

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

WEDNESDAY, THE 6TH DAY OF APRIL 2022 / 16TH CHAITHRA, 1944

WP (C) NO. 29029 OF 2021

PETITIONERS:

- 1 BINOY
AGED 49 YEARS
S/O SREEDHARAN,
ITTANTHARA,
VADAKKEMURI VILLAGE,
PADINJARE MURI KARA, WARD NO.17, UDAYANAPURAM VILLAGE
PANCHAYAT, VAIKOM TALUK,
KOTTAYAM DISTRICT-686143.

- 2 BAIJU
AGED 50 YEARS
S/O SREEDHARAN,
ITTANTHARA,
VADAKKEMURI VILLAGE,
PADINJARE MURI KARA, WARD NO.17,
UDAYANAPURAM VILLAGE PANCHAYAT,
VAIKOM TALUK,
KOTTAYAM DISTRICT-686143.

- 3 TOMY JOSEPH
AGED 55 YEARS
S/O JOSEPH,
PUTHANKARI,
VADAKKEMURI VILLAGE,
PADINJARE MURI KARA, WARD NO.17,
UDAYANAPURAM VILLAGE PANCHAYAT,
VAIKOM TALUK,
KOTTAYAM DISTRICT-686143.

- 4 JOHNY JOSEPH
AGED 60 YEARS
S/O JOSEPH,
PUTHANKARI,
VADAKKEMURI VILLAGE,
PADINJARE MURI KARA, WARD NO.17,
UDAYANAPURAM VILLAGE PANCHAYAT,
VAIKOM TALUK,
KOTTAYAM DISTRICT-686143.

- 5 P K RADHAKRISHNAN
AGED 64 YEARS
S/O PADMANABHAN,

KALATHIL HOUSE,
VADAKKEMURI VILLAGE,
PADINJARE MURI KARA, WARD NO.17,
UDAYANAPURAM VILLAGE PANCHAYAT,
VAIKOM TALUK,
KOTTAYAM DISTRICT-686143.

- 6 AJITH KUMAR K G
AGED 36 YEARS
S/O GOPINATHAN,
KATTUKANDATHIL HOUSE,
VADAKKEMURI VILLAGE,
PADINJARE MURI KARA, WARD NO.17,
UDAYANAPURAM VILLAGE PANCHAYAT,
VAIKOM TALUK,
KOTTAYAM DISTRICT-686143.
- 7 THANKAMMA
AGED 64 YEARS
W/O GOPINATHAN,
KATTUKANDATHIL HOUSE,
VADAKKEMURI VILLAGE,
PADINJARE MURI KARA, WARD NO.17,
UDAYANAPURAM VILLAGE PANCHAYAT,
VAIKOM TALUK, KOTTAYAM DISTRICT-686143.
- 8 SUNIL KUMAR
AGED 47 YEARS
S/O BAHULEYAN,
NIKARTHIL HOUSE,
VADAKKEMURI VILLAGE,
PADINJARE MURI KARA, WARD NO.17,
UDAYANAPURAM VILLAGE PANCHAYAT,
VAIKOM TALUK, KOTTAYAM DISTRICT-686143.

BY ADVS.
V.N.SANKARJEE
V.N.MADHUSUDANAN
R.UDAYA JYOTHI
M.M.VINOD
M.SUSEELA
KEERTHI B. CHANDRAN
VIJAYAN PILLAI P.K.

C.PURUSHOTHAMAN NAIR
NITHEESH.M

RESPONDENTS :

- 1 STATE OF KERALA
REPRESENTED BY THE SECRETARY, PUBLIC WORKS DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695001.
- 2 THE CHIEF ENGINEER (ROADS & BRIDGES),
PUBLIC WORKS DEPARTMENT, GOVERNMENT OFFICER'S COMPLEX,
THIRUVANANTHAPURAM-695033.
- 3 THE DISTRICT COLLECTOR
COLLECTORATE OFFICE, KOTTAYAM DISTRICT-686002.
- 4 THE DISTRICT COLLECTOR
CIVIL STATION, ALAPPUZHA DISTRICT-688001.
- 5 THE TAHSILDAR,
VAIKOM, KOTTAYAM DISTRICT-686145.
- 6 THE SPECIAL TAHSILDAR
LAND ACQUISITION GENERAL, PALA, KOTTAYAM DISTRICT-
686575.

SRI.K.V.MANOJ KUMAR.SPL.G.P.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
06.04.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.R.

JUDGMENT

The petitioners assail Ext.P31 notification issued by the District Collector, Alappuzha under the provisions of Section 11 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as "Fair Compensation Act"); along with Ext.P36, which is the declaration issued by the said Authority under Section 19 of the afore said Act on various grounds as I will presently state.

2. Dr.V.N.Sankarjee - learned counsel appearing for the petitioners, edified his arguments on the following broad assertions;

- a) The District Collector, Alappuzha, is not the "appropriate Government" as per the provisions of the "Fair Compensation Act".

- b) Even if the District Collector can be construed to be the "appropriate Government", Ext.P31 notification is incompetent because it takes in two different districts.
- c) Ext.P31 notification is bad because the necessary publication, as per Rule 18 of the Right to Fair Compensation Transparency in Land Acquisition Rehabilitation Resettlement Kerala Rules, 2015 (Hereinafter referred to as the "Fair Compensation Rules"), has not been made.
- d) Ext.P36 declaration also suffers from the vice of it not having been published as per the "Fair Compensation Rules".
- e) No individual notice was issued to his clients, as is required under Section 21 of the "Fair Compensation Act", since they are in occupation of the properties in

question.

3. Dr.V.N.Sankarjee then went on to explain each of his afore submissions by arguing that the District Collector cannot be construed to be the "appropriate Government" under the provisions of Section 3E of the "Fair Compensation Act", since said Authority can only obtain the competence to requisition and not to acquire lands. As far as the 2nd limb of his argument is concerned, Dr.V.N.Sankarjee predicated that since Section 3E of the "Fair Compensation Act" only provides that District Collector shall be deemed to be the "appropriate Government" for an area not exceeding as may be notified by the Government, Ext.P31 notification - which takes in two different districts, namely Alappuzha and Kottayam - is incompetent.

4. On the 3rd, 4th and 5th limbs of his

argument, Dr.V.N.Sankarjee contended that no materials have been placed on record by the official respondents to demonstrate the statutory necessitated publication of either Ext.P31 or Ext.P36; or the service of individual notices on his clients, as required under Section 21 of the "Fair Compensation Act"; and therefore, that they are all liable to be set aside by this Court.

5. In response, Sri.K.V.Manoj Kumar - learned Senior Government Pleader appearing for the official respondents, submitted that Section 3E of the "Fair Compensation Act" defines the words "appropriate Government"; and, under its proviso, makes it ineluctable that, on a notification to be issued by the Government, the Collector of the district shall be deemed to be "the appropriate Government". He submitted that Government has

already issued such a notification and therefore, that the afore contention of the petitioners, that a District Collector, cannot be construed to be the "appropriate Government", has no legs to stand on.

6. He, thereafter, in answer to the 2nd limb of the argument of Dr.V.N.Sankarjee, took my attention to Rule 3(3) of the "Fair Compensation Rules", to show that where the lands to be acquired are spread over more than one district, the requisition for acquisition shall be made to the Collector of that district where the major portion of such lands is situated. He then impelled a corollary argument that this Rule would clearly show that the Collector of any one of the districts can requisition and acquire the land as per the notification of the Government.

7. Finally, on the 3rd, 4th and 5th limbs of

the submissions of Dr.V.N.Sankarjee, Sri.K.V.Manoj Kumar pointed out to a memo of his, dated 06.04.2022, wherein, publications of Exts.P21, 31 and 36, as also the individual notices to the petitioners, have been produced. He thus contented that none of the allegations of the petitioners are factually or forensically tenable and consequently prayed that this writ petition be dismissed.

8. I have considered the afore submissions very carefully, juxtaposed on the various documents produced on record.

9. As far as the contention, that the District Collector cannot be an "appropriate Government" under the provisions of the "Fair Compensation Act" is concerned, I am certain that it deserves to be repelled because, going by the proviso to Section 3E of the same, Government can notify a District Collector to

be the "appropriate Government" and he shall then be deemed to be such Authority therefrom. The notification issued by the Government in this regard is G.O(P) No.649/2015/RD dated 04.12.2015, which is available on the files of the connected matter, namely WP(C) No.22627/2021.

10. The further predication of Dr.V.N.Sankarjee - that the District Collector, in any event, can only be an "requisitioning Authority" and not the "acquiring Authority" - does not also appeal to me because, as rightly stated by Sri.K.V.Manoj Kumar, the Act and the Rules thereunder render it luculent that "appropriate Government" is both the requisitioning and acquiring Authorities; and apodictically, thereafter, when the District Collector is deemed to be such Government, he

will obtain both such capacities.

11. Qua the next argument of the petitioners, namely that the Collector of a district can issue a notification for acquisition solely with respect to the properties within his territory, is concerned, again, as rightly stated by Sri.K.V.Manoj Kumar, Rule 3(3) of the "Fair Compensation Rules" renders it perspicuous that when the land to be acquired is spread over more than one district, the requisition for it and its acquisition shall be made by the Collector of the district where major portion of the said land is situated. In this case, it was without contest - it being expressly admitted - that major portion of the acquisition is required to be done in Alappuzha and therefore, that Ext.P31 has been issued by the District Collector, Alappuzha. I cannot,

hence, find the said notification to be vitiated for that reason.

12. Coming to the publication of Exts.P31 and P36 notifications as also the service of individual notices to the petitioners under Section 21 of the "Fair Compensation Act" is concerned, the learned Government Pleader has produced all paper publications and evidence of service of notices, in substantiation of his plea that the requisites under Rule 18 of the "Fair Compensation Rules" and that under Section 21 of the "Fair Compensation Act", have been complied with.

13. When I evaluate the various paper publications and documents, produced along with a Memo of the Senior Government Pleader dated 06.04.2022, it is indubitable that publications, as are required under Rule 18 of the Rules "Fair Compensation Rules", have been

made and that petitioners have served with individual notices, as required under Section 21 of the "Fair Compensation Act". Since the petitioners do not have a case contrary to this, I am of the firm view that nothing remains in this writ petition to be considered by this Court.

Resultantly and for the afore reasons, I dismiss this writ petition and allow the competent respondents to continue with the project as per law, however, ensuring that every statutory right of the petitioners are implicitly protected and adhered to.

Of course, I must record the submissions of Dr.V.N.Sankarjee that a personal notice, as stated by Sri.K.V.Manojkumar, was never served on his clients, but the documents produced by the learned Government Pleader would clearly show that such a notice was served by affixture

on the petitioners. Since this is a pure question of fact, which cannot be resolved by this Court, while acting under Article 226 of the Constitution of India, I am certain that petitioners must invoke their alternative right under Section 64 of the "Fair Compensation Act", if they intend to raise any dispute with respect to the Award that has been issued or to be issued. I leave full liberty to them to do; for which purpose, all their contentions in such regard are left open.

Sd/-

DEVAN RAMACHANDRAN

JUDGE

SAS

APPENDIX OF WP(C) 29029/2021

PETITIONERS' EXHIBITS

- Exhibit P1 TRUE COPY OF THE SETTLEMENT DEED BEARING NO.281/2003 DATED 27.01.2003 ON THE FILE OF THE SRO, VAIKOM.
- Exhibit P2 TRUE COPY OF THE TAX RECEIPT DATED 22.10.2021 ISSUED FROM VADAKKEMURI VILLAGE IN THANDAPER ACCOUNT NO.1169 TO THE 1ST PETITIONER.
- Exhibit P3 TRUE COPY OF THE BUILDING TAX RECEIPT DATED 8/7/2019 ISSUED FROM UDAYANAPURAM GRAMA PANCHAYAT TO THE 1ST PETITIONER.
- Exhibit P4 TRUE COPY OF THE SETTLEMENT DEED BEARING NO.1690/2011 DATED 5.8.2011 ON THE FILE OF THE S R O, VAIKOM.
- Exhibit P5 TRUE COPY OF THE TAX RECEIPT DATED 3.8.2021 ISSUED FROM VADAKKEMURI VILLAGE IN TANDAPER ACCOUNT NO.15623 TO THE 2ND PETITIONER.
- Exhibit P6 TRUE COPY OF THE BUILDING TAX RECEIPT DATED 10.12.2021 IN RESPECT OF BUILDING NO.17/401 ISSUED FROM UDAYANAPURAM GRAMA PANCHAYAT TO THE 2ND PETITIONER.
- Exhibit P6(A) TRUE COPY OF THE BUILDING TAX RECEIPT DATED 10.12.2021 IN RESPECT OF BUILDING NO.17/402 ISSUED FROM UDAYANAPURAM GRAMA PANCHAYAT TO THE 2ND PETITIONER.
- Exhibit P7 TRUE COPY OF THE LICENSE DATED 24.09.2020 NO. 71/2020-2021/A-7/4824/2020 ISSUED TO THE 2ND PETITIONER BY UDAYANAPURAM GRAMA PANCHAYAT.
- Exhibit P8 TRUE COPY OF THE LICENSE DATED 24.09.2020 NO. 72/2020-2021/A-7/4823/2020 ISSUED TO THE 2ND PETITIONER'S WIFE YAMUNA BAIKU UDAYANAPURAM GRAMA PANCHAYAT.

- Exhibit P9 TRUE COPY OF THE WILL NO.125/2010 DATED 29.06.2010 ON THE FILE OF THE SRO, VAIKOM.
- Exhibit P10 TRUE COPY OF THE WILL NO.160/2010 DATED 06.09.2010 ON THE FILE OF THE SRO, VAIKOM.
- Exhibit P11 TRUE COPY OF THE TAX RECEIPT DATED 12.10.2021 ISSUED FROM VADAKKEMURI VILLAGE IN TANDAPER ACCOUNT NO.18853 TO THE 3RD PETITIONER.
- Exhibit P12 TRUE COPY OF THE BUILDING TAX RECEIPT DATED 8.12.2021 IN RESPECT OF BUILDING NO.17/407 ISSUED FROM UDAYANAPURAM GRAMA PANCHAYAT TO THE 3RD PETITIONER.
- Exhibit P12(a) TRUE COPY OF THE BUILDING TAX RECEIPT DATED 8.12.2021 IN RESPECT OF BUILDING NO.17/408 ISSUED FROM UDAYANAPURAM GRAMA PANCHAYAT TO THE 3RD PETITIONER.
- Exhibit P13 TRUE COPY OF THE TAX RECEIPT DATED 8.6.2021 ISSUED FROM VADAKKEMURI VILLAGE IN TANDAPER ACCOUNT NO.18848 TO THE 4TH PETITIONER.
- Exhibit P14 TRUE COPY OF THE BUILDING TAX RECEIPT DATED 8.12.2021 IN RESPECT OF BUILDING NO.17/409 ISSUED FROM UDAYANAPURAM GRAMA PANCHAYAT TO THE 4TH PETITIONER.
- Exhibit P14(a) TRUE COPY OF THE BUILDING TAX RECEIPT DATED 8.12.2021 IN RESPECT OF BUILDING NO.17/410 ISSUED FROM UDAYANAPURAM GRAMA PANCHAYAT TO THE 4TH PETITIONER.
- Exhibit P15 TRUE COPY OF THE SALE DEED NO.3441/1993 DATED 29.11.1993 ON THE FILE OF THE S R O, VAIKOM.
- Exhibit P16 TRUE COPY OF THE TAX RECEIPT DATED 8.6.2021 ISSUED FROM UDAYANAPURAM GRAMA PANCHAYAT TO THE 4TH PETITIONER.
- Exhibit P17 TRUE COPY OF THE BUILDING TAX RECEIPT DATED 8.12.2021 IN RESPECT OF BUILDING NO.17/411 ISSUED FROM UDAYANAPURAM GRAMA PANCHAYAT TO

THE 4TH PETITIONER.

- Exhibit P18 TRUE COPY OF THE PARTITION DEED NO.2713/2000 DATED 20.09.2000 OF THE S R O, VAIKOM.
- Exhibit P19 TRUE COPY OF THE TAX RECEIPT DATED 22.10.2021 ISSUED FROM VADAKKEMURI VILLAGE IN TANDAPER ACCOUNT NO,11025 TO THE 5TH PETITIONER.
- Exhibit P20 TRUE COPY OF THE BUILDING TAX RECEIPT DATED 2.12.2021 IN BUILDING NO.17/412 ISSUED FROM UDAYANAPURAM GRAMA PANCHAYAT TO THE 5TH PETITIONER.
- Exhibit P21 TRUE COPY OF THE LICENSE DATED 27.07.2015 ISSUED FROM UDAYANAPURAM GRAMA PANCHAYAT TO THE 5TH PETITIONER.
- Exhibit P22 TRUE COPY OF THE SETTLEMENT DEED NO.2262/2013 DATED 26.10.2013 ON THE FILE OF THE S R O, VAIKOM.
- Exhibit P23 TRUE COPY OF THE TAX RECEIPT DATED 21.10.2021 ISSUED FROM VADAKKEMURI VILLAGE IN TANDAPER ACCOUNT NO.16987 TO THE 6TH PETITIONER
- Exhibit P24 TRUE COPY OF THE SALE DEED NO.2826/2003 DATED 27.10.2003 ON THE FILE OF THE SRO, VAIKOM.
- Exhibit P25 TRUE COPY OF THE TAX RECEIPT DATED 21.10.2021 ISSUED FROM VADAKKEMURI VILLAGE IN TANDAPER ACCOUNT NO.12059 TO THE 7TH PETITIONER.
- Exhibit P26 TRUE COPY OF THE PARTITION DEED BEARING NO.575/2008 DATED 21.2.2008 ON THE FILE OF THE S R O, VAIKOM.
- Exhibit P27 TRUE COPY OF THE TAX RECEIPT DATED 18.10.2021 ISSUED FROM VADAKKEMURI VILLAGE IN TANDAPER ACCOUNT NO.14154 TO THE 8TH PETITIONER.
- Exhibit P28 TRUE COPY OF THE RESIDENTIAL/OWNERSHIP CERTIFICATE DATED 24.09.2020 ISSUED FROM

UDAYANAPURAM GRAMA PANCHAYAT TO THE 8TH PETITIONER.

- Exhibit P29 TRUE COPY OF THE TAX RECEIPT DATED 4.8.2021 ISSUED FROM VADAKKEMURI VILLAGE IN TANDAPER ACCOUNT NO.14155 TO THE 9TH PETITIONER.
- Exhibit P30 TRUE COPY OF THE JUDGMENT DATED 23.05.2016 IN WPC NO.3123/2016 OF THIS HON'BLE COURT.
- Exhibit P31 TRUE COPY OF THE NOTIFICATION NO.G2/21819/2018 DATED 31.01.2020 AS DOWNLOADED FROM THE WEBSITE OF THE 3RD RESPONDENT.
- Exhibit P32 TRUE COPY OF THE REPORT COUCHED AS SOCIAL IMPACT ASSESSMENT STUDY REPORT DATED NIL OF SPRINGS SOLUTIONS TOGETHER WITH THE NOTIFICATION DATED 28.01.2019 ISSUED BY TH4E 4TH RESPONDENT DISTRICT COLLECTOR AS PUBLISHED IN WWW.ALAPUZHA.NIC.IN.
- Exhibit P33 TRUE COPY OF APPRAISAL REPORT OF CHAIRPERSON OF THE EXPERT COMMITTEE DATED 14.11.2019 AS PUBLISHED IN WEBSITE WWW.ALAPUZHA.NIC.IN.
- Exhibit P34 TRUE COPY OF THE PROCEEDINGS OF THE 4TH RESPONDENT NO.G2/21819/2018 DATED 19.12.2019 AS PUBLISHED IN WEBSITE WWW.ALAPUZHA.NIC.IN.
- Exhibit P35 TRUE COPY OF THE ORDER HRMP NO.3963/2017 DATED 20.07.2017 OF THE HONOURABLE HUMAN RITHTS COMMISSION AS UPLOADED IN WWW.ALAPPUZHA.NIC.IN.
- Exhibit P36 TRUE COPY OF THE DECLARATION DATED 22.2.2021 IN G2/21819/2018 ISSUED BY THE 4TH PETITIONER.
- Exhibit P37 TRUE COPY OF THE NOTICE DATED 1.12.2021 NO.B2/584/13(LAC 1/2021) ISSUED TO THE 1ST PETITIONER BY THE 6TH RESPONDENT.
- Exhibit P38 TRUE COPY OF THE NOTICE DATED 1.12.2021

NO.B2/584/13(LAC 2/2021) ISSUED TO THE 2ND
PETITIONER BY THE 6TH RESPONDENT.

Exhibit P39

TRUE COPY OF THE NOTICE DATED 1.12.2021
NO.B2/584/13(LAC 3/2021) ISSUED TO THE 3RD
PETITIONER BY THE 6TH RESPONDENT.

Exhibit P40

TRUE COPY OF THE NOTICE DATED 1.12.2021
NO.B2/584/13(LAC 4/2021) ISSUED TO THE 4TH
PETITIONER BY THE 6TH RESPONDENT.

Exhibit P41

TRUE COPY OF THE NOTICE DATED 1.12.2021
NO.B2/584/13(LAC 5/2021) ISSUED TO THE 4TH
PETITIONER BY THE 6TH RESPONDENT.