IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE SMT. JUSTICE P.V.ASHA

FRIDAY, THE 13TH DAY OF MARCH 2015/22ND PHALGUNA, 1936

LA.App..No. 563 of 2000 (A)

AGAINST THE JUDGMENT IN LAR 78/1997 of III ADDL.SUB COURT, ERNAKULAM DATED 30-11-1999

APPELLANT(S)/2ND RESPONDENT:
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KERALA INDUSTRIAL INFRASTRUCTURE DEVELOPMENT CORPORATION (KINFRA), VELLAYAMBALAM, THIRUVANANTHAPURAM, REP.BY ITS MANAGING DIRECTOR.

BY ADVS.SRI.G.S.REGHUNATH
SRI.BASANT BALAJI

RESPONDENT(S)/CLAIMANTS & 1ST RESPONDENT:
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1. **SMT.MARY, W/O.K.S.MATHEW, KATTUPARAMBIL HOUSE, PALATHURUTHY KARA, ELAMKULAM P.O, ERNAKULAM.**

2. **JALAJA, D/O.KESAVAN, PONOTH HOUSE, SREENARAYANA VILASAM, KALOOR.**

3. **STATE OF KERALA, REP.BY ITS CHIEF SECRETARY, SECRETARIAT, TRIVANDRUM.**

BY ADV. SRI.S.SREEKUMAR SRI.PADMARAJ
R3 BY GOVERNMENT PLEADER

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON 6-01-2015 ALONG WITH LAA. 564/2000 AND CONNECTED CASES, THE COURT ON 13-03-2015, DELIVERED THE FOLLOWING:

PJ

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

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LAA Nos.563, 564, 565, 611, 612, 613,
769, 1456, 1462 and 1471 of 2000 and 786, 806,
810 and 822 of 2001

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Dated this the 13th day of March, 2015

JUDGMENT

Ramachandran Nair, J.

The above appeals arise from reference cases wherein the land was acquired for a common purpose. The reference court has disposed of those matters in two different batches. The first batch of cases are LAR Nos. 47, 48, 49, 50, 76, 77 and 78 and of 1997 from which LAA Nos.563, 564, 565, 611, 612, 613, 769, 1456, 1462 and 1471 of 2000 have been filed. The next batch is LAR Nos.37, 53, 56 and 57 of 1997 from which LAA Nos.786/2001, 806/2001, 810/2001 and 822/2001 have been filed. For convenience, we will refer to them as First and Second Batch of cases.

2. The properties have been acquired in all these cases for establishing an export promotion industrial park at Kakkanad under the auspices of Kerala Infrastructure Development Corporation

("KINFRA" for short). In all these cases the properties have been categorised as category 6. The Land Acquisition Officer awarded land value at the rate of Rs.13,750/- per are. The claimants claimed enhanced land value and in the first batch of cases, viz. LAA Nos.563/2000 to 769/2000 the land value has been refixed at Rs.22,992/- per are whereas in the second batch of cases the reference court has not granted any enhancement. In the first batch of cases appeals are filed by the requisitioning authority and in the second batch of cases the claimants have come up in appeal. Since all these lands are included in category 6 and are lying in close proximity, we heard the appeals together. In the second batch of cases, the judgment of the reference court in the first batch of cases even though was relied upon, that was not relied on by the reference court since the appeals filed are pending.

3. For convenience, initially we shall deal with the first batch of cases. The notification under Section 4(1) of the Act was published in the Kerala Gazette Extra-ordinary dated 31.1.1995, in the locality on 15.2.1995 and subsequently in the newspaper, viz. Deshabhimani on

1.11.1995.

4. In the first batch of cases the claimant is the same and the total extent of land acquired is 278.19 ares comprised in Sy. Nos.605 and 606 of Kakkanad Village, Kanayannur Taluk. The Land Acquisition Officer has awarded land value under different awards and thus seven reference cases have come up.

5. The claimant claimed land value at the rate of Rs.30,000/- per cent (Rs.75,000/- per are). Both sides adduced evidence and on behalf of the claimant, AWs. 1 to 6 have been examined and Exts.A1 to A9 documents have been marked. On the side of the respondents, R.Ws.1 to 5 have been examined and Exts.B1 to B17 documents have been marked.

6. We heard learned counsel Shri G.S. Reghunath appearing for the appellants, Shri S. Sreekumar, learned Senior Counsel and Shri Wilson for the respondents and learned Senior Government Pleader.

7. At the outset, Shri G.S.Reghunath, learned counsel submitted that the total extent acquired for the purpose of the requisitioning authority is 71.7 hectares out of which an extent of 30.99 hectares have

been purchased by negotiation and the acquisition was resorted to in the other cases as the negotiations did not succeed, i.e. 36.64 hectares and 4.054 hectares were transferred to KINFRA by the Government. It is submitted that out of these seven cases only the property in LAR No.48/97 situated in Sy. No.605/6 is near the Panchayat road. All these items of properties were paddy lands and going by the Notes to Award, they are interspersed with thodus and raised portions and bunds and are remaining as marshy land. There are cultivations like coconut trees and arecanut trees, etc., but they are non yielding ones. It is submitted that even though the claimants relied upon Exts.A1 to A9 documents in evidence, the only document accepted by the reference court is Ext.A4. The same is dated 23.2.1995. It is submitted that the reference court accepted the said document on the assumption that the notification under Section 4(1) is published on 1.11.1995 whereas going by the correct legal principles, the date of publication of the notification in the gazette alone has to be reckoned. If that be so, the date 31.1.1995 is relevant whereas Ext.A4 document is after the said date, viz. 23.2.1995. For this reason itself, it is submitted that

Ext.A4 being a post notification document, it could not have been relied upon.

8. On the acceptability of Ext.A4 also, much arguments have been raised by the learned counsel. It is submitted that the same is not a transaction in respect of a similar property. The acquired property is interspersed with thodus and bunds whereas the property covered by Ext.A4 is a dry land with a building. It is 2.5 kms. away from Collectorate. It was purchased by the Stock Exchange. Therefore, it is evident that the attraction as a building site alone had given it the advantage. The total value shown in the document is Rs.60 lakhs. Learned counsel submitted that the said document therefore was also not helpful to the claimants. If that be so, the same will have to be rejected.

9. Learned counsel further submitted that Exts.B16 and B17 are minutes of the meetings conducted at the camp office of the District Collector, Ernakulam which are of the years 1993 and 1994. The same will show that the steps for acquisition were in progress in the locality, during the said period. Therefore, even though Exts.A1 and A2

documents are dated 1.2.1995, it is evident that they have been created for the purpose of claiming inflated compensation. Similarly, Ext.A3 is also dated 2.2.1995. Exts.A5 to A7 are in April, 1995 which also are not relevant. Ext.A8 is the copy of the common judgment in LAR Nos.1332/1988 and connected cases which was not relied upon by the trial court and Ext.A9 was also not relied upon.

10. It is submitted that the claimant purchased the properties as per Exts.B12 to B14 in the year 1991 wherein the land value shown is Rs.250/- per cent. Therefore, it gives a ready pointer to the land value which can be claimed by the claimant. It is further submitted that the requisitioning authority purchased various items by Exts.B2 to B6 documents by negotiation wherein the land value shown is Rs.1,200/- per cent. These are also paddy lands. No discussion has been made by the reference court about these items of documents. Therefore, it is a case where the documents produced by the appellant have not been discussed at all which aspect also has to be considered by this Court.

11. By relying upon various judgments of the Apex Court, learned counsel submitted that the relevant principles will show that the

method adopted by the reference court is faulty. The market value will have to be determined by recourse to the method of assessing the potential value by comparing with similar transactions. Since such evidence is totally lacking in this case, it is submitted that the claimant is not entitled for any enhancement.

12. Thus, great reliance is placed by the learned counsel for the appellants on Exts.B2 to B5 which according to him, will reflect the value for similar lands. In Ext.B5 the sale consideration is Rs.3,650/- per cent and in Ext.B6, it will be Rs.3663/- per cent. It is submitted that Exts.B7 and B10 are the basic documents and Exts.B8 and B9 also would support the case of the respondents.

13. Apart from the same, it is submitted that there is no evidence to show the amount if any expended for conversion of the land purchased by the claimant, namely, reclamation charges. He also referred to the oral evidence adduced in the matter. It is also the contention of the learned counsel that the value adopted by the Land Acquisition Officer is also on a higher side compared to the value for the land purchased by the requisitioning authority. He explained the

various aspects by referring to the various documents. It is also submitted that even though the claimants had filed appeals before this Court, they have been dismissed as not pressed.

14. One of the points raised by the learned counsel is that except Ext.A8 judgment, all other documents are post notification documents and there is no evidence to show the value of the land as on 31.1.1995. Even in respect of Ext.A8, the items of properties are 1 ½ km. west of Collectorate whereas the acquired property is to the east of the Collectorate.

15. Learned Senior Counsel for the respondents Shri S. Sreekumar submitted that the notes to award itself describes the importance of the locality and the developments therein. It will show that after the Collectorate, which is the centre of the civil administration for the district was established years back, the entire nearby localities have been developed. Various industrial zones and other important institutions have been established, even prior to the acquisition in these cases. It is submitted that the Land Acquisition Officer, in paragraph 47 of the notes to award, noticed the trend in

increase in land value in the locality. It is submitted that the acquired lands herein are well developed by reclamation and by various cultivations. They cannot be treated as paddy lands. They are reclaimed and improved lands. It is therefore submitted that the prior title deeds of the claimants will not be relevant to determine the land value, at the time of acquisition.

16. By referring to the mahazars prepared in each land acquisition cases, Shri S. Sreekumar, learned Senior Counsel explained that there were coconut trees, plantains and arecanut trees in all the items of land. The property is lying as a compact area with the acquired property in LAR No.47/1997 having road frontage to the panchayat road and the other properties are lying contiguous to it. It cannot therefore be said that the property is having no road frontage. The evidence of A.W.1 was explained in detail by the learned Senior Counsel. The cultivations and improvements made in the property have been explained by her. Learned Senior Counsel also relied upon the various documents produced by the claimant and submitted that the reference court has gone wrong in rejecting these documents. It is submitted that Ext.A8

judgment will show that the notification therein under Section 4(1) is dated 16.7.1985 and therein the land value awarded by the Land Acquisition Officer is Rs.4,938/- per are for wet land which was enhanced to Rs.12,355/- per are. The nature of the property therein and that of the acquired property is similar. Of course, it has got two roads on its side. Therefore, Ext.A8 reflects the land value in the locality, i.e. Rs.12,355/- per are even in 1985. Therefore, learned Senior Counsel submitted that the said judgment also can be relied upon by this Court. It is submitted that Exts.A1 to A3 are dated 1.2.1995. The land value, going by the same, is Rs.15,000/- per cent. The reason for rejection of the document is not correct. Ext.A9 is also relevant in this context, which shows the value in that locality. It is submitted that Exts.A1 to A3 will reflect the land value of wet lands. It is also submitted that Exts.A5 to A7 are relevant and the reason for rejection is not fully correct. The notes to award shows that they have been rejected for odd reasons and it is submitted that the importance of the acquired land is clear from the notes to award. Learned Senior Counsel relied upon various judgments of the Apex Court.

17. Learned counsel for the appellant, Shri G.S. Reghunath replied to the arguments raised by the learned Senior Counsel for the respondents, by reiterating the contentions raised earlier. It is submitted that the documents produced by the claimants cannot be relied upon. He also referred to the evidence in detail.

18. It is submitted by the learned counsel for the claimants - appellants Shri C.P. Wilson that in the second batch of cases the reference court did not accept the evidence produced by the claimants wrongly. These properties are very near to the lands acquired and involved in the first batch of cases and similar type of evidence was also adduced. The properties were improved with coconuts, etc. and therefore almost on all counts they were similar to the properties involved in the first batch of cases.

19. Shri Wilson, learned counsel submitted that the reference court went wrong in not relying upon the judgment in the first batch of cases and in denying any enhancement. Particular reference was made to the various documents produced and he explained that the land value ought to have been enhanced by the reference court.

20. Shri G.S. Reghunath submitted that the reference court has properly considered the evidence and contentions of the parties and he invited our attention to each of the findings.

21. First we will refer to the notes to award in LAR No.47/1997 which is the subject matter of LAA No.613/2000, so as to get the basic details. In Form 15 prepared by the Land Acquisition Officer, the nature of the land is shown as "wet reclaimed land". In the objections to the notice the claimant has raised a claim for land value at Rs.30,000/- per cent (Rs.75,000/- per are) and an amount of Rs.4 lakhs is claimed towards improvements in the property. As far as the general descriptions of the area and the important institutions in the locality are concerned, we find from the notes to award that there is a detailed description. It shows that the area is situated on the western side of Kadamprayar and leads northwards to Kakkanad-Edachira PWD road. The eastern side of the area is bounded by kadamprayar puzha and puramboke thodu. Southern and western sides are bounded by Kakkanad-Edachira PWD road and paddy fields. It is stated further that "the land under acquisition is situated at a distance of 1 ½ km east

from Kakkanad Civil Station, about 1 ½ km north east from Cochin Export Processing Zone, about 5 km. north from the FACT-Ambalamedu, about 750 metres south west of Marthoma Public School and about 300 metres east of Kusumagiri Hospital. So many Government Offices and establishments such as NPOL, Sub Registry Office, Police Station, Post Office, Government Analytical Laboratory, N.G.O. quarters, GCDA, Township etc. are situated within a radius of 3 kms. from the land under acquisition." The entire lands under acquisition are categorised into 10 and category No.1 is dry land having PWD road frontage. Herein, the category VI shown is "converted wet land into bunds and thodus with panchayat road frontage." For fixing the land value, the sale deeds of transactions within a radius of 5 kms. have been verified by the Land Acquisition Officer. It is also clear from the notes to award that the acquisition proceedings were initiated during the period 1992-1993. Document No.2087/1993 of SRO, Thrikkakkara (Ext.B9) has been accepted as basic document for fixing the land value for wet lands in categories 4 to 7. What is mentioned in respect of category 6 is that it is a developed land filled with soil and coconut trees are plated therein and the land is having road frontage. The land coming under category 6 is facing panchayat road and it is compact plot and Rs.13,750/- per are is fixed as land value by deducting 7.25% of the documental value from the land value in document NO.2087/1993.

22. Next we will come to the mahazar prepared on 22.2.1995, after inspecting the site. The land involved in L.A.R.No.47/1997 is having an extent of 0.0805 hectares. The description of the location shown is that it is situated about 800 metres away from Parakkamukal junction towards east and it is situated just opposite to DDL Brandy company. It is stated that the property is having frontage to panchayat road.The property is reclaimed land and is being cultivated with plantains, coconuts and arecanuts. The list of improvements show that coconut trees, 80 numbers, plantains 40 numbers, arecanut plants - 10, plantain small - 105 and and plantain medium - 90 numbers, are there in the property. Similar mahazars have been prepared in all L.A.R. cases.

23. Now we will refer to the oral evidence in the first batch of

cases. A.W.1 is the claimant. In chief examination she has stated that the property is situated 1 ½ km away from civil station and 500 metres away of Parakkamugal junction, opposite to DDL company and facing panchayat road. In respect of each items of properties, she has spoken about the details of cultivations. Generally, the cultivations effected are coconut trees, plantains and arecanut trees. According to her, there is one building in the property involved in LAR No.48/1997, bearing No.9/764-A which is a vacant shed and there is a compound wall, bath room, pipe, toilet, etc. Coconut trees are aged about 4 years in all the cases. According to her, some of them are yielding also. All the items of properties in the seven cases are lying in a compact plot and are having entry from road directly. It is a motorable road and even lorries can ply. The trailer of DDL company is normally passing through the said road. The total extent is above 6 acres situated as a compact block. She has claimed land value as claimed in the claim statement. In cross examination she has stated that paddy fields were reclaimed in the year 1991 after filling with soil. It is stated that she has been filing returns under Agricultural Income Tax Act also. In cross examination of additional second respondent, viz. the requisitioning authority, she has stated that the acquired properties have been purchased as paddy fields and they were reclaimed and planted with coconut trees. She does not recollect the amount spent for reclamation charges and planting coconut trees. To a specific question whether the property in Sy. No.605 alone is having road access, she said that all the properties are having the same advantage of road.

24. A.W.2 is the vendor of Ext.A1 document. He stated that the said property is at a distance of 2 ½ kms. from civil station and lying as an interior paddy field. According to him, the acquired property is at a distance of 1 ½ kms. away from civil station and is lying facing panchayat road. Documents Exts.A2 and A3 have also been marked through him and he has spoken about the rate at which the properties were sold, i.e. at Rs.15,000/- per cent.

25. In cross examination, with regard to the negotiation undertaken by the requisitioning authority, it is explained that some land owners agreed for the negotiated price. He was also invited for negotiation and the willing land owners were prepared to sell their

items of properties. In cross examination by the appellant, he has stated that to reach Exts.A1 to A3 properties, there is a way having 14 links width.

26. AW3 was examined to prove Ext.A4. He was the President of Cochin Stock Exchange at the time of execution of the document. According to him, the said property is lying 2 ½ kms. east of civil station, on the northern side of the panchayat road. It is lying as a slop from the road. 2 acres and 32 cents was purchased for Rs.60 lakhs and the building was valued at Rs.31,22,000/- and the property was purchased at the rate of Rs.12,405/- per cent. He also deposed that the acquired property is having entry directly from panchayat road. He knows about the property. The property in Ext.A4 is separated by a distance of 1 ½ kms. from the acquired property. The acquired property lies at the road level. According to him, the acquired property is having more importance than the property in Ext.A4 as the same is near civil station and it is cultivated with coconut and plantains. In cross examination he deposed that the property purchased by the Stock Exchange is not a water logged area. According to him, while

enquiring about the various properties for purchase, he had inspected the acquired property also. According to him, Ext.A4 property was purchased for construction of houses for members after filling it. In cross examination by the appellant herein, he deposed that at the time of purchase there was a big residential building in the property. The major portion of the value represents the value of the building and the building is situated in the levelled portion and the remaining portion is lying in a slop. The property is having road frontage.

27. AW5 is a practicing doctor. His property was acquired for NPOL and there were acquisition cases as LAR No.1332/1988 series. The judgment has been marked through him as Ext.A8. He also deposed that the appeal from the said judgment has been dismissed and he has received the entire compensation. According to him, the said property is lying 1 km. north west of civil station and it was having panchayat road frontage which was not tarred at the time of acquisition. The acquired property is lying at a distance of 2 ½ kms. away from the said property. According to him, the property acquired in Ext.A8 and the acquired property in this case are similar. In cross examination by

the first respondent he deposed that the acquired property is reclaimed and cultivated by coconut and plantain. In cross examination by the appellant herein, he deposed that the acquired property in Ext.A8 had road frontage of 2 sides and it was having coconut trees and other fruit bearing trees of more than 20 years of age. Bharath Matha College is situated ½ kms. away from the said property and there were other institutions like bank, temple, church, etc. According to him, the property acquired is a residential property and the main road is at a distance of ½ kms. away from the said property.

28. AW6 was examined to prove Ext.A9 document. He is the director of M/s. Bhageeradha Engineering Ltd. The said property lies at a distance of 1 kms. towards east of civil station. It was having access through a private road and around there were rubber estate. There was road access for the entire property. The acquired property is at a distance of 1 ½ km. away from the property in Ext.A9. It was also having road access. In cross examination by the appellant, he deposed that the property in Ext.A9 is 100 metres away from Collectorate. He denied the suggestion that the property in Ext.A9 is a commercial plot.

29. RW.1 is a Deputy Collector (RR) who was the Special Tahsildar (LA) at the time of acquisition. In chief examination he deposed that he had personally inspected the acquired properties and the same are located 1 ½ kms. east of civil station. The property involved in these cases are lying in a compact plot and all the items are having a common nature also. The property lies with thodus and bunds and there is road frontage of a panchayat road. Coconut and plantains and other cultivations were there and yielding coconut trees were less and there was a building which was not numbered. The property is lying at a lower level. According to him, it is not a residential area. According to him, after acquisition steps were initiated, the land value in the area has increased. The acquired property is valued as property having bunds and thodus and property having road frontage. In cross examination he submitted that it is not correct to say that there was no increase in land value in 1994-1995 than in 1993. The property covered by document No.2087/1993 (basic document) which lies at a distance of 500 metres away from the acquired property, is also wet land. It is having a road frontage where buses were plying.

30. RW.2 is the Assistant Manager of the appellant company. He has produced a litho plan showing the acquired properties and the properties purchased through negotiation which was marked as Ext.B1. According to him, nearby properties were also purchased through negotiated sale which is lying on the northern side of the acquired property. Exts.B2 to B4 are such documents. Exts.B5 to B10 documents were also marked through him. According to him, the acquired property is at a lower level and around the entire property purchased by KINFRA, there is a thodu on the east and on the northern side Kakkanad-Edachira road is there. KINFRA had purchased 180 acres including by negotiation. On the southern side of it there is a panchayat road and on the west, there is a private property. According to him, Ext.A4 property and the acquired property are not comparable. In cross examination, he stated that he cannot identify the properties covered by Exts.B7 to B10. He also deposed that the negotiation meetings were conducted by a committee under the chairmanship of the District Collector.

31. R.W.3 is one of the persons who had sold the property after

settlement through negotiation with the appellant. Ext.B6 was marked through him. According to him, the price was agreed by him. To a specific question in the chief examination as to whether the same represents the market value, he deposed that the market price was more. Ext.B5 sale deed was executed by his wife which is a nearby property. Both the documents were registered on the same date. His property was lying as a paddy field and there were no coconut trees. The acquired property is on the south of the property covered by Exts.B5 and B6. In his property there were certain coconut trees. According to him, because of dumping of waste, agricultural operations could not be undertaken in the paddy field. In cross examination of the claimant, he deposed that his property was remaining as water-logged paddy land and had no road frontage also. The acquired property has got frontage to panchayat road. His properties are situated $1/4^{th}$ km. away from the panchayat road and there is no direct passage to his property. Exts.B5 and B6 properties are lying at a lower level of 6 ft. from the road. There were no improvements in his property also. According to him, $3/4^{th}$ of the acquired properties are reclaimed ones and in the reclaimed portion coconut trees and plantains were there. Some of the coconut trees had actually started yielding also at the time when Exts.B5 and B6 documents were executed. The acquired properties were lying at the same level of the panchayat road. According to him, it is true that since his properties were lying without any yield and had also no road access, they were sold to the appellants herein. Compared to the acquired properties, the value of Exts.B5 and B6 properties is less also. From the civil station, it is lying at a distance of 2 km.

32. R.W.4 is also one of the persons who had sold his properties to the appellant as per Ext.B3 document. Ext.B2 is one executed by him along with his brothers and Ext.B4 is one executed by his brother. Before executing the documents with the appellant, negotiated price was agreed. To a specific question whether the documents were executed in tune with the market value in the locality, he answered that it is not fully correct. When the properties around were being sold, there was no other option. The acquired property is south of Ext.B5 property. There is a pathway leading from Ext.B3, to their dry lands and on the north there is a thodu and on the east it is Chithrappuzha

thodu. All the items were remaining as paddy lands which were not being cultivated also because of collection of waste materials.

33. In cross examination, he deposed that from Collectorate, his property is lying at a distance of 2 ½ kms. The acquired properties were reclaimed lands, cultivated by coconut trees and plantains. Almost the entire properties were reclaimed. The acquired properties are better than Exts.B2 to B4 properties. In cross examination for the claimant also he stated that Exts.B2 to B4 were lying as waterlogged paddy field and the panchayat road and the acquired properties are lying at same level. Exts.B2 to B4 properties have no road frontage. The properties covered by Exts.B2 to B4 were lying without any cultivation as waste lands and the properties are at a level 5 ft. below the road level. The acquired properties were developed by filling with soil and at the time of execution of Exts.B2 to B4 documents, coconut trees in the acquired properties had started yielding. According to him, it is true to say that their properties and the acquired properties cannot be compared and the properties of the claimants are having more importance.

34. R.W.5 is the purchaser of Ext.B9 document. It was purchased for constructing a residential building. There was a panchayat road which has now been developed into a P.WD. road and the rate per cent is Rs.6,000/-. It was part of a paddy field also. He does not know the acquired property. In cross examination, he stated that his property was wet land at the time of purchase and it was lying at a level 6 - 7ft. below the panchayat road and there were no cultivations. According to him, for filling one cent of land it requires six loads of soil and the rate will be between Rs.1,500/- - Rs.2,000/-.

35. Ext.A8 is the judgment in LAR No.1332/1988 and connected cases. Therein, the notification under Section 4(1) is dated 16.7.1985 under which an extent of 41.28 ares of wet land comprised in Sy. No.570/8 of Thrikkakara south Village in Kanayannur Taluk was acquired for N.P.O.L. apart from dry lands in the connected cases. Therein, the awarding officer awarded land value at the rate of Rs.4,938/- per are. This case was disposed of along with connected cases, viz. LAR Nos.1369/88, 1375/88, 1376/1988, 1379/88 and 114/89 and in those cases the acquired properties were dry lands. As

far as dry lands are concerned, the value fixed by the reference court is Rs.26,467/- per are and as far as wet land involved in LAR No.1332/1988 is concerned, the land value has been fixed at Rs.5,000/- per cent corresponding to Rs.12,355/- per are. The said property had panchayat road frontage also.

36. Now we will come to the principles discussed in various judgments relied upon by the learned counsel for the appellant. He relied upon various judgments:

1. **State of Kerala v. Victoria** (1971 KLT SN page 37. It has been held by a Division Bench of this Court that "in the matter of valuing lands on the basis of price paid within a reasonable time in bona fide transactions of purchase of lands adjacent to the acquired properties it is necessary that all the transactions of purchases made available should be scrutinised. The arbitrary selection of some transactions only, vitiate the finding of the court."

2. **Koyappathodi M. Ayisha Umma v. State of Kerala** {(1991) 4 SCC 8} - The principle concerning ascertainment of

market value where land with fruit bearing trees standing thereon, has been discussed in the said judgment. It was held that the determination of the compensation of the land as well as the trees is illegal.

3. **State of Kerala v. Chellam** (1994 (2) KLT 1036) - The dictum laid down is that "the market value of a piece of property, for purpose of S.23 is stated to be price at which the property changes hands from a willing seller to a willing, but not too anxious a buyer, dealing at arms length. The determination of market value is the prediction of an economic event, viz. the price outcome of a hypothetical sale, expressed in terms of probabilities. Prices fetched for similar lands with similar advantages and potentialities under bonafide transactions of sale at or about the time of the preliminary notification are the usual and indeed the best, evidences of market value."

4. **Land Acquisition Officer, Eluru and others v. Jasti Rohini (smt) and another** {(1995) 1 SCC 717} - The principles for

determining market value based on bonafide transactions were reiterated therein. It was held that “the price must be determined by reference to the price which a willing seller might reasonably expect from a willing purchaser as on the date of notification published under Section 4(1).” (para 6)

5. **Kummari Veeraiah and others v. State of A.P.** {(1995) 4 SCC 136} - It was held that “certified copies of sale deeds even though admissible, they cannot be relied upon unless the vendor or vendee has been examined as witness to testify not only the consideration paid but also their specific knowledge and the circumstances in which the sale deed came to be executed, nearness to the lands, etc.”

6. T**opandas Kundanmal, and others v. State through the Land Acquisition Officer, Jamnagar and others** {(1995) 5 SCC 336} - This decision dealt with the burden of proof to prove the prevailing market value.

7. **Special Land Acquisition Officer and another v. Sidappa Omanna Tumari and others** (1995 Supp (2) SCC 168). It was

held that sale price of small extent of land should not ordinarily be made the basis for determination of market value of large extent of land.

8. **M.V.K. Gundarao v. Revenue Divisional Officer, (LAO), Narasaraopet** {(1996) 3 SCC 129}. - It was held that the burden is on the claimant to prove the market value as on the date of Section 4(1) notification. It was held that the documents produced in the court in support of the market value after getting knowledge of the acquisition, cannot be pressed into service.

9. **Hookiyar Singh and others v. Special Land Acquisition Officer, Moradabad and another** {(1996) 3 SCC 766} - General principles have been reiterated. It was held that future user of the land cannot be taken into consideration and that the value prevailing as on the date of publication of Section 4(1) notification should be considered.

10. **Land Acquisition Officer & Assistant Commissioner, Mangalore v. Belekal Krishna Bhat** {(1996) 10 SCC 39} - It

was held that the court has to look into the attendant circumstances whether the documents are brought into existence with intention to inflate the market value or are true and genuine documents.

11. **Special Land Acquisition Officer, Karnataka Housing Board and others v. P.M. Mallappa and others** {(1997) 4 SCC 429} - With regard to the determination of market value, it was held that the potential value has to be determined as on the date of the notification and not after subsequent developments.

12. **Special Deputy Collector and another v. Kurra Sambasiva Rao and others** {(1997) 6 SCC 41} - General principles for determining market value have been laid down. It was held that even though some guess work is permissible, but mechanical assessment of evidence should be avoided and it is the duty of the court to scrutinise and objectively assess the evidence tendered by the parties.

13. **State of J & K v. Mohammad Mateen Wani and others**

{(1998) 6 SCC 233} - General principles have been discussed.

14. **Kanwar Singh and others v. Union of India** {(1998) 8 SCC 136) - In paragraph 9 it has been held on facts as follows:

> "The awards in High Court judgments in respect of acquisitions in the adjoining villages cannot be relied upon for those matters were either wrongly pursued or not actively pursued by the land acquisition department concerned."

15. **State of Haryana v. Ram Singh** {(2001) 6 SCC 254} - It was held that the potential value forms part of market value and therefore payment of any amount over and above the market value, on account of potential value, cannot be permitted.

16. **Bhim Singh and others v. State of Haryana and another** {(2003) 10 SCC 529} - It was held that while considering the relative price in earlier sales, some deduction has to be made where a large area is acquired.

17. **Cement Corpn. of India Ltd. v. Purya and others**

{(2004) 8 SCC 270} - With regard to the interpretation of Section 51A of the Land Acquisition Act, it was held that even though the vendor or vendee is not required to be examined themselves to prove the contents of the documents, it would not mean that the contents of the transaction as evidenced by the registered sale deed would automatically be accepted."

18. **ONGC Ltd. v. Sendhabhai Vastram Patel and others** [(2005) 6 SCC 454} - It was held that the courts are bound to take into consideration the well settled principles of law and factors enumerated in Section 23 of the Act. In paragraph 15 it has also been held as follows:

> "Instances of sale in respect of the similar land situated in the same village and/or neighbouring villages should have been taken as guiding factors by the Reference Judge as also by the High Court. In the absence of any better evidence, the Reference Judge as also the High Court could have made addition in the sale prices for the land as evidenced by the said deeds of sale."

19. **U.P. State Industrial Development Corpn. v.**

RishabhIspat Ltd. and others {(2007) 2 SCC 248} - It was held that "when the Land Acquisition Collector had himself offered a higher rate for the land in question, compensation could not be reduced below that in view of Section 25".

20. **Gafar and others v. Moradabad Development Authority and another** {(2007) 7 SCC 614} - It was held that under Section 23 of the Act, documents relating to distant lands can be taken into consideration by making adjustments.

21. **Chandrasekhar and others v. Additional Special Land Acquisition Officer** {(2009) 14 SCC 441} - The principles relevant when reliance is sought on judgment not inter partes have been discussed. It was held as follows:

> "Such previous decisions are admissible in a subsequent case as far as the market value of the acquired land is concerned. However, for a judgment relating to value of land to be determined in evidence either as an instance or as one from which the market value of the acquired land could be inferred or deduced, must have been a previous judgment of that same court, which

requirement is fulfilled in the present case. But the requirement that it must have been proved by the person relying upon such judgment by adducing evidence aliunde and that due regard being given to all other attendant facts and circumstances, it could furnish the basis for determining the market value of the acquired land, is the more important test for admission of such previous decision of the High Court for determination of the market value of the land acquired in the present case."

22. **Sangunthala (dead) through Lrs. v. Special Tahsildar (Land Acquisition) and others** {(2010) 3 SCC 661} - It was held that the burden is on the claimant to prove the market value.

23. **Kolkata Metropolitan Development Authority v. Gobinda Chandra Makal** (2011 (4) KLT SN 1 (C. No.1) SC) - It was held that for the purpose of Section 23(1) of the Act, the relevant date will be the date of publication in the gazette of the notification under Section 4(1).

37. Learned Senior Counsel appearing for the claimants relied

upon the decisions of the Apex Court in **Sunder v. Union of India** (2001 (3) KLT 489 - SC) and **Kolkata Metropolitan Development Authority v. Gobinda Chandra Makal** {(2011) 9 SCC 207} and that of a Division Bench of this Court in L**illykutty v. State of Kerla** (2012 (4) KLT 428).

38. In the decision of the Apex Court in **Kolkata Metropolitan Development Authority's case** {(2011) 9 SCC 207} various points have been considered and in paragraphs 23 to 28 the general principles for valuing the acquired properties have been laid down. Another point decided is the one relating to the relevant date for determining the compensation. It is finally held that the date of publication of the notification under Section 4(1) in the gazette is the relevant one.

38. **Lillykutty's case** (2012 (4) KLT 428) is relied upon to contend that as the land in these cases are lying as a compact plot and contiguously, when there is access through P.W.D. road to the property in LAR No.47/97, the same will enure to the benefit of other items also. We extract paragraph 4 of the above judgment hereunder:

"It is in evidence that the properties were lying contiguously and that the husband and wife were enjoying the properties as common holding of the family. Whatever advantages the husband's property was enjoying were available to the wife's property also through her husband's property. Under the social conditions prevailing in the State there is justification for treating these properties of the husband and wife, lying together and contiguously as one single holding of the family. We are therefore of the view that the property of the husband and wife can be included in one and the same category."

39. **Sunder v. Union of India** (2001 (3) KLT 489 - SC) is relied upon in support of the claim for interest on solatium also. Therein, the Apex Court held that the person entitled to award of compensation, is also entitled for interest on solatium.

40. Now we proceed to consider the various aspects. The acquired properties in LAR No.37/1997 and connected cases are situated just on the eastern side of the acquired properties in the first batch of cases. The properties in all the reference cases in the second batch) are situated in a compact area. They are surrounded by barbed wire fencing with granite stone poles. They were also reclaimed lands. The Panchayat road skirted the southern boundary of the compact plot.

On the western side there is a private road which was part of the acquired properties and just beyond the private road, is the property under acquisition in the first batch of cases. More or less same evidence has been adduced in the said cases also.

41. A.W.2 is the Commissioner who prepared Ext.A4 Commission report in O.S. No.114/1996 of the Munsiff's Court, Ernakulam.

42. We will consider the facts necessary for deciding the land value one by one:

i) **<u>Location and other features including importance</u>**: The acquired lands are situated 1 ½ kms. away from civil station and they are having frontage to a panchayat road. The notes to award which we have already quoted, will show that the nature of the land is wet reclaimed land. In the second batch of cases also the same is the nature and even in the Thandapper Register it is noted as reclaimed land in L.A.R. No.37/1997 and mahazars in various L.A.R. cases show that the land consisted of bunds and channels. The panchayat road leads northwards to Kakkanad - Edachira P.WD. road. The distance from other areas are: 1 ½ km. north east from Cochin Export Processing Zone, about 5 kms. north from FACT, Ambalamedu, about 750 mtrs. south west of Marthoma Public School and about 300 mtrs east of Kusumagiri Hospital. Other public institutions and offices are: NPOL, Sub Registry Office, Police Station, Post Office, Government Ayurvedic Analytical Laboratory, NGO Quarters, GCDA, Town Ship, etc. within a radius of 3 kms. from the land under acquisition. Therefore, it can be easily presumed that the acquired land in both cases (First and Second Batches) is so proximate to a well developed industrial as well as commercially important area. They are not purely agricultural lands in any interior place.

ii) **Acceptability of basic land**: Paragraph 17 of the judgment in LAR No.47/1997 series gives the details of the basic land. The document is produced as Ext.B9 in that case. The reference court in the said judgment, in paragraph 17 has discussed various details. The extent involved is 6.07 ares of wet land in Sy. No.358/2 having frontage of Kakkanad-Edachira P.W.D. Road which was sold for a total consideration of Rs.90,000/-. Per are the value is Rs.14,827/-. The said property was lying at a depth of 6 ft. below the level of the P.W.D. road, and was without any improvements. The awarding officer fixed the land value for the acquired land by deducting 7.25% from the value reflected in the said document. This was done by assuming that there are no other proper documents available. The same is serial No.18 to the notes to award. The reference court found that except for the presence of a P.W.D. road at a height of 6 ft., there is no other importance or utility to compare with the present acquired lands and therefore the same was not accepted. In the second batch of cases the reference court was of the view that the Land Acquisition Officer was very lenient to the claimants, on a comparison of the basic land and category 6 lands. This was mainly for the reason that the basic land could be easily be converted because of nearness to P.W.D. road and therefore it will become a commercial site and the acquired properties, even if converted, it would have become farm lands. The court assumed that conversion of wet land will involve huge expenses also.

43. According to us, as far as Ext.B9 document is concerned, it cannot be compared with the acquired lands. The acquired lands are at

the same level of panchayat road whereas the land covered by the basic document is below 6 ft. from the P.W.D. road. No other locational importance, etc. are there for the said basic land. Therefore, it cannot be said that while fixing the land value, the Land Acquisition Officer has fixed the value at a higher rate than the land value available in the locality. Apart from the same, the oral evidence of parties on both sides show the potential of the acquired properties which are already converted lands, whereas the basic land is a wet land itself.

44. Exts.A1 to A3 produced in the first batch of cases are relating to the transaction of wet land. The documents are dated 1.2.1995, 1.2.1995 and 2.2.1995, very proximate to the notification under Section 4(1). In paragraph 18 of the judgment in LAR No.47/1997 series, the reference court has discussed these details. Exts.A1 and A2 are executed by A.W.2 and the land involved is 4 ares and 4.03 ares and the average sale consideration is Rs.37,500/- per are. Ext.A3 is executed by the sister of A.W.2 wherein also the land is having extent 4.03 ares and the value per are is Rs.37,220/-. The reference court found that the sale consideration is highly excessive

and does not reflect the prevailing market value. They have come into effect after the proceedings for acquisition were known in the locality from 1992-1993 onwards. The awarding officer rejected these documents for the above said reason.

45. Of course, Shri S. Sreekumar, learned Senior Counsel appearing for the claimants submitted that even though those documents were not relied upon, they will reflect the increase in market value of even wet lands in the locality.

46. Exts.A5 to A7 in LAR No.47/1997 series are in respect of transactions of dry lands. The market price is Rs.46,913/- per are. The property is situated 4.5 kms. away from the acquired lands. they were having main road frontage and the facility of bus route and bus stop. There are schools functioning nearby. Therefore, the reference court found that they are not comparable which we agree.

47. As far as Ext.A9 in LAR No.47/1997 series is concerned, it is in respect of a commercially important land. It was purchased by Government of India, which also cannot be equated with the acquired lands.

48. We will have to consider whether Ext.A4 produced in LAR No.47/1997 series could be relied upon for fixing the land value. It was a sale deed executed on 23.2.1995, in close proximity to the acquisition, going by the date of publication of Section 4(1) notification in the Gazette, i.e. 31.1.1995. Of course, the document cannot be rejected as a post notification one, since the documents so proximate to the acquisition can be relied upon, in the light of the decision of the Apex Court in **Karan Singh v. Union of India** {(1997) 8 SCC 186}. Therefore, even though Shri G.S. Reghunath wanted an outright rejection of the document as a post notification one, we cannot agree. It is executed in favour of Cochin Stock Exchange. The extent involved is 2 acres and 32 cents with a building. The total consideration is Rs.60 lakhs and the land value is Rs.28,78,000/- and value of the building is Rs.31,22,000/-. The average land value is Rs.30,656/- per are (Rs.12,405/- per cent). A.W.3 is the former President of the Stock Exchange who was examined by the claimants in the First Batch of cases and in the Second Batch of cases.. The property was having panchayat road frontage. The same is 2.5 kms.

away from civil station on the eastern side and 1.5 kms. from the acquired land. Thus, the acquired land is very near to the civil station than the property in Ext.A4. The reference court in the First Batch of cases found that the location of these two items of properties is similar. It is also noted in paragraph 23 of the judgment that in the notes to award the Land Acquisition Officer relied upon Ext.B7 for fixing land value for dry lands under category No.1, The said document is dated 3.5.1993, showing sale consideration of Rs.22,277/- per are which was in respect of the property situated on the southern boundary of the alignment with P.W.D. road frontage. For fixing land value in category No.1 dry lands, he gave 25% increase over the value reflected in the said document. For dry lands having panchayat road frontage included in category 2, the awarding officer has fixed the land value at Rs.14,700/- by relying upon Ext.B8. On a comparison of the land value, the reference court found that if Ext.A4 is compared with category 2 lands, the proportionate enhancement for category 6, viz. the acquired lands herein, will be Rs.28,675/-. After deducting 25% from the land value in Ext.A4, the value of category 6 property is arrived at as Rs.22,992/-. Then, the trial court proceeded to consider the judgment Ext.A8 in LAR No.1332/1988 series wherein also wet lands were involved and if the same is reckoned, the land value for the acquired land will be Rs.27,180/- per are. From out of the above three values, the reference court found that the second one, viz. Rs.22,992/- can be adopted and therefore the claimants were allowed enhancement by Rs.9,242/- per are after deducting Rs.13,750/- already fixed by the Land Acquisition Officer.

49. In the second batch of cases the reference court did not rely upon the said document at all which factor is heavily relied upon by the learned counsel Shri G.S. Reghunath. At this stage we will have to consider another point whether the sale deeds executed through negotiated sales by the requisitioning authority could have any relevance or not. They are Exts.B2 to B6 documents in LAR No.47/1997 series. The average price of wet land is Rs.2,965/- per are. The witnesses examined are R.Ws.3 and 4. We have already referred to their evidence. Even in the deposition of R.W.3, he has stated that the market price of the property was more than that was provided in

Exts.B5 and B6. The property was remaining as a paddy field without any cultivation as waste land. Because of dumping of waste, agricultural operations could not be undertaken also. In cross examination he deposed that it was remaining as a water-logged paddy land and there was no road frontage also, whereas the acquired property is having facility of frontage to a panchayat road. His properties were remaining 1/4th km. away from panchayat road, without any direct access. He also deposed that compared to the acquired properties, the value of Exts.B5 and B6 properties is less.

50. R.W.4 was examined to prove Exts.B2, B3 and B4 documents and the transactions. According to him also, those documents do not reflect the real market value. The apparent reason for selling the land is that there was no other option. All the items were remaining as paddy lands which were not even cultivated because of collection of waste materials in them. The properties were lying at a distance of 2.5 kms. away from Collectorate. Even properties covered by Exts.B2 to B4 were having no road access. They were lying at a low level without any cultivation as waste lands, whereas the acquired properties

were developed even according to them, and they also deposed that the properties under those documents cannot be compared with the acquired properties.

51. Even though Shri G.S. Reghunath, learned counsel heavily relied upon them, as rightly found by the reference court in LAR No.47/1997 series (first batch of cases), those cannot be taken as a pointer in fixing the land value for the acquired property. There is no comparison or similarity with the acquired land. The acquired properties were reclaimed having panchayat road frontage. The acquired properties are having cultivation like coconut, arecanut and plantain, whereas in Exts.B2 to B4 there was no cultivation as they were remaining as waste land because of collection of waste materials. The reference court also observed that in the written statement filed by the requisitioning authority before the reference court, they have also indicated that during the relevant period the lands in that locality were having a market price ranging from Rs.2,853/- to Rs.9,053/- per are. Therefore, those documents cannot be relied upon.

52. Regarding the previous documents under which the claimants

in LAR No.47/1997 series, purchased the lands also, they are of the year 1991. They were remaining as paddy lands at that time. It is clear that the properties have been reclaimed thereafter. Therefore, those documents also cannot be compared as rightly found by the trial court in LAR No.47/1997 series. (First Batch)

53. The judgment of the reference court in LAR No.47/1997 series (First Batch) show that Ext.A8 is the judgment relating to acquisition for NPOL and the same judgment has been marked as Ext.A2 in LAR No.37/1997 series also (Second Batch). The said judgment shows that it is a common judgment in six cases, viz. LAR No.1332, 1369, 1375, 1376 and 1379 of 1988 and 114 of 1989. The property in LAR No.1332/1998 was having an extent of 41.28 ares of wet lands. The Land Acquisition Officer awarded land value at the rate of Rs.4,938/- per are which has been enhanced to Rs.12,355/- per are. The judgment is dated 30.8.1990. Of course, the reference court did not rely upon these judgments fully. The evidence show that those properties were acquired as per notification under Section 4(1) dated 16.7.1985. A.W.5 was the owner of those properties. The properties

were situated at a distance of 1 km. west of civil station where as the property herein is at a distance of 1.5 kms. from civil station on the eastern side. The lands involved in Ext.A8 were having facility to panchayat road frontage on two sides and bus route and bus stop facility at a distance of 500 metres. This led to the trial court in finding that they were not similarly placed. But as rightly submitted by the learned Senior Counsel for the claimants in the First Batch and the learned counsel for the appellants/claimants in the Second Batch, who also relied upon it as relevant as the lands acquired in both the cases are in nearby localities. The distance from Collectorate is 1 km. and 1.5 kms. respectively and the properties are situated on two sides of the Collectorate. The properties in L.A.R. No.1332/1988 were wet lands and the reference court in the judgment in LAR No.47/1997 series (First Batch) found that if Ext.A8 is relied upon, the land value for the acquired land will be Rs.27,180/- per are. We are of the view that even if reasonable deductions are made for the land value reflected in Ext.A8 for the accessibility to panchayat roads from two sides, the land value in the locality even at the relevant time can be easily assessed.

Apart from that, it can be seen that the acquisition in the nearby areas will give importance to the acquired properties in the present case also. This matter can also be reckoned going by the well settled principles discussed by the Apex Court in **G.M. Oil & Natural Gas Corporation Ltd. v. Rameshbhai Jivanohai Patel & another** (2008 SAR (Civil) 894), in paragraph 13. Therein their Lordships held that "but if some lands in that area are acquired for a residential/commercial/industrial layout, there will be all round development and improvement in the infrastructure/amenities/facilities in the next one or two years, as a result of which the surrounding lands will become more valuable. Even if there is no actual improvement in infrastructure, the potential and possibility of improvement on account of the proposed residential/commercial/industrial layout will result in a higher rate of escalation in prices." These observations were made while considering the effect of post notification documents. But still, the fact that in Ext.A8 judgment the land value fixed was at the rate of Rs.12,355/- per are, will give credence to the argument of the claimants in these cases also. Therefore, it cannot be said that Ext.A8 judgment can be totally discarded. (Ext.A2 in the second batch of cases).

54. Now we will have to come to the question whether the land value fixed in the first batch of cases based on Ext.A4 could be accepted. The reference court after arriving at the land value in Ext.A4, found that if the said value is adopted, as far as the acquired property is concerned, it will come to Rs.22,992/- per are. This was calculated by giving deduction of 25% from the land value reflected in Ext.A4.

55. Vehement objection by learned counsel Shri G.S. Reghunath is that it is a document showing dry land whereas the acquired properties are converted lands. In this context, we will have to consider the fact that the acquired lands are situated in a locality which is fast developing one and therefore the potential value will be increasing steadily year by year. After the Collectorate was established in the locality, so many developments have come in the near vicinity. The importance of the institutions noted already will show that industrial establishments, Government offices, schools and commercial establishments are there. Therefore, the acquired properties cannot be

termed to be agricultural lands in a very interior area where there will not be any marginal increase in land value on an yearly basis. The acquired lands have got access to Panchayat road also. Of course, they are near to the river also. But the fact cannot be denied that within a short distance there are public roads and panchayat road connects it to the acquired properties. These aspects will loom large while testing the fixation of land value made by the reference court. It is well settled that when transactions of same or similar nature are not readily available, transactions of lands in nearby localities will also be relied upon by the court by making suitable deductions like development charges (**Sabhia Mohammed Yusuf Abdul Hamid Mulla (Dead) by Lrs. and Ors. v. Special Land Acquisition Officer and Ors.** (JT 2012 (6) SC 185). This method will have to be adopted when it is clear from the evidence that the acquired lands are having potential value.

56. Then the next question will be whether the deduction made by the trial court, viz. 25% will be the correct one. 25% is adopted as it was the method adopted by the Land acquisition Officer for fixing market value to category 3 land from the value fixed for category 2

land. Ext.A4 property being a building site, according to us, deductions would be more.

57. Hence, it will be reasonable to arrive at a correct figure by making further deductions in the land value arrived at based on Ext.A8 judgment (Rs.27,180/- per are) and in Ext.A4 document (Rs.22,992/- per are), by the Reference Court in the First Batch of cases. As we have already noted, for wet lands in Ext.A8 the land value fixed is Rs.12,355/- per are for the acquisition made in 1985. The reference court found that the land value, if adopted as per Ext.A8, the market value of the acquired property will be Rs.27,180/- per are. If 25% is further deducted from the same, in view of the fact that the said item of properties had panchayat roads on two sides, the land value will be Rs.20,395/-. By making 35% deduction from the land value reflected in Ext.A4 document for better advantages for it, it will be Rs.19926.90.

58. In that view of the matter, the market value of the acquired properties can be fixed based on Rs.20,395/- per are which is the higher among the two. The property involved in Ext.A8, viz. LAR No.1332/1988 are wet lands. Compared to it, the acquired lands in

these cases are reclaimed lands. Therefore, a slight increase from the amount arrived at will be only reasonable and we fix an amount of Rs.21,000/- per are. By deducting the award amount at Rs.13,755/- per are fixed by the Land Acquisition Officer, the enhancement per are will be Rs.7,245/- per are. The same, according to us, will be a reasonable fixation.

59. The reference court in the second batch of cases, did no rely upon the judgment in first batch of cases made by the reference court for the main reason that the appeals herein from it are pending. Now that we have fixed the land value in LAR No.47/1997 series at the said rate, the same land value can be adopted in the second batch of cases also, viz. LAR No.37/1997 series. The properties are lying very closely and the same is also converted wet land. Paragraph 22 of the judgment therein will show that there is a discussion of the evidence of R.W.1 who was the Village Assistant of Thiruvamkulam Village when the acquisition took place. He worked as the Village Assistant in the office of the Special Tahsildar, Land Acquisition. It was he who prepared the mahazar of the acquired land involved in LAR

No.53/1997 which is marked as Ext.B1 therein. Exts.B1(a) to B1(c) are copies of the mahazars in those cases. The lands are lying as bunds and channels at the time of acquisition. Panchayat road touches the land involved in LAR No.37/1997 and property in LAR No.57/1997 had river frontage. He also deposed in cross examination that the land involved in all the reference cases were encompassed by a common barbed wire fencing erected on granite stone pillars. He also admitted that the lands are described as "nilam nikathu purayidam (converted garden lands). R.W.2 examined therein is another Village Assistant who also deposed that the entire lands were surrounded by a single barbed wire fencing with intermittent granite stone poles. There was a building in the land in LAR No.56/1997. Of course, his evidence is that vehicle could not reach this plot. The panchayat road was at a little higher level than the lands on either side of it. Of course, it was a metalled road but was in a state of bad repair.

60. Ext.A8 in the first batch of cases has been marked as Ext.A2 and Ext.A4 is marked as Ext.A3, Ext.A9 is marked as Ext.A5 and Ext.B3 is marked as Ext.B21. The reference court, in paragraph 40 of

the judgment, addressed the question whether the acquired property can be treated as lands in category 2, since the claimants had challenged the categorisation itself. The reference court agreed with the categorisation made by the Land Acquisition Officer. The reference court in paragraph 49 of the judgment, considered the argument of the requisitioning authority by relying upon Exts.B14 to B21, viz. concerning negotiated purchase and transfer from Government. Exts.B15 to B27 and B27(1) to B27(f) are the sale deeds in respect of plots purchased by KINFRA through negotiation. It was held that there is no evidence to show that the wet lands purchased through negotiation fell in category No.VI converted wet lands into bunds and thodus with Panchayat road frontage. Thus, it was held that the above set of documents are of no help for fixing the land value in these cases. The same is the view taken in the first batch of cases also. We have already adverted to the contentions raised by Shri G.S. Reghunath, relying upon the documents executed by negotiated sale by KINFRA. Those lands cannot be compared with the acquired lands.

61. Therefore, as rightly pointed out by the learned counsel for

the claimants, Shri Wilson, the properties involved in LAR No.37/1997 series are also similar to the lands involved in the first batch of cases, viz. LAR No.47/1997 series. Since the evidence in both the cases are more or less same, we will be justified in adopting the same value herein also. Therefore, we fix the value of acquired properties in the second batch of cases also at the same rate, viz. Rs.21,000/- per are and the claimants will be entitled for enhancement of Rs.7,245/- per are in these items.

62. Even though it is contended that in both cases the acquired lands are having channels for entering water, being converted wet lands, these channels have been obviously made for pursuing cultivations. These lands cannot be therefore compared with the waste lands which were purchased by KINFRA through negotiation wherein cultivation and other agricultural activities were not there. Therefore, the vehement reliance placed on those documents by Shri G.S. Reghunath, in both the cases cannot hold good.

Therefore, the appeals are disposed of in the following manner:

LAA Nos.563, 564, 565, 611, 612, 613, 769, 1456, 1462 and

1471 of 2000 are partly allowed by fixing land value of the acquired properties to Rs.21,000/- per are instead of Rs.22,992/- adopted by the reference court. All the other appeals, viz. LAA Nos.786, 806, 810 and 822 of 2001 are allowed by fixing the land value at Rs.21000/- per are. In both the batch of cases the claimants will be entitled for enhanced land value uniformly at Rs.7,245/- per are than the value awarded by the Land Acquisition Officer. The claimants are also entitled for statutory benefits under Sections 23, 23(1A) and 28 of the Land Acquisition act, for the amount of compensation.

The parties will suffer their costs in the appeal.

(T.R. RAMACHANDRAN NAIR, JUDGE.)

(P.V. ASHA, JUDGE.)

kav/