IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

MONDAY, THE 22ND DAY OF JUNE 2015/1ST ASHADHA, 1937

LA.App..No. 100 of 2006 (D)
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AGAINST THE JUDGMENT & DECREE IN LAR 68 /1998 OF IIIRD ADDL.SUB COURT, ERNAKULAM DATED 23-07-2004
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APPELLANT/1ST RESPONDENT :
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STATE OF KERALA
REPRESENTED BY CHIEF SECRETARY,
GOVERNMENT OF KERALA, SECRETARIAT
TRIVANDRUM.

BY GOVT. PLEADER SRI. R. PADMARAJ

RESPONDENTS (CLAIMANTS/2ND RESPONDENT) :
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1. CHERIA PAULOSE,
KUZHIYANJAL, KAKKANAD.

2. VARGHESE,
S/O.PAULOSE, KUZHIANJAL, KAKKANAD.

3. VARKEY CHERIAN,
CHAKKALAMOOLAYIL,
KAKKANAD (*DIED, LEGAL HEIRS RECORDED)

4. MARIYAMMA CHERIAN,
AGED 62, W/O. LATE VARKEY CHERIAN,
CHAKKALAMOOLAYIL HOUSE, KUSUMAGIRI P.O.,
KAKKANAD VILLAGE, KANAYANNUR TALUK.

5. LIGI CHERIAN,
AGED 25, S/O. VARKEY CHERIAN, -DO- -DO-

6. SHIJU CHERIAN,
AGED 20, S/O. LATE VARKEY CHERIAN, DO- -DO-

7. SARAMMA,
W/O. PAULOSE, KUZHIYANJAL,
KAKKANAD.

8. KERALA INDUSTRIAL INFRASTRUCTURE
DEVELOPMENT CORPORATION (KINFRA), VELLAYAMBALAM
TRIVANDRUM, REPRESENTED BY THE MANAGING DIRECTOR.
-2ND RESPONDENT.

*RESPONDENTS 4, 5, 6 ARE RECORDED AS THE LEGAL HEIRS OF THE DECEASED RD RESPONDENT AS PER ORDER DTD. 10.6.13 IN LAA.100/06.

R4 TO R6 BY ADV. SRI.M.RAVIKUMAR
R2 & R7 BY ADV. SRI.VARGHESE C.KURIAKOSE
R8 BY ADV. SRI.G.S.REGHUNATH

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON 22-06-2015, ALONG WITH LAA. 156/2006 & LAA NO. 177/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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**T.R. RAMACHANDRAN NAIR &**
**K.P. JYOTHINDRANATH, JJ.**
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**L.A.A.Nos.100, 156 and 177 of 2006**
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**Dated this the 22nd day of June, 2015**

## JUDGMENT

**Ramachandran Nair, J.**

All these appeals are filed by the State from the respective judgments and decrees in L.A.R.Nos.68/1998, 70/1998 and 97/1998 on the file of the III Addl. Sub Court, Ernakulam. The properties were acquired for the purpose of the requisitioning authority to set up the Export Promotion Industrial Park of KINFRA at Kakkanad. These items of lands have been categorised by the Land Acquisition Officer as Category II. The lands were acquired by notification under Section 4(1) of the Act published on 31.1.1995. The land value as far as the acquired properties are concerned, has been fixed at Rs.14,700/- per are. The reference court has granted enhancement by fixing the land value at Rs.27,000/- per are.

2. We heard learned counsel both sides.

3. In fact as far as the date of publication of the notification under

Section 4(1) of the Act is concerned, it is actually 31.1.1995, even though in the form of award it has been noted as 18.12.1995. In the light of the said controversy we had called for the relevant records which were made available by the learned Senior Government Pleader. The date 18.12.1995 corresponds to the publication of the draft notification under Section 6(1) of the Act. As far as the notification under Section 4(1) is concerned, in the Notes to Award it has been correctly given as 31.1.1995 which is the date of publication of the notification in the gazette and being the first notification, the said date will have to be adopted in the light of the decision of the Apex Court in **Kolkata Metropolitan Development Authority v. Gobinda Chandra Makal** (2011(4) KLT SN 1), which we adopt.

4. The reference court has taken the date as 1.11.1995 which has therefore to be corrected by us. In these cases the properties have been categorised under category II which are dry lands having frontage of panchayat road and private road. The notes to award shows that the Land Acquisition Officer has considered Sl. No.15 document in fixing the land value. A brief description of the same is necessary before

proceeding further. The said document is dated 13.9.1993 and the document number is 1723/1993. It is in respect of 4.86 ares of dry land without any improvements and the net land value was fixed at Rs.17,489/- per are. On the ground that the said property is near Kakkanad Junction and on the further finding that the acquired property is situated 1 ½ km. away from Kakkanad, the Land Acquisition Officer fixed land value by adopting 16% deduction. According to us, the Land Acquisition Officer has omitted to consider one aspect. For the time lag between 13.9.1993 to the date of Section 4 (1) notification, no further increase has been adopted. In fact, the reference court in paragraph 37 of the judgment, was of the view that acceptance of the said document was not justified, as the property was found to be located in an interior place without direct access to any road. The said finding was rendered based on the notes to award itself. Thereafter, land value was fixed at Rs.27,000/- per are based on another document and by providing rate of increase from the value fixed in respect of other categories.

5. Learned Senior Government Pleader submitted that in the light

of the common judgment of this Court in LAA No.563/2000 and connected cases wherein the land value has been finally fixed at Rs.21,000/- per are, the percentage of increase therein alone could be adopted. The said items of properties are comprised in category VI wet land. Therein, if the percentage of increase is taken, it is clear that we had increased the land value from Rs.13,750/- per are granted by the Land Acquisition Officer to Rs.21,000/- per are which will be 52% and if that method is adopted, the land value for the acquired properties herein will be Rs.22,450/- per are. But Shri Varghese Kuriakose, learned counsel appearing for the respondent in LAA No.156/2006 submitted that the difference between the land value fixed by the Land Acquisition Officer will be Rs.950/-, i.e. as far as the acquired properties herein is concerned, the land value fixed by the Land Acquisition Officer is Rs.14,700/- whereas for category VI properties, it was Rs.13,750/-. Therefore, the difference will be only 8.8%. Learned counsel for the requisitioning authority submitted that there should be a proper deduction in cases where the extent of property is large. In fact, Rs.21,000/- has been fixed by us in respect of large extent of land, nearly 6 acres. Herein, category II property having frontage of Panchayat road and private road, is in an important location. Therefore, if the value fixed in LAA No.563/2000 and connected cases is adopted, the land value will be Rs.25,450/- and if the method suggested by Shri Varghese Kuriakose is adopted, it will be Rs.25,840/- per are.

6. We are also of the view that the Land Acquisition Officer has fixed the land value at a reduced rate by taking document No.1723/1993 and without granting any addition for the time lag. If actually, the time lag was properly calculated, in any view of the matter, the amount would have been more, viz. Rs.21,000/-, going by the document value. If that be so, the rate of percentage of increase would have been different between category II and category VI.

7. Bearing in mind this aspect also, we are of the view that we will be justified in fixing the land value in the light of the special facts of this case, at Rs.25,840/-, rounded off to Rs.25,850/- per are.

8. The appeals are allowed to the above extent. The respondents will be entitled for the benefit under Section 23(1A) of the Act for the

period from 31.1.1995. We also direct that the additional amount calculated at 12% per annum will be liable to be granted for the period from 31.1.1995 to 23.10.1996, in LAR Nos.68/1998 and 70/1998 (LAA Nos.156/2006 and 100/2006) instead of the period from 1.11.1995 to 23.10.1996. In LAR No.97/1998 (LAA No.177/2006) it is granted from 31.1.1995 to 11.9.1996.

The parties will suffer their costs in the appeals.

**(T.R. RAMACHANDRAN NAIR, JUDGE.)**

**(K.P. JYOTHINDRANATH,, JUDGE.)**

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