

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE SMT. JUSTICE P.V.ASHA

WEDNESDAY, THE 18TH DAY OF FEBRUARY 2015/29TH MAGHA, 1936

LA.App..No. 846 of 2012 ()

AGAINST THE JUDGMENT IN LAR 238/2009 of I ADDL.SUB
COURT, THIRUVANANTHAPURAM

APPELLANT:

UDAYAKUMARI
D/O.N.BAHULEYAN, M.B.S.BHAVAN, KAPPIL P.O.
EDAVA, CHIRAYINKIL TALUK, THIRUVANANTHAPURAM.

BY ADV. SRI.BASANT BALAJI

RESPONDENT:

1. STATE OF KERALA
REPRESENTED BY THE DISTRICT COLLECTOR
THIRUVANANTHAPURM-695001.

2. THE SECRETARY
TRIDA, THIRUVANANTHAPURAM-695001.

R2 BY ADV. SRI.K.A.JALEEL, SC., TRIDA
R1 BY GOVERNMENT PLEADER SRI.L.ALOYSIOUS THOMAS

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD
ON 18-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

**T.R.RAMACHANDRAN NAIR &
P.V.ASHA, JJ.**

LAA No.846 of 2012

Dated this the 18th day of February, 2015

JUDGMENT

Ramachandran Nair, J.

This appeal is filed from the judgment and decree in L.A.R.No.238/2009 of the Sub Court, Thiruvananthapuram. The acquisition in this case was for the purpose of widening of G.G.Hospital-Kumarapuram-Poonthy-Anamugham NH bye-pass. The notification under Section 4(1) was published on 26.6.2006. The land acquisition officer awarded land value @ ₹1,97,775/- per Are. For the compound wall and gate, an amount of ₹13,744/- has been awarded. In this appeal, the learned counsel for the appellant seeks enhancement of land value as well as for the structures.

2. The reference court has refixed the land value to 10,91,500/- per Are and as far as enhancement sought for the structures, no amount has been granted. The learned counsel relied upon the common judgment of this Court in LAA No.31/2013 and

connected cases. In the said judgment, we have fixed land value at ₹12,35,000/- per Are in respect of garden land situated in Reach I, II and III-A. Therefore as far as the appellant is concerned, he is entitled to land value @ ₹12,35,000/- per Are.

3. As far as the value of structures, the learned counsel for the appellant submitted that the report of the Commissioner was not accepted by the trial court which is not justifiable. Our attention was invited to the discussion on point No.2. We have gone through the report of the Commissioner, wherein as far as the appellant is concerned, value of the structure is assessed at ₹40372/-, out of which 15% has been reduced for depreciation. Therefore, the correct value will be ₹34,317/-. The value of the structures fixed by the land acquisition officer is ₹13,744/-. We have perused the valuation made by the land acquisition officer where he has not given the split up details of the structures and the value thereon. It is clear from the judgment of this Court in **State of Kerala and another v. Sushama Kumari (2010(2) KHC 834)** that the compensation fixed by the land acquisition authority relying solely on the valuation prepared by the Engineers of the Public Works Department cannot be approved. The

said view was taken on the finding that the PWD rates are not realistic.

4. The learned Senior Government Pleader submits that the report of the Commissioner cannot be accepted in toto without any supporting materials to show the market value of the items, used for construction of structures.

Even if certain guess work has been made, the difference in price will be only come ₹20,000/-. Even after giving due reduction for the variations in market value, according to us, at any rate, ₹18,000/- can be granted as additional compensation under this head. Therefore, we allow the appeal and the land value is refixed at ₹12,35,000/- per Are and the appellant will also be entitled for an additional value of ₹18,000/- for the structures. The appellant will also be entitled for statutory benefits as granted by the trial court.

The appeal is accordingly allowed. Parties will suffer their costs in the appeal.

T.R.RAMACHANDRAN NAIR, JUDGE

P.V.ASHA, JUDGE

SV.