

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 4TH DAY OF AUGUST 2015/13TH SRAVANA, 1937

LA.App..No. 712 of 2012 (C)

AGAINST THE ORDER/JUDGMENT IN LAR 41/2010 of SUB COURT,THODUPUZHA DATED
13-01-2012

APPELLANT(S)/RESPONDENTS :

1. STATE
REPRESENTED BY THE DISTRICT COLLECTOR, IDUKKI.

2. THE EXECUTIVE ENGINEER,
P.W.D.ROADS DIVISION, IDUKKI.

BY SR.G.P. SHRI R. PADMARAJ

RESPONDENT(S)/CLAIMANT:

JOJI JOHN
S/O.M.K.JOHN, MARATTIL, EAST KALOOR
PIN-682020.

R1 BY ADV. SRI.T.J.MICHAEL
R1 BY ADV. SRI.JOSEPH JOHN

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON 04-08-2015, ALONG WITH CO 123/2015 AND ALONG WITH LAA NO.754/2012 & CO 106/15 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

L.A.A.No.712/12 & C.O.NO.123/15, L.A.A.No.754/12 & C.O.106/15, L.A.A.No.745/12 & CO 116/15, L.A.A.No.738/12 & CO 121/15, L.A.A.No.749/12 & CO 117/15, L.A.A.No.830/12 & CO 114/15, L.A.A.No. 741/12 & CO 115/15, L.A.A.No.802/12 & CO 122/15, L.A.A.No.789/12 & CO 124/15, L.A.A.No.746/12 & CO 113/15, L.A.A.No.437/13 & CO 119/15, L.A.A.No.686/12 & CO 104/15, L.A.A.No.123/13 & CO 118/15, L.A.A.No.791/12, 549/12, 325/13, 377/13, 847/12, 510/12, 223/13, 470/12, 852/12, 509/12, 440/13, 357/13, 717/13, 365/13, 540/13, 385/13, 530/13, 731/12, 872/14, 115/13, 595/13, 37/15, 232/15, 278/15, 752/12 & CO 30/14, 227/15, 330/13 and 424/13

Dated this the 4th day of August, 2015

JUDGMENT

Ramachandran Nair, J.

These appeals arise from the respective judgments and decrees in different Land Acquisition Reference cases. Apart from the appeals filed by the State there are separate appeals filed by the claimants as well as cross objections filed by some of the claimants. We heard all these appeals together and therefore we dispose of the appeals together.

2. The properties under acquisition were notified by the State for the purpose of improvement to Irrukkumpuzha bridge approach road and the notification under Section 4(1) of the Act was published on 24.10.2008. The Land Acquisition Officer had categorised various

items of properties into different groups. The total extent of land acquired is 3.3990 hectares comprised in various survey numbers. The properties are situated in two adjoining villages, viz. Thodupuzha and Manakkad. As far as the acquired properties herein are concerned, they are grouped as group 3, viz. land nearby the municipal road. We reproduce below the table given in the award giving categorisation of different items of land along with the land value fixed by the Land Acquisition Officer:

	<i>Group</i>	<i>Extent</i>	<i>Document No. & date</i>	<i>Recommended Rate (per are)</i>	<i>Recommended Rate (per cent)</i>
1A	Dry land having State High Way Road frontage	0.0556	1004/06 dated 15.3.06 of Thodupuzha SRO	160750	65081
1B	Wet land converted to dry lands having State High Way frontage	0.0686	1486/06 dt.24.4.06 of SRO Thodupuzha	105770	42822
2	Lands having mud road facility and commercial importance	0.2550	1004/06 dt.15.3.06 of Thodupuzha SRO	88410	35794
3	Land nearby the Municipal road	0.8965	2749/08, 2750/08 dt.11.7.08 of Thodupuzha SRO	73400	29717
4	Land nearby the Municipal road and less important than group 3	0.5412	2749/08, 2750/08 dt.11.7.08 of Thodupuzha SRO	62390	25259

	<i>Group</i>	<i>Extent</i>	<i>Document No. & date</i>	<i>Recommended Rate (per are)</i>	<i>Recommended Rate (per cent)</i>
5	Wet land with Municipal Road accessibility but less importance of Thodupuzha town	0.0262	2033/08 dt.20.5.08 of SRO Thodupuzha	13163	5327
6	Dry land without road accessibility	0.1750	2749/08, 2750/08 dt.11.7.08 of Thodupuzha SRO	53030	21470

The proposed road is having a distance of 1.5 kms. from Pala-Thodupuzha State Highway starting from the junction wherein the Municipal private bus stand is situated. As far as category 1A is concerned they are dry lands having State Highway road frontage. As far as category 3 properties are concerned, they are only situated 350 metres away from the east and west of Crymptoms factory.

3. We heard learned Senior Counsel Shri K.K. Chandran Pillai and learned counsel Shri Joseph John for the claimants and learned Senior Government Pleader Shri Padmaraj appearing for the State.

4. What is highlighted by the learned counsel for the claimants is the fact that the reference court in these cases, in spite of adducing evidence by the claimants, had only relied upon the judgment in LAR No.41/2010 for the purpose of granting enhanced compensation. The

judgment of the reference court shows that as far as category 3 items of properties are concerned, the land value has been refixed to Rs.1,90,000/- per are. The State has come up in appeal against the judgment in LAR No.41/2010 as LAA No.712/2012.

5. Learned counsel for the claimants further submitted that the documents produced by the claimants therein are Exts.A1 to A12 and there are reports of the Commissioners which have been marked in evidence also. As far as LAR No.41/2010 is concerned, the reports have been marked as Exts.X1 and X2 and the claimants have examined AWs. 1 to 3. More or less same documents have been produced in all the cases and Commissioners' reports have also been marked.

6. As far as the main argument in support of the claim for further enhancement is concerned, learned Senior Counsel Shri Chandran Pillai and learned counsel Shri Joseph John submitted that even going by the award, it can be seen that the properties are situated in important localities in Thodupuzha municipal town. It is therefore submitted that when due importance is given to the locality and the potential value of

the properties, the claimants are entitled for further enhancement. It is emphasised by the learned counsel that the access and nearness to the private bus stand, viz. Kothaikunnu bus stand and the availability of various important commercial establishments near the bus stand and other parts of the town will give more potential value to the acquired property.

7. We find from the award of the Land Acquisition Officer that in paragraph 6 a detailed description has been given with respect to the location of the property as well as important institutions therein and therefore we reproduce the same hereinbelow:

“6) Basis Valuation Report

The BVR was prepared and submitted to District Collector, Idukki.

The proposed Irrukkumpuzha Bridge approach roads starts from west of Thodupuzha Kothaikunnu Private Bus Stand, Thodupuzha - Pala State Highway and ends at Manakkad - Kolani Municipal Road in Manakkad Village and these land is situated in Idukki District, Thodupuzha Taluk. The land under acquisition are mainly dry land and also wet lands and wet lands

converted into dry lands having buildings, shops and agricultural lands. Thodupuzha - Kothaikunnu Private Bus stand, Pulimoottil Plaza, Jai Rani Public School and Convent, ITDP Women's Hostel, Cryptoms Factory, Cadnury's Factory, Thodupuzha Mini Civil Station, Police Station, Municipal office, KSRTC bus stand, St. Mary's Hospital, Chazhikattu Hospital, St. Sebastian High School, town church, thenamkunnu Church, Co-operative Hospital, NSS High School, Manakkad, Depaul Public School, Boys High School, Girls High School, Vimala Public School, Mangattukavala Bus Stand, Newman College, Taluk Hospital, Government and quazi Government offices of the town and commercial establishments are also situated in the surroundings of 2 kms. of proposed acquisition land.”

As far as group 3 items are concerned, it is tabled as land nearby municipal road. It is recorded in the award that the lands included in this group are having great importance due to the presence of Thenamkunnu church, St. Sebastian's High School, Cryptoms factory, Kadbury's factory and portions of these institutions are also included in this group. The group of land is situated within 350 metres distance from Cryptoms factory. It is stated by the Land Acquisition Officer that

this group of land is having great importance and road facility. Therefore, apparently the arguments raised by the learned counsel for the claimants on these aspects are well-founded.

8. Learned Senior Government Pleader submitted that the important junction nearby the private bus stand is Manakkad junction and according to the learned Senior Government Pleader, the land value therefore refixed by the reference court does not reflect the actual land value and hence the appeals filed by the State will have to be allowed.

9. Even though several documents have been marked in evidence by the claimants in these appeals, we need not separately discuss all those documents in the light of the fact that after discussing various items of evidence we have disposed of LAA No.775/2012 in relation to properties acquired for the same purpose under the same notification and which were included in Group 1A. Those are dry lands having State Highway road frontage. After considering various aspects therein, we have refixed the land value to Rs.6,20,000/- by our judgment dated

3.8.2015.

10. It is submitted by the learned Senior Counsel for the claimants Shri Chandran Pillai and learned counsel Shri Joseph John that the value fixed in the judgment in LAA No.775/2012 could be profitably adopted for refixing the land value in these cases, since the properties are only at a distance of 350 metres away. Of course, various items of lands included in Group 3 are dry lands. The difference between the properties on the side of the State Highway and the acquired properties herein are that those are located in slightly more commercially important localities compared to the acquired properties herein. What we find from the award of the Land Acquisition Officer is that the Land Acquisition Officer has awarded around 45% of the land value fixed for group 1A, as far as group 3 properties are concerned. Learned counsel for the parties submitted that such a deduction was unwarranted in view of the fact that the properties are, going by the award itself, lying in an important locality and adjacent to Cryptoms factory and other important institutions, already mentioned

above.

11. We are also of the view that the importance of the properties cannot be overlooked and the potential nature of the items also cannot be of any doubt. The properties are situated, as already noticed, only 350 - 400 metres away from Thodupuzha - Pala State Highway. All these factors will point out the fact that the claimants are entitled for enhanced land value. After comparing the items of properties in group 1A and group 3, we are of the view that land value can be adopted by giving 50% of the value given for the properties included in group 1A, viz. Rs.3,10,000/- per are and we refix the land value accordingly.

Therefore, the appeals filed by the State, viz. LAA Nos.712/12, 754/12, 745/12, 738/12, 749/12, 830/12, 741/12, 802/12, 789/12, 746/12, 437/12, 686/12, 123/13, 791/12, 325/13, 847/13, 223/13, 852/12, 440/13, 365/13, 385/13, 731/12, 115/13, 752/12 and 330/13 are dismissed. The appeals and cross objections filed by the claimants, viz. LAA Nos.549/12, 377/13, 510/12, 470/12, 509/12, 357/13, 717/13, 530/13, 872/14, 595/13, 37/15, 232/15, 278/15, 227/15 and 424/13 and

C.O.Nos.123, 106, 116, 121, 117, 114, 115, 122, 124, 113, 119, 104, 118 and 30 of 2015 are allowed by fixing the land value for the acquired properties therein, at Rs.3,10,000/- per are. The appellants in LAA Nos.549/12, 377/13, 510/12, 470/12, 509/12, 357/13, 717/13, 530/13, 872/14, 595/13, 37/15, 232/15, 278/15, 227/15 and 424/13 and the cross objectors will be entitled for the statutory benefits as granted by the reference court.

In the appeals and cross objections shown below, delay petitions have been allowed, condoning the delay in filing them subject to conditions. They are:

<u>Sl. No.</u>	<u>Case No.</u>	<u>Extent of delay</u>
1.	LAA No.717/13	328 days
2.	LAA No.540/13	35 days
3.	LAA No.470/12	38 days
4.	LAA No.530/13	74 days
5.	LAA No.872/14	873 days
6.	LAA No.595/13	262 days
7.	LAA No.37/15	842 days
8.	LAA No.232/15	995 days

9.	LAA No.278/15	1102 days
10.	LAA No.227/15	995 days
11.	C.O.No.123/15	365 days
12.	C.O.No.106/15	713 days
13.	C.O.No.116/15	928 days
14.	C.O.No.117/15	922 days
15.	C.O.No.114/15	898 days
16.	C.O.No.115/15	94 days
17.	C.O.No.122/15	716 days
18.	C.O.No.124/15	876 days
19.	C.O.No.113/15	926 days
20.	C.O.No.30/14	188 days

We make it clear that for the period of delay, the appellants in the appeals filed by the claimants and the cross objectors will not be entitled for interest under Section 28 of the Act and the grant of statutory benefits will be subject to the above. As far as the appeals and cross objections filed by the claimants are concerned, wherever there is deficiency in the court fee remitted, we grant two weeks time from

today for remitting the balance court fee and the certified copies of decrees will be issued to such claimants only after remitting the balance court fee.

The parties will suffer their costs in the appeals and cross objections.

(T.R. RAMACHANDRAN NAIR, JUDGE.)

(K.P. JYOTHINDRANATH, JUDGE.)

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The following corrections are made in the common judgment dated 04.08.2015 in L.A.A.No.712/2012 & Cross Objection No.123/2015 and connected cases, vide order dated 07.12.2015 in L.A.A.Nos.712/2012, 752/2012, 847/2012, 437/2013, 540/2013 and C.O.No.30/2014:

L.A.A.No.437/2012 and L.A.A.No.847/13 occurring in the 3rd line of the last paragraph at page 9 of the judgment are corrected and substituted as L.A.A.No.437/2013 and L.A.A.No.847/2012 respectively.

Cross Objection No.30/2015 occurring in the 9th line of the last paragraph at page 9 of the judgment is corrected and substituted as Cross Objection No.30/2014.

L.A.A.No.540/2013 is inserted between L.A.A.No.227/15 and the word “and” occurring in the 7th and 12th lines of the last paragraph at page 9 of the judgment.

Sd/- Registrar (Judicial)