No.193/1972, namely, Abdul Jalil and Abdul Gafoor who derived the same as per Partition Deed No.2068/1989 after the death of the plaintiff



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in O.S.No.193/1972 on 2/5/1983.

5. In short, the fate of O.S.No.605/1995 is dependent upon the fate of O.S.No.193/1972 since the plaintiff in O.S.No.605/1995 claims title and possession through the plaintiff in O.S.No.193/1972. Hence, both these appeals are heard and disposed of together, treating S.A.No.811/1980 as the leading case.
6. This Court had earlier allowed S.A.No.811/1980 as per the judgment dated 14.02.1986. But later, it was noticed that the sole respondent in the appeal died before the date of judgment, and hence the judgment dated 14.02.1986 was recalled and by order dated 18.02.2020. The legal heirs of the deceased respondent were impleaded as additional respondents 2 and 3.
7. O.S.No.193/1972 was for a permanent prohibitory injunction to restrain the defendant/Calicut Corporation from dispossessing him from the plaint schedule property in pursuance of the Land Acquisition Award No.9/1970.
8. O.S.No.605/1995, as amended, was for a permanent prohibitory injunction restraining the defendant/Calicut Corporation and its officials from entering into the plaint schedule property or



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dispossessing the plaintiff from the property in any manner and for direction to the defendant Corporation to grant necessary license and to approve the plan for the construction of the building in the plaint schedule property applied for by the plaintiff.

9. At the requisition of the Calicut Corporation, the State Government initiated acquisition proceedings to acquire 49 cents of land for providing necessary playground to an educational institution. The acquisition proceedings were commenced in the year 1967 and an Award was passed in the year 1970. The present suit was filed in the year 1972 to restrain the Corporation from taking possession of the land pursuant to the Award passed in the land acquisition proceedings. Sri. Moideen Koya Haji had filed another suit as O.S.No.109/1972 against the State Government represented by the District Collector, Kozhikode, from dispossessing him from the plaint schedule property in pursuance of the Award No.9/1970. The present suit was filed when Sri.Moideen Koya Haji came to know that the Calicut Corporation is the requisitioning authority and hence seeking the very same



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relief in O.S.No.109/1972, O.S.No.193/1972 was filed against the Calicut Corporation. The Trial Court considered both suits together and decreed both the suits as prayed for with costs. The finding of the Trial Court is that as on the date of filing of the suit, the plaintiff is in possession of the plaint schedule property and that the procedure for acquisition of the land as per the Land Acquisition Act has not been complied with. The defendant - Calicut Corporation, filed A.S.No.153/1976 and the State Government filed A.S.No.140/1976 before the First Appellate Court and both the appeals were dismissed with cost as per judgment dated 24.01.1980. Since after handing over the title and possession of the property by the Government to the Calicut Corporation which was the requisitioning authority, the property is vested with Calicut Corporation, the Calicut Corporation alone filed S.A.No.811/1980 challenging the judgment and decree passed by the Trial Court in O.S.No.193/1972 which is confirmed by the First Appellate Court in A.S.No.153/1976.

10. This Court admitted the Second Appeal on 21.10.1980 on the substantial questions of law framed in the Memorandum of



Appeal, which is as follows:

- A. The whole purpose of the publication contemplated in Section 3 of the Kerala Land Acquisition Act being one to acquaint persons interested in the land proposed to be acquired about the acquisition proposed so as to give them opportunity to raise objections if any, and the evidence adduced in the case indicate that the plaintiff had in fact full knowledge about the acquisition proposal, can the plaintiff be permitted to take shelter under a minor defect in the compliance of procedural formality to contend that the land acquisition proceedings culminating in Exhibit A17 award is not binding on him.
- B. Where the evidence adduced in the case clearly prove that the plaintiff had in fact received notice of the land acquisition proceedings, is it still necessary that he should become aware of the proceedings from the publication of the substance of the notification in the locality so as to make the land acquisition proceedings binding on him.
- C. Where the evidence adduced in the case



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conclusively show that all the persons interested in the land were aware of the proposed acquisition, is it not sufficient that the procedural requirements are substantially complied with and whether it will not be incorrect to say that any defect in the compliance with the procedural requirements of Section 3 of the Act is fatal to the validity of the proceedings.

D. Whether it is necessary that the publication in the locality should be done in such a way so as to give 30 days time to the persons interested in the land for filing objections.

11. I heard the learned Senior Counsel for the appellant Sri. T. Krishnanunni, instructed by Standing Counsel for the appellant Sri. K.D. Babu and the learned counsel for the 4th respondent, who claimed to be the present owner of the plaint schedule property.

12. Here is a case where the plaintiff in the suit did not have any dispute that the land acquisition proceedings were initiated and concluded with respect to the plaint schedule property. The prayer



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in the suit itself is with reference to Award No.9/1970 in the land acquisition proceedings. It is seen from the Trial Court records that Section 3(1) Notification under the Kerala Land Acquisition Act,1961 was published in the Gazette on 07.11.1967. It was published in the locality on 05.12.1967. Notice under Rule 3 was sent to the plaintiff's wife, who was shown as a party in the proceedings and the same was received by the plaintiff on 03.12.1967. So the plaintiff was well aware of the land acquisition proceedings. Though objections were called, the plaintiff has no case that he raised any objection against the land acquisition proceedings. The Declaration under Section 6 was published on 04.06.1968. Thereafter the Award enquiry was conducted and the Award was passed on 15.07.1970. The defendant claimed that the plaintiff was disposed of on 14.10.1970. The plaintiff has not disputed the public purpose of the acquisition. He has not alleged any malafide against the proceedings. The plaintiff filed the suit about two years after taking possession of the land.

13. The defendant examined DWs 1 and 2 to prove the land acquisition proceedings and to prove that possession of the plaint



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schedule property was taken over by the State Government and the same was handed over to Calicut Corporation. DWs 1 & 2 are the official witnesses. They deposed the facts as revealed from the official documents. The finding of the Trial Court is that the DWs 1 and 2 do not have any direct knowledge about taking over possession of the plaint schedule property. Accordingly, the Trial Court found that the plaintiff is in possession of the plaint schedule property on the date of filing of the suit, relying on Exts.C1 Commission Report and C2 Schedule. When official witnesses are examined to prove facts revealed from official records, it is quite natural that they would not have any direct knowledge in the matter. The official records are presumed to be correct and proper in the absence of any evidence to the contrary. This principle is embodied in Section 119 of Bharatiya Sakshya Adhinyam, 2023 corresponding to Section 114 of the Indian Evidence Act, 1872. In the case of official records and action, regularity and propriety is a matter of presumption and are to be presumed to be correct, valid and legal unless the contrary is proved by the person who challenges the same. It is always open to the challenger to dislodge the presumption through any of the modes available to him legally. In the case on hand, the plaintiff has not adduced any evidence to show



that the official records are not correct and proper.

14. The Trial Court ought not to have rejected the evidence of DW1 and DW2 who deposed from official records. The Commissioner found possession in favour of the plaintiff on the ground that there were some logs of timber that belonged to the plaintiff in the property. Admittedly, the plaint schedule property is barren land which was fit to be used as a playground for educational institution. Mere keeping of some logs of wood should not have been treated as a sign of possession in favour of the plaintiff when there are clear official records that the possession of the plaint schedule property was taken over by the authorities pursuant to the land acquisition proceedings. The Trial Court as well as the Appellate Court should not have entertained the claim of the plaintiff over the acquired property alleging illegality in the land acquisition proceedings long after the conclusion of the land acquisition proceedings when no objection with respect to the same was raised by the plaintiffs before the authorities. If the plaintiff had any complaint with respect to the land acquisition proceedings, he ought to have challenged the same when he got knowledge of the same. He waited till the culmination



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of the land acquisition proceedings by passing the Award and filed the suit after two years. The Trial Court ought not to have entertained the claim of the plaintiff that he is the owner in possession of the plaint schedule property when Ext.A17 Award dated 15.07.1970 was passed in the land acquisition proceedings. The suit for injunction was filed only on 29.02.1972. If at all there is any infirmity or irregularity in the land acquisition proceedings, there is no prejudice caused to the plaintiff as he had enough notice of the land acquisition proceedings and he had enough opportunity to challenge the same. He need not have waited till the culmination of the proceedings. At any rate, it is clear that the procedural requirements are substantially complied with by the State Government while acquiring the plaint schedule property. It is specifically provided in Section 12 of the Kerala Land Acquisition Act that the Award passed by the Collector shall be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, or of the true area and value of the land, and the apportionment of the compensation among the persons interested.



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15. On passing of the Award and taking possession of the land, the land is absolutely vested with the Government, free from all encumbrances. Section 11 of the Kerala Land Acquisition Act makes it abundantly clear. Any person who does not accept the Award has a right to seek reference to the court under Section 20 of the Kerala Land Acquisition Act.

16. In ***Municipal Council, Ahmednagar and Another vs. Shah Hyder Beig and Others, 2000 (2) SCC 48***, in the context of a belated challenge to the land acquisition proceedings, applying the principle that delay defeats equity, the Hon'ble Supreme Court held that a belated challenge is not to be entertained and the plea of delay can be raised at the stage of arguments. In the case on hand the plaintiff filed the suit alleging illegality in the land acquisition proceedings two years after the culmination of proceedings, which could not be permitted.

17. In ***Indore Development Authority vs. Manoharlal, 2020 (8) SCC 129***, a Constitution Bench of the Honorable Supreme Court held that once the title of the land vests in the State, consequent to acquisition and taking of possession, even if the landholder has



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retained possession or otherwise trespassed upon it after possession has been taken by the State, he remains a trespasser and his possession would be deemed to be on behalf of the State. In view this settled proposition of law, even if the plaintiff had continued with possession after land acquisition proceedings, the same could only be termed as for and on behalf of the Government and he could not maintain an action for injunction on the strength of such possession.

18. The Trial Court as well as the Appellate Court failed to consider the above vital aspects of the matter while decreeing the suit. In the aforesaid circumstances, the judgment and decree passed by the Trial Court, which is confirmed by the First Appellate Court challenged in S.A.No.811/1980 are unsustainable. The substantial questions of law Nos.A, B, C and D formulated in S.A.No.811/1980 are answered in the negative and in favour of the appellant.

19. R.S.A.No.302/2005 filed by the Defendant Calicut Corporation in O.S.No.605/1995 was admitted on 13.12.2007, formulating the following substantial questions of law:

1. When the respondent in S.A.811/1980 was represented



by a counsel and said counsel was heard and judgment was pronounced, whether the judgment is a nullity for the reason that the said respondent died prior to the disposal of second appeal, even though factum of death of respondent was not known to the appellant and was not reported by the counsel appearing for respondent to the court as provided under Rule 10 A of Order 22 of Code of Civil Procedure.

2. Whether the finding of courts below that judgment in S.A.811/1980 is a nullity and therefore the appellant is not entitled to claim that the State obtained possession of the property pursuant to the award passed under Land Acquisition Act as found in S.A.811 of 1980 cannot be accepted and as found under the reversed judgments respondent in that second appeal was in possession of the property is sustainable.

20. Since the above Substantial Questions of Law are with reference to the nullity of the judgment dated 14.02.1986 in S.A.No.811/1980, which was recalled by Order dated 18.02.2020 when it was noticed



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that the sole respondent in the appeal died before the date of judgment, the above Substantial Questions of Law do not subsist in the matter. In the light of the changed circumstances, I re-frame the Substantial Question of Law in R.S.A.No.302/2005 as hereunder.

1. Whether the claim of the plaintiff over the plaint schedule property on the strength of the Title Deeds Exts.A2 and A3 executed by the legal heirs of late Moideen Koya Haji is sustainable in view of the conclusion of the land acquisition proceedings by passing the Award without any objection from the part of Moideen Koya Haji.

21. The Trial Court found that the plaintiff in in O.S.No.605/1995 is in possession of the property relying on the judgment and decree in O.S.No.193/1972. In the light of the findings in R.S.A.No.811/1980 rejecting the claim of the plaintiff in O.S.No.193/1972, the claim of the plaintiff in O.S.No.605/1995 has no legs to stand. The Substantial Question of Law in R.S.A.No.302/2005 is answered in negative and in favour of the appellant. In the aforesaid circumstances, the judgment and decree passed by the Trial Court, which is confirmed by the First Appellate Court challenged in R.S.A.No.302/2005 are unsustainable.



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22. Accordingly, these Second appeals are allowed without costs setting aside the judgments and decrees in O.S.No.193/1972 and O.S.No.605/1995 of the Munsiff Court II, Kozhikode, which is confirmed by First Appellate Court and dismissing both the suits.

Ordered accordingly.

Sd/-

M.A.ABDUL HAKHIM

JUDGE

Shg/xx