

State of Kerala Vs. Devika Asokan and Union of India (Uoi)

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Court : Kerala

Decided On : Nov-06-2009

Judge : S.R. Bannurmath, C.J. and; A.K. Basheer, J.

Appeal No. : WA. No. 2442 of 2009

Appellant : State of Kerala

Respondent : Devika Asokan and Union of India (Uoi)

Advocate for Def. : No Appearance

Advocate for Pet/Ap. : Government Pleader

Disposition : Appeal allowed

Judgement :

S.R. Bannurmath, C.J.

1. Aggrieved by the impugned judgment of the learned Single Judge dated 4th June, 2009 in W.P.(C) No. 7313 of 2004, especially the direction issued to the District Collector to make payment of the compensation with interest at the rate of 12% per annum personally, the first respondent in the writ petition has filed the present writ appeal.

2. The writ petitioner claims to be the wife of the deceased Asokan who was murdered in Middle East, and in this regard eligible compensation was paid by the

Insurance Company for the death of her husband. This amount was received by the Consulate General of India to the tune of Rs. 45145/- which is stated to be forwarded to the District Collector, Thiruvananthapuram for payment to the legal heirs of the deceased.

3. According to the writ petitioner, she and her children are the only legal heirs of the deceased, and alleging that inspite of having received the money, the District Collector has not taken any steps to trace the legal heirs and release the amount for the last five years, she approached this Court and sought for appropriate direction.

4. The learned Single Judge accepting the bare contention of the writ petitioner that, the compensation amount was deposited with the District Collector and there was inaction on the part of the District Collector in disbursing the same to the legal heir, without even the District Collector being a party and without hearing him, proceeded to hold that the District Collector was negligent in not taking steps and as such directed the Government to pay the compensation with 12% interest with further direction that the Government to recover the interest from him personally. It is this direction in the impugned judgment which is challenged before us.

5. In our view, in the absence of any prima facie material as to whether the writ petitioner is the only legal heir of the deceased Asokan and especially in the absence of the District Collector being a party to the proceedings, and without affording him any opportunity, the learned Single Judge has erroneously held that there is default on the part of the District Collector in disbursing of the compensation and as such liable to pay penal interest.

6. It is to be noted that there is nothing on record to show that the writ petitioner has ever approached the District Collector and on the other hand, as is contended by the appellant, after receiving the amount, the District Collector had made enquiries and as nobody approached him, he could not disburse the compensation. It is also not much in dispute that only after the impugned judgment, the writ petitioner has applied for the legal heirship which indicates that even at the time of approaching this Court, no steps have been taken by her to establish that she is the only legal heir, nor approached the District Collector for

that purpose.

7. In that view of the matter, especially when the District Collector was not a party to the writ petition and he was not given any opportunity, we find that the impugned order of the learned Single Judge saddling him with liability to pay interest at the rate of 12% per annum appears to be unjustified. Accordingly that portion of the judgment is set aside and it is directed that the amount in deposit shall be disbursed by the District Collector to the legal heir of the deceased Asokan on production of substantive material to prove the legal heirship and also after holding a detailed enquiry in this regard, to the appropriate legal heir. The District Collector is also directed to complete the enquiry within three months from the date of receipt of a copy of this judgment and disburse the amount as directed above without any interest.

8. The writ appeal is allowed. The impugned judgment of the learned Single Judge stands modified to the above extent.

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