

State of Kerala vs Bineesh

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SooperKanoon Citation : sooperkanoon.com/1291715

Court : Kerala

Decided On : Feb-29-2024

Judge : Honourable Mr. Justice a.Muhammed Mustaque,Honourable Mrs. Justice Shoba Annamma Eapen

Appeal No. : LA.App./456/2015

Appellant : State of Kerala

Respondent : Bineesh

Judgement :

& THURSDAY, THE 29TH DAY OF FEBRUARY 2024 / 10TH PHALGUNA, LA.APP. NO. 372 OF 2015 AGAINST THE JUDGMENT AND DECREE DATED 29.11.2014 IN LAR NO.23 OF 2013 OF PRINCIPAL SUB COURT, KOTTAYAM ---- APPELLANTS/RESPONDENTS 1 AND 2: 1 STATE OF KERALA, REPRESENTED BY THE DISTRICT COLLECTOR, KOTTAYAM-686 001. 2 THE SPECIAL TAHSILDAR L.A.(RAILWAY), KOTTAYAM-686 001. RESPONDENTS/CLAIMANT & 3RD RESPONDENT:

1 KURIAN, S/O.VARKEY, VAKKEL HOUSE, VELLASSERY, KADUTHURUTHY VILLAGE, VAIKOM TALUK, KOTTAYAM-686 604. 2 THE DEPUTY CHIEF ENGINEER (CONSTRUCTION), SOUTHERN RAILWAY, ERNAKULAM-682 011. SRI.DOMSON J.VATTAKUZHAY FOR

R1 SRI.MATHEW JOHN K FOR R1 SRI.K.S.PRENJITH KUMAR, STANDING COUNSEL FOR R2 29.02.2024, ALONG WITH LA.App.No.60/2019, 381/2015 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: LA App.No.372/2015 & conn.cases 2 & THURSDAY, THE 29TH DAY OF FEBRUARY 2024 / 10TH PHALGUNA, LA.APP. NO. 60 OF 2019 AGAINST THE JUDGMENT AND DECREE DATED 29.11.2014 IN LAR NO.21/2014 OF PRINCIPAL SUB COURT, KOTTAYAM ----- APPELLANTS/RESPONDENTS IN L.A.R.: 1 THE STATE OF KERALA, REPRESENTED BY THE DISTRICT COLLECTOR, KOTTAYAM-686001. 2 THE SPECIAL TAHSILDAR LA (RAILWAY), KOTTAYAM-686001. RESPONDENT/CLAIMANT IN L.A.R.: 1 ELSY PETER, NILAPPANA PUSHPAMANGALTHU, VELLASSERY, KADUTHURUTHY VILLAGE, VAIKOM TALUK, KOTTAYAM-686604. 2 THE DEPUTY CHIEF ENGINEER (CONSTRUCTION), SOUTHERN RAILWAY, ERNAKULAM-682001. SRI.MATHEW JOHN (K) FOR R1 SRI.MATHEW DEVASSI FOR R1 SRI.ABY J AUGUSTINE FOR R1 SRI.IMTHIYAS AHAMED FOR R2 29.02.2024, ALONG WITH LA.App..372/2015 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: LA App.No.372/2015 & conn.cases 3 & THURSDAY, THE 29TH DAY OF FEBRUARY 2024 / 10TH PHALGUNA, 1945 LA.APP. NO. 381 OF 2015 AGAINST THE JUDGMENT AND DECREE DATED 29.11.2014 IN LAR NO.5/2013 OF PRINCIPAL SUB COURT, KOTTAYAM ----- APPELLANTS/RESPONDENTS 1 AND 2: 1 STATE OF KERALA, REPRESENTED BY THE DISTRICT COLLECTOR, KOTTAYAM. 2 THE SPECIAL TAHSILDAR L.A. (RAILWAY), KOTTAYAM. RESPONDENTS/CLAIMANT & 3RD RESPONDENT: 1 JOSEPH JOSEPH, MADAKKAMPURATHU PUTHANPURAYIL, POOZHIKKOL, KADUTHURUTHY VILLAGE, VAIKOM TALUK, KOTTAYAM - 686 604. 2 DEPUTY CHIEF ENGINEER (CONSTRUCTION), SOUTHERN RAILWAY, ERNAKULAM - 682 031. SRI.DOMSON J.VATTAKUZHAY FOR R1 SRI.MATHEW JOHN K FOR R1 SRI.K.S.PRENJITH KUMAR, STANDING COUNSEL FOR R2

29.02.2024, ALONG WITH LA.App..372/2015 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: LA App.No.372/2015 & conn.cases 4 & THURSDAY, THE 29TH DAY OF FEBRUARY 2024 / 10TH PHALGUNA, 1945 LA.APP. NO. 389 OF 2015 AGAINST THE JUDGMENT AND DECREE DATED 29.11.2014 IN LAR NO.39/013 OF PRINCIPAL SUB COURT ----- APPELLANTS/RESPONDENTS 1 AND 2: 1 STATE OF KERALA, REPRESENTED BY THE DISTRICT COLLECTOR, KOTTAYAM. 2 THE SPECIAL TAHSILDAR L.A. (RAILWAY), KOTTAYAM. RESPONDENTS/CLAIMANT & 3RD RESPONDENT: 1 JOSEPH, KUMMANAMKOTTU, KADUTHURUTHY, POOZHIKKOL, KADUTHURUTHY VILLAGE, VAIKOM TALUK, KOTTAYAM-686604. 2 DEPUTY CHIEF ENGINEER (CONSTRUCTION), SOUTHERN RAILWAY, ERNAKULAM-682011. SRI.DOMSON J.VATTAKUZH FOR R1 SRI.JOHN MATHEW,SC, RAILWAYS SRI.P.P.M.NAJEEB KHAN, SC, RAILWAYS SRI.MATHEW JOHN K FOR R1 SRI.SREEJITH P.R., STANDING COUNSEL 29.02.2024, ALONG WITH LA.App.372/2015 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: LA App.No.372/2015 & conn.cases 5 & THURSDAY, THE 29TH DAY OF FEBRUARY 2024 / 10TH PHALGUNA, 1945 LA.APP.NO.450 OF 2015 AGAINST THE JUDGMENT AND DECREE DATED 19.12.2014 IN LAR NO.9/2013 OF PRINCIPAL SUB COURT, KOTTAYAM ----- APPELLANTS/RESPONDENT 1 AND 2: 1 STATE OF KERALA, REPRESENTED BY THE DISTRICT COLLECTOR, KOTTAYAM. 2 THE SPECIAL TAHSILDAR L.A.(RAILWAY), KOTTAYAM. RESPONDENTS/CLAIMANT & 3RD RESPONDENT: 1 V.N.DINESH KUMAR, VETTOOR HOUSE, VELLASSERY, KADUTHURUTHY P.O., KADUTHURUTHY VILLAGE, VAIKOM TALUK, KOTTAYAM DISTRICT-686604. 2 DEPUTY CHIEF ENGINEER (CONSTRUCTION), SOUTHERN RAILWAY, ERNAKULAM-682011. SRI.DOMSON J.VATTAKUZH FOR R1 SRI.JOHN MATHEW,SC, RAILWAYS SRI.P.K.SAJEEV, SC, RAILWAYS SRI.MATHEW JOHN K FOR R1 SMT.MINI GOPINATH, CGC

29.02.2024, ALONG WITH LA.App..372/2015 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

LA App.No.372/2015 & conn.cases 6 & THURSDAY, THE 29TH DAY OF FEBRUARY 2024 / 10TH PHALGUNA, 1945 LA.APP. NO.454 OF 2015 AGAINST THE JUDGMENT AND DECREE DATED 19.12.2024 IN LAR NO.15 OF 2013 OF PRINCIPAL SUB COURT, KOTTAYAM ----- APPELLANTS/RESPONDENTS 1 AND 2: 1 STATE OF KERALA, REPRESENTED BY THE DISTRICT COLLECTOR, KOTTAYAM. 2 THE SPECIAL TAHSILDAR L.A (RAILWAY), KOTTAYAM. RESPONDENTS/CLAIMANT & 3RD RESPONDENT:

1 PAUL, S/O.VARKEY, KAMMATHURUTHEL, VELLASSERY, KADUTHURUTHY P.O., KADUTHURUTHY VILLAGE, VAIKOM TALUK, KOTTAYAM - 686 604. 2 DEPUTY CHIEF ENGINEER CONSTRUCTIONS), SOUTHERN RAILWAY, ERNAKULAM-682 011. SRI.DOMSON J.VATTAKUZHAY FOR R1 SRI.MATHEW JOHN K FOR R1 SMT.MINI GOPINATH, CGC, FOR R2 29.02.2024, ALONG WITH LA.App..372/2015 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: LA App.No.372/2015 & conn.cases 7 & THURSDAY, THE 29TH DAY OF FEBRUARY 2024 / 10TH PHALGUNA, 1945 LA.APP. NO.456 OF 2015 AGAINST THE JUDGMENT AND DECREE DATED 19.12.2014 IN LAR NO.11/2013 OF PRINCIPAL SUB COURT, KOTTAYAM ----- APPELLANTS/RESPONDENT NOS.1 & 2: 1 STATE OF KERALA, REPRESENTED BY THE DISTRICT COLLECTOR, KOTTAYAM. 2 THE SPECIAL TAHSILDAR L.A (RAILWAY), KOTTAYAM. RESPONDENTS/CLAIMANT & 3RD RESPONDENT: 1 BINEESH, S/O.KRISHNANKUTTY, POOVAKKULATHY VELLASSERY, KADUTHURUTHY VILLAGE, VAIKOM TALUK, KOTTAYAM DISTRICT-686604. 2 DEPUTY CHIEF ENGINEER (CONSTRUCTION), SOUTHERN RAILWAY, ERNAKULAM-682011. SRI.DOMSON J.VATTAKUZHAY FOR R1 SRI.S.CHANDRASENAN, SC, RAILWAYS FOR R2 SRI.MATHEW JOHN K FOR R1 29.02.2024, ALONG WITH LA.App..372/2015 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: LA App.No.372/2015 & conn.cases 8 & THURSDAY, THE 29TH DAY OF FEBRUARY 2024 / 10TH PHALGUNA, LA.APP.

NO. 464 OF 2015 AGAINST THE JUDGMENT AND DECREE DATED 19.12.2014 IN LAR NO.37 OF 2013 OF PRINCIPAL SUB COURT, KOTTAYAM ----- APPELLANTS/RESPONDENTS 1 & 2: 1 STATE OF KERALA, REPRESENTED BY THE DISTRICT COLLECTOR, KOTTAYAM. 2 THE SPECIAL TAHSILDAR L.A.(RAILWAY), KOTTAYAM. RESPONDENTS/CLAIMANTS & 3RD RESPONDENT: (*1 PANNIKKAL KRISHNAN NARAYANAN, NADUVATHU, VELLASSERY, KADUTHURUTHY P.O., KADUTHURUTHY VILLAGE, VAIKOM TALUK, KOTTAYAM DISTRICT-686 604.)DELETED

(1ST RESPONDENT IS DELETED FROM THE PARTY ARRAY AT THE RISK OF APPELLANT VIDE ORDER DATED 07.08.2017 IN I.A.1239/2016.) 2 JOSE, S/O.VARKEY, KAMMATHURUTHEL, VELLASSERY, KADUTHURUTHY P.O., KADUTHURUTHY VILLAGE, VAIKOM TALUK, KOTTAYAM DISTRICT-686 604. 3 DEPUTY CHIEF ENGINEER (CONSTRUCTIONS), SOUTHERN RAILWAY, ERNAKULAM-682 011. LA App.No.372/2015 & conn.cases 9 SRI.DOMSON J.VATTAKUZHAY FOR R2 SRI.P.K.SAJEEV, SC, RAILWAYS FOR R3 SRI.MATHEW JOHN K FOR R2 SRI.S.BIJU, CGC FOR R3 29.02.2024, ALONG WITH LA.App..372/2015 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: LA App.No.372/2015 & conn.cases 10

& THURSDAY, THE 29TH DAY OF FEBRUARY 2024 / 10TH PHALGUNA, LA.APP. NO. 190 OF 2017 AGAINST THE JUDGMENT AND DECREE DATED 31.08.2015 IN LAR NO.22/2014 OF ADDL.SUB COURT, KOTTAYAM -----

APPELLANTS/RESPONDENTS 1 & 2: 1 STATE OF KERALA, REPRESENTED BY THE DISTRICT COLLECTOR, KOTTAYAM 2 THE SPECIAL TAHSILDAR L.A, (RAILWAY), KOTTAYAM. RESPONDENTS/CLAIMANT & 3RD RESPONDENT: 1 SRI. PAUL, S/O. VARKEY, KUMMATHURUTHEL, VELLASSERY, KADUTHURUTHY-686 604. 2 DEPUTY CHIEF ENGINEER (CONSTRUCTION), SOUTHERN RAILWAY, ERNAKULAM-682 016.

SRI.DOMSON J.VATTAKUZHAY FOR R1 SRI.S.PRASHANTH, SC, RAILWAYS SRI.MATHEW JOHN K FOR R1 SMT.MINI GOPINATH, CGC 29.02.2024, ALONG WITH LA.App..372/2015 AND CONNECTED CASES, THE COURT ON

THE SAME DAY DELIVERED THE FOLLOWING:

LA App.No.372/2015 & conn.cases 11 & THURSDAY, THE 29TH DAY OF FEBRUARY 2024 / 10TH PHALGUNA, 1945 LA.APP. NO. 66 OF 2016 AGAINST THE JUDGMENT AND DECREE DATED 19.12.2014 IN LAR NO.61 OF 2013 OF PRINCIPAL SUB COURT, KOTTAYAM ----- APPELLANTS/RESPONDENT NOS.1 AND 2: 1 STATE OF KERALA, REPRESENTED BY THE DISTRICT COLLECTOR, KOTTAYAM. 2 THE SPECIAL TAHSILDAR L.A. (RAILWAY), KOTTAYAM. RESPONDENTS/CLAIMANT & 3RD RESPONDENT:

1 K.V.PAUL, KAMMATHURUTHEUL, VELLASSERY KARA, KADUTHURUTHY P.O., KADUTHURUTHY VILLAGE, VAIKOM TALUK, KOTTAYAM DISTRICT-686604. 2 DEPUTY CHIEF ENGINEER (CONSTRUCTIONS), SOUTHERN RAILWAY, ERNAKULAM-682011. SRI.DOMSON J.VATTAKUZHAY FOR R1 SRI.JOHN MATHEW,SC, RAILWAYS SRI.S.CHANDRASENAN, SC, RAILWAYS SRI.MATHEW JOHN K FOR R1 BYSRI.K.S.PRENJITH KUMAR, STANDING COUNSEL 29.02.2024, ALONG WITH LA.App..372/2015 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: LA App.No.372/2015 & conn.cases 12 & THURSDAY, THE 29TH DAY OF FEBRUARY 2024 / 10TH PHALGUNA, LA.APP. NO. 73 OF 2016 AGAINST THE JUDGMENT AND DECREE DATED 31.08.2015 IN LAR NO.20/2014 OF SUB COURT, KOTTAYAM -----

APPELLANTS/RESPONDENTS 1 AND 2: 1 STATE OF KERALA, REPRESENTED BY THE DISTRICT COLLECTOR, KOTTAYAM. 2 THE SPECIAL TAHSILDAR, LA (RAILWAY), KOTTAYAM. RESPONDENTS/CLAIMANT 7 3RD RESPONDENT: 1 ELSY PETER, NILAPPANA, PUSHUPAMANGALATH - VELLASSERY, KADUTHURUTHY-686 604. 2 THE DEPUTY CHIEF ENGINEER (CONSTRUCTION), SOUTHERN RAILWAY, ERNAKULAM-682 011.

SRI.MATHEW JOHN (K) FOR R1 SRI. SREEJITH P. R., STANDING COUNSEL FOR R2 SRI.DOMSON J.VATTAKUZHAY FOR R1 29.02.2024, ALONG WITH LA.App..372/2015 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: LA App.No.372/2015 & conn.cases 13

JUDGMENT

[LA.App.Nos.372/2015, 60/2019, 381/2015, 389/2015, & 73/2016]

A.Muhamed Mustaque, J.

These appeals are filed by the State, arising from the

judgment of the reference court. The lands were acquired

from the claimants for the purpose of doubling of railway line from Mulamthuruthy-Chengannoor. The acquired lands admittedly in the following cases stand in 'D, E and D & E Categories': Sl.No. LA Appeal No. Category 1 372/2015 D 2 381/2015 D 3 389/2015 D 4 454/2015 D 5 66/2016 D 6 60/2019 E 7 450/2015 E 8 456/2015 E 9 464/2015 E LA App.No.372/2015 & conn.cases 14 10 73/2016 E 11 190/2017 D&E

2. The learned Government Pleader submitted that

this Court has scaled down the land value in respect of 'Category D' in LA App.No.303/2016 by refixing at Rs.1,58,233/- per Are. The reference court in 'D category', awarded the land value at the rate of Rs.1,85,250/- per Are. Therefore, it is submitted that in respect of 'D Category', the enhancement granted by the reference court shall be reduced. However, he fairly conceded that in respect of 'E Category' the amount awarded is only Rs.18,525/- per Are.

3. The learned counsel for the claimants submitted

that in LAR Nos.60/2013 and 90/2013, the reference court fixed the land value at Rs.2,47,000/- per Are and neither the State nor the requisition authority-railway had challenged the award. It is further submitted that the entire amount to the claimant in LAR Nos.60/2013 and LA App.No.372/2015 & conn.cases 15 amount before the execution court. It is argued that in view of the finality attained in the award in LAR Nos.60/2013 and 90/2013, the claimants are entitled to a parity treatment. It is to be noted that in all these cases originally the land acquired was classified as 'E Category' and thereafter, the reference court converted it to 'D

Category'. Though recategorisation was done, the reference court did not award the same amount awarded to the land acquired, which is the subject matter of reference under LAR Nos.60/2013 and 90/2013.

4. The learned Government Pleader submitted that though they have not preferred an appeal against the award in LAR Nos.60 and 90/2013, it will not operate as a *resjudicata*.

5. The State acquiring the property, exercising

their power, will have to treat all the similarly situated holders of the land equally. The object behind Section 28 of the Land Acquisition Act (for short, the 'Act') is to treat all the holders at par for the fair distribution of compensation. Therefore, any person interested in the LA App.No.372/2015 & conn.cases 16 land covered by the same notification and could not seek reference within the time as provided under Section 18 of the Act would be entitled to be treated at par with those who have already sought reference under Section 18 of the Act, when an enhancement is given to the latter. That apart, the finality of an award and acceptance of the award, demands that all should be treated at par. We specifically note here that though the requisition authority here is the railway, they apparently accepted the award without any demur by depositing the same.

6. If any of the claimants had not sought a

reference under Section 18 of the Act, they would be entitled to claim the compensation amount at par with the claimants under LAR Nos.60/2013 and 90/2013. Therefore, for the same reason, if they have sought a reference, they could not put themselves in a disadvantageous position to accept the lesser amount awarded to them than the amount awarded to other claimants. Though this is not a case strictly coming under Section 28A of the Act, this Court cannot overlook the LA App.No.372/2015 & conn.cases 17 objectives of Section 28A for treating all such persons at par for the purpose of claiming compensation. In the light of the above, we are of the view that these appeals have to be dismissed, warranting no interference. Therefore, the appeals are dismissed. Sd/- A.MUHAMED MUSTAQUE JUDGE Sd/- SHOBA ANNAMMA EAPEN JUDGE In

