

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

WEDNESDAY, THE 1ST DAY OF MARCH 2023 / 10TH PHALGUNA, 1944

WP (C) NO. 36100 OF 2022

PETITIONER/S:

- 1 RADHAKRISHNAN NAIR
AGED 78 YEARS
S/O.CHELLAPPAN NAIR AND MAHESWARI AMMA, HINDU NAIR,
DOCTOR, VAZHOTTU HOUSE, LAKSHMI NADA, KOLLAM WEST
VILLAGE, KOLLAM TALUK, KOLLAM DISTRICT., PIN - 691015
- 2 LEELABHAI AMMA
AGED 73 YEARS
D/O.CHELLAPPAN NAIR AND MAHESWARI AMMA, HINDU NAIR,
DIVAKARA PRABHU HOUSE, PULLAMCODE P.O., NILAMBOOR
TALUK, MALAPPURAM DISTRICT., PIN - 679329
- 3 SARALAKUMARI AMMA ALSO KNOWN AS SARALAAMMA
AGED 71 YEARS
D/O.CHELLAPPAN NAIR AND MAHESWARI AMMA, INDIRA SADANAM
HOUSE, ATTINGAL P.O., ATTINGAL VILLAGE, CHERAYINKEEZHU
TALUK, THIRUVANTHAPURAM DISTRICT ., PIN - 695101
- 4 LATHIKA
AGED 65 YEARS
D/O.CHELLAPPAN NAIR AND MAHESWARI AMMA, KODUMAN,
SOUPARNIKA HOUSE, ATTINGAL P.O., ATTINGAL VILLAGE,
CHIRAYINKEEZHU TALUK, THIRUVANTHAPPURAM DISTRICT., PIN
- 695101
- 5 C.MOHANAKUMARAN NAIR ALSO KNOWN AS BALAKRISHNAN NAIR,
AGED 68 YEARS
S/O. CHELLAPPAN NAIR AND MAHESWARI AMMA, SAKALYAM,
VIKRAM SARABAI ROAD, MARADU, KANAYANNUR TALUK,
ERNAKULAM., PIN - 682304

BY ADVS.

C.HARINDRAMOHAN NAIR
SEBASTIAN JOSEPH (KURISUMMOOTTIL)

RESPONDENT/S:

- 1 UNION OF INDIA
REPRESENTED BY ITS SECRETARY TO GOVERNMENT, MINISTRY
OF ROAD TRANSPORT AND HIGHWAYS, TRANSPORT BHAVAN-1,

PARLIAMENT STREET, NEW DELHI, PIN - 110001

- 2 SPECIAL DEPUTY COLLECTOR L.A. (NH) AND
COMPETENT AUTHORITY
COLLECTORATE, THIRUVANTHAPURAM, PIN - 695001
- 3 THE PROJECT DIRECTOR,
NATIONAL HIGHWAY AUTHORITY OF INDIA,
THIRUVANTHAPURAM, PIN - 695001
- 4 THE DISTRICT COLLECTOR AND ARBITRATOR
APPOINTED UNDER THE NATIONAL HIGHWAYS ACT,
COLLECTORATE, THIRUVANTHAPPURAM, PIN - 695001

OTHER PRESENT:

SRI. BIMAL K NATH (SR GP), SRI. S MANU (DSGI)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 01.03.2023, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

JUDGMENT

The petitioners in this writ petition claim to be legal heirs of one Chellappan Nair and Maheswari Amma, who died intestate. The aforesaid Chellappan Nair owned 3.95 Ares of land and the aforesaid Maheswari Amma owned another 7.43 Ares of land. These lands have been acquired for the purposes of widening of the NH-66. The 1st petitioner had filed a suit for partition as O.S.No.209/2009 before the Sub Court, Attingal where a preliminary decree was passed regarding the partition of the aforesaid items of property. Aggrieved by the preliminary decree, petitioners 3 and 5 had taken up the matter in appeal as A.S.No.163/2015 before the Additional District Court-III, Thiruvananthapuram where the trial Court decree was modified in so far as it relates to the 7.43 Ares of land belonging to late Maheswari Amma is concerned. The said order of the Appellate Court has become final.

2. At present, the petitioners appear to have no dispute between them regarding the manner in which the properties in question are to be partitioned or to the share which each of them are entitled to in the property of late Chellappan Nair and Maheswari Amma. The 2nd respondent competent authority has issued Ext.P3

communication to the petitioners stating that since no final decree has been passed in terms of the judgment and decree of the Appellate Court, it is not possible at present to pay compensation to the petitioners. It is aggrieved by the said communication that the petitioners have approached this Court.

3. Having heard the learned counsel appearing for the petitioners, the learned senior Government Pleader appearing for the competent authority and the learned Deputy Solicitor General appearing for the National Highways Authority of India, I am of the view that the fact that there is no final decree passed on the basis of the Appellate Court decree need not in any manner delay the payment of compensation to the petitioners as it appears that, at present, there is no dispute amongst them as to the manner in which they will succeed to the properties of late Chellappan Nair and late Maheswari Amma. This may be in terms of the Appellate Court decree or otherwise. If the petitioners are the only legal heirs of the late Chellappan Nair and late Maheswari Amma, the petitioners can be paid the compensation provided they execute a notarized affidavit before the competent authority regarding the manner in which they are entitled to claim compensation in respect of the land acquired. I am of this view on account of the fact that even de-hors the partition suit, it is open to the petitioners to decide between themselves as to

the manner in which they would take share in the properties of their late parents.

Accordingly, this writ petition will stand disposed of directing that on the petitioners executing a duly notarized affidavit before the competent authority setting out the manner in which they will take share in the compensation to be awarded in respect of the acquisition of the land in question, together with proof that they are the only legal heirs of late Chellappan Nair and Maheswari Amma, the competent authority shall take into consideration the said affidavit and shall order for the payment of compensation in the manner set out in the affidavit. This shall be done within a period of one month from the date of receipt of a certified copy of this judgment.

**GOPINATH P.
JUDGE**

acd

APPENDIX OF WP(C) 36100/2022

PETITIONER EXHIBITS

- Exhibit-P1 TRUE COPY OF THE NOTICE OF AWARD
NO.1245/A/2020, DATED 08/11/2021, ISSUED
BY THE 2ND RESPONDENT.
- Exhibit-P2 TRUE COPY OF THE NOTICE OF AWARD
NO.1245/E/2020, DATED 20/10/2021, ISSUED
BY THE 2ND RESPONDENT.
- Exhibit-P3 TRUE COPY OF THE REPLY DATED 19-04-2022
BEARING NO.L.A.C.1245/2020 A.
- Exhibit-P4 TRUE COPY OF THE JUDGMENT DATED
25/3/2015 IN O.S.209/2009 ON THE FILE OF
SUB COURT, ATTINGAL.
- Exhibit-P5 TRUE COPY OF THE DECREE DATED 25/3/2015
IN O.S.209/2009 ON THE FILE OF SUB
COURT, ATTINGAL.
- Exhibit-P6 TRUE COPY OF THE JUDGMENT DATED
28/11/2017 IN A.S.163/2015 ON THE FILE
OF ADDL. DISTRICT JUDGE-III,
THIRUVANANTHAPURAM.
- Exhibit-P7 TRUE COPY OF THE DECREE DATED 28/11/2017
IN A.S.163/2015 ON THE FILE OF ADDL.
DISTRICT JUDGE-III, THIRUVANANTHAPURAM.