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 3RD DAY OF AUGUST 2015/12TH SRAVANA, 1937

LA.App..No. 775 of 2012 (C)

AGAINST THE JUDGMENT IN LAR 44/2010 of SUB COURT, PALAKKAD DATED 14-02-2012

APPELLANTS/RESPONDENTS 1 AND 2 IN THE LAR:
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1. STATE OF KERALA
REPRESENTED BY THE DISTRICT COLLECTOR, IDUKKI.

2. THE EXECUTIVE ENGINEER
PUBLIC WORKS DEPARTMENT, ROADS DIVISION, IDUKKI.

BY GOVERNMENT PLEADER SRI.R.PADMARAJ

RESPONDENTS/CLAIMANTS IN THE LAR:
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1. CHACKO
S/O.THOMAS, KANIYAMUZHIYIL HOUSE, THALAMATTOM [DIED].

2. MARY JACOB
W/O.THOMAS CHACKO, KANIYAMUZHIYIL HOUSE, THALAMATTOM
THODUPUZHA. 685 584.

3. BLESSY JACOB
D/O.THOMAS CHACKO, KANIYAMUZHIYIL HOUSE, THALAMATTOM
THODUPUZHA. 685 584.

4. JINCY JACOB
D/O.THOMAS CHACKO, KANIYAMUZHIYIL HOUSE, THALAMATTOM
THODUPUZHA. 685 584.

5. JAISY JACON
D/O.THOMAS CHACKO, KANIYAMUZHIYIL HOUSE, THALAMATTOM
THODUPUZHA. 685 584.

R2 BY ADV. SRI.JOSEPH JOHN

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON 03-08-2015, ALONG WITH CO. 100/2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

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L.A.A.No.775 of 2012 &
Cross Objection No.100 of 2015

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Dated this the 3rd day of August, 2015

JUDGMENT

Ramachandran Nair, J.

Both the appeal and the cross objection are filed from the judgment and decree in L.A.R.No.44/2010 of Sub Court, Thodupuzha. The State has come up in appeal in L.A.A.No.775/2012 and cross objection No.100/2015 is filed by the claimants.

2. The properties have been acquired as per notification under Section 4(1) of the Act dated 24.10.2008. The acquisition was for the construction of approach road to Irrukumpuzha bridge. The land acquisition officer has categorized various items of properties into different groups and as far as the acquired properties herein are concerned, they are grouped under Group I (A). They are dry land having State Highway road frontage. The extent involved is 0.0477 hectars.

3. The land acquisition officer awarded land value @ Rs. 1,60,750/- per Are for group 1(A) properties (Rs.65,081/- per cent). This was done by relying upon document No. 1004 dated 15/3/2006 of Thodupuzha SRO as the basic land. Before the reference court, both sides adduced evidence The claimants claimed land value at Rs.10 lakhs per cent. The Reference Court by the impugned judgment refixed the land value as far as the acquired property in this case is concerned at Rs.4,16,110/- per Are.

4. The claimants have produced Exts.A1 to A8 documents and respondents have marked in evidence Exts.R1 to R5. They are mahazars, valuation statement, notes to award etc. Ext.X1 is the copy of the Commission report. Ext.X1 (a) is the rough sketch and one of the claimants was examined PW1. There was no oral evidence on the part of the respondent.

5. The reference court found that the land value fixed by the land acquisition officer is not in tune with the importance and potentiality of the land involved and the claimants are entitled for

enhancement. But at the same time, the reference court did not rely upon any of the sale deeds produced by the claimants. The court below refixed the land value based on the judgment in L.A.R.No.41/2010 of the same court, in relation to the same acquisition. The item of land involved therein is in group III.

6. We heard the learned Senior Government Pleader Sri.R.Padmaraj for the State and the learned counsel for the claimants Sri.Joseph John.

7. Great attack is made by the learned Senior Government Pleader on the method adopted by the reference court. According to the learned Senior Government Pleader, when the reference court did not rely upon the documents, there was no reason to grant enhancement. It is submitted that the documents produced by the claimants having been rejected, there was no other reliable evidence before the reference court. As far as the judgment in L.A.R.No.41/2010 is concerned, it is submitted that the same is under Group III.

8. The learned counsel for the claimants submitted that the reference court was not right in rejecting all the sale transactions relied upon by the claimants. It is submitted that the properties are in an important locality and they are on the side of Pala-Thodupuzha State Highway. Notes to award will show that the properties are in an important locality and there are various industrial and commercial establishments, Government offices and other commercial establishments in and around the locality. The learned counsel submits that the claimants had relied upon various documents including two documents in respect of sale transactions of nearby lands namely Exts.A3 and A4. It is submitted that the reasons stated by the reference court to reject Exts.A3 and A4 cannot be supported. Those two documents are pre-notification sale transactions of properties which are lying very close to the acquired property and also bounded by the same road, namely State Highway. Particular reliance was placed on the report of the Commissioner, wherein the Commissioner has, in his report stated that the acquired properties and the properties covered by

Exts.A3 and A4 are having equal importance and the said properties are lying at a distance of only 150 metres from the junction where the Municipal private bus stand is situated. The acquired property is lying just opposite to the said Municipal Bus stand. Therefore, it is submitted that the acquired properties and the properties covered by Exts.A3 and A4 have the very same advantage, being on the side of the State Highway.

9. The learned counsel also submits that as far as the judgment in L.A.R.No.41/2010 is concerned, it is in respect of group III and when evidence was there before the reference court with regard to comparable sale transaction of similar properties, those sale deeds ought to have been accepted with due increase in value for the time lag. Our attention was invited to the details of the Commissioner's report. In this context, the learned counsel submits that the only reason stated by the reference court to reject the Commissioner's report was that the Commissioner had visited the land two years after the acquisition. It is submitted that the municipal town is already a developed one much

before the present acquisition and therefore as far as the properties having commercial importance are concerned, there may not be much substantial change. Therefore, it is submitted that the Commissioner's report should have been accepted for assessing the importance of the locality as well as potential nature of the properties acquired.

10. The learned counsel submits that the reasons stated by the court below for rejecting Ext.A3 also cannot be countenanced. It is submitted that the reference court was of the view that those documents do not relate to transaction of similar nature.

11. The learned Senior Government Pleader in his reply submitted that Exts.A3 and A4 relate to properties which are situated in the heart of the town and therefore they would have fetched more value.

12. We have considered the rival submissions. As regards the importance of the locality is concerned, it is clear from the notes to award itself that the properties are situated in a very important locality in the Thodupuzha Municipal town. It is stated in the notes to award as

follows :

" The proposed Irrukkumpuzha Bridge approach road 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, Cadbury's Factory, Thodupuzha Mini Civil Station, Police Station, Municipal Office, KSRTC Bus stand, St.Mary's Hospital, Chazhikattu Hospital, St.Sebastians High School, Town Church, Thenmkunnu 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.
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> There are no objectionable elements such as Temple, Mosque, Church, Burial grounds in the land under acquisition. Taking into account of the above aspects and other important factors like similarity in location, nature, road accessibility etc. the land under acquisition are classified into 6 groups in order of importance, for proposing the land value."

13. Evidently, the localities are highly important and that too within Thodupuzha municipal town. The important institutions noted in the notes to award of course are noticeable. It can also be seen that different roads start from the State Highway also. Therefore it is a case where there are different roads in the locality which had led to the all round development of the town even before the acquisition in this case. In this context, a reference to the report of the Commissioner will show

that the Commissioner has also stated that the acquired property is situated in a very important locality which is commercially important also. The location of the property covered by Exts.A3 and A4 is approximately 150 metres away from the municipal private bus stand on the western side of Thodupuzha – Pala road. There are lot of important commercial establishments near the acquired property. It is also stated that within 1 ½ kms. there are educational institutions, hospitals, government and semi government institutions etc.

14. In view of the objection stated by the learned Senior Government Pleader for accepting Exts.A3 and A4 i.e. they are in the heart of the town, we will also refer to the distance shown by the commissioner in respect of the important institutions. It is stated that the Thodupuzha Municipal bus stand is at a distance of 150 metres. Jayarani School and the Newman College are within a distance of 3 km. and the important hospitals like Co-operative Hospital, St.Mary's Hospital are within a distance of less than 1 ½ km. from the acquired property. Municipal buildings and municipal bus stand are at a

distance of only 1 km. In the property covered by Ext.A3, the business establishment named 'Seemas Collections' is situated. The Commissioner has mentioned that there are so many whole sale and retail commercial establishments, offices, banks, hospitals etc. which are within a short distance from the acquired property.

15. These aspects according to us confirm the argument of the learned counsel for the claimants that the property is situated in an important locality within the town and has got potential as a commercial plot. Therefore, after evaluating various materials, this Court will be justified in keeping in mind these aspects. The acquired property is situated just opposite to the Municipal Bus stand as already noticed above.

16. As far as the documents produced by the claimants are concerned, first we will come to document Ext.A3. The same is dated 24.03.2006 and the extent involved is 54 cents. There was an old building in the property and the total sale consideration for land and building is shown as Rs.1,23,00,000/- and the building has been

valued at Rs.10,000/-. Therefore, the sale consideration of land will be Rs.1,22,90,000/-. The centage value going by the same will be Rs.2,27,592.5 per cent / 5,62,153.47 per Are. There is a time gap of two years seven months from the date on which the document was executed to the date of notification under Section 4(1). The reason which persuaded the reference court not to rely upon the document appears to be the argument on behalf of the Sate that a fancy price would have been paid for the said property since it was purchased by a financial institution (LIS). Even though such an argument was raised, it can be seen that no other item of evidence was adduced in support of the said contention. There was no contention that it was not a genuine transaction or is not a bonafide transaction. Apart from the same, the extent of property involved is 54 cents. That also is located in the heart of Thodupuzha town only 150 metres away from the Municipal Bus stand. The documents produced by the claimants will show that claimants have been successful in producing various documents concerning sale transactions in different localities of the town itself.

The aspect therefore to be considered is whether the document could be accepted. The reason stated by the reference court mainly appears to be that the said property is a little away from the acquired property. But going by the report of the Commissioner the maximum distance is only 150 metres. The property covered by Ext.A4 is lying close to it.

17. The learned Senior Government Pleader submits that it was located near Manakkad junction and therefore it is in a more important locality. According to us, the property being on the side of same road viz; the Pala - Thodupuzha State Highway, where the acquired property is situated and the distance is only 150 metres while considering the commercial importance of the locality, the fact that the Commissioner has reported about the existence of commercial establishments all throughout in the area cannot be lost sight off. Therefore it can be easily considered that the property covered by Ext.A3 and the acquired properties are similar in nature. For the time gap of two years seven months also, this Court may have to adopt a reasonable enhancement. In this context, going by the decisions of the

Supreme Court, when the properties are situated in a developed urban locality, the reasonable percentage of increase annually will be between 10 to 15. As far as the present case is concerned, it can be seen from the notes to award itself that the land acquisition officer had adopted 15% increase per annum for the time gap for arriving at the land value. Therefore, it will be safe to adopt 15% increase per year as far as the time gap is concerned.

18. When we come to the next document Ext.A4, the same is executed on 26.5.2007. There are three documents namely sale deed Nos.1967 of 2007, 1968 of 2007 and 1969 of 2007. There the total consideration is 19,70,000/- and the value per are will be Rs.4,81,662/- on an average. Of course, the award will show that the above documents were also considered by the land acquisition officer, but without elaborating the reasons, he has stated that the transaction is not of a similar nature . Evidence show that the same is also situated on the side of the State Highway and very near to the acquired property. Going by the report of the Commissioner, it can be safely relied upon.

19. The reliance placed by the reference court on the judgment in L.A.R.No.41/2010, according to us was not justified since there was evidence of sale deeds of comparable transactions for considering the importance and potential nature of the acquired property and also for fixing the proper land value. Of course as far as fixation of land value is concerned, different methods are possible including by reliance on judgments. But herein when transactions of comparable nature of similar properties were evident by the two documents, Exts.A3 and A4 the land value therein could have been considered and adopted, with suitable adjustments.

20. As far as Ext.A3 is concerned, the time gap is two years and 7 months and after calculating escalation for a period of 20 months alone at 15% per annum, , the land value will be Rs.7,02,691.7/- approximately. As far as Ext.A4 is concerned, the time gap is 1 year and 5 months and after adding 15% for the said period towards increase, the resultant land value will be Rs.5,84,014.7/- approximately. Assuming that the properties therein are in a junction

and the distance from the acquired property is 150 metres, by giving a proper reduction or by taking an average of these two, land value can be arrived at. Therefore the average land value will Rs.6,43,353/- per Are. After considering all factors, we fix Rs.6,20,000/- per Are as the land value for the acquired property.

21. In that view of the matter, we dismiss L.A.A.No.775/2012 and allow Cross Objection No.100/2015. The claimants will be entitled to all the statutory benefits as granted by the reference court.

There is a delay of 361 days in filing the cross objection. We hold that the claimants will not be entitled for interest under Section 28 for the above period and grant of statutory benefits will be subject to the above. Parties will suffer their costs in the appeal and cross objection.

T.R.RAMACHANDRAN NAIR, JUDGE

K.P.JYOTHINDRANATH,JUDGE

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