

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE ANIL K.NARENDHAN

TUESDAY, THE 27TH DAY OF OCTOBER 2015/5TH KARTHIKA, 1937

LA.App.No. 527 of 2005 ()

(AGAINST THE JUDGMENT IN LAR 118/2001 of SUB COURT, PAYYANNUR DATED
31-07-2003)

APPELLANT/PETITIONER::

1. S.A.P. ABDUL SALAM,
S/O. ABDULLA HAJI, S.A.P. HOUSE, MADAI AMSOM
PUTHIYANGADI DESOM. P/A. HOLDER OF SAP ABDUL KALAM AZAD
AND ABDUL RASHEED.

BY ADVS.SRI.M.SASINDRAN
SRI.T.P.ELDHO

RESPONDENT/RESPONDENT:

THE SPECIAL TAHSILDAR, (LA)
KANNUR.

BY SR.GOVERNMENT PLEADER MR. L. ALOSIOUS THOMAS.

THIS LAND ACQUISITION APPEAL HAVING COME UP FOR ADMISSION ON
27-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**P.R. RAMACHANDRA MENON
&
ANIL K. NARENDRAN, JJ.**

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L.A. APPEAL No.527 OF 2005
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Dated this the 27th October, 2015

J U D G M E N T

P.R. Ramachandra Menon, J.

Rejection of the claim for enhancement pursuant to the reference under Section 18 of the Land Acquisition Act is the subject matter of challenge in this appeal preferred by the claimant. An extent of 38.830 cents of land in R.S.No.13/2 and 9.880 cents in R.S.14/2 in Madai Village belonging to the appellant was acquired for construction of an approach road to Muttom Bridge . The land value was fixed by the Awarding Officer at Rs.5927/- per cent. The amount was obtained under protest and reference was sought to be made. It was accordingly, that the matter came to be placed before the Reference Court where it was numbered as LAR No.118 of 2001.

2. The case of the appellant was that the property concerned was having much higher potential value . An Advocate Commissioner was appointed so as to evaluate the facts and

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figures, who submitted a report as Ext.A1. The Power of Attorney Holder of the claimant was examined as A.W.1 and the Advocate Commissioner was examined as A..W.2. Reliance was placed on Ext. A2 document (Sale deed No.821 of 2000), wherein value of the land was shown as Rs.15000/- per cent. The Reference Court refused to accept or rely on Ext. A2 document , as it was a document executed after 4(1) Notification issued on 11.04.2000. Observing that no evidence was adduced to sustain any enhancement, the claim was rejected , which in turn is sought to be intercepted by filing this appeal.

3. As a matter of fact , the appeal was not filed on time and the delay of 383 days was sought to be condoned by filing C.M.Application No.721 of 2005. The application came up for consideration before this Court on 28.09.2015, when delay was condoned, subject to the rider that, if at all any enhancement was ordered, the appellant would not be entitled for interest for the period of delay.

4. Heard both the sides.

5. The matter was pending before this Court right from the

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year 2005. The primary point to be considered is whether the Reference Court was justified in holding that Ext.A2 document was a post notification document or not. The observation made by the Reference Court in paragraph 9 are relevant and hence the same is extracted below.

“9. The claim petitioner pressed into service Ext.A2 document for claiming enhanced compensation. Under Ext.A2 an extent of 18 cents of land was covered for a sum of Rs.270,000/- in favour of Muttom Tha Alimul Islam Trust, P.O. Vengara. According to the claim petitioner the property covered by Ext.A2 document is situated adjacent to the acquired land and it was a purchase made for the purpose of “omen's college. Even though Ext.A2 transaction is after S.4(1) notification it can be relied on applying the dictum laid down in the judgment of our Hon'ble High Court reported in 1997(2) KLJ page 298 and 1990(1) KLT page 432 as there is no inflexible rule that post notification document cannot be looked into to ascertain the market value and the burden of proof is on the party who objects to the consideration of the post notification documents. But on going through Ext.A2 it can be found that the

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property lying on the southern and eastern sides of the Ext.A2 property belongs to the Juma at itself. So it will not be safe to place reliance on Ext.A2 transaction for fixing the market value of the acquired land. There is every possibility for the trust to purchase the property covered by Ext.A2 for their convenient enjoyment of the property adjacently situated on the south and eastern sides of the Ext.A2 property. So in the absence of any convincing evidence to get enhanced market value of the acquired land I hold that the claim petitioner is not entitled to get enhanced compensation for the acquired land. It therefore follows that adequate and fair compensation was already awarded by the respondent. Point No.1 is found accordingly.

There is discussion by the Reference Court to the effect that, by virtue of the law declared by this Court in **1997 (2)KLJ 298 (Jacob vs. State of Kerala)** and **1990(1) KLT 432 (Narayana Iyer vs. State of Kerala)**, there was no inflexible rule that post notification document' cannot be looked into to ascertain the market value. But the burden of proof is, of course,

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on the claimant , which in the instant case was not satisfied. It was also observed that the property covered by Ext.A2 was lying bordered by the property belonging to the vendee on the southern and eastern sides and as such, it was not proper to have placed reliance on Ext.A2 to ascertain the actual market value, also for the reason that the property might have been purchased by the vendee for more beneficial utilisation of their existing land for fancy price .

6. At the very outset, this Court would like to observe that the matter was being proceeded on a wrong tangent in so far as Ext.A2 document was executed on 14.03.2000 , i.e. one month prior to Section 4(1) notification dated 11.04.2000 and never after the notification. If the said document was prior to 4(1) notification, what prevented the Reference Court from looking into the same to ascertain the factual position is not known, but for that the Reference Court was proceeding under the impression that the document was after Section 4(1) notification, which obviously is wrong

7. Yet another aspect brought to the notice of this Court

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by the learned Counsel for the appellant, during the course of hearing, is that another extent of property was purchased by the very same vendee, from the very same vendors, as per another document executed on the very same date, i.e. 14.03.2000, wherein the value of the property was shown as Rs.15000/- per cent as in Ext. A2. This document was produced and sought to be relied on in a connected matter, i.e. LAR No.125 of 2001, which arose from the very same notification. After examining the facts and figures, the Reference Court in the said case held, as per the verdict dated 21.08.2004 that the value shown in the said document produced as Ext.A1 therein reflected the land value plus value of the improvements and hence the value as such could not be accepted as the proper land value, though the document was executed almost 'one month prior to' the date of Section 4(1) notification. However, considering the facts and circumstances, the land value of Rs.5123.91/- awarded by the Land Acquisition Officer was enhanced by 100%.

8. In the instant case, the land value fixed by the Awarding Officer is Rs.5927/- per cent, ie. more than the value

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in LAR No.125 of 2001 and still, no enhancement has been ordered and the claim has been rejected in toto.

9. This Court finds that the matter requires to be reconsidered in the light of the discussion made above. The judgment and decree passed by the Reference Court is set aside and the matter is remitted to the court below for fresh consideration, with liberty to the appellant to adduce additional evidence, if any to substantiate the facts and figures. Since the matter is an old one, the proceedings as above shall be finalised at the earliest, at any rate within 'four months' from the date of receipt of a copy of this judgment. The order passed by this Court on 28.09.2015 with regard to eligibility for interest will continue to govern the field.

**P.R. RAMACHANDRA MENON,
JUDGE**

**ANIL K. NARENDRA,
JUDGE**

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