

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 24TH DAY OF JUNE 2015/3RD ASHADHA, 1937

LA.App..No. 790 of 2012 ()

LAR 71/1998 of III ADDL.SUB COURT, ERNAKULAM

APPELLANTS(CLAIMANTS) :

- 1. THANKAMANI
W/O.LATE THANKAPPAN, MALAYIL PARAMBIL, KAKKANAD.**
- 2. MINI, D/O.LATE THANKAPPAN, MALAYIL PARAMBIL, KAKKANAD.**
- 3. SINI, D/O.LATE THANKAPPAN, MALAYIL PARAMBIL, KAKKANAD.**
- 4. ANEESH, S/O.LATE THANKAPPAN, MALAYIL PARAMBIL, KAKKANAD.**

**BY ADVS.SRI.RAJAN P.KALIYATH
SRI.P.C.IYPE, ADDL. ADVOCATE GENERAL**

RESPONDENTS/(RESPONDENTS) :

- 1. STATE OF KERALA
REPRESENTED BY THE DISTRICT COLLECTOR, ERNAKULAM.**
- 2. KERALA INDUSTRIAL INFRASTRUCTURE DEVELOPMENT CORPORATION
(KINFRA) VELLAYAMBALAM, THIRUVANANTHAPURAM 695510
REP. BY ITS MANAGING DIRECTOR.**

**R1 BY SENIOR GOVERNMENT PLEADER SRI. R. PADMARAJ
R2 BY ADV. SRI.G.S.REGHUNATH**

**THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD
ON 24-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

bp

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

L.A.A.No.790 of 2012

Dated this the 24th day of June, 2015

JUDGMENT

Ramachandran Nair, J.

This appeal is filed from the judgment and decree in LAR No.71/1998 on the file of the III Addl. Sub Court, Ernakulam. The requisitioning authority is the second respondent herein. The extent involved is 2.85 ares in Sy. No.613/5 of Kakkanad Village. The date of Section 4(1) notification is 31.1.1995 as published in the Gazette and the land value awarded by the Land Acquisition Officer is at the rate of Rs.14,700/- per are. The land value claimed by the appellant is at the rate of Rs.1 Lakh per are.

2. Before the reference court, evidence was let in by both sides and the first claimant was examined as A.W.1. She had produced in evidence Exts.A1 to A3. The respondents have produced Exts.B1 to B4.

3. The reference court, by relying upon Ext.B3 document, fixed

land value at the rate of Rs.18,500/- per are. Ext.B3 is a document dated 6.10.1994 wherein the land value shown is Rs.19,941/- per are. The same relates to a property purchased by KINFRA itself. It was contended before the reference court that the judgment of the reference court in LAR No.47/1997 series can be relied upon for fixing land value in this case. The reference court did not rely upon the same, since appeals have been pending before this Court.

4. As far as appeals from LAR No.47/1997 series are concerned, those appeals have been disposed of by this Court in LAA No.563/2000 and connected cases fixing land value at the rate of Rs.21,000/- per are. Therein, the category of lands acquired was category VI, viz. Wet land having Panchayat road frontage. Herein, going by the award, the Land Acquisition Officer has adopted document No.1723/1993, but for the time lag between the date of execution of the said document and the date of Section 4(1) notification, no addition was made and straightaway 25% deduction was made. This aspect has not been considered by the reference court. If the land value has been properly fixed by giving addition for time lag by 15%, it would have been

around Rs.21,000/-. The property was located without road access also. Hence, it is not similar.

5. The reference court has relied upon Ext.B3 which also is a document prior to Section 4(1) notification. The category of land herein being category II, dry land having Panchayat road and private road frontage, learned Senior Government Pleader and learned counsel for the requisitioning authority submitted that the request of the appellants to treat the land in category I cannot be supported.

6. As far as category I is concerned, they are dry lands having frontage of P.W.D. Road and going by the mahazar prepared at the time of taking possession, the property herein was lying on the side of a panchayat road. Even though learned counsel for the appellants submitted that the property could have been categorised as category I, we cannot accede to the above argument. Therefore, as far as categorisation of the property is concerned, no error has been committed by the reference court.

7. The next aspect is regarding the land value to be adopted. The plot of land is part of a property having total extent of more than 7 ares.

It is submitted that the dwelling house has also been acquired. According to the appellants, even though KINFRA had offered alternate plot along with a building, the appellants could not avail of the benefits. But as far as the proceedings now before this Court is concerned, this Court cannot consider the said grievance. Since the land is included in category II, the judgment of this Court relation to the said category could be safely adopted, i.e. the judgment in LAA No.100/2006 and connected cases. Therein, the Land Acquisition Officer has fixed the land value at the rate of Rs.14,700/- per are which has been enhanced to Rs.21,000/- by the reference court and by a separate judgment, we have refixed it to Rs.25,850/- per are. Since the category is the same, we adopt the said value in this case also. Accordingly, the land value for the acquired property is fixed at Rs.25,850/- per are.

8. One of the arguments raised by the learned counsel for the appellants is that the reference court committed a mistake in not granting interest on solatium. We also notice that the benefit under Section 23(1A) is granted from 1.11.1995 and in the light of the fact

that Section 4(1) notification is taken as 31.1.1995, the additional land value calculated at 12% will be granted for the period from 31.1.1995 to 29.1.1997. We also hold that the claimants will be entitled for interest under Section 28 of the Act for the solatium granted.

9. Going by the order passed by this Court in C.M.App.No.990/2012, the appellants are not entitled for interest under Section 28 of the Act for a period of 4178 days. Therefore, we reiterate the same and hold that the benefit of Section 28 of the Act will be granted subject to the above.

The appeal is allowed as above. The appellants will be entitled for proportionate costs in this appeal throughout.

(T.R. RAMACHANDRAN NAIR, JUDGE.)

(K.P. JYOTHINDRANATH,, JUDGE.)

kav/