

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 29TH DAY OF JULY 2015/7TH SRAVANA, 1937

LA.App..No. 385 of 2012 ()

**AGAINST THE JUDGMENT AND DECREE IN LAR 245/2008 OF SUB COURT, PAYYANNUR
DATED 30-01-2010**

APPELLANTS/PETITIONERS:

- 1. T.K.FATHIMA
D/O.LATE ATHIKKAL PANDIKASALAYIL MUHAMMED KUNHI
ETTIKKULASM P.O, RAMANTHALI.**
- 2. T.K.SAINABA
D/O.LATE ATHIKKAL PANDIKASALAYIL MUHAMMED KUNHI
'SAINABA MANZIL', VENGARA P.O, PAYANGADI.**
- 3. T.K.SHAFEEQUE
S/O.LATE MUHAMMED KUNHI, 'SAINABA MANZIL', VENGARA P.O
PAYANGADI.**
- 4. KUNHIKKALANTHANTAKATH KUNHALEEMA,
IST WIFE OF LATE OF MUHAMMED KUNHI, ETTIKKULAM P.O.**
- 5. KUNHIKKALANTHANTAKATH MUHAMMED ANEEF
S/O.LATE MUHAMMED KUNHI, ETTIKKULAM P.O.**
- 6. KUNHIKKALANTHANTAKATH NAZEEMA
D/O.MUHAMMED KUNHI, ETTIKKULAM P.O.**
- 7. KUNHIKKALANTHANTAKATH MUHAMMED SHAREEF
S/O.LATE MUHAMMED KUNHI, ETTIKKULAM P.O.**
- 8. KUNHIKKALANTHANTAKATH SAJEEMA
D/O.MUHAMMED KUNHI, ETTIKKULAM P.O.**
- 9. KUNHIKKALANTHANTAKATH ABDULLA
S/O.LATE MUHAMMED KUNHI, ETTIKKULAM P.O.**

BY ADV. SRI.SERGI JOSEPH THOMAS

LA.App..No. 385 of 2012 ()

RESPONDENTS/RESPONDENTS:

- 1. THE DISTRICT COLLECTOR
P.O. KANNUR 679 001.**
- 2. THE SPECIAL TAHSILDAR (LA)
EZHIMALA NAVAL ACADEMY, PAYYANNUR. 679 301.**
- 3. THE SPECIAL TAHSILDAR (LA GENERAL)
P.O. THALASSERY 679 101.**

BY SENIOR GOVERNMENT PLEADER SRI. R. PADMARAJ

**THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON
29-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

shg/

T.R. RAMACHANDRAN NAIR & K.P. JYOTHINDRANATH, JJ.

L.A.A.No.385 of 2012

Dated this the 29th day of July, 2015

J U D G M E N T

Ramachandran Nair, J.

This appeal is filed by the claimants in LAR No.245/2008 on the file of the Sub Court, Payyannur. An extent of 0.7560 hectares of land comprised in R.S.No.323/1 of Ramanthali Village was acquired from the title holder late Anthikkal Pandikasalayil Muhammed Kunhi for the establishment of Naval Academy at Ezhimala as per notification u/s. 4(1) of Land Acquisition Act published on 22.2.1983. The claimants were granted land value at the rate of Rs.466.40/- per cent.

2. The award will show that Rs.71,424/- was given as land value for an extent of 0.6200 hectares excluding the standing space of 0.1360 hectares and fixing the land value at the rate of Rs.1,15,200/- per hectare. An amount of Rs.33,433/- and Rs.1,298.25 were also given as value of bearing and non-bearing improvements.

3. The proceedings have been initiated under Section 28A(3) of the Land Acquisition Act. Before the reference court evidence was adduced by examining AW1 and AW2 and Exts.A1 to A14 were marked also.

4. The claimants relied upon the judgment in LAR No.120/1987 (Ext.A1). The said property was also acquired for the same purpose. The claimants had relied upon Exts.A6 to A14 also and the court below after considering various aspects was of the view that the properties involved in LAR No.245/2008 and the relied on judgments are not similar for want of direct road access.

5. Learned counsel for the claimants submitted that the enhanced value granted in LAR No.120/1987 could have been relied upon by the court below. According to the learned counsel, the Land Acquisition Officer has treated the property involved in LAR No.120/1987 and in this case alike and the land value awarded is at the same rate of Rs.466/-. It is therefore submitted that a further recategorization is not required and therefore the method

adopted by the court below is wrong.

6. We find much force in the above submission. When it is shown that Land Acquisition Officer has treated both the properties alike, it is evident that the said method has been adopted after verifying the similarities between the properties. Both these had no direct access from the road. This is clear from Ext.A1 judgment but the court below held otherwise which is apparently wrong. Therefore, the view taken by the court below that the property is not similar to the properties acquired in LAR No.120/1987 is not correct.

7. As far as LAR No.120/1987 is concerned, the market value fixed is at the rate of Rs.1,500/- per cent. Therefore, we are of the view that the claimants will be entitled for land value at the rate of Rs.1,500/- per cent. The claimants will be entitled to all the statutory benefits as granted by the reference court.

8. There was a delay of 710 days in filing the appeal and the delay was condoned as per order in

C.M.A.No.564/2012 and while condoning the delay this Court made it clear that in the event of the appeal being allowed and the appellants becoming entitled for enhanced compensation, such enhanced compensation will not carry interest at the rate admissible under Section 28 for the said period. We reiterate the same and the grant of statutory benefits will be subject to the above condition.

Accordingly, the appeal is allowed and there will be no order as to costs.

Sd/-
T.R. RAMACHANDRAN NAIR
JUDGE

Sd/-
K.P. JYOTHINDRANATH
JUDGE

//True copy//

P.A. TO JUDGE

shg/