

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

WEDNESDAY, THE 20TH DAY OF MAY 2015/30TH VAISAKHA, 1937

WP(C).No. 17667 of 2011 (G)

PETITIONER(S) :

MEETHALE ABDUL MAJEED,
S/O.KUNHAMMED,
NEAR GOVERNMENT HIGH SCHOOL, ETTIKULAM POST,
RAMANTHALI VILLAGE, PAYYANNUR,
TALIPARAMBA TALUK,
KANNUR DISTRICT.

BY ADVS.SRI.O.RAMACHANDRAN NAMBIAR
SRI.GEEN T.MATHEW.

RESPONDENT(S) :

1. STATE OF KERALA
REPRESENTED BY THE DISTRICT COLLECTOR,
COLLECTORATE, KANNUR DISTRICT,
PIN - 670 001.
2. SPECIAL TAHSILDAR (LA) GENERAL,
OFFICE OF THE SPECIAL TAHSILDAR, THALASSERY,
KANNUR DISTRICT, PIN - 670 101.

BY SENIOR GOVERNMENT PLEADER SRI. SOJAN JAMES.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 20-05-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

EXHIBIT-P1: TRUE COPY OF THE PETITION DATED 24/04/1998 UNDER
SECTION 28 A OF THE LAND ACQUISITION ACT, 1894.

EXHIBIT-P2: TRUE COPY OF THE JUDGMENT DATED 22/03/2010 IN WA
NO.524/2010 BEFORE THE HONOURABLE COURT.

EXHIBIT-P3: TRUE COPY OF THE ORDER NO.D.DIS/192/10/C DATED
21/02/2011 ISSUED BY THE 2ND RESPONDENT.

RESPONDENT(S) ' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

ANIL K.NARENDRA, J

W.P.(C)No.17667 Of 2011

DATED THIS THE 20th DAY OF MAY, 2015

JUDGMENT

The property owned by the petitioner having an extent of 1 Acre and 25 cents in Survey No.15/1A1A (Re-survey No.74/1) of Ramanthali Village was acquired by the respondents for the purpose of Naval Academy, Ezhimala. The petitioner received the compensation without any protest and he made no reference under Section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') claiming enhancement of compensation. Later, on the basis of the judgment in L.A.R.No.120 of 1987 of the Sub Court, Payyannur, the petitioner made Ext.P1 application for enhancement of the compensation under Section 28A of the Act. The said application was rejected by the first respondent, which order was interfered with by this Court in Ext.P2 judgment by which a Division Bench of this Court directed the second respondent to consider Ext.P1 application filed by the petitioner on merits, on the petitioner furnishing the old survey number of the acquired property.

2. Pursuant to Ext.P2 judgment, the petitioner furnished the

old survey number of the property. The second respondent then considered Ext.P1 application on merit, but the same ended in dismissal by Ext.P3 order of the second respondent. A reading of Ext.P3 order would show that the application submitted by the petitioner under Section 28A of the Act was turned down on the ground that the judgment in L.A.R.No.120 of 1987 was originally pronounced on 20.3.1990 and that the application filed by the petitioner under Section 28A of the Act is relying on a judgment dated 3.9.1997 in the aforesaid L.A.R., which was the revised judgment on the basis of the judgment of this Court in L.A.A.No.229/92 by which this Court has remanded back the matter to the reference court for passing fresh orders. It is aggrieved by Ext.P3 order, the petitioner is before this Court in this writ petition.

3. A counter affidavit has been filed on behalf of the respondent supporting the reasoning made by the second respondent in Ext.P3 order.

4. Heard arguments of the learned counsel for the petitioner and also the learned Senior Government Pleader

appearing for the respondents.

5. The issue raised in this writ petition is squarely covered in favour of the petitioner by a judgment of this Court in **Annamma Thomas v. State of Kerala (2010(1) KLT 623)** in which a learned Judge of this Court has held that an award passed by the reference court following an appellate order of remit is an award sufficient to sustain an application under Section 28A (1) of the Act. Para.23 of the judgment reads thus:

“23. S.28A(1) empowers a person from whom land is acquired, to file an application for redetermination of amount of compensation. Notwithstanding that he had not made an application to the Collector under S.18. This right enures to all who are aggrieved by the award of the Collector. This means that a person who is aggrieved by the award of the Collector, on noticing an award passed by a court which results in the grant of a different rate of compensation to another person whose land is acquired under the same notification, is eligible to make application under S.28A. The question would be as to what would be the basis of that application. The statute is clear. It says under S.28A(1) that the cause of action to file such an application arises where in an award passed in this part, the court allows compensation in excess of the amount award by the

Collector. This means that what is relevant is the award under Part III of the Act which deals with reference to court and procedure thereon. Notwithstanding the fact that an order of remit has been made by an Appellate Court in exercise of the authority under S.54 of the Land Acquisition Act, the consequential adjudication by the reference court and the resultant award that would be passed after remit by the Appellate Court is nothing but an award under Part III of the Act. So much so, an award passed by reference court following an appellate order of remit, is an award sufficient to sustain an application under S.28A(1) of the Act.”

6. The judgment of the learned Single Judge in **Annamma Thomas's case**(supra) was confirmed by a Division Bench of this Court in **District Collector, Kannur and others v. Athickal Muhammed Kunhi and Others (2013 (1) KHC 13)**.

7. In view of the principle laid down in the judgments referred to above, the reasoning of the second respondent in Ext.P3 order cannot be sustained.

8. In the result, Ext.P3 order passed by the second respondent is set aside and the second respondent is directed to reconsider Ext.P1 application submitted by the petitioner under

Section 28A of the Act, in the light of the principle laid down by this Court in **Annamma Thomas v. State of Kerala (2010(1) KLT 623)** and **District Collector, Kannur v. Athickal Muhammed Kunhi (2013 (1) KHC 13)** and pass appropriate orders thereon strictly in accordance with law, as expeditiously as possible, at any rate, within a period of three months from the date of receipt of a certified copy of this judgment, with notice to the petitioner.

The writ petition is disposed of as above.

Sd/-

ANIL K.NARENDRA, JUDGE

dsn