SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

State of Kerala vs Anna

State of Kerala vs Anna

SooperKanoon Citation : sooperkanoon.com/1898946

Court : Kerala

Decided On : Mar-14-2019

Judge : Honourable Mr. Justice P.B.Suresh Kumar

Appeal No. : LA.App./384/2014

Appellant : State of Kerala

Respondent : ANNA

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR THURSDAY, THE 14TH DAY OF MARCH 2019 / 23RD PHALGUNA, L.A.App.No.384 of 2014 AGAINST THE JUDGMENT AND DECREE IN LAR 6/2012 of THE SUB COURT, MUVATTUPUZHA DATED 22-11-2013 APPELLANTS/RESPONDENTS: 1 STATE OF KERALA. 2 THE EXECUTIVE ENGINEER, MUVATTUPUZHA VALLEY IRRIGATION PROJECT, DIVISION 4, PIRAVOM. BY ADVS. SRI.SYAMJI RAM, GOVERNMENT PLEADER RESPONDENT/CLAIMANT: ANNA, W/O.AUGUSTHY KOCHARACKAL HOUSE, THIRUMARADY-686687 BY ADV. SRI.SHINDO VARGHESE

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON 14.03.2019, ALONG WITH LA.App.259/2014, LA.App..261/2014, LA.App..721/2013, LA.App..724/2013, LA.App..729/2013, LA.App..748/2013, LA.App..768/2013 & LA.App..700/2015, LA.App..283/2014 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -2-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR THURSDAY, THE 14TH DAY OF MARCH 2019 / 23RD PHALGUNA, 1940 LA.App..No.259 of 2014 AGAINST THE JUDGMENT AND DECREE IN LAR 4/2012 of THE SUB COURT, MUVATTUPUZHA DATED 22-11-2013 APPELLANTS/RESPONDENTS: 1 STATE OF KERALA 2 THE EXECUTIVE ENGINEER M.V.I.P., DIVISION NO.4, PIRAVOM. BY ADVS. SRI.SYAMJI RAM, GOVERNMENT PLEADER RESPONDENT/CLAIMANT: JOHN S/O. MATHAI, MUTTATHUMARIKUNNEL, THIRUMARADY, PIN-686 687. BY ADVS. SRI.C.P.MAHESH SRI.SHINDO VARGHESE THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON 14.03.2019, ALONG WITH LA.App..768/2013, LA.App..748/2013, LA.App..729/2013, LA.App..724/2013, LA.App..721/2013, LA.App..261/2014, LA.App..700/2015, LA.App..384/2014, LA.App..283/2014 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -3-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR THURSDAY, THE 14TH DAY OF MARCH 2019 / 23RD PHALGUNA, 1940 LA.App..No.261 of 2014 AGAINST THE JUDGMENT AND DECREE IN LAR 13/2012 of THE SUB COURT, MUVATTUPUZHA DATED 07.09.2013 APPELLANTS/RESPONDENTS: 1 STATE OF KERALA, REPRESENTED BY DISTRICT COLLECTOR, ERNAKULAM. 2 THE EXECUTIVE ENGINEER, M.V.I.P., DIVISION NO.4, PIRAVOM. BY ADVS. SRI.SYAMJI RAM, GOVERNMENT PLEADER RESPONDENTS/CLAIMANTS: 1 ALIYAMMA, W/O

ABRAHAM, PUTHENPURACKAL, KOOTHATTUKULAM 686662 2 ULAHANNAN MATHEW, VADAKKEDATHU, KIZHAKONBU 686662 3 PAULOSE, S/O VARGHESE,VALIYAKATTAYIL, KIZHAKOMBU 686662 4 ALLY, W/O PAULOSE, VALIYAKATTAYIL, KIZHAKOMBU 686662 BY ADVS. SRI. UMESH N.PAI SRI.BINOY DAVIS SRI.GOPAKUMAR G. (ALUVA) SRI.REJI GEORGE -4- THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON 14.03.2019, ALONG WITH LA.App..768/2013, LA.App..748/2013, LA.App..729/2013, LA.App..724/2013, LA.App..721/2013, LA.App..259/2014, LA.App..700/2015, LA.App..384/2014, LA.App..283/2014 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -5-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR THURSDAY, THE 14TH DAY OF MARCH 2019 / 23RD PHALGUNA, 1940 LA.App..No.700 of 2015 AGAINST THE JUDGMENT AND DECREE IN LAR 4/2014 of THE SUB COURT, MUVATTUPUZHA DATED 31.08.2015 APPELLANTS/RESPONDENTS: 1 THE EXECUTIVE ENGINEER, MUVATTUPUZHA VALLEY IRRIGATION PROJECT DIVISION NO.4, PIRAVOM. 2 THE DISTRICT COLLECTOR, ERNAKULAM. 3 SPECIAL TAHSILDAR (LA) MUVATTUPUZHA VALLEY IRRIGATION PROJECT, KOOTHATTUKULAM. BY ADV. SRI.SYAMJI RAM, GOVERNMENT PLEADER RESPONDENTS/CLAIMANTS: 1 LEELAMMA, AGE NOT KNOWN, W/O.JOSEPH, NEELAMMARIYIL HOUSE, THIRUMARADY-686687. (DIED & LEGAL HEIRS ARE IMPLEADED) 2 JOSEPH, AGE NOT KNOWN, S/O.MATHAI, NEELAMMARIYIL HOUSE, THIRUMARADY-686687. (DIED & LEGAL HEIRS ARE IMPLEADED)

ADDITI 3 SANTHOSH JOSEPH, NEELAMMARIYIL VEEDU, THIRUMARADI ONAL P.O., MOOVATTUPUZHA TALUK, ERNAKULAM-686662. LR'S OF THE DECEASED RESPONDENTS NO 1 AND 2 IS IMPLEADED AS ADDL.RESPONDENT NO.3 VIDE ORDER DATED 24.08.2017 IN I.A.NO.741/2017 -6- BY ADVS. SRI.P.V.JAYACHANDRAN SMT.RESHMA LISA RAJAN SRI.E.B.SHIVANANDAN SRI.NIDHI BALACHANDRAN SRI.PAUL

V.KOLLINAL SRI.S.SUDHEESHKAR

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON 14.03.2019, ALONG WITH LA.App..768/2013, LA.App..748/2013, LA.App..729/2013, LA.App..724/2013, LA.App..721/2013, LA.App..261/2014, LA.App..259/2014, LA.App..384/2014, LA.App..283/2014,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -7-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR THURSDAY, THE 14TH DAY OF MARCH 2019 / 23RD PHALGUNA, 1940 LA.App..No.721 of 2013 AGAINST THE JUDGMENT AND DECREE IN LAR 54/2010 of THE SUB COURT, MUVATTUPUZHA DATED 12-07-2013 APPELLANTS/RESPONDENTS IN LAR: 1 STATE OF KERALA, REPRESENTD BY THE DISTRICT COLLECTOR, ERNAKULAM. 2 THE EXECUTIVE ENGINEER, M.V.I.P., DIVISION NO.4, PIRAVOM. BY ADV. SRI.SYAMJI RAM, GOVERNMENT PLEADER RESPONDENT/CLAIMANT IN LAR: KUNJUMON, S/O.MADHAVAN, EDATHENAL, KIOZHAKOMBU KARA, KOOTHATTUKULAM, MUVATTUPUZHA, ERNAKULAM-686 662. THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON 14.03.2019, ALONG WITH LA.App..768/2013, LA.App..748/2013, LA.App..729/2013, LA.App..724/2013, LA.App..261/2014, LA.App..259/2014, LA.App..700/2015, LA.App..384/2014, LA.App..283/2014,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -8-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR THURSDAY, THE 14TH DAY OF MARCH 2019 / 23RD PHALGUNA, 1940 LA.App..No.724 of 2013 AGAINST THE JUDGMENT AND DECREE IN LAR 110/2011 of THE SUB COURT, MUVATTUPUZHA DATED 28-06-2013 APPELLANTS/RESPONDENTS IN LAR: 1 STATE OF KERALA, REPRESENTED BY THE DISTRICT COLLECTOR, ERNAKULAM. 2 THE EXECUTIVE

ENGINEER, M.V.I.P DIVISION NO.4, PIRAVOM. BY ADVS. SRI.SYAMJI RAM, GOVERNMENT PLEADER RESPONDENT/CLAIMANT IN LAR: PAROO, W/O.MADHAVAN, KUYILANICLKAL, KIZHAKOMBUKARA (REPRESENTED BY POWER OF ATTORNEY HOLDER REGI.S/O.MADHAVAN, KUYILANICLKAL, KIZHAKOMBUKARA. BY ADV. SRI.P.V.JAYACHANDRAN THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON 14.03.2019, ALONG WITH LA.App..768/2013, LA.App..748/2013, LA.App..729/2013, LA.App..721/2013, LA.App..261/2014, LA.App..259/2014, LA.App..700/2015, LA.App..384/2014, LA.App..283/2014,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -9-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR THURSDAY, THE 14TH DAY OF MARCH 2019 / 23RD PHALGUNA, 1940 LA.App..No.729 of 2013 AGAINST THE JUDGMENT AND DECREE IN LAR 2/2012 of THE SUB COURT, MUVATTUPUZHA DATED 12-07-2013 APPELLANTS/1ST AND 2ND RESPONDENTS IN LAR: 1 STATE OF KERALA, REPRESENTED BY THE DISTRICT COLLECTOR, ERNAKULAM 2 THE EXECUTIVE ENGINEER, M.V.I.P DIVISION NO.4, PIRAVOM. BY ADVS. SRI.SYAMJI RAM, GOVERNMENT PLEADER RESPONDENT/CLAIMANT IN LAR: ALEKKUTY, W/O.AVIRACHAN, KANDATHIL, KIZHAKOMBU KARA, 686 661. BY ADV. SRI.REJI GEORGE THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON 14.03.2019, ALONG WITH LA.App..768/2013, LA.App..748/2013, LA.App..724/2013, LA.App..721/2013, LA.App..261/2014, LA.App..259/2014, LA.App..700/2015, LA.App..384/2014, LA.App..283/2014,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -10-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR THURSDAY, THE 14TH DAY OF MARCH 2019 / 23RD PHALGUNA, 1940 LA.App..No.748 of 2013 AGAINST THE JUDGMENT AND DECREE IN LAR

71/2011 of THE SUB COURT, MUVATTUPUZHA DATED 12-07-2013 APPELLANTS/RESPONDENTS IN LAR: 1 STATE OF KERALA, REPRESENTED BY THE DISTRICT COLLECTOR, ERNAKULAM. 2 THE EXECUTIVE ENGINEER, M.V.I.P DIVISION NO.4, PIRAVOM. BY ADVS. SRI.SYAMJI RAM, GOVERNMENT PLEADER RESPONDENTS/CLAIMANTS IN LAR: 1 JOHNS M.JOSEPH S/O.JOSEPH, MACHAMATTATHIL HOUSE, THIRUMARADY KARA - 686 687. 2 ANEESHA, D/O.JOY, (W/O.JOHNS) MELETHU, PAZHANTHOTTAM 683 565, AIKKARANADU VILLAGE (NORTH). BY ADVS. SRI.R.BINDU (SASTHAMANGALAM) SRI.PRASANTH M.P SRI.R.BINDU (SASTHAMANGALAM) THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON 14.03.2019, ALONG WITH LA.App..768/2013, LA.App..729/2013, LA.App..724/2013, LA.App..721/2013, LA.App..261/2014, LA.App..259/2014, LA.App..700/2015, LA.App..384/2014, LA.App..283/2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -11-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR THURSDAY, THE 14TH DAY OF MARCH 2019 / 23RD PHALGUNA, 1940 LA.App..No.768 of 2013 AGAINST THE JUDGMENT AND DECREE IN LAR 109/2011 of THE SUB COURT, MUVATTUPUZHA DATED 12-07-2013 APPELLANTS/RESPONDENTS IN LAR: 1 THE STATE OF KERALA, REPRESENTED BY THE DISTRICT COLLECTOR, ERNAKULAM. 2 THE EXECUTIVE ENGINEER, M.V.I.P DIVISION NO.4, PIRAVOM. BY ADVS. SRI.SYAMJI RAM, GOVERNMENT PLEADER RESPONDENT/CLAIMANT IN LAR: T.A SKARIA S/O. AVIRA, THEKKUMMATTATHIL, KIZHAKOMBU KARA, PIN-686 662. BY ADV. SRI.REJI GEORGE THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON 14.03.2019, ALONG WITH LA.App..748/2013, LA.App..729/2013, LA.App..724/2013, LA.App..721/2013, LA.App..261/2014, LA.App..259/2014, LA.App..700/2015, LA.App..384/2014, LA.App..283/2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -12-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR THURSDAY, THE 14TH DAY OF MARCH 2019 / 23RD PHALGUNA, 1940 LA.App..No. 283 of 2014 AGAINST THE JUDGMENT AND DECREE IN LAR 5/2012 of THE SUB COURT, MUVATTUPUZHA DATED 22-11-2013 APPELLANTS/RESPONDENTS: 1 STATE OF KERALA 2 THE EXECUTIVE ENGINEER, M.V.I.P. DIVISION NO.4, PIRAVOM. BY ADV. SRI.SYAMJI RAM, GOVERNMENT PLEADER RESPONDENT/CLAIMANT: ALICE D/O AUGUSTHY, PLAPPILLYTHOTTIYIL, THIRUMARADY-686687. BY ADV. SRI.SHINDO VARGHESE THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON 14.03.2019, ALONG WITH LA.App..748/2013, LA.App..729/2013, LA.App..724/2013, LA.App..721/2013, LA.App..261/2014, LA.App..259/2014, LA.App..700/2015, LA.App..384/2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -13-

JUDGMENT

These appeals arise from a batch of land acquisition reference cases relating to the acquisition of lands for the construction of Edayar Distributory of the Muvattupuzha Valley Irrigation Project of the State Government. The lands were notified for acquisition under Section 4(1) of the Land Acquisition Act, 1894 on 31.05.2007. The extent of the lands involved in the matters varies from 0.60 Ares to 4.19 Ares. The Land Acquisition Officer fixed the land value for the lands involved in LAR Nos. 6/2012 and 71/2011 at Rs.18,795/-per Are and for the lands involved in LAR Nos.4/2012 and 54/2010 at Rs.12,357/-per Are. Likewise, the Land Acquisition Officer fixed the land value for the lands involved in LAR Nos.13/2012 and 2/2012 at Rs.16,064/ per Are and for the lands involved in LAR No.5/2012 at Rs.20,888/-per Are. Similarly, the Land Acquisition Officer fixed the land value for the lands involved in LAR Nos. 109/2011 and 110/2011 at Rs.22,971/- per Are. Likewise, the Land Acquisition Officer fixed the land value for the lands involved in LAR -14-

No.4/2014 at Rs.20,883/- per Are. Among the cases, LAR Nos.

common award and LAR Nos.4/2012, 5/2012 and 6/2012 were disposed of by another common award. The remaining cases were disposed of individually. The highest land value was fixed by the Land Acquisition Officer for the lands covered by LAR Nos.109/2011 and 110/2011. The land value fixed by the Land Acquisition Officer in those cases was Rs.22,971/- per Are and the reference court enhanced the same to Rs.1,85,325/- per Are, at the rate of Rs.75,000/- per cent. The land value in the remaining cases were fixed by the reference court proportionally downwards on that basis. The State is aggrieved by the enhancement of the land value granted by the reference court and hence these appeals.

2. Heard the learned Government pleader as also the learned counsel for the claimants.

3. As noted, the highest land value was fixed by the

Land Acquisition Officer for the lands covered by LAR Nos.109/2011 and 110/2011. The land value fixed by the Land Acquisition Officer in LAR Nos.109/2011 and 110/2011, viz, -15-

Rs.22,971/- per Are was enhanced by the reference court to Rs.1,85,325/- per Are, at the rate of Rs.75,000/- per cent. As the land value in the remaining cases were re-fixed by the reference court proportionally downwards on that basis, the correctness of the re-fixation of the land value made by the reference court in LAR Nos.109/2011 and 110/2011 would decide the fate of this batch of cases.

4. In LAR No.109/2011, the claimants have produced

two documents, namely Exts.A1 and A2, of which Ext.A1 is a sale deed executed during 1997 in respect of a property situated near to the acquired land. They also examined three witnesses as AW1 to AW3.

Among them, AW2 was the person who executed Ext.A1 document. In addition, at the instance of the claimant in LAR No.109/2011, an Advocate Commissioner was appointed for submitting a report as to the locational advantages of the acquired land with reference to the property covered by Ext.A1 document. Ext.C1 is the report submitted by the Advocate Commissioner.

5. Ext.A1 is the only document produced by the claimant to establish that the land value fixed by the Land -16-

Acquisition Officer is inadequate. As noted, the said document is a sale deed executed on 25.06.1997 in respect of a property measuring two cents lying near to the acquired land. The consideration for the transaction shown in Ext.A1 is Rs.25,500/- per cent. The reference court took the view that land value cannot be fixed based on Ext.A1 document as the land dealt with therein is one situated in a different survey number. The reference court then proceeded to consider the locational importance of the acquired land. Based on the materials on record, the reference court found that the acquired land is one situated near Piravom-Koothattukulam main road and also near to Kizhakombu Bank Junction. The reference court also noticed that the acquired land is situated on the side of a road. Placing reliance on the report of the Advocate Commissioner, the reference court found that there are so many institutions and worship places in the vicinity of the acquired land, including Kizhakombu Branch of Koothattukulam Farmer's Service Co-operative Bank, Mini Department store, St.John's Jacobite Church, St.John's RC Church, Kizhakombu Post Office, Kizhakombu Ayurveda Hospital, St.Joseph's High School, -17-

St.John's H.S.S., T.T.I., L.F.High School, Kizhakombu Devi Temple, Kizhakombu Market and Milk Producer's Co-operative Society. It is on the basis of the locational importance of the acquired land as found by the reference court, it re-fixed the land value at Rs.75,000/- per cent,

which would work out to be Rs.1,85,325/- per Are. It is seen that no evidence, whatsoever, was let in by the Government in this matter, not even formal. Further, in Ext.C1 report, the Advocate Commissioner has stated that the land covered by Ext.A1 sale deed is a land situated about 100 meters from the land involved in LAR No.109/2011. No objection is seen filed by the State to Ext.C1 report which is part of the records. There is, therefore, nothing wrong, according to me, in considering the land value mentioned in Ext.A1, also for the purpose of examining the correctness of the re-fixation made by the reference court having regard to the locational importance of the lands. In Krishi Utpadan Mandi Samiti, Sahaswan, District Badaun

Vs. Bipin Kumar [(2004) 2 SCC 283], the Apex Court has held

that the land value can be re-fixed based on the land value shown in the documents by matching the same by adding -18-

appropriate percentage of the land value for the yearly escalation. In General Manager, Oil and Natural Gas Corporation Ltd., Vs. Rameshbai Jivanbhai Patel and Another [(2008) 14 SCC 745], the Apex Court held that in the case of lands situated in urban and semi urban areas, the land value can be matched by adding 10-15% every year for the price escalation. Ext.C1 report indicates that the area is a semi-urban area. If the land value shown in Ext.A1 is reckoned as the base value, the reference court cannot be found fault with for having re-fixed the land value of the acquired land at Rs.75,000/- per cent, for the same would represent only the land value at an yearly escalation rate of 11.5%, applying the principle laid down by the Apex Court in Rameshbai Jivanbhai.

6. The learned Government Pleader contended that

the only document produced by the claimants to justify the enhancement of the land value sought in the proceedings is Ext.A1 and the reference court having

found that the said document cannot be accepted, there was absolutely no justification for refixation of the land value solely based on the -19-

locational importance of the land. It was also contended by the learned Government Pleader that in the case of wet lands acquired for the very same purpose, the Land Acquisition Officer fixed the land value only at Rs.4,237/- per Are and the reference court enhanced the same to Rs.40,000/- per Are. It is submitted that as per the judgment in L.A.A. No.202/2014, this court reduced the said land value of the wetland to Rs.25,000/- per Are. According to the learned Government Pleader, if the same proportion is applied in the case of dry lands, the land value for the land involved in LAR No.109/2011 cannot be fixed at Rs.75,000/- per cent. It is submitted that, at any rate, the land value has to be refixed in tune with the proportion applied by this court LAA No.202/2014. I do not find any merit in the said contention. True, in the case of wet lands acquired for the same purpose, the Land Acquisition Officer fixed the land value at Rs.4237/-per Are and the same was enhanced by this court to Rs.25,000/-per Are. In other words, this court re-fixed the land value at almost six times. The re-fixation made by the reference court as far as the dry lands are concerned is almost eight times. Merely for the reason that the land value of the -20-

wetlands has been re-fixed at six times by this court, it cannot be argued that the land value of the dry lands also shall be refixed at the same proportion. There is nothing on record to indicate that the same parameters have been applied by the Land Acquisition Officer for fixing the land value of the wetlands and dry lands. Further, it is seen that having found that the reference court re-fixed the land value of the wetland without any basis at Rs.40,000/- per Are, this court reduced the land value to Rs.25,000/- per Are. But as far as the dry lands are concerned, I find that it is having regard to the locational importance of the acquired lands as referred to in the award that the reference court has re-fixed the land value at Rs.75,000/- per cent. In the aforesaid

circumstances, I do not find any merit in these land acquisition appeals and the same are, accordingly, dismissed. Sd/- P.B.SURESH KUMAR JUDGE

VV -21-

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com