

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE SUNIL THOMAS

THURSDAY, THE 11TH DAY OF JUNE 2015/21ST JYAISHTA, 1937

WA.No. 1782 of 2014 () IN WP(C).182/2014

AGAINST THE ORDER/JUDGMENT IN WP(C) 182/2014 of HIGH COURT OF
KERALA DATED 27-10-2014

APPELLANT(S) :/2ND RESPONDENT

M.S.ASHRAF,
S/O.SYED MOHAMMED,
MANALUMPARAYIL HOUSE,
PAIMATTOM, MANIKKINAR P.O.,
PIN - 686 693.

BY ADVS.SRI.T.A.SHAJI (SR.)
SRI.B.PRAMOD

RESPONDENT(S) :/PETITIONERS&RESPONDENTS 1, 3 TO 6

1. EMMY JOSE, W/O.JOSE, 7,
PRALAYIKKAD SOUTH, KOLANJIYIL,
THURUTHY P.O., PERUMBAVOOR - 683 545.
2. SHYAMA UNNI, W/O.UNNI,
KOCHOOR HOUSE, DOOR NO.37,
TAGORE LANE, PERANDOOR,
ELAMAKKARA, KOCHI - 26.
3. MARYKUTTY THAMBY, W/O.THAMBI,
ANJIVELIL HOUSE,
PINDIMANA P.O., KOTHAMANGALAM - 686 692.
4. ROSELIND ISSAC, W/O.ISSAC JOSE,
VETTIKKAPARAMBIL HOUSE,
EDAYAR P.O., KOOHATTUKULAM, PIN - 686 662.
5. INDIAN BANK, CHETPET BRANCH,
CHENNAI, CHENNAI DISTRICT,
PIN - 600 031,
REP. BY ITS ASSISTANT GENERAL MANAGER.

6. THE RECOVERY OFFICER,
DEBTS RECOVERY TRIBUNAL, 5TH FLOOR,
KSHB BUILDING, PANAMPILLY NAGAR,
ERNAKULAM, PIN - 682 035.
7. BHARAT PETROLEUM CORPORATION LTD.,
IRIMPANAM, KOCHI,
REP. BY ITS TERRITORY MANAGER.
8. R.NARAYANASWAMY & SON,
BPCL DEALER,
A.M.ROAD, PERUMBAVOOR - 683 542,
REP. BY ITS MANAGING PARTNER.
9. THANPURAN L.MANJOORAN,
MANJOOR NIVAS,
PRASANTHY NAGAR, EDAPPALLY P.O.,
PIN - 682 024, ERNAKULAM DISTRICT.

R1 -R4 BY ADV. SRI.P.VISWANATHAN
R1 -R4 BY ADV. SRI.SUNIL N.SHENOI
R5 BY ADV. SRI.S.EASWARAN
R BY SRI.JACOB SEBASTIAN
R7 BY SRI.N.N.SUGUNAPALAN (SR.),
STANDING COUNSEL FOR BPCL
SRI.S.SUJIN
R8 BY SRI.RAJESH VIJAYENDRAN
SMT.SHAMEENA SALAHUDHEEN

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 11-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

THOTTATHIL B.RADHAKRISHNAN &
SUNIL THOMAS, JJ.

.....
W.A.No.1782 of 2014
.....

Dated this the 11th day of June, 2015.

J U D G M E N T

Thottathil B.Radhakrishnan, J.

1. Having heard the learned senior counsel for the writ appellant and the learned counsel appearing for the contesting respondents, including the Bank, we think that all that we are being asked in through this writ appeal is to revisit the discretion exercised by the learned single Judge in fixing a particular amount as legitimate and sufficient compensation for the second respondent in the writ petition, who is the appellant before us.
2. The writ appellant was a bidder in auction through the Debt Recovery Tribunal. The legal representatives of the person, whose property was sold in auction, ultimately, succeeded before the learned single Judge on issues relating to various aspects which are ultimately dealt with in the judgment impugned.
3. Be that as it may, as is discernible from paragraph No.25 of the impugned judgment, the learned single Judge was of the view that

the auction purchaser, being a person who has invested fairly sizable amount for purchasing the property, reasonably expects a minimum return of such investment. Dilating on that aspect and applying mind on the total amount lying in deposit and different other relevant factors, the learned single Judge came to the conclusion that the appellant is entitled to certain amount as is ordered in the resultant portion of the impugned judgment. The reasoning process of the learned single Judge in this regard is well oriented in paragraph Nos.26 and 27 of the impugned judgment. The quantification has been, ultimately, concluded by saying that the compensation component will be represented by whatever is contained in terms of close (v) among the directions issued by the learned single Judge.

4. The aforesaid discussion clearly shows that the learned single Judge, in exercise of writ jurisdiction, was conscious of the fact that some equitable adjustments have to be made and that the equitable adjustments to be made in the case in hand are in the manner that has been done by the learned single Judge. The exercise carried out in writ jurisdiction clearly discloses fair

application of mind and numerous reasons for the conclusions arrived at by the learned single Judge. No provision of any statute law governing rate of interest applies. The quantum meruit doctrine has also to be appropriately understood in contextual exercise of judicial power. We see that the learned Judge has weighed all relevant facts and factors in arriving at the conclusions he had in determining the amount that is payable to the auction purchaser. We, therefore, do not find any ground to visit that decision in exercise of appellate jurisdiction through this intra-court appeal under Section 5 of the Kerala High Court Act, 1958. No ground is made out to sustain this appeal.

In the result, this appeal is dismissed however clarifying that the authority concerned will release the amount without delay. Let this be done, at the earliest, within a period of four weeks from today.

(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

(SUNIL THOMAS, JUDGE)