IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 28TH DAY OF JULY 2015/6TH SRAVANA, 1937

LA.App..No. 524 of 2012 ()

AGAINST THE JUDGMENT IN LAR 11/1999 of SUB COURT, PATHANAMTHITTA DATED 28-02-2005

APPELLANT/CLAIMANT

RAJAN, S/O RAMAKRISHNA PILLAI
VAYALIRAKKI HOUSE
PATHANAMTHITTA

BY ADV. SRI.K.K.CHANDRAN PILLAI (SR.)

RESPONDENTS/RESPONDENTS:

1. STATE OF KERALA
   REP. BY THE DISTRICT COLLECTOR
   PATHANAMTHITTA 689 645

2. THE SECRETARY, PATHANAMTHITTA
   MUNICIPALITY, PATHANAMTHITTA 689 645

BY SRI.V.K.SUNIL, SC FOR PATHANAMTHITTA MUNICIPALITY
BY GOVERNMENT PLEADER SRI.R.PADMARAJ

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON 28-07-2015, ALONG WITH LAA. 661/2012, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

** The date of judgment in the cause title of L.A.A.No.524/2012 and 661/2012 is corrected as Thursday, the 30th day of July 2015/8th Sravana 1937 (30.07.2015) vide order dated 18/11/2015 in L.A.A.No.524/2012 and 661/2012.

Sd/-
Assistant Registrar

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

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L.A.A.Nos.524 & 661 OF 2012

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Dated this the 28th day of July, 2015

<u>JUDGMENT</u>

<u>Ramachandran Nair, J.</u>

Both these appeals have been filed by the respective claimants whose properties have been acquired for the same purpose namely for establishing a private bus stand by Pathanamthitta municipality, represented by the second respondent herein.

2. L.A.A.No.524/2012 is from the judgment in L.A.R.No.11/1999 and L.A.A.No.661/2012 is from the judgment in L.A.R.No.12/1999. The properties have been acquired as per notification under Section 4(1) dated 28.05.1995. The land value fixed by the land acquisition officer as far as these items of properties are @ `48,700/- per Are ( ` 19,717/- per cent). In L.A.A.No.661/2012, a portion of the property, namely .25 Are is treated as wet land and the same is valued at `1235/- per Are. According to the appellants, the same is also dry land. In these appeals, the claimants have claimed land value @ `50,000/- per cent more.

3. We heard the learned Senior Counsel for the appellants Sri.K.K.Chandran Pillai, the learned counsel for the second respondent Municipality Sri.V.K.Sunil and the learned Senior Government Sri.R.Padmaraj.

4. Both the land acquisition reference cases were disposed of together. The claimants in support of their claim for enhancement have produced Exts.A1 to A9 sale deeds. An Advocate Commissioner was appointed who has submitted reports as Exts.C1 to C3. Aws 1 to 3 have been examined on the part of the claimants.

5. The learned Senior counsel for the appellants submitted that properties acquired are in an important locality and the properties are commercial plots also. It is submitted that they are located just opposite to the transport bus stand and are having road frontage to Pathanamthitta - Mylapra road. It is submitted that the properties are in the heart of Pathanamthitta town and therefore the land value awarded by the land acquisition officer and that is fixed by the reference court do not reflect the correct market value in the locality.

6. The learned counsel for the second respondent submits that

all the documents have been considered by the trial court and it was found that those documents relate to properties situated in more important localities i.e. on the side of the main road.

7. The learned Senior Counsel for the appellants further relied upon the judgment of the reference court itself in L.A.R.No.3/2001 which has been produced before this Court along with I.A.No.21/2013 in L.A.A.No.524/2012. The said property is the adjoining item to the properties acquired herein and the reference court after evaluation the evidence has refixed the market value @ `95,000/- per cent. It is therefore submitted that when the properties are equally important and are similar, the appellants are also entitled for enhancement. It is the submission of the learned counsel for the Municipality that the property covered by L.A.R.No.3/2001 is lying adjoining Pathanamthitta - Kumbazha road which is a main road. It is true that in respect of the items of land involved herein and in respect of the property involved in L.A.R.No.3/2001, the land acquisition officer has awarded land value at the same rate. The evidence as regards the locality and importance of the acquired properties herein are concerned are also clear from the

discussion made by the reference court in paragraph 16. The Advocate Commissioner had submitted reports Exts.C1 to C3. It was found that the basic land is located at a distance of 2 Km. south east from the acquired land and in a remote residential area which was having no road frontage also. The Commissioner has given evidence that the acquired properties are bound by the ring road.

8. The trial court in paragraph 18 found that going by Exts.C1 to C3 reports, it is clear that a Municipal road was going through the southern side of the acquired land at the time of acquisition. The proximity to the Pathanamthitta town has also been established. After considering various aspects, the reference court by a guess work enhanced the land value by fixing it at `75,000/- per Are for the dry land and `25,000/- per Are for the wet land.

9. Of course, as far as the documentary evidence adduced by the appellants are concerned, the finding is that those are in relation to properties lying on the side of the main road. But still the question whether the documents relating to neighbouring areas could be relied upon should have been a matter for consideration by the trial court and

by adopting a reduction for the importance of those properties and the potential value of those properties, the reference court is free to fix appropriate market value for the acquired property.

In that view of the matter, according to us, the total rejection of those documents was not justified. Now that the reference court has fixed land value going by the judgment in L.A.R.No.3/2001, definitely the same judgment could be relied upon by this Court since it is in respect of the adjoining property. We are also informed that the Municipality or the State has not filed any appeal against the judgment and decree in L.A.R.No.3/2001. Therefore, the same has become final. We therefore mark in evidence the judgment in L.A.R.No.3/2001 as additional Exhibit A10.

10. The discussion of evidence in Ext.A10 contain the details with regard to the location and importance of the properties. The acquired land therein was held as situated at the centre of the Pathanamthitta town, on the side of Thiruvalla - Kumbazha PWD road. The reference court has quoted findings of this Court in L.A.A.No.857/2005 which was from the judgment initially passed in

L.A.R.No.3/2001. The said judgment was set aside and the matter was remanded and thereafter the trial court rendered Ext.A10 judgment. The trial court also found in paragraph 13 that the acquired land is situated on the heart of Pathanamthitta town and is a vast developing area. As far as the land value fixed therein is concerned, we have already noticed that the same is at the rate of `95,000/- per cent. The land value claimed as regards acquired property is `50,000/- per cent more i.e. ` 80,000/-. By a process of reduction of the land value, considering the fact that the acquired properties are not situated on the side of the main road, it will be safe to conclude that the appellants are entitled for an amount @ `70,000/- per cent. In that view of the matter, we allow the appeal and we refix the land value of the acquired properties at the rate of `70,000/- per cent for the dry land.

11. As far as the wet land involved in L.A.A.No.661/2012 is concerned, the learned counsel for the appellant submits that it is actually a converted reclaimed land. There is no documentary evidence in support of the claim. Therefore, we fix the value of the wet land at `26,000/- per cent ( 1/3 of `80,000/-).

The appeals are accordingly allowed. It is also made clear that the appellants are entitled for all the statutory benefits as granted by the trial court. The parties will suffer their costs in the appeals. There was a delay of 2344 days in re-presenting L.A.A.No.524/2012 after curing the defects. While condoning the delay, this Court ordered that the enhanced compensation which may be awarded to the appellant, will not carry interest under Section 28 of the Land Acquisition Act during the period of delay. We confirm the same and the grant of benefits under Section 28 of the Act will be subject to the above. Both parties will suffer their costs in the appeals.

T.R.RAMACHANDRAN NAIR, JUDGE

K.P.JYOTHINDRANATH,JUDGE

The date of the common judgment in L.A.A.Nos.524 & 661 of 2012 occurring in the first page is corrected as " 30.07.2015" and also the figures " Rs.26,000/- per cent (1/3 of Rs.80,000/-)" occurring in the 11th paragraph as "Rs.23,000/- per cent (1/3 of Rs.70,000/-)" (vide order dated 18/11/2015 in L.A.A.Nos.524 & 661 of 2012).

Sd/-
Registrar (Judicial)

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