

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE G.GIRISH

FRIDAY, THE 3RD DAY OF MAY 2024 / 13TH VAISAKHA, 1946

LA.APP. NO.108 OF 2023

AGAINST THE JUDGMENT DATED 19.08.2023 IN LAR NO.130 OF 2013
OF ADDITIONAL SUB COURT, THALASSERY

APPELLANTS/CLAIMANT NOS.3, 7, 8, 9 & 10:

- 1 R.K.RAMAKRISHNAN
AGED 82 YEARS
S/O. RAYAROTH KOTHERI NARAYANAN NAMBIAR,
'ROJA NILAYAM' , ELAMPARA, EDAYANNUR.P.O,
KANNUR (DT), PIN - 670595
- 2 THANKAMANI.K.K
AGED 78 YEARS
W/O. R.K.PADMANABHAN NAMBIAR, RAYAROTH HOUSE,
ELAMPARA, KEEZHALLUR.P.O, THALASSERY,
KANNUR (DT), PIN - 670595
- 3 GEETHA.K.K
AGED 56 YEARS
W/O. HAREENDRAN.M, 'THIRUVATHIRA' , THODIKKALAM
KANNAVAM, KANNAVAM.P.O, THALASSERY, KANNUR (DT) ,
PIN - 670650
- 4 VIJAYAN.K.K
AGED 50 YEARS
S/O. R.K.PADMANABHAN NAMBIAR, RAYAROTH HOUSE,
ELAMPARA, KEEZHALLUR. P.O, THALASSERY, KANNUR
(DT), PIN - 670595
- 5 RAJEEVAN.K.K
AGED 47 YEARS
S/O. R.K.PADMANABHAN NAMBIAR, RAYAROTH HOUSE,
ELAMPARA, KEEZHALLUR. P.O, THALASSERY, KANNUR
(DT), PIN - 670595

BY ADVS.

CIBI THOMAS

LOHITHAKSHAN CHATHADI KANNOTH

RESPONDENTS/CLAIMANT NOS.1, 4, 5 AND 6:

- 1 P.C. MOOSA HAJI
S/O. MAMMU HAJI, ZUM ZUM THERUR, EDAYANNUR.P.O,
KANNUR, PIN - 670595
- 2 GOVT. OF KERALA
REPRESENTED BY THE DISTRICT COLLECTOR,
KANNUR, PIN - 670002
- 3 THE MANAGING DIRECTOR,
KINFRA, VELLAYAMBALAM, THIRUVANANTHAPURAM,
PIN - 695010
- 4 THE SPECIAL THAHSILDAR
LA, AIRPORT NO.II, MATTANNUR, KANNUR DISTRICT,
PIN - 670702

SRI.ABDUL RAOOF PALLIPATH FOR R1

SMT.SYLAJA (SC), GP FOR R2

THIS LAND ACQUISITION APPEAL HAVING COME UP FOR HEARING
ON 09.04.2024, THE COURT ON 03.05.2024 DELIVERED THE
FOLLOWING:

'CR'**G.GIRISH, J.****L.A.A.No.108 of 2023****Dated this the 03rd day of May, 2024****J U D G M E N T**

The issue involved in this appeal is the rival claims raised by the appellants and the 1st respondent over an amount of Rs.14,76,912/-, which the Land Acquisition Authorities deposited before the Additional Sub Court at Thalassery (mentioned as Reference Court hereafter, for convenience), in connection with the acquisition of an extent of 0.4828 Hectors (119 cents) comprised in Re-Survey No.27/3 of Keezhallur Village in Thalassery Taluk, for the purpose of Kannur Airport.

2. An extent of 4 acres 92 cents of land comprised in Re-Survey No.27/3 of Keezhallur Village, which belonged to the 1st respondent, was purchased directly by KINFRA, in connection with the construction of Kannur Airport. However, a reference under Section 30 of the Land Acquisition Act (for short "L.A Act") was made in respect of the compensation amount of 1 acre and 19 cents of land, which was said to be held by 1st respondent along

with the abovesaid 4 acre and 92 cents, for the reason that the 1st respondent failed to produce title documents before the Acquisition Authority to convince his right over the said property. According to the 1st respondent, the abovesaid 1 acre and 19 cents formed part of the total extent of 5 acres and 05 cents held by him right from the year 1986. It is stated that the 1st respondent holds a total extent of 6 acres 11 cents of land there, which exist contiguously within well-defined boundaries. The split particulars of derivation of title of the abovesaid 6 acres and 11 cents claimed by the 1st respondent are as follows :

- i. *An extent of 5 acres and 5 cents was purchased by the 1st respondent from the persons by name Abuthali and Mammad by virtue of sale deed No.2260/1986 of SRO, Mattannur. Though the extent of land mentioned in the above sale deed was only 3 acres and 86 cents, the actual extent which was handed over to the 1st respondent was 5 acres and 5 cents.*
- ii. *An extent of 45 cents was purchased by the 1st respondent by virtue of sale deed No.1023/1993 of SRO, Mattannur.*
- iii. *An extent of 15 cents was purchased by the 1st respondent by virtue of sale deed No.2270/1994 of SRO, Mattannur.*
- iv. *An extent of 46 cents was purchased by the 1st respondent by virtue of sale deed No.787/2007 of SRO, Mattannur.*

3. According to the 1st respondent, the compensation amount deposited by the acquisition authorities in respect of the

abovesaid 1 acre and 19 cents has to be given to him since the above land has been remaining under his absolute title and possession ever since 1986, when he purchased the 5 acre and 5 cents as stated in item No.i above.

4. The appellants strongly disputed the claim of the 1st respondent over the 1 acre and 19 cents, in respect of which the acquisition authority, being unable to trace title, had deposited the compensation amount before the Reference Court. The appellants trace their right over the said property from the partition decree in O.S.No.247 of 1947 of the Munsiff's Court, Koothuparamba. According to the appellants, an extent of 4 acres shown as 'D' plot in Plan V was allotted to defendant Nos.103 and 104 of the said suit, who are said to be the predecessors-in-interest of the claimant No.2 and claimant No.3 in LAR No.130 of 2013 of the Additional Sub Court, Thalassery (Reference Court). Since claimant No.2 died during the pendency of the above proceedings, additional claimants 7 to 10 were impleaded as his legal representatives. The appellants herein are claimant No.3 and additional claimant Nos.7 to 10 in LAR No.130 of 2013 of the Additional Sub Court, Thalassery. It is the further contention of the appellants that in addition to the 4 acres obtained by their

predecessors, as per the partition decree in O.S.No.247 of 1947 of Munsiff's Court, Koothuparamba, an extent of 1 acre and 5 cents of rocky land, named 'Pulpara', which abutted the abovesaid 4 acres on the west, also remained under their absolute title and possession, as conveyed to them in the abovesaid partition decree. The appellants would contend that an extent of 3 acres and 86 cents, out of the abovesaid 4 acres of land, were sold to the persons by name, Abuthali and Mammad by virtue of sale deed No.823/1986. According to the appellants, it is the abovesaid 3 acres and 86 cents alone, which Abuthali and Mammad sold to the 1st respondent by virtue of sale deed No.2260/1986. It is the further contention of the appellants that they are having ownership and possession over another extent of 1 acre and 42 cents, and thus, out of the total extent of 6 acres and 47 cents of land, the portion excluding 3.86 acres sold to Abuthali and Mammad remained under their absolute possession and enjoyment with well-defined boundaries. The disputed 1 acre and 19 cents involved in this case, according to the appellants, formed part and parcel of the abovesaid 2 acres and 61 cents, which remained under the title and possession of appellants after the sale of 3.86 acres to Abuthali and Mammad. It is the case of the

appellants that the 3 acres and 86 cents purchased by the 1st respondent does not take in the disputed 1 acre and 19 cents, and that it exist separately. Upon the above premises, the appellants stake claim to have the compensation amount of Rs.14,76,912/- deposited by the acquisition authority in connection with the acquisition of the aforesaid 1 acre and 19 cents.

5. In a Commission Application filed by the claimant (1st respondent), as I.A.No.1357 of 2015, the Reference Court appointed an Advocate Commissioner with the assistance of Village Officer, Keezhallur to conduct a local investigation in the disputed property and to prepare a report and plan. In the above Commission Application, the Advocate Commissioner was required to ascertain the location, nature and lie of the acquired property with the nature of boundaries. The Commissioner was also requested to measure the acquired property and the property which was purchased directly by KINFRA from the claimants, and to prepare a plan on the basis of individual sketches prepared by the land acquisition authority, and Field Measurement Book available at Keezhallur Village Office.

6. The learned Advocate Commissioner prepared an undated, cryptic one page report and filed the same, along with a

sketch which does not contain the requisite particulars of a measured plan. The abovesaid Commission Report and plan have been marked, in the trial before the Reference Court, as Exts.X1 and X2. The Commissioner reported in Ext.X1 that she identified the properties as per possession and as per the boundaries of the properties. However, at the time of examination before the Reference Court, the Advocate Commissioner had testified as AW4 that Ext.X2 Plan was prepared on the basis of the plans produced by the Land Acquisition Authorities, land documents and boundaries.

7. Long before the examination of the Advocate Commissioner before the Reference Court, the appellants had filed I.A.No.534 of 2017 with a prayer to remit the above Commission Report and plan to the Advocate Commissioner with a direction to furnish fresh Commission Report and Plan, as per Field Measurement Book and the approved Commission Report in O.S.No.247 of 1947 of Munsiff's Court, Koothuparamba. The above I.A was disposed of by the Reference Court with the observation that the question of remittance of the Commission Report could be considered, after taking evidence in the case. The said order of the Reference Court was challenged by the

appellants by filing O.P(C)No.89 of 2019 before this Court. As per order dated 19.02.2019, this Court set aside the order of the Reference Court dated 01.06.2018 in I.A.No.534 of 2017 and directed the said court to pass fresh orders in the said application with the observation that it is required to be ascertained whether the acquired property falls within the portion allotted to the original claimants or the additional claimants, as per the final decree for partition in O.S.No.247 of 1947 of the Munsiff's Court, Koothuparamba. This Court also stated in the aforesaid order that the properties are to be identified based on the plan attached to the final decree in O.S.No.247 of 1947, and that the above aspects have not been correctly placed before the Reference Court. Accordingly, the Reference Court was directed to consider the aforesaid aspects and pass fresh orders in I.A.No.534 of 2017, within a period of two months from the date of receipt of a copy of that judgment.

8. Notwithstanding the specific directions of this Court in the aforesaid order dated 19.02.2019, the Reference Court again relegated the adjudication on the challenge against the acceptability of the Commission Report and plan to the final stage of trial of the L.A.R case, as per order dated 10.04.2019,

dismissing I.A.No.534 of 2017. Again the matter was taken up before this Court in O.P(C)No.1616 of 2019, challenging the order of dismissal of I.A.No.534 of 2017. In the judgment dated 18.06.2019 in the aforesaid O.P., this Court observed that the plan attached to the final decree in O.S.No.247 of 1947 was not produced before the Reference Court, and hence the said court could not have passed order directing the Advocate Commissioner to conduct fresh local inspection for identifying the property on the basis of the plan attached to the decree in the said suit. However, while dismissing the above O.P., this Court provided an option to the appellants to produce the above plan, along with fresh application for remittance of the Commission Report. Accordingly, the appellants filed I.A.No.1527 of 2019 with the relevant plan before the Reference Court, seeking remission of the Commission Report. But the above application was also dismissed by the Reference Court with the observation that the right of the appellants to seek remission of the Commission Report and plan would be reserved to the stage after the completion of evidence, and that, if found necessary, the report and plan could be remitted back at that stage. The appellants challenged the above order before this Court by filing O.P(C)No.36 of 2020. The above

Original Petition was disposed of by this Court, as per the judgment dated 09.01.2020, in which this Court reposed confidence upon the Reference Court that the said Court, during the course of trial, will consider the question of remission, taking due note of the earlier judgments of this Court in O.P(C)No.89 of 2019 and O.P(C)No.1616 of 2019.

9. In the present appeal, the grievance of the appellants is that the Reference Court had totally ignored the observations of this Court in O.P(C)No.89 of 2019, O.P(C)No.1616 of 2019 and O.P(C)No.36 of 2020 and disposed of L.A.R.No.130 of 2013, relying on Exts.X1 and X2 Commission Report and plan, which were erroneously prepared by the Advocate Commissioner. The appellants would allege that the Reference Court decided the L.A.R in favour of the 1st respondent upon the false notion that the appellants have not produced documents evidencing their title over the disputed property. It is stated that, apart from the erroneous findings of the Advocate Commissioner in Exts.X1 and X2 and the wrong entries in the revenue records, which the 1st respondent managed to incorporate by way of manipulations, there was absolutely no reliable material to establish the right of the 1st respondent over the disputed 1 acre and 19 cents of land.

Upon the above grounds, the appellants seek to set aside the judgment and decree dated 19.08.2023 in L.A.R.No.130 of 2013 of the Additional Sub Court, Thalassery.

10. Heard the learned counsel for the appellants, the learned counsel for the 1st respondent and the learned Government Pleader representing respondents 2 to 4.

11. The point to be decided is whether there are sufficient grounds to interfere with the impugned decree and judgment rendered by the Reference Court on 19.08.2023 in L.A.R.No.130 of 2013.

12. Neither the appellants nor the 1st respondent are in a position to produce any title document, which would precisely show their right over the disputed 1 acre and 19 cents of land, which is the bone of contention in this case. It is contended by the 1st respondent that the property conveyed to him by Abuthali and Mammad by virtue of sale deed No.2260/1986 of SRO, Mattannur was having an actual extent of 5 acres and 5 cents, which exceeds by 1 acre and 19 cents from the actual extent of 3 acres and 86 cents mentioned in that document. According to the 1st respondent, it is for the abovesaid 1 acre and 19 cents that the Acquisition Authority deposited compensation amount before the

Reference Court, alleging that the 1st respondent was not having title document establishing his right over that property. The appellants, per contra, would contend that Abuthali and Mammad, who are the vendors of the 1st respondent, did not get even an inch of land exceeding the 3 acres and 86 cents sold to them by the predecessors of the appellants by virtue of sale deed No.823/1986 of SRO, Mattannur. The abovesaid 3 acres and 86 cents sold to Abuthali and Mammad by virtue of sale deed No.823/1986 is said to be the major portion of the 4 acres, which the predecessors-in-interest of the appellants obtained as 'D' plot in plan V in the final decree passed in O.S.No.247 of 1947 of Munsiff's Court, Koothuparamba. Thus, according to the appellants, the 1st respondent cannot stake claim over any land, which Abuthali and Mammad, his predecessors-in-interest, had not obtained. It is upon the above premises that the appellants stake claim over the disputed 1 acre and 19 cents of land which, according to them, is inclusive of the remaining 14 cents out of the 4 acres obtained by the final decree in O.S.No.247 of 1947, and the adjoining rocky land having an extent of 1 acre and 5 cents.

13. Having regard to the nature of the rival contentions

raised by the parties in the above regard, it is inevitable for the conclusive resolution of the dispute that the properties obtained by the appellants, as per the final decree in O.S.No.247 of 1947 of the Munsiff's Court, Koothuparamba, and the properties obtained by the 1st respondent by virtue of the sale deeds with numbers 2260/1986, 1023/1993, 2270/1994 and 787/2007 of SRO, Mattannur, are to be identified and located on the basis of the relevant Field Measurement Book and the relevant plan forming part of the final decree in O.S.No.247 of 1947 of the Munsiff's Court, Koothuparamba. It is obviously for the said reason that this Court rendered the judgment dated 19.02.2019 in O.P(C)No.89 of 2019, directing the Reference Court to consider the aspects relating to ascertaining and identifying the properties on the basis of the final decree in O.S.No.247 of 1947 of Munsiff's Court, Koothuparamba. The need to follow the above course has been reiterated by this Court in the judgment dated 18.06.2019 in O.P(C)No.1616 of 2019 providing an opportunity to the appellants herein to furnish the relevant plan of the final decree in O.S.No.247 of 1947 before the Reference Court and to seek compliance of the direction in the judgment rendered in O.P(C)No.89 of 2019. Though the appellants approached the

Reference Court with the relevant plan and sought the remission of EXt.X1 Commission Report and Ext.X2 plan, the Reference Court, conveniently and with ease, evaded from looking into the question of remission of the Commission Report and Plan, with the observation that the said aspect would be taken care of, after the completion of evidence in the L.A.R case. When the appellants challenged the above order of the Reference Court by filing O.P(C)No.36 of 2020 before this Court, the above matter was disposed of by the judgment dated 09.01.2020, reposing confidence upon the Reference Court with the belief that the said Court would honour its commitment expressed in the impugned order that the issue relating to remission of the Commission Report and Plan would be looked into after the entire evidence is over. But, unfortunately, the Reference Court did not care to consider the above aspect, and instead, disposed of the L.A.R in favour of the 1st respondent, finding fault with the appellants for their failure to produce title documents to establish their right over the disputed 1 acre and 19 cents of land. It is an irony that while blaming the appellants for their failure to produce title documents, the Reference Court lost sight of the absence of any such document produced by the 1st respondent to establish his

right over the abovesaid 1 acre and 19 cents of land.

14. It appears from the impugned judgment of the Reference Court that the said court placed heavy reliance upon the boundary descriptions in the sale deed executed by the abovesaid Abuthali and Mammad in favour of the 1st respondent, as well as the sale deed executed by the predecessors-in-interest of the appellants in favour of Abuthali and Mammad, and found that property exceeding the extent of 3 acres and 86 cents mentioned in the relevant sale deeds might have been conveyed to the vendees concerned since there was no indication of the existence of the remaining land of the vendors in the boundary description of the said sale deeds. In addition to the above assumption, the Reference Court relied on the Commission Report and plan marked as Exts.X1 and X2 to arrive at the finding that the disputed 1 acre and 19 cents of land involved in the case actually belonged to the 1st respondent.

15. It has to be stated that the course adopted by the Reference Court in the above regard is per se erroneous. The mere fact that the Document Writer, who prepared the sale deed concerned, omitted to mention the existence of the remaining land of the vendor in the boundary descriptions of the title deed,

ought not have been relied on by the Reference Court as a circumstance to arrive at the finding that property exceeding the extent mentioned in that sale deed might have been conveyed by the vendor to the vendee. So also, the Reference Court apparently went wrong in relying on Ext.X1 Commission Report and Ext.X2 plan, which lacked the basic requirements, which are expected to contain in a Commission Report and plan. It is not possible to understand from the above records how the Village Officer proceeded with the measurement of the properties concerned and located the disputed 1 acre and 19 cents and the remaining land purchased by KINFRA, as shown in Ext.X2. Neither Ext.X1 report nor Ext.X2 Plan contain any indication as to the relevant land record relied on by the Advocate Commissioner and the Village Officer for locating the property, taking the measurements and for preparation of the said plan. It appears that Ext.X2 Plan has been prepared by simply copying some other sketch procured by the Village Officer. Needless to say that Ext.X2 plan is worth not even the value of the paper in which it is drawn. The Reference Court committed serious error in eschewing the request of the appellants for remission of the above Commission Report and plan, notwithstanding repeated directions of this Court

in the judgments in O.P(C)No.89 of 2019, O.P(C)No.1616 of 2019 and O.P(C)No.36 of 2020 to consider and decide the above challenge. As already stated above, it was not possible to have a fair resolution of the dispute involved in this case, without ascertaining and locating the properties which the appellants claimed on the basis of the final decree in O.S.No.247 of 1947 of the Munsiff's Court, Koothuparamba, and those properties which the 1st respondent claimed on the basis of sale deed Nos.2260/1986, 1023/1993, 2270/1994 and 787/2007 of SRO, Mattannur. The failure of the Reference Court to move in the above direction happened only because of the course adopted by the said court relegating the challenge against Ext.X1 Commission Report and Ext.X2 plan to the final stage of the litigation, after the completion of evidence.

16. Order XXVI Rule 10 sub-rule (2) of the Code of Civil Procedure deals with the evidence of the Commission Report filed in a case and the examination of the Advocate Commissioner in respect of the matters referred to him, or mentioned in his report. Sub-rule (3) of Order XXVI Rule 10 of the Code of Civil Procedure deals with the direction for further enquiry to be made by the Advocate Commissioner, if the Court gets dissatisfied with the

proceedings of the Advocate Commissioner. For the sake of convenience and easy reference, the above provisions are extracted hereinbelow:

"10. Procedure of Commissioner

(1) xxx

(2) *Report and depositions to be evidence in suit-*

The report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the suit and shall form part of the record; but the court or, with the permission of the court, any of the parties to the suit may examine the Commissioner personally in open court touching any of the matters referred to him or mentioned in his report, or as to his report, or as to the manner in which he has made the investigation.

(3) *Commissioner may be examined in person-*

Where the court is for any reason dissatisfied with the proceedings of the Commissioner, it may direct such further inquiry to be made as it shall think fit."

17. It is to be noted that the aforesaid provision does not prescribe the stage of the suit at which the examination of the Advocate Commissioner has to be conducted towards evaluating the acceptability of the Commission Report and plan prepared by him. When a party to the litigation moves an application challenging the acceptability of the Commission Report and plan, it is incumbent upon the court concerned to proceed with the enquiry on that matter by the examination of the Advocate

Commissioner and any other person, who assisted him in the preparation of the report and plan, and to arrive at a finding as to whether the above records are worth to be taken as evidence in the suit, and part of the case records. The practice followed by many courts relegating the challenge against the Commission Report and plan to the final stage of evidence in the suit, would result in tricky situations causing hardships to the parties and inconvenience to the court itself. This is because of the fact that, if the Commission Report is found to be unworthy at the final stage of the litigation, at a time when the court is all set for the disposal of the suit after the completion of all other evidence, the remission of the Commission Report to the Advocate Commissioner for further enquiry at that stage, would complicate the matter and result in abrupt procrastination of the proceedings. The above precarious situation may compel, at least a small minority of the Presiding Officers, to ignore the fallacies and errors in the Commission Report for the sake of a disposal of the suit. For avoiding the above unhealthy trend and practice of compromising the grave errors and anomalies in the Commission Report, and declining further enquiry in the matter, it is highly necessary to proceed with the enquiry relating to the acceptability of the

Commission Report forthwith, once an application is filed by any of the parties in that regard. Therefore, the Trial Courts are expected to decide the issue regarding the acceptability of the Commission Report before proceeding with the trial of the suit, if any of the parties have moved an application challenging the Commission Report and Plan.

18. As far as the present case is concerned, the impugned decree and judgment rendered by the Reference Court, cannot be permitted to survive in view of the fact that the Trial Court did not take any effort to have the relevant materials procured for an effective and comprehensive adjudication of the issue involved. Needless to say that the decree and judgment under challenge are liable to be set aside, and the matter remanded back to the Reference Court for fresh disposal, after getting a foolproof Commission Report and plan, identifying and locating the properties in dispute on the basis of relevant records.

In the result, the appeal stands allowed as follows:

- (i) The judgment and decree dated 19.08.2023 of the Additional Sub Court, Thalassery in L.A.R.No.130 of 2013 are hereby set aside and the case is remanded back to the said court for fresh disposal.
- (ii) Ext.X1 Commission Report and Ext.X2 Plan are ordered to be remitted back to the Advocate

Commissioner for further enquiry. The Advocate Commissioner, with the assistance of a competent Surveyor, shall proceed with the task of identifying the disputed acquired property as well as the larger extent of land in which the disputed property forms part, on the basis of the relevant plan forming part of the final decree in O.S.No.247 of 1947 of the Munsiff's Court, Koothuparamba, the title deeds relied on by the parties and the relevant land records.

(iii) The Commission batta and Surveyor's batta are to be met by the appellants.

(iv) The learned Sub Judge shall make every endeavour to expedite the proceedings, and dispose of L.A.R afresh, after getting the further report and plan of the Advocate Commissioner, and examining the Advocate Commissioner and Surveyor, upon the matters mentioned in the report and plan.

Sd/-

G.GIRISH, JUDGE

vgd

Going by the provisions contained in Section 67 of the Kerala Court fees and Suits Valuation Act, 1959, the appellants herein are entitled for refund of the full amount of court fee paid on the memorandum of appeal as per the order dated 24/7/2024 in I.A. 3/2024 in LAA.108/2023.

(sd/-) **Joint Registrar**