

WP(C) Nos.36125 & 36436/2024



-:1:-

2024:KER:97678

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

FRIDAY, THE 27TH DAY OF DECEMBER 2024 / 6TH POUSHA, 1946

WP(C) NO. 36125 OF 2024

PETITIONER:

M/S. ELSTONE TEA ESTATES LTD.
KALPETTA P.O., HAVING ITS REGISTERED OFFICE AT
NO.9 MISSION ROAD, BANGALORE 560027,
ADMINISTRATIVE OFFICE AT P.B. NO.8, KALPETTA,
WAYANAD-673121, REPRESENTED BY ITS MANAGING
DIRECTOR, K.M. MOIDEENKUNHI, PADHOOR HOUSE,
THEKKIL P.O., KASARAGODE, PIN - 671541

BY ADVS.K.BABU THOMAS
MARYKUTTY BABU
DRISYA DILEEP

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT,
SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001
- 2 THE SECRETARY TO GOVERNMENT
REVENUE DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001
- 3 THE LAND REVENUE COMMISSIONER
COMMISSIONERATE OF LAND REVENUE,
PUBLIC OFFICE BUILDINGS,
THIRUVANANTHAPURAM, PIN - 695033

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- 4 THE DISTRICT COLLECTOR, WAYANAD
& CHAIRMAN, DISTRICT, DISASTER MANAGEMENT
AUTHORITY, CIVIL STATION, WAYANAD AT NORTH
KALPETTA P.O., PIN - 673122
- 5 THE SUB COLLECTOR
REVENUE DIVISIONAL OFFICE, GANDHIPARK,
MANANTHAVADY, WAYANAD, PIN - 670645
- 6 THE DEPUTY COLLECTOR
(LAND RECORDS), CIVIL STATION,
KALPETTA & SPECIAL OFFICER, PIN - 673122
- 7 THE TAHSILDAR
VYTHIRI TALUK, VYTHIRI P.O.,
WAYANAD, PIN - 673576
- 8 THE VILLAGE OFFICER
KALPETTA VILLAGE OFFICE,
KALPETTA P.O., PIN - 673122
- 9 THE GOVERNMENT LAND RESUMPTION SPECIAL OFFICER
PUBLIC OFFICE,
THIRUVANANTHAPURAM, PIN - 695033
- *10 K.M. AHMED NIZAR
SON OF LATE T.. KUNHIMAHIN HAJI,
RESIDING AT VILLA NO.74,
SOBHA LIFESTYLE LEGACY, IVC ROAD,
DEVANAHALLI, BENGALURU

*[ADDITINOAL 10TH RESPONDENT IS IMPLEADED IN WP(C)
36125/2024 AS PER ORDER DATED 06.11.2024 IN
IA.1/24.]
- *11 S.L.P. KUNHIBI
AGED 75 YEARS,
W/O LATE T..B. KUNHIMAHIN HAJI,
PADHOOR HOUSE, THEKKIL. P.O.,
KASARGODE -671541
- 12 ARIFA KUNHIMAHIN
AGED 46 YEARS,
D/ O LATE T.B. KUNHIMAHIN HAJI,

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PADHOOR HOUSE, THEKKIL. P.O.,
KASARGODE -671541

13 TAHIRA ALI
AGED 58 YEARS
D/ O LATE T.B. KUNHIMAHIN HAJI,
PADHOOR HOUSE, THEKKIL. P.O.,
KASARGODE -671541

*[ADDL RESPONDENTS 11 TO 13 ARE IMPEADED IN WP(C)
36125/2024 AS PER ORDER DATED 06.11.2024 IN
IA.2/2024)]

BY ADVS.
S.VINOD BHAT
A.LOWSY
K.GOPALAKRISHNA KURUP, ADVOCATE GENERAL
SHRI.C.E.UNNIKRISHNAN, SPL.GOVERNMENT PLEADER
SHRI.M.H.HANIL KUMAR, SPL.G.P. (REVENUE)
ANAGHA LAKSHMY RAMAN
M.S.IMTHIYAZ AHAMMED
V.NAMITHA
K.SHIBILI NAHA
GAYATHRI RAJAGOPAL

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 26.11.2024, ALONG WITH WP(C).36436/2024, THE
COURT ON 27.12.2024 DELIVERED THE FOLLOWING:

WP(C) Nos.36125 & 36436/2024



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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

FRIDAY, THE 27TH DAY OF DECEMBER 2024 / 6TH POUSHA, 1946

WP(C) NO. 36436 OF 2024

PETITIONER:

M/S. HARRISONS MALAYALAM LIMITED
24/1624, BRISTOW ROAD,
WILLINGDON ISLAND, ERNAKULAM,
COCHIN, REPRESENTED BY ITS HEAD - LEGAL -
SRI. SUMITH BABU, PIN - 682003

BY ADVS.
M.GOPIKRISHNAN NAMBIAR
K.JOHN MATHAI
JOSON MANAVALAN
KURYAN THOMAS
PAULOSE C. ABRAHAM
RAJA KANNAN
JAI MOHAN
NAYANPALLY RAMOLA
E.K.NANDAKUMAR (SR.) (N-23)

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY ITS PRINCIPAL SECRETARY,
REVENUE & DISASTER MANAGEMENT DEPARTMENT
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM., PIN - 695001
- 2 KERALA STATE DISASTER MANAGEMENT AUTHORITY
REPRESENTED BY ITS COMMISSIONER

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OBSERVATORY HILLS, VIKAS BHAVAN P.O.
THIRUVANANTHAPURAM, PIN - 695033

- 3 DISTRICT DISASTER MANAGEMENT AUTHORITY,
WAYANAD, REPRESENTED BY ITS CHAIRPERSON,
KALPETTA, WAYANAD, PIN - 673122
- 4 THE DISTRICT COLLECTOR, WAYANAD
COLLECTORATE,
KALPETTA WAYANAD., PIN - 673122
- 5 THE TAHSILDAR, VYTHIRI TALUK
VYTHIRI TALUK OFFICE VYTHIRI,
WAYANAD., PIN - 673576

BY ADVS.
ADVOCATE GENERAL OFFICE KERALA
K.GOPALAKRISHNA KURUP, ADVOCATE GENERAL
SHRI.C.E.UNNIKRISHNAN SPL. G.P TO A.G
SHRI.M.H.HANIL KUMAR, SPL.G.P. (REVENUE)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 26.11.2024, ALONG WITH WP(C).36125/2024, THE
COURT ON 27.12.2024 DELIVERED THE FOLLOWING:

WP(C) Nos.36125 & 36436/2024



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“C.R.”

J U D G M E N T

In the early hours of July 30, 2024, the picturesque Wayanad District in Kerala witnessed India's worst-ever landslide triggered by torrential downpour, devastating three villages - Chooralmala, Mundakkai and Punchirimattom. The scale of destruction was unimaginable. The entire villages were swept away, claiming 251 lives, injuring many, and leaving more than 47 people missing. Besides, 1555 houses were totally damaged, and 452 houses were partly damaged. The district known for its fertile landscape and agricultural prosperity was plunged into despair.

2. The State Government, immediately after the landslide, came forward with a plan for a comprehensive rehabilitation process for the survivors. It took a decision to build a model township to rehabilitate displaced families permanently and restore the livelihood of the region as a part of disaster management measures in the land having an extent of 65.41

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Hectares in Block No.28, Sy. No.366 of Kottappadi Village, Vythiri Taluk in Nedumbala Estate (hereinafter referred to as 'subject property No.1') and another land having an extent of 78.73 Hectares in Sy. No.88/1 in Block No.19 in the Elstone Tea Estates (hereinafter referred to as 'subject property No.2'). On 4/10/2024, the Government issued GO(Rt) No.11/2024/DMD (for short, GO dated 4/10/2024) according sanction and approval for setting up a model township in the subject properties for rehabilitating the disaster victims and to take over the subject properties under the provisions of the Disaster Management Act, 2005 (for short, the DM Act, 2005). The petitioner company in WP(C) No.36436/2024 who claims to be the title holder in possession of the subject property No.1 and the petitioner company in WP(C) No.36125/2024 who claims to be the title holder in possession of the subject property No.2 challenges GO dated 4/10/2024 mainly on the ground that it was issued beyond the powers under the DM Act, 2005 and is violative of the provisions contained in Article 300A of the Constitution of India. It is specifically alleged in the writ petitions that right to property being a constitutional

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right guaranteed under the Constitution, the Government is not entitled to take over the land from the private entity by resorting to the provisions of the DM Act, 2005 without payment of compensation. The petitioners have also attributed malafides and malice against the Government.

3. The 1st respondent filed a statement in both the writ petitions raising identical contentions. It is contended that the writ petitions are premature in view of the fact that the Government has not directed the petitioners to surrender the landed properties mentioned in the GO dated 4/10/2024 but has only accorded in principle, sanction to the District Collector, Wayanad, to take over the land proposed for rehabilitation/relocation of landslide victims. It is further contended that around 1210 families who were rendered homeless as a result of the landslide are accommodated temporarily on rented premises, and thus, it is a very urgent and imminent necessity to rehabilitate them permanently as part of disaster management measures taken. Accordingly, the District Collector who is the Chairman of the District Disaster

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Management Authority (for short, 'DDMA') identified the subject properties for utilizing the same for rehabilitation and reconstruction after taking into account all relevant factors and the suitability of the land considering environmental feasibility, viability and also the fact that it is free from landslide proneness and gave a proposal to the Government. The Government considered the proposal and, after due deliberation, decided to take possession of the subject properties, invoking the provisions of the DM Act, 2005, and GO dated 4/10/2024 was issued, accepting the proposal and granting in-principle approval for initiating proceedings for taking possession of the same. It is contended that the Government is well within its power to take possession of the subject properties for disaster management invoking the provisions of the DM Act, 2005. The apprehension expressed by the petitioners that the attempt of the Government is to acquire property without payment of adequate compensation by invoking the provisions of the DM Act, 2005 has been answered assuring that appropriate and adequate compensation will be paid to the persons who are eligible and

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entitled to receive the same and while determining the compensation, all relevant factors will be considered by the Government. It is also contended that the right of the petitioners guaranteed under Article 300A of the Constitution of India is in no way affected by the impugned proceedings. The 1st respondent has disputed the title of the petitioners over the subject properties as well.

4. The petitioners have filed reply affidavits refuting the contentions in the statement filed by the 1st respondent and reiterating the averments in the writ petitions.

5. I have heard Sri.P.S.Raman, the learned Senior counsel instructed by Sri.M.Gopikrishnan Nambiar, the learned counsel for the petitioner in WP(C) No.36436/2024, Sri.K.Babu Thomas, the learned counsel for the petitioner in WP(C) No.36125/2024, Sri.K.Gopalakrishna Kurup, the learned Advocate General, Sri.M.H.Hanil Kumar and Sri.C.E.Unnikrishnan, the learned Special Government Pleaders. Sri. S. Vinod Bhat, the learned counsel for the 10th respondent in WP(C) No.36125/2024 and Sri.A.Lowsey, the

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learned counsel for respondents 11 to 13 in WP(C) No.36125/2024.

6. The main challenge in the above writ petitions is against GO dated 4/10/2024, by which the Government has decided to take over the subject properties under the provisions of the DM Act, 2005, for the purpose of setting up a model township for the rehabilitation of persons who were affected by the landslide. In the letter dated 11/9/2024 addressed by the Chairman of the DDMA to the Land Revenue Commissioner (marked as Ext.R1(b) in WP(C) 36436/2024), the Chairman has specifically stated that the subject properties are part of tea plantation in the possession and enjoyment of the petitioners. The learned counsel for the petitioners vehemently argued that the Government has no power to permanently take over the land from a private entity by invoking the provisions of the DM Act, 2005. Relying on Sections 34 and 65 of the DM Act, 2005, the learned counsel submitted that there are specific provisions in the DM Act, 2005, for the acquisition of any resources or material

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from a private entity for a limited period on payment of adequate compensation. The absence of a similar provision for permanent acquisition itself is a clear indication that the legislature did not contemplate permanent acquisition under the provisions of the DM Act, 2005 and the only legislation by which the Government can acquire the land belonging to a private entity is by invoking the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, 'the LARR Act, 2013'). Relying on Sections 2, 40, and 105 of the LARR Act, 2013, the learned counsel argued that after the introduction of the LARR Act, 2013, permanent acquisition of land, even for rehabilitation of the disaster victims, can be done under that Act only. The decision contained in the GO dated 4/10/2024 to take over the subject properties of the petitioners without payment of compensation is without jurisdiction, beyond the powers conferred under the provisions of DM Act, 2005 and is violative of Article 300A of the Constitution of India, added the counsel. Per contra, the learned Advocate General (AG) submitted that the Government is well within its



power to take over the subject properties invoking various provisions of the DM Act, 2005, particularly Sections 2(d), 2(e), 2(e)(viii), (2) (i) r/w Sections 38(2)(k), (l), and 72. The learned AG further submitted that the contention taken by the petitioners that the only option available to the Government is to acquire the subject properties under the provisions of the LARR Act, 2013, is not legally tenable. Reliance was placed on the decision of the Division Bench of this Court in *State of Kerala and Others v. Dr.Biju Ramesh and Another*¹. The learned AG also submitted that the apprehension of the petitioners that the attempt of the Government is to take over the land permanently without payment of compensation is unfounded, and the Government is prepared to pay fair and adequate compensation to the persons who are eligible and entitled to receive the same.

7. In view of the rival submissions, the first and foremost issue that arises for consideration in these writ petitions is whether the DM Act, 2005 empowers the Government to take over land permanently for disaster management.

¹ 2016 KHC 436



8. The DM Act, 2005 was enacted for the effective management of disasters, for prevention and mitigation effects of disasters and for undertaking a holistic, coordinated and prompt response to any disaster situation. Section 2 is the definition clause. Section 2(d) defines the term “disaster” thus:

“(d) “disaster” means a catastrophe, mishap, calamity or grave occurrence in any area, arising from natural or man made causes, or by accident or negligence which results in substantial loss of life or human suffering or damage to, and destruction of, property, or damage to, or degradation of, environment, and is of such a nature or magnitude as to be beyond the coping capacity of the community of the affected area;

Section 2(e) defines the term “disaster management” thus:

“(e) “disaster management” means a continuous and integrated process of planning, organising, coordinating and implementing measures which are necessary or expedient for-

- (i) prevention of danger or threat of any disaster;*
- (ii) mitigation or reduction of risk of any disaster or its severity or consequences;*
- (iii) capacity-building;*
- (iv) preparedness to deal with any disaster;*
- (v) prompt response to any threatening disaster situation or disaster;*
- (vi) assessing the severity or magnitude of effects of any*



*disaster;(vii)evacuation, rescue and relief;
(viii)rehabilitation and reconstruction.”*

Section 2(b) defines “capacity-building” thus:

- (b) “capacity-building” includes—*
- (i) identification of existing resources and resources to be acquired or created;*
 - (ii) acquiring or creating resources identified under sub-clause (i);*
 - (iii) organisation and training of personnel and coordination of such training for effective management of disasters.”*

Going by the definition of “disaster” quoted above, there is no room for doubt that the devastating landslide that occurred at Wayanad is a disaster. The definition of “disaster management” indicates that disaster management is a continuous act and process of planning, organizing, coordinating, and implementing measures that are necessary or expedient for the prevention of danger or threat of any disaster, mitigation or reduction of risk of any disaster or its severity or consequences. Disaster management includes the prevention of danger of any threat of disaster, capacity-building, evacuation, rescue and relief, rehabilitation and reconstruction. Disaster management thus



contemplates planning, coordination, and implementation prior to the occurrence of disaster and planning, organization, coordination, and implementation after the occurrence of disaster. Thus, rehabilitation and reconstruction of the victims of disaster after happening of the disaster falls within the ambit of disaster management. For rehabilitation and reconstruction of the disaster victims after the happening of disaster, long-term and permanent measures are to be taken. Capacity-building, which forms part of disaster management, includes acquiring resources. The term “resources,” as defined under Section 2(p) of the DM Act, 2005 includes manpower, services, materials, and provisions.

9. Under the DM Act, 2005, various powers have been given to different authorities, including the DDMA, to achieve the objectives of the Act.

Section 34 deals with the powers and functions of the DDMA in the event of any threatening disaster situation or disaster, which reads thus:

“34. Powers and functions of District Authority in the event of any threatening disaster situation or disaster .-For the



purpose of assisting, protecting or providing relief to the community, in response to any threatening disaster situation or disaster, the District Authority may-

(a) give directions for the release and use of resources available with any Department of the Government and the local authority in the district;

(b) control and restrict vehicular traffic to, from and within, the vulnerable or affected area;

(c) control and restrict the entry of any person into, his movement within and departure from, a vulnerable or affected area;

(d) remove debris, conduct search and carry out rescue operations;

(e) provide shelter, food, drinking water and essential provisions, health-care and services;

(f) establish emergency communication systems in the affected area;

(g) make arrangements for the disposal of the unclaimed dead bodies;

(h) recommend to any Department of the Government of the State or any authority or body under that Government at the district level to take such measures as are necessary in its opinion;

(i) require experts and consultants in the relevant fields to advise and assist as it may deem necessary;

(j) procure exclusive or preferential use of amenities from any authority or person;

(k) construct temporary bridges or other necessary structures and demolish structures which may be



hazardous to public or aggravate the effects of the disaster;

(l) ensure that the non-governmental organisations carry out their activities in an equitable and non-discriminatory manner;

(m) take such other steps as may be required or warranted to be taken in such a situation.”

Section 34 clearly contemplates action by the DDMA in two situations. i.e., (i) in response to any threatening disaster situation or (ii) disaster. As stated already, the term “disaster management” as defined in Section 2(e) of the DM Act, 2005, means a continuous and integrated process of planning, organizing, coordinating and implementing measures which are necessary or expedient for the prevention of danger or threat of any disaster and for capacity-building, rehabilitation and reconstruction. Sub clause (m) of Section 34 specifically empowers the DDMA to take such other steps as may be required or warranted to be taken in the case of disaster. Thus, any measure for capacity-building or rehabilitating the disaster victims and reconstructing the damage caused by the disaster are statutorily contemplated and within the powers of the DDMA.



10. Section 38 of the DM Act, 2005 deals with the measures to be taken by the State Government for disaster management. It reads thus:

"38. State Government to take measures .-(1) Subject to the provisions of this Act, each State Government shall take all measures specified in the guidelines laid down by the National Authority and such further measures as it deems necessary or expedient, for the purpose of disaster management.

(2) The measures which the State Government may take under sub-section (1) include measures with respect to all or any of the following matters, namely:-

(a) coordination of actions of different departments of the Government of the State, the State Authority, District Authorities, local authority and other non-governmental organisations;

(b) cooperation and assistance in the disaster management to the National Authority and National Executive Committee, the State Authority and the State Executive Committee and the District Authorities;

(c) cooperation with, and assistance to, the Ministries or Departments of the Government of India in disaster management, as requested by them or otherwise deemed appropriate by it;

(d) allocation of funds for measures for prevention of disaster, mitigation, capacity-building and preparedness by the departments of the Government of the State in accordance with the provisions of the State Plan and the

*District Plans;*

(e) ensure that the integration of measures for prevention of disaster or mitigation by the departments of the Government of the State in their development plans and projects;

(f) integrate in the State development plan, measures to reduce or mitigate the vulnerability of different parts of the State to different disasters;

(g) ensure the preparation of disaster management plans by different departments of the State in accordance with the guidelines laid down by the National Authority and the State Authority;

(h) establishment of adequate warning systems up to the level of vulnerable communities;

(i) ensure that different departments of the Government of the State and the District Authorities take appropriate preparedness measures;

(j) ensure that in a threatening disaster situation or disaster, the resources of different departments of the Government of the State are made available to the National Executive Committee or the State Executive Committee or the District Authorities, as the case may be, for the purposes of effective response, rescue and relief in any threatening disaster situation or disaster;

(k) provide rehabilitation and reconstruction assistance to the victims of any disaster; and

(l) such other matters as it deems necessary or expedient for the purpose of securing effective implementation of provisions of this Act. “

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Section 38(2)(k) specifically provides for rehabilitation and reconstruction assistance to disaster victims. This clause makes it mandatory for the State Government to take measures for disaster management. Section 39(f)(iii) states that it shall be the responsibility of every department of the Government of Kerala to provide assistance, as required, by the District Authorities for carrying out rehabilitation and reconstruction.

11. The learned Senior Counsel for the petitioner in WP(C) No.36436/2024 vehemently argued that Section 34 could be invoked only as a temporary measure for the purpose of assisting, protecting, or providing relief to the community in response to any threatening disaster situation or disaster. The learned Senior Counsel further submitted that the GO dated 4/10/2024 contemplates taking over possession of subject properties for the construction of a model township, which cannot by any stretch of the imagination be considered temporary. The learned Counsel pressed into service Section 65 of the DM Act, 2005, which states that the period of requisition shall not extend



beyond the period for which the premises are required for rescue purposes. According to the learned Senior Counsel, a joint reading of Sections 34 and 65 makes it clear that the power under Section 34 of the DM Act, 2005 can be exercised only when the premises (which includes land) are needed or likely to be needed temporarily for the purpose of rescue operation as envisaged under Section 65 of the Act. Section 65 reads thus:

"65. Power of requisition of resources, provisions, vehicles, etc., for rescue operations, etc.—(1) If it appears to the National Executive Committee, State Executive Committee or District Authority or any officer as may be authorised by it in this behalf that—

(a) any resources with any authority or person are needed for the purpose of prompt response;

(b) any premises are needed or likely to be needed for the purpose of rescue operations; or

(c) any vehicle is needed or is likely to be needed for the purposes of transport of resources from disaster affected areas or transport of resources to the affected area or transport in connection with rescue, rehabilitation or reconstruction,

such authority may, by order in writing, requisition such resources or premises or such vehicle, as the case may be, and may make such further orders as may appear to it to be necessary or expedient in connection with the



requisitioning.

(2) *Whenever any resource, premises or vehicle is requisitioned under sub-section (1), the period of such requisition shall not extend beyond the period for which such resource, premises or vehicle is required for any of the purposes mentioned in that sub-section.*

(3) *In this section,—*

(a) “resources” includes men and material resources;

(b) “services” includes facilities;

(c) “premises” means any land, building or part of a building and includes a hut, shed or other structure or any part thereof;

(d) “vehicle” means any vehicle used or capable of being used for the purpose of transport, whether propelled by mechanical power or otherwise.”

12. The question whether Section 34 could be exercised only for a temporary period or whether it could be invoked for the execution of a long-term/permanent plan came up for consideration before the Division Bench of this Court in ***Dr.Biju Ramesh***². The question considered in the said case was whether, in the exercise of power under Section 34 of the DM Act, 2005, the District Management Authority can direct the demolition of

² *State of Kerala and Others v. Dr. Biju Ramesh and Another* (2016 KHC 436)



construction belonging to a private individual. The learned Single Judge interpreting Sections 34 and 65 of the DM Act, 2005, took the view that the said provisions do not authorize authorities under the Act to dispossess, evict, or acquire property of persons permanently. It was further held that the DM Act, 2005, in circumstances of public need in conflict with the public interest, did not envision the authority to act upon other than through the mechanism of ordinary law except in emergency situations as a temporary measure. Thus, in order to acquire or dispossess or evict the property of a private person permanently, the authorities need to rely on allied or related laws like the Land Acquisition Act. The learned Single Judge further held that on long-term measures for prevention and capacity building, the authority has no such power as envisaged under Section 34 r/w Section 65, and in the absence of any emergency situation, the District Authority should recourse to the Land Acquisition Act to acquire the land. In appeal, the Division Bench set aside the judgment of the learned Single Judge and held that the finding of the Single Judge that power under Section 34 cannot be exercised

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for the execution of a long-term plan and that power under Section 34 can be exercised only when it is an emergency measure cannot be approved. The Division Bench further found that power under Section 34 of the DM Act, 2005 can be exercised by the DDMA to take any measure in implementing the statutory disaster management plan or to make any measure towards Disaster Management. It was further found that there is no basis to interpret any precondition in Sections 34 and 65, that only when the authority exercises the power under Section 65, the power under Section 34 can be exercised. It was also held that power under Section 65 cannot be hedged by any condition or situation which are not provided for in the statute.

13. The learned counsel for the petitioners submitted that the dictum laid down in *Dr.Biju Ramesh*³ has absolutely no application to the facts of the case inasmuch as the said case pertains to the demolition of a portion of the building which was causing obstruction to the free flow of water through a public

3 *State of Kerala and Others v. Dr. Biju Ramesh and Another* (2016 KHC 436)

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canal owned and maintained by the Government and there was no permanent acquisition of land involved in that case. I cannot subscribe to the said argument. Even though the above case pertains to the demolition of a portion of the building that was causing obstruction to the free flow of water through a public canal owned and maintained by the Government, the main issue involved and decided in that case pertains to the extent of power that could be exercised by DDMA in reference to disaster management. The Division Bench specifically formulated and considered the questions whether the power under Section 34 of the DM Act, 2005 can be exercised by the DDMA in the event the measures to be taken is a long-term measure and whether the DDMA was required to resort to the provisions of the Land Acquisition Act before acquiring or taking possession of premises (which includes land) under the Act, 2005. The Division Bench categorically held that the power under Section 34 of the DM Act, 2005, can be exercised by the DDMA to take any measure towards disaster management, which no doubt includes capacity-building, rehabilitation and reconstruction.



14. Yet another contention of the petitioners that after the introduction of the LARR Act, 2013 the acquisition of land even for the purpose of the rehabilitation of the victims of natural calamities in case of urgency is possible only under that Act cannot also be accepted in view of Section 72 of the DM Act, 2005 which gives overriding effect to the provisions of DM Act, 2005 notwithstanding anything inconsistent therewith contained in any other law or in any instrument having effect by virtue of any law other than the DM Act, 2005. In *Vijayan and Others v. State of Kerala and Others*⁴, this Court held that in times of disaster, DM Act, 2005 will and should override the provisions of other laws because the said Act is intended to protect the very life of the citizens, without which the words right, liberty, or freedom and even the word constitution will have no meaning. The laudable object of the DM Act, 2005 is to protect and safeguard the disaster victims, and thus, the provisions of the Act cannot be interpreted in a manner to restrict the DDMA from exercising power without resorting to what has been provided

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under the provisions of the LARR Act, 2013. The provisions of the DM Act 2005 have to be given a purposive interpretation in view of the objectives sought to be achieved by the Act. The present proceedings were initiated by the Government in the aftermath of a disaster which warranted immediate measures for the rehabilitation of the homeless. The State is not expected to take recourse to any time-consuming process in such an extraordinary circumstance. Extraordinary times call for extraordinary measures. Public interest has to prevail over the private interest of the petitioners in such circumstances.

15. The right of a State or sovereign to its own or his own property is absolute, while that of the subject or citizen to his property is only paramount. The citizen holds his property subject always to the right of the sovereign to take it for a public purpose. This right is called "eminent domain". The right of eminent domain is the right of the sovereign state, through its regular agencies, to reassert, either temporarily or permanently, dominion over any portion of the soil of the State, including private property, without its owner's consent on account of public



exigency and for the public good. Eminent domain is the highest and most exact idea of property remaining in the Government or in the aggregate body of the people in the sovereign capacity. It gives the right to resume possession of property in the manner directed by the Constitution and the laws of the State, whenever the public interest requires it. It is inherent in every sovereign state to exercise its power of eminent domain to expropriate private property for public use without the owner's consent⁵.

16. The provisions in the DM Act, 2005 discussed in detail in the aforementioned paragraphs when tested on the touchstone of the dictum laid down in *Dr. Biju Ramesh*⁶, make it clear that the DDMA, using the power of eminent domain, is competent to take any measure towards disaster management, including permanently taking over/acquiring land of a private person/entity to rehabilitate the disaster victims and reconstruct the damage caused by the disaster. There is no lack of jurisdiction for the DDMA in the exercise of power under Section 34 to take

⁵ *Jilubhai Nhanbhai Khachar and Others v. State of Gujarat and Another*, AIR 1995 142; *State of Bihar v. Kameshwar Singh*, AIR 1952 SC 252

⁶ *State of Kerala and Others v. Dr. Biju Ramesh and Another* (2016 KHC 436)

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over/acquire property for the implementation of disaster management.

17. The learned Senior Counsel for the petitioners submitted that the right to property guaranteed under Article 300A of the Constitution is a constitutional right, and no person shall be dispossessed from his property without payment of adequate compensation. It is true that the right to property is now considered to be not only a constitutional right but also a human right, though not a fundamental right⁷. Article 300A of the Constitution only limits the power of the State that no person shall be deprived of his property save by authority of law. There has to be no deprivation without any sanction of law. The word 'property' used in Article 300A must be understood in the context in which the sovereign power of eminent domain is exercised by the State and expropriated the property. Article 300A gets attracted to an acquisition or taking possession of property by necessary implication for a public purpose, in accordance with

⁷ *Tukaram Kana Joshi and Others v. Maharashtra Industrial Development Corporation and Others* (2013) 1 SCC 353]



the law made by the parliament or of a State Legislature. *Prima facie*, the State would be the Judge to decide whether purpose is public or not. But it is not the sole Judge. This will be subject to judicial review and it is the duty of the court to determine whether a particular purpose is a public purpose or not. Public interest has always been considered to be an essential ingredient of public purpose⁸. No doubt, the decision of the Government to take possession of the subject properties for the purpose of rehabilitating the landslide victims is a public purpose. The obligation of the State to pay just compensation when exercising the power of eminent domain, though not expressly included in Article 300A, can be inferred in that Article⁹. In ***State of Bihar v. Kameshwar Singh***¹⁰, the Supreme Court while holding that 'eminent domain' is a right inherent in every sovereign to take an appropriate private property belonging to individual citizens for public use without the owner's consent, clarified that the payment of compensation, though not an essential ingredient of

⁸ ibid

⁹ ***Vidya Devi v. State of Himachal Pradesh*** (2020 SCC OnLine SC 14), ***Dharmidhar Mishra v. State of Bihar*** [2024 KLT OnLine 1517 (SC)]

¹⁰ AIR 1952 SC 252



the connotation of the term, is an essential element of the valid exercise of such power. In *Tukaram*¹¹, it was held that in a welfare state, statutory authorities are bound to pay legal compensation when the property of a private person is acquired or taken possession of for any public purpose. The Supreme Court recently *in Kolkata Municipal Corporation and Another v. Bimal Kumar Shah and Others*¹² elucidating the scope of the right to property as enshrined under Article 300 A of the Constitution, delineated seven essential sub-rights that the State must protect during the land acquisition process. One of the said sub-rights is the right to fair compensation. It was held that the State is required to ensure fair compensation or appropriate rehabilitation for the displaced property owner. The Bench emphasized that those sub-rights form the core of the right to property under Article 300A, and the nonobservance of those rights would render any land acquisition process unlawful. Very recently, the Supreme Court reiterated that when the power of eminent domain of the Government is

11 *Tukaram Kana Joshi and Others v. Maharashtra Industrial Development Corporation and Others* (2013) 1 SCC 353]

12 2024 SCC OnLine SC 968

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exercised to acquire the land of a private citizen for a public purpose, the said power is coupled with bounden duty and obligation on the part of the Government to ensure that the owners whose lands get acquired are paid compensation¹³. For these reasons, I have no hesitation in holding that the Government is liable to pay just and adequate compensation to the owners of the subject properties. It must be noted that even for the requisition of any resources or material from a private individual for a limited period, payment of compensation to those persons from whom such a requisition is made is provided under Section 65 of the DM Act, 2005. So also, in the case of the acquisition of property as an emergent measure invoking Section 40 of the LARR Act, 2013, payment of 80% of the compensation before taking possession of the land is mandatory. In the counter statement filed by the 1st respondent, it is specifically conceded that the Government is prepared to pay just and adequate compensation to the title holders of the subject properties. In the absence of a specific provision in the DM Act, 2005, for

13 *M/s Ultra Tech Cements Ltd v. Mast Ram*, 2024 KLT OnLine 2316



determination of compensation in case of permanent acquisition/taking possession of immovable property from a private person, the provision contained in the LARR Act, 2013, can be relied on to fix the compensation. The learned AG fairly submitted that the compensation could be determined as per the provisions of the LARR Act, 2013.

18. The 1st respondent, in its counter statement, has disputed the title of the petitioners over the subject properties. It is contended that the petitioners are not 'aggrieved persons' so as to receive compensation. The learned AG submitted that the 1st respondent has already instituted suits against the petitioners for declaration of title and recovery of possession of the subject properties, and hence, the Government is prepared to deposit the compensation determined before any competent court of jurisdiction.

19. The petitioner in WP(C) No.36436/2024 relies on Ext.P1 title deed, Exts.P2 and P3 orders passed by this court in Company Petition, Ext.P4 certificate of incorporation issued by the Registrar

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of Companies and Exts.P5 and P6 land revenue payment receipts to prove its title and possession over the subject property No.1. The petitioner also relies on Ext.P8 judgment of this court to prove its title over the subject property No.1. A reading of Ext.P8 would show that the 1st respondent in the year 2013 appointed a Special Officer and Collector to resume the lands held by the petitioner in the State under the provisions of the Kerala Land Conservancy Act, 1957. The Special Officer so appointed passed an order in the year 2014 ordering the resumption of about 30,000 Acres of land held by the petitioner in the districts of Kollam, Kottayam, Pathanamthitta, and Idukki. Aggrieved by the same, the petitioner approached this Court by filing WP(C) No.33122/2014. A Division Bench of this Court, after elaborate consideration of the matter, by virtue of Ext.P8 judgment, set aside the final order passed by the Special Officer ordering the resumption of lands. Ext.P8 was confirmed by the Supreme Court on 17/9/2018 while dismissing the Special Leave Petition filed by the 1st respondent. In Ext.P8 judgment, there is a categoric finding that the petitioner has title over the disputed property

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No.1. The petitioner in WP(C) No.36125/2024 relies on Exts.P1 and P2 certificates of incorporation, Exts.P4 to P6 title deeds, and Ext.P7 basic tax payment receipt to prove their title and possession over the property. These documents *prima facie* prove the title and possession of the petitioner over the subject property No.2. In Annexure R1(b), the Chairperson, DDMA has reported that the petitioners are in possession of the subject properties. As per Section 3 (x) of the LARR Act, 2013, 'person interested' means all persons claiming an interest in compensation to be made on account of the acquisition of land under the Act. Since the petitioners have *prima facie* title and admitted possession over the property, they are persons interested as defined under Section 3(x) of the LARR Act, 2013. Therefore, the 1st respondent cannot contend that since it does not admit the title of the petitioners over the subject properties, the compensation amount will be deposited in a competent court instead of paying to them. The 1st respondent shall pay the compensation determined in accordance with the LARR Act, 2013 to the petitioners. Of course, since the 1st respondent has already

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instituted suits against the petitioners for declaration of title and recovery of possession of the subject properties, payment of compensation shall be subject to the final outcome of the suits.

In the wake of the above discussions and findings, the writ petitions are disposed of as follows:

(i) The challenge against GO dated 4/10/2024 fails and is rejected.

(ii) The 1st respondent is free to proceed further with GO dated 4/10/2024 to take over the subject properties for rehabilitation/reconstruction of landslide victims in accordance with law.

(iii) The 1st respondent shall determine the total amount of compensation to be awarded to the petitioners for taking over/acquiring the subject properties in accordance with the provisions of the LARR Act, 2013.

(iv) The compensation amount shall be paid to the petitioners before taking possession of the land on the petitioners

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executing a bond that in the event the titles of the properties are declared against them in the suits filed by the 1st respondent, they shall refund the amount of compensation.

(v) The petitioners shall be entitled to pursue the statutory remedies available to them under the provisions of the LARR Act, 2013, for further enhancement of compensation if they are not satisfied with the compensation determined by the 1st respondent.

(vi) Before taking possession of the land, the petitioners shall permit the 1st respondent to enter the subject properties so as to measure and demarcate the areas and boundaries of the subject properties and also to proceed with and complete other necessary formalities for the purpose of taking possession of the properties.

Sd/-

DR. KAUSER EDAPPAGATH

JUDGE

Rp

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APPENDIX OF WP(C) 36125/2024

PETITIONER EXHIBITS

EXHIBIT P1	TRUE COPY OF INCORPORATION CERTIFICATE ISSUED BY REGISTRAR OF COMPANIES , BANGALORE DATED 29-3-1978
EXHIBIT P2	TRUE COPY OF FRESH INCORPORATION CERTIFICATE IN THE NAME OF ELSTONE TEA ESTATES LTD. DATED 23-12-1994
EXHIBIT P3	TRUE COPY OF INCORPORATION PARTICULARS OF THE PETITIONER DOWNLOADED FROM THE WEB SITE OF THE MINISTRY OF CORPORATE AFFAIRS DATED 8-10-2024
EXHIBIT P4	TRUE COPY OF REGISTERED SALE DEED NO.798 OF 1928 OF SRO, VYTHIRI DATED 1-6-1928
EXHIBIT P5	TRUE COPY OF REGISTERED SALE DEED NO.687 OF 1978 DATED 31-7-1978 OF SRO KOZHIKODE
EXHIBIT P6	TRUE COPY OF SALE DEED NO.1601 OF 1993 OF SRO KOZHIKODE DATED 7-6-1993
EXHIBIT P7	TRUE COPY OF BASIC TAX RECEIPT FOR RS.2,54,391/- DATED 8-12-2017
EXHIBIT P8	TRUE COPY OF POSSESSION CERTIFICATE ISSUED BY THE VILLAGE OFFICER, KALPETTA VILLAGE DATED 14-3-2018
EXHIBIT P9	TRUE COPY OF JUDGMENT IN L.A.A. NO.406 OF 2003 DATED 31-5-2010
EXHIBIT P10	TRUE COPY OF ORDER IN SPECIAL LEAVE TO APPEAL (C)... C.C.2821-2822 DATED 25-4-2011
EXHIBIT P11	TRUE COPY OF G.O. (RT) NO.180 OF 2011/PWD DATED 29-1-2011
EXHIBIT P12	TRUE COPY OF G.O. (P) NO.29/22/TAX DATED 30-3-2022

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EXHIBIT P13	TRUE COPY OF LETTER SENT BY THE 9TH RESPONDENT DATED 1-4-2017
EXHIBIT P14	TRUE COPY OF REPLY TO EXHIBIT P13 DATED 14-8-2017
EXHIBIT P15	TRUE COPY OF G.O. (MS) NO.2312/2024/RD DATED 24-9-2024
EXHIBIT P16	TRUE COPY OF G.O. (RT) NO.11/2024/DMD DATED 4-10-2024
EXHIBIT P17	TRUE COPY OF REPRESENTATION TO THE 1ST RESPONDENT DATED 8-10-2024
EXHIBIT P18	TRUE COPY OF REPRESENTATION TO THE 2ND RESPONDENT DATED 8-10-2024
EXHIBIT P19	TRUE COPY OF RELEVANT PORTION OF A REGISTER IN RESPECT OF RESURVEY NO. 88/1 OF KALPATTA VILLAGE
EXHIBIT P20	TRUE COPY OF RELEVANT PAGE OF BASIC TAX REGISTER OF RESURVEY NO.88/1 OF KALPATTA VILLAGE CORRESPONDING TO OLD SURVEY NO. 520 OF KALPATTA VILLAGE
EXHIBIT P21	TRUE COPY OF LETTER DATED 2-11-2024 SUBMITTED BY THE PETITIONER TO THASILDAR LAND RECORDS VYTHIRI TALUK FOR CORRECTION

PETITIONER ANNEXURES

ANNEXURE A1	TRUE COPY OF NOTICE DATED 18-1-2023 FOR THE MEETING
ANNEXURE A2	TRUE COPY OF NOTICE DATED 18-1-2023 TO KUNHIBI
ANNEXURE A3	MINUTES OF MEETING DATED 24-1-2023
ANNEXURE A4	MINUTES OF MEETING DATED 24-1-2023 AND

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RESOLUTION FOR APPOINTMENT OF MANAGING
DIRECTOR

ANNEXURE A5 TRUE COPY OF FIRST TWO PAGES OF COMPANY
PETITION NO. 121/BB/2023

ANNEXURE A6 AFFIDAVIT DATED 23-7-2024

ANNEXURE A7 NOTICE DATED 17-1-2024

ANNEXURE A8 NOTICE DATED 17-1-2024 TO KUNHIBI

RESPONDENT ANNEXURES

ANNEXURE R1(a) TRUE COPY OF THE RELEVANT PAGES OF
MEMORANDUM- KERALA REGARDING MEPPADY
LANDSLIDE DATED 30.07.2024

ANNEXURE R1(b) TRUE COPY OF THE LETTER OF THE DISTRICT
COLLECTOR DATED 11.09.2024 ADDRESSED TO LAND
REVENUE COMMISSIONER.

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PETITIONER EXHIBITS

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| EXHIBIT P1 | TRUE COPY OF THE SALE DEED NO.2805 OF 1923 SRO, CHINGELPUT DATED 25.09.1923 |
| EXHIBIT P2 | TRUE COPY OF THE ORDER DATED 04.04.1979, IN C.P. NO.25 OF 1978, PASSED BY THIS HON'BLE COURT |
| EXHIBIT P3 | TRUE COPY OF THE ORDER DATED 19.09.1984, IN C.P. NO.13 OF 1983, PASSED BY THIS HON'BLE COURT |
| EXHIBIT P4 | TRUE COPY OF THE FRESH CERTIFICATE OF INCORPORATION CONSEQUENT ON CHANGE OF NAME DATED 29.10.1984 ISSUED BY THE REGISTRAR OF COMPANIES, KERALA |
| EXHIBIT P5 | TRUE COPY OF THE BASIC TAX REGISTER PERTAINING TO SURVEY NO. 366/1 OF KOTTAPADI VILLAGE OBTAINED BY THE PETITIONER ON 29.02.2021 |
| EXHIBIT P6 | TRUE COPY OF THE LAND TAX RECEIPT DATED 30.01.2014 ISSUED BY THE VILLAGE OFFICER, KOTTAPADI VILLAGE |
| EXHIBIT P7 | TRUE COPY OF THE LETTER DATED 27.10.2014 TOGETHER WITH THE ENDORSEMENT MADE BY THE VILLAGE OFFICER, KOTTAPPADI DECLINING TO ACCEPT LAND TAX FROM THE PETITIONER |
| EXHIBIT P8 | TRUE COPY OF THE DECISION OF THIS HON'BLE COURT REPORTED IN 2018 (2) KHC 719, HARRISONS MALAYALAM LIMITED VS. STATE OF KERALA |
| EXHIBIT P9 | TRUE COPY OF THE SAID GOVERNMENT ORDER G.O. (ORD.) NO 2312/2024/RD DATED 24.09.2024 |

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EXHIBIT P10 TRUE COPY OF THE NEWSPAPER REPORT DATED
04.10.2024 APPEARED IN INDIAN EXPRESS DAILY

EXHIBIT P11 TRUE COPY OF THE LETTER DATED 05.10.2024
ISSUED BY THE PETITIONER TO RESPONDENTS 1
AND 4

EXHIBIT P12 TRUE COPY OF THE GOVERNMENT ORDER G.O.
(MANU.) NO. 11/2024/DMD DATED 04.10.2024

EXHIBIT P13 TRUE COPY OF THE RELEVANT PAGES OF THE
KERALA STATE DISASTER MANAGEMENT PLAN, 2016

RESPONDENT ANNEXURES

ANNEXURE R1(a) TRUE COPY OF THE RELEVANT PAGES OF
MEMORANDUM- KERALA REGARDING MEPPADY
LANDSLIDE DATED 30.07.2024.

ANNEXURE R1(b) TRUE COPY OF THE LETTER OF THE DISTRICT
COLLECTOR DATED 11.09.2024 ADDRESSED TO
LAND REVENUE COMMISSIONER.