

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

MONDAY, THE 2ND DAY OF FEBRUARY 2015/13TH MAGHA, 1936

CO.No. 8 of 2007 () IN LAA NO.545 OF 2006

AGAINST THE JUDGMENT AND AWARD IN LAR 94/2003 of II ADDL.SUB
COURT,THRISSUR DATED 28-01-2006

CROSS OBJECTORS:RESPONDENTS 1 TO 5

1. THRESSIA, W/O.LATE K.T.JOSE
2. K.J.THARU, S/O.LATE K.T.JOSE
3. K.J.VARGHESE, S/O.LATE K.T.JOSE
4. K.J.JOJU, S/O.LATE K.T.JOSE
5. K.J.PAULY, S/O.LATE K.T.JOSE

ALL ARE RESIDING AT KONIKKARA HOUSE,
KURIACHIRA DESOM, CHIYYARAM VILLAGE,
THRISSUR TALUK.

BY ADV. SRI.P.B.KRISHNAN

APPELLANT:RESPONDENTS 6 AND 7

1. THE THRISSUR CORPORATION,
THRISSUR.
2. THE SPECIAL TAHSILDAR(L.A),
THRISSUR MUNICIPALITY,
THRISSUR.
3. THE DISTRICT COLLECTOR,
THRISSUR.

R,R1 BY ADV. SRI.K.P.VIJAYAN
R2,R3 BY SR.GOVERNMENT PLEADER SHRI R.PADMARAJ

THIS CROSS APPEAL HAVING BEEN FINALLY HEARD ON
02-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

T.R.RAMACHANDRAN NAIR & P.V ASHA, JJ.

**Cross Objection No.8 of 2007 in
L.A.A No.545 of 2006**

Dated this the 2nd day of February, 2015

JUDGMENT

Ramachandran Nair, J.

The claimant has filed a Cross Objection seeking enhancement of the land value as well as the value of the building in the acquired property. The reference court considered the claim for enhancement in L.A.R No.94/2003 of the Sub Court, Thrissur. The land acquired is having an extent of 0.0041 hectares of dry land comprised in Sy.No.1216/1 C of Thrissur village which was acquired for the purpose of widening of the Pattalam Road and for the construction of shopping centre block No.3.

2. The land value fixed by the Land Acquisition Officer is @ Rs.1,80,000/- per Are. Before the reference court AW1 and AW2 were examined and Exts.A1 to A3 were marked on behalf of the claimants and Ext.R1 was marked on the side of the respondent.

3. At the outset We notice that the

respondent/Corporation had filed L.A.A No.545/2006 challenging the fixation of enhanced land value which was dismissed by a Division Bench of this Court as per judgment dated 22.08.2012.

4. The learned Senior Counsel for the claimants Sri S.V.Balakrishna Iyer submitted that the appeal was dismissed after taking note of the judgment in L.A.A No.976 of 2002 and connected cases. It is submitted by the learned Senior Counsel that therein the notification under Section 4(1) was published on 13.05.1996; whereas herein the notification is dated 5.10.2000. It is therefore submitted that the fixation of land value by the said common judgment even though was @ Rs.1,97,600/- per cent, considering the time lag between the notifications, the cross objector is entitled for reasonable enhancement.

5. The learned counsel for the Thrissur Corporation relied upon the judgment in L.A.A No.700 of 2006 rendered by a Division Bench of this Court. We find from the said judgment that the notification under Section 4(1), going by para.1 of the judgment, was dated 08.10.1999 and the Land Acquisition Officer had awarded land value at the rate of Rs.1,80,000/- per Are which has been enhanced to Rs.99,500/- per cent by the

reference court. A Division Bench of this Court by relying upon a common judgment in L.A.A No.976 of 2002 and connected cases, refixed the land value of the land under acquisition in L.A.A No.700 of 2006 at Rs.1,97,600/- per cent.

6. The Notification under Section 4(1) herein was published in the Gazette on 05.10.2000. The said date has to be reckoned in the light of the relevant provisions of the Land Acquisition Act, 1984.

7. With regard to the value of the building, it is submitted that even though evidence was available before the reference court, no amount was granted.

8. We find from the reading of the judgment that the reference court was of the view that Ext.A1 cannot be accepted for fixing the market value as the property therein was sold for Rs.80 lakhs and it included the value of structures and improvements. In that paragraph, the date of 4(1) notification has been noted as 08.10.1999, but actually the date is 05.10.2000.

9. After referring to Ext.R1 produced by the respondent, the market value has been fixed at Rs.99,500/- per cent.

10. The building in the property was a 3 storied one. Ext.A3 is the report of the Advocate Commissioner. Since no expert had inspected the building and estimated the value of the building, no further enhancement was granted by the reference court. The Land Acquisition Officer had awarded an amount of Rs.1,11,476.44 as compensation.

11. The learned counsel for the Corporation therefore submitted that since the claimant has failed to adduce proper evidence for enhancement of the value of the building, they are not entitled to get anything further in this Cross Objection.

12. We have considered the rival submissions. It is seen that the Division Bench in L.A.A No.976 and 1751 of 2002 and connected cases fixed the land value at Rs.1,97,600/- per cent. The time lag between the notification under Section 4(1) therein and the notification in this case will be just above 4 years. The learned Senior counsel for the cross objector relied upon the judgment of the Apex Court in **Ranjit Singh v. Union Territory of Chandigarh** [(1992) 4 SCC 659], especially para.6. Therein after noticing the time lag between the notifications, the Apex Court had enhanced the market value of the acquired property.

13. The property herein is in an urban area. The fact that there will be hike in price and appreciation of the property cannot be beyond dispute. But as far as the said factor is concerned, no other evidence is available before the court also. The property is already in the heart of the town, which cannot be disputed. It was for widening of the road that the acquisition was made also. Therefore the importance and potential value of the area as well as the purpose for which the acquisition was made, cannot be disputed. It is submitted by the learned Senior Counsel for the Cross Objector that the property involved in L.A.A No.976 of 2002 and the acquired property are on the same side of the road. We find from the judgment in L.A.A No.700/2006 that therein the notification under Section 4(1) is in October, 1999 and the time lag between the notification therein and the acquired property herein will be one year. Since for the said land this Court fixed the land value at Rs.1,97,600/- per cent, we are of the view that the Cross Objector will be entitled for 10% more over the land value from that was granted in L.A.A No.700 of 2006. Accordingly the land value is refixed at Rs.2,17,360/- per cent, which will be reasonable.

14. As far as the value for the building is concerned, the reference court has not accepted the evidence adduced by the cross objector. After perusing the details of the evidence available before the reference court, the report of the Advocate Commissioner was not accepted by the reference court, according to us rightly.

15. This Court has been uniformly granting 30% increase over the value awarded by the Land Acquisition Officer in such cases since the valuation by the Land Acquisition Officer will be based on the PWD rates and not on the basis of market rates at the relevant date. We are of the view that the said method can be adopted herein also. Accordingly, there will be enhancement of the value of the building by 30% of the value fixed by the Land Acquisition Officer, ie. 30% of Rs.1,11,476.44.

16. It is seen from the judgment of the reference court in para.16 that the benefit under Section 23(1)(A) of the Act has been granted from 08.10.1999 to 11.11.2002. Since the date of notification under Section 4(1) is 5.10.2000, we modify the same and the said benefit is granted for the period from 5.10.2000 to 11.11.2002 for the enhanced amount and the cross objector will

be entitled for all the statutory benefits as granted by the Tribunal.

The Cross Objection is allowed accordingly. No costs.

Sd/-
T.R.RAMACHANDRAN NAIR
Judge

Sd/-
P.VASHA
Judge

rtr/

/true copy/

P.S to Judge