

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE AMIT RAWAL

TUESDAY, THE 18TH DAY OF FEBRUARY 2020 / 29TH MAGHA, 1941

WP(C).No.3227 OF 2020(C)

PETITIONER:

VISWANATHAN M. ,
AGED 59 YEARS, S/O. LATE K.S. MANI,
ELUPARAMBIL, AZAD ROAD, SOUTH END, THAMMAAM,
PULLEPPADY ROAD, KATHRIKADAVU, KALOOR-682017.

BY ADVS.

SRI.T.R.S.KUMAR
SMT.DEENA JOSEPH
SHRI.ABHILASH AUGUSTINE M.

RESPONDENTS:

- 1 THE CHIEF COMMISSIONER,
INCOME TAX DEPARTMENT, C.R. BUILDING,
I.S. PRESS ROAD, KOCHI-682018.
- 2 THE COMMISSIONER OF INCOME TAX,
C.R. BUILDING, I.S. PRESS ROAD, KOCHI-682018.
- 3 THE INCOME TAX OFFICER,
CORPORATE WARD 2(2), I.S. PRESS ROAD, KOCHI-682018.
- 4 THE SPECIAL TAHSILDAR (L.A.),
CORPORATION OF KOCHI, VYTTILA-682019.
- 5 CORPORATION OF KOCHI,
REPRESENTED BY ITS SECRETARY,
CORPORATION OFFICE, KOCHI-682011.

BY ADVS.

R4 BY DR. THUSHARA JAMES, GOVERNMENT PLEADER
R5 BY SRI.P.FAZIL, STANDING COUNSEL, COCHIN CORPORATION
R1 TO R3 BY SRI.CHRISTOPHER ABRAHAM, STANDING COUNSEL

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
18.02.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Petitioner, in the instant case, has assailed Exts.P7 and P8, assessment order and notice of demand issued by the Income Tax Department, respectively.

2. Succinctly, the facts which are necessary for adjudication of the controversy involved are that the petitioner is the absolute owner, title holder of a land to the extent of 7.33 cents with three shop rooms and a residential building in Sy. No.170/2 and 170/4 in Elamkulam Village, Kanayannoor Taluk, Ernakulam District, which is situated on the southern side of the Thammanam Pullepady Road. The market value of the land on announcement of Smart City Project, Metro Rail Project and Mono Rail Project, increased many fold. Out of the aforementioned land, about 1.32 Ares (3.26 cents) of land with a building of 1500 Sq. Ft. had been taken for expansion of Thammanam Pullepady Road. The Land Acquisition Officer fixed the value as Rs.10,48,269/- and the improvements at Rs.3,864/-. The notification under

the Old Land Acquisition Act was published on 24.04.2013. Thereafter, declaration under Sections 6(1) and 17(1) of the erstwhile Land Acquisition Act, 1894, showing the emergency provisions which tantamount to compulsory acquisition were published.

3. The learned counsel for the petitioner submits that the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, which came into force with effect from 01.01.2014 and the award in the aforementioned case has not so far been passed. The fact of the matter is, under the agreement Ext.P1 dated 13.08.2016, entered into between the petitioner and other land owners and Corporation of Kochi, the land was acquired. In other words, the effect of the acquisition under the Land Acquisition Act, 1894 effaced. In terms of the aforementioned agreement a sum of Rs.43,08,268/- (80% of the total amount due, after deducting 1% Income Tax amount of Rs.43,518/-) was released to the petitioner and 20% is still pending, for which W.P.(C)

No.208/2020 was filed, which is pending consideration.

4. The grievance in instant writ petition is confined to the impugned assessment order and demand notice whereby the Assessing Officer, after undertaking the assessment order brought the case of the petitioner under scrutiny and issued a notice under Section 143 (1) of the Income Tax Act, 1961. In the result thereof, the petitioner received a show cause notice. Petitioner was represented through an authorised representative and brought to the fact that the aforementioned compensation can be exempted under Section 96 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 as it would not fall within the mischief of Section 54F of the Income Tax Act, 1961. In support of the aforementioned contention, reliance has been laid to Circular No.36/2016 dated 25.08.2016 whereby the Central Board of Direct Taxes issued a clarification that if the land is non-agricultural, it would not be taxable as per the provisions of the Income-tax Act, 1961. The assessment order and

the demand notice are wholly without jurisdiction, malicious and not sustainable in the eyes of law.

5. Per contra, Sri.Christopher Abraham, the learned Standing Counsel for the Income-tax did not deny the issuance of the Circular No.36/2016 dated 25.08.2016 (Ext.P10) but supports the impugned order on the premise that the occupancy certificate placed on record reveals that the construction was not done within a period of three years, in order to claim exemption from the Capital gain and urges this Court for dismissal of this writ petition.

6. Having heard the learned counsel appearing for both the parties and apprising the paper books, I am of the view that there is force and merit in the submissions. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 came into force with effect from 01.01.2014. It is a matter of record that the parties to the lis; viz., the petitioner and the acquisition authority, for the purpose of coming out the way development had in unison agreed to

acquire and give the land on the basis of certain conditions in fixing the market value. Petitioner, in lieu, thereof received 80% of the amount, i.e., Rs.43,51,786/-. I would not be commenting on the claim of the petitioner with regard to the balance amount, as the matter is subjudice in this Court. The language of Section 96 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, do not leave any doubt in the mind that if the land is either acquired or the result of an agreement, it could not fall within the mischief of Income Tax Act, in other words, exemption is liable to be granted. It is in this background of the matter and owing to certain confusions, the Central Board of Direct Tax vide the Circular No.36/2016 dated 25.08.2016 came out with a clarification. For the sake of brevity, only relevant portion of the circular is re-produced herein:-

"3. As no distinction has been made between the compensation received for compulsory acquisition of agricultural land and non-agricultural land in the matter of providing exemption from income-tax under the RFCTLARR Act, the exemption provided under

Section 96 of the RFCTLARR Act is wider in scope than the tax-exemption provided under the existing provisions of Income-tax Act, 1961. This has created uncertainty in the matter of taxability of compensation received on compulsory acquisition of land, especially those relating to acquisition of non-agricultural land. The matter has been examined by the Board and it is hereby clarified that compensation received in respect of award or agreement which has been exempted from levy of income-tax vide section 96 of the RFCTLARR Act shall also not be taxable under the provisions of income-tax Act, 1961 even if there is no specific provision of exemption for such compensation in the Income-tax Act, 1961."

The aforementioned clarification is totally opposite to what has been assessed by the Assessing Officer. For the reasons aforementioned, the assessment and demand notice cannot sustain and are hereby quashed.

The writ petition is accordingly disposed.

Sd/-

AMIT RAWAL, JUDGE

APPENDIX**PETITIONER'S EXHIBITS:**

- EXHIBIT P1 TRUE COPY OF AGREEMENT DATED
30/08/2016.
- EXHIBIT P2 TRUE COPY OF GOVERNMENT ORDER (RT)
NO.3085/14/RD DATED 05/07/2014.
- EXHIBIT P3 TRUE COPY OF GOVERNMENT (RT)
N.1806/14/RD DATED 06/05/2014.
- EXHIBIT P4 TRUE COPY OF GOVERNMENT ORDER (RT)
NO.2085/14/RD DATED 22/05/2014.
- EXHIBIT P5 TRUE COPY OF WRIT PETITION
NO.208/2020 WITHOUT EXHIBITS.
- EXHIBIT P6 TRUE COPY OF INTERIM ORDER IN SLP
NO.11399-11407/2018 DATED 05/09/2019
PASSED BY HON'BLE SUPREME COURT.
- EXHIBIT P7 TRUE COPY OF ASSESSMENT ORDER DATED
19/12/2019.
- EXHIBIT P8 TRUE COPY OF NOTICE OF DEMAND DATED
19/12/2019.
- EXHIBIT P9 TRUE COPY OF NOTICE DATED 28/01/2020
ISSUED BY INCOME TAX DEPARTMENT.
- EXHIBIT P10 TRUE COPY OF CIRCULAR DATED
25/10/2016.
- EXHIBIT P11 TRUE COPY OF CIRCULAR DATED
01/03/2018.

RESPONDENTS' EXHIBITS: NIL