

Kerala High Court

Abraham @ Biju Cherian vs The District Collector on 4 November, 2009

IN THE HIGH COURT OF KERALA AT ERNAKULAM

WP(C).No. 31317 of 2009(H)

1. ABRAHAM @ BIJU CHERIAN, S/O.CHERIYAN,  
... Petitioner
2. ALIYAMMA CHERIYAN, W/O.CHERIYAN, OF DO.

Vs

1. THE DISTRICT COLLECTOR,  
... Respondent

2. STATE OF KERALA, REPRESENTED BY ITS

For Petitioner :SRK. JOHNSON MANAYANI

For Respondent : No Appearance

The Hon'ble MR. Justice THOTTATHIL B.RADHAKRISHNAN

Dated :04/11/2009

O R D E R

THOTTATHIL B.RADHAKRISHNAN, J.

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W.P(C).No.31317 OF 2009  
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Dated this the 4th day of November, 2009

JUDGMENT

1.An item of land belonging to the petitioners was acquired. They appear to have challenged that acquisition leading to matters before this Court in writ jurisdiction. The District Collector passed the award. The petitioners refused to accept compensation on ground that they were agitating against the acquisition before this Court. Obviously, the Collector deposited the compensation amount in the reference court. That essentially is the reference under Section 31 of the Land Acquisition Act, 1894. Ext.P1 is the application of the petitioners for enhancement of compensation. The pendency of

any reference under Section 18, if made in accordance with law, is not a ground to exclude the conclusion of the proceedings referable to the reference under Section 31 of the LA Act, if such proceedings can be concluded earlier. This will result in the claimants being eligible for release of fund which WPC.31317/09 Page numbers are in deposit, notwithstanding the pendency of reference application under Section 18.

2.It appears that the reference stood dismissed for default. The application filed for restoration of that was again dismissed for default. The further application for restoration of the earlier application for restoration was allowed on 26.10.2009. But, in the mean while, the court below has issued the order dated 26.8.2009, dismissing the cheque application filed by the petitioners. I do not find any ground to accuse the court below of having committed any error of law or in jurisdiction, in taking that course of action because as on 26.8.2009, the date of dismissal of the cheque application, the reference stood dismissed and the same was restored only on 26.8.2009, though such restoration energises the matter fully.

3.Taking the aforesaid into consideration, it is ordered that the impugned order dated 26.8.2009, dismissing the cheque application, shall not stand in the way of the petitioners WPC.31317/09 Page numbers making a fresh cheque application and if such cheque application is received, the court below will verify whether there is a reference under Section 31 and if so, immediately look into the matter to ascertain whether there is any rival claimant. Otherwise, let cheque be issued for the amounts in deposit, with notice to the Government Pleader, at the earliest. Learned counsel for the petitioners volunteers to file a cheque application tomorrow. If he does so, the same will be taken up by the court below and orders issued at the earliest, at any rate within a period of three weeks. This writ petition is ordered accordingly.

Sd/-

THOTTATHIL B.RADHAKRISHNAN, Judge.

kkb.4/11.