

P.B.Prasannan Vs State Of Kerala

Court: High Court Of Kerala

Date of Decision: Jan. 8, 2025

Acts Referred: Code of Civil Procedure, 1908 " Order 41 Rule 27

Land Acquisition Act, 1894 " Section 28A, 28A(3)

Kerala Land Reforms Act, 1963 " Section 72(F)

Hon'ble Judges: G.Girish, J

Bench: Single Bench

Advocate: Dinesh R.Shenoy, N.Anjali, H.Kiran, T.S.Saumya, Rekha C. Nair, M.Gopikrishnan Nambiar, A.S.P.Kurup

Final Decision: Dismissed

Judgement

G.Girish, J

1. The judgment dated 08.12.2010 of the Additional Sub Court, North Paravur in LAR No.230/2008, a reference under Section 28A(3) of the Land

Acquisition Act, 1894, closing the above reference with the observation that the claimant is not entitled to any reliefs, is under challenge in this appeal.

2. The appellant is the A-Claimant in the above Land Acquisition Reference. The B-Claimant is the Bank where the acquired property was offered as

security by A-Claimant in connection with a loan transaction. A total extent of 27.67 Ares of land (23.31 Ares in Survey No.100/10-7-2 and 4.36 Ares

from Survey No.100/10-4/2 of Eloor Village), belonging to the appellant, was said to have been acquired for the disposal of gypsum from FACT

Udyogamandal. According to the appellant, the actual extent of land acquired from his possession was 32.39 Ares, but the Acquisition Officer

mistakenly mentioned the extent as 27.67 Ares. Earlier, a sum of Rs.98,971/- was awarded as compensation for the above said 27.67 Ares of land.

The Reference application submitted by the appellant against the above award of 17.11.1992 was rejected as time barred. Thereupon the appellant

preferred an application under Section 28A of the Land Acquisition Act for redetermination of compensation on the basis of the judgment in LAR

No.755/1993 of Sub Court, North Paravur. The above application was rejected by the Acquisition Authority for the reason that the award in LAR

No.755/1993 was challenged in appeal. Thereupon the appellant filed O.P.No.12646/1998 before this Court which was disposed of with a direction to

keep the petitioner's application under Section 28A of the LA Act pending till the appeal was disposed of by this Court. Pursuant to the disposal of

the appeal by this Court, the compensation for the 27.67 Ares acquired in this case was redetermined and an award was passed on 10.12.1999

granting an additional amount of Rs.1,17,624/-. Claiming that the actual extent of land acquired from the appellant was 32.39 Ares, he again filed a

petition under Section 28A(3) of the LA Act for enhanced compensation in respect of the balance extent of land. The above application was rejected

by the Land Acquisition Officer on 08.02.2000. Aggrieved by the above order, the appellant preferred O.P No.9089/2000 before this Court which was

disposed of on 05.07.2004 directing the State of Kerala to make a reference to the Court under Section 28A(3) of the LA Act regarding the

correctness of the award passed by the Land Acquisition Officer in the applications filed by the appellant under Section 28A of the LA Act.

Accordingly, the matter was again referred to the Additional Sub Court, North Paravur, and it was numbered as LAR No.230/2008.

3. Before the Reference Court, the appellant was examined as AW1 and six documents were marked as Exts.A1 to A6. Four documents were

marked from the part of the respondents as Exts.R1 to R4. A commission report along with report of the Village Officer, Eloor were marked as

Exts.C1 and C1(a).

4. As per the impugned judgment dated 08.12.2010, the learned Sub Judge found that the appellant failed to prove his actual possession or title over

the entire extent of land of 32.39 Ares claimed by him. On the basis of the above observation, the Reference was closed. Aggrieved by the above

judgment of the Additional Sub Court, North Paravur, the appellant is here before this Court with this appeal.

5. Heard the learned counsel for the appellant, the learned Government Pleader representing the first respondent and the learned Standing Counsel

representing respondents 2 and 3.

6. Along with the appeal, the appellant had filed I.A.No.1/2018 under Order XLI Rule 27 of the Code of Civil Procedure for the receipt of additional

documents. The above application has been allowed and the additional documents produced from the part of the appellant are marked as Exts.A7 to

A17.

7. The crux of the issue involved in this case is the actual extent of land acquired from the possession of the appellant for the purpose of a gypsum

plant of FACT Udyogamandal. While it is contended by the appellant that a total extent of 32.39 Ares, which belonged to him by virtue of Exts.A1 to

A3 documents, was acquired by the first respondent, the Land Acquisition authorities would contend that the actual extent of land acquired from the

appellant was only 27.67 Ares. Ext.A1 is the certified copy of a sale deed of the year 1980 by virtue of which the appellant obtained the total extent of

32.39 Ares, out of which 23.49 Ares is stated to be comprised in Sy.No.100/10/2, and the remaining 8.90 Ares in Sy.No.100/8 of Eloor Village.

Exts.A2 and A3 are respectively the proceedings of the Special Tahsildar (Land Reforms), North Paravur and the purchase certificate pertaining to

the assignment of 80 cents of land (22 cents in Sy.No.100/8 and 58 cents in Sy.No.100/10-2 of Eloor Village) in the name of the vendor in Ext.A1 sale

deed. According to the appellant, the above said total extent of 80 cents of land (32.39 Ares) so obtained by him was offered as security before the

third respondent Bank for availing a loan. The additional documents produced before this Court as Exts.A7 to A10 are also relied on by the appellant

in support of his claim of title and possession over the 32.39 Ares of land said to have been acquired by the first respondent. Ext.A7 is the copy of the

order dated 06.07.1977 of the Land Tribunal and Ext.A8 is the statement accompanying the said order. Both the above documents relate to the

assignment of 80 cents of land in favour of the predecessor-in-interest of the appellant herein. Exts.A9 and A10 are notices issued under Forms D and

E respectively in accordance with Section 72(F) of the Land Reforms Act in connection with the assignment of the aforesaid extent of 80 cents of

land in the name of the predecessor-in-interest of the appellant herein. Ext.A11 is a receipt showing the remittance of fee by the appellant herein for

getting the copy of thandaper account of a person by name Sarojini, W/o Madhavan of Kanjirakkatt. Exts.A12 and A14 are respectively the copies of

thandaper accounts of the persons by name Sarojini, W/o. Madhavan and Cicily, W/o Pylee. Ext.A13 is a reply given to the appellant by the Village

Officer, Eloor to an application filed under the Right to Information Act stating that an extent of 18.21 Ares in Sy.No.100/8 and 26.92 Ares in

Sy.Nos.100/10-2 and 100/10-1 of Eloor Village were included as puramboke pursuant to the acquisition for the purpose of gypsum disposal of FACT.

Ext.A15 is a receipt pertaining to the remittance of fee for getting copies of records under the Right to Information Act from Eloor Village Office.

Exts.A16 and A17 are encumbrance certificates of the property of the appellant.

8. It is true that the aforesaid documents relied on by the appellant would give the indication that the appellant had obtained total extent of 80 cents of

land (22 cents in Sy.No.100/8 and 58 cents in Sy.No.100/10-2 of Eloor Village), and that the above property was not subject to any encumbrance

other than the loan liability with third respondent. It is also true that the documents marked as Exts.A12 to A14 disclose the extent of certain land in

Sy.Nos.100/8, 100/10-2 and 100/10-1 which the revenue authorities considered as puramboke land at the time of acquisition for the gypsum plant of

FACT Udyogamandal. But, it is not possible to conclude from the aforesaid records that the acquisition and revenue authorities wrongly considered

the deficit extent of 4.72 Ares (32.39 - 27.67) claimed by the appellant as puramboke land, and that he is actually entitled for compensation for the

aforesaid extent as well. The acquisition records relied on by the Land Acquisition Authorities would reveal that the property acquired from the

appellant was duly identified after proper measurement and the necessary plan and mahazar had been prepared prior to the acquisition. The mere fact

that the title documents relied on by the appellant pointed to an extent of 32.39 Ares of land as belonging to the appellant, by itself is not sufficient to

establish the claim of the appellant that he was in possession of that entire extent, and that the acquisition authorities wrongly excluded an extent of

4.72 Ares of his registered holding as puramboke land. So also, the indications in Exts.A12 to A14 about the puramboke land acquired from

Sy.Nos.100/8, 100/10-2 and 100/10-1 of Eloor Village for the disposal of gypsum of FACT, cannot by itself establish the title and possession of the

appellant over the above said extent of 4.72 Ares. It is pertinent to note in this context that Ext.A12 copy of thandaper account pertains to a person by

name Sarojini, W/o. Madhavan, and Ext.A14 copy of thandaper account is in respect of the person by name Sisily, W/o. Pailee. The appellant has not

produced any records to show that the aforesaid persons by name Sarojini and Sisily were anyway related to his predecessor-in-interest who executed

Ext.A1 sale deed in his favour or that the properties shown in Exts.A12 & A14 copies of thandaper accounts were inclusive of the property which he

obtained by virtue of Ext.A1 sale deed. The Advocate Commissioner and Village Officer who prepared Exts.C1 and C1(a) also reported their inability

to identify the extent of land which the appellant is said to have been divested of, as a result of the acquisition. It is not possible to find the title and

possession of the appellant over the aforesaid deficit extent of 4.72 Ares of land on the basis of assumptions and speculations. Therefore, the findings

of the learned Sub Judge in the impugned judgment cannot be said to be erroneous. Needless to say that the judgment under challenge in this appeal is

not liable to be set aside or modified.

In the result, the appeal is hereby dismissed.