IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

FRIDAY, THE 18TH DAY OF DECEMBER 2015/27TH AGRAHAYANA, 1937

LA.App..No. 89 of 2007 ( )

AGAINST THE JUDGMENT IN LAR 597/1998 of ADDL.SUB COURT,NORTH PARAVUR
DATED 30-11-2005

APPELLANT/CLAIMANT.:

VARGHESE, S/O.PATHROSE,
AREECKAL HOUSE, MAIKKAVU, VAPPELSSERRY
ANGAMALY, ERNAKULAM DISTRICT.

BY ADVS.SRI.KKM.SHERIF
SRI.P.M.KUNJIMOIDEENKUTTY
SRI.P.A.MOHAMMED ASHROF
SRI.LAL K.JOSEPH
SRI.A.A.ZIYAD RAHMAN

RESPONDENTS/RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY
DISTRICT COLLECTOR, ERNAKULAM.

2. THE MANAGING DIRECTOR,
KOCHI INTERNATIONAL AIRPORT SOCIETY, ERNAKULAM.

R1 BY SR.GOVT.PLEADER SRI R.PADMARAJ
R2 BY ADV. SRI.N.N.SUGUNAPALAN, SC, KIAS LTD.
R2 BY ADV. SMT.T.N.GIRIJA, SC, COCHIN I AIRPORT

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON 30.10.2015, ALONG WITH LAA. 886/2007, THE COURT ON 18-12-2015, DELIVERED THE FOLLOWING:

P.R.RAMACHANDRA MENON & ANIL K.NARENDRAN, JJ.

L.A.A.Nos.89 & 886 of 2007

DATED THIS THE 18th DAY OF DECEMBER, 2015

JUDGMENT

ANIL K.NARENDRAN, J.

These appeals arise out of the judgment and decree of the Additional Sub Court, North Paravur dated 30.11.2005 in L.A.R.No.597 of 1998. L.A.A.No.89 of 2007 is filed by the claimant in that L.A.R. and L.A.A.No.886 of 2007 is filed by the State.

2. The land owned by the claimant, having an extent of 49.70 Ares (122.76 cents) comprised in Survey Nos.156/9, 10, 7 and 26 of Nedumbasserry Village was acquired for the purpose of rehabilitation of the evictees of the Kochi International Airport, as per Section 4(1) notification dated 20.7.1995, issued under the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act'). The property was taken possession on 19.2.1996. As per Award No.795/97 dated 14.10.1997, the Land Acquisition Officer awarded land value at the rate of Rs.2,125/- per Are along with other statutory benefits. The claimant received compensation under protest. Based on the application made by the claimant the matter was referred under Section 18 of the Act, and the same was

numbered as L.A.R.No.597 of 1998 on the file of the Additional Sub Court, North Paravur.

3. Before the Reference Court, the claimant filed statement contending that the entire land acquired was dry land at the time of acquisition and therefore the categorisation made by the Land Acquisition Officer as 'double crop wet land interior (reclaimed)' is incorrect. The claimant contended that, the land is situated in an important locality and considering its potentiality, it would have fetched at least Rs.25,000/- per cent, at the time of acquisition. Apart from that, the well and other improvements in the property were not properly valued by the Land Acquisition Officer.

4. The Requisitioning Authority, the Kochi International Airport Society, filed a statement contending that the acquired property was double crop wet land lying in an interior place and the Land Acquisition Officer fixed the land value after verifying the registered sale deeds of adjacent lands similarly situated and the land value claimed by the claimant is exorbitant and without any basis. The Land Acquisition Officer has also properly valued the improvements and structures and awarded proper

compensation. They also contended that, major portion of the property required for the project has been acquired under negotiation and the claimant is not entitled to get the benefits conferred on the land owners who surrendered their properties voluntarily under negotiation. Therefore, the claimant is not entitled for enhancement of the compensation awarded by the Land Acquisition Officer.

5. Before the Reference Court, the claimant was examined as AW1 and certified copy of the judgment in L.A.R.No.134 of 1998 was marked as Ext.A1. On the side of the Requisitioning Authority, notice of award, sketch, mahazar and valuation statement were marked as Exts.R1 to R4. The claimant as AW1 deposed that the property under acquisition is dry land. However, AW1 has admitted that the property was originally wet land, which he had reclaimed. From the evidence of AW1, the Reference Court found that the acquired land was not a pucca dry land and there were only some coconut and arecanut saplings in that property. Therefore, the Reference Court held that, the Land Acquisition Officer has correctly categorised the property as reclaimed double crop wet land lying interior.

6. Before the Reference Court, the claim for enhanced land value made by the claimant was solely based on Ext.A1 judgment in L.A.R.No.134 of 1998, which relates to the land acquired for the construction of the Terminal for the International Airport. The claimant as AW1 deposed that he is entitled to get enhanced land value in proportion to the land value fixed for the property in L.A.R.No.134 of 1998. Considering the fact that, the acquired property in L.A.R.No.597 of 1998 and that in L.A.R.No.134 of 1998 are situated in the very same village and were acquired for the Kochi International Airport, though under different Section 4(1) notifications, the Reference Court by judgment and decree dated 5.4.2002 enhanced the land value in L.A.R.No.597 of 1998 at the rate of 96% of the land value fixed by the Land Acquisition Officer, thereby granting the claimant enhanced land value of Rs.2,040/- per Are, together with statutory benefits.

7. The judgment and decree of the Reference Court was under challenge in L.A.A.No.66 of 2003 filed by the Requisitioning Authority. During the pendency of that appeal, the claimant has also filed L.A.A.No.160 of 2003 against the judgment and decree

of the Reference Court.

8. The judgment of the Reference Court in L.A.A.No.134 of 1998 (Ext.A1), which relates to the land acquired for the construction of the Terminal for the International Airport was under challenge in L.A.A.No.412 of 2001 filed by the Requisitioning Authority. This Court by judgment dated 16.6.2003 (Ext.A6) allowed L.A.A.No.412 of 2001 and connected appeals, by reducing the enhanced land value from 96% to 45% of that awarded by the Land Acquisition Officer. When L.A.A.No.66 of 2003 and connected appeals came up for final hearing, a Division Bench of this Court noticed that, the land involved in L.A.R.No.134 of 1998 and connected cases are dry lands, which were acquired for the construction of the Terminal for the International Airport and the same proportionate increase cannot be given for the land acquired in L.A.A.No.66 of 2003 and connected cases, which were acquired for rehabilitation of the evictees, based on a Section 4(1) notification which was published after one year from the Section 4(1) notification in L.A.R.No.134 of 1998.

9. Before the Division Bench, it was contented on behalf

of the Requisitioning Authority that, the Land Acquisition Officer had taken that aspect while calculating the compensation and as such no further enhancement is needed. Per contra, it was contended on behalf of the claimants that, more value should have been granted as the land value in the locality has considerably increased after the notification for construction of the International Airport. Since there was no sufficient evidence on record to fix the market value of the category of land acquired in L.A.A.No.66 of 2003 and connected cases, the Division Bench of this Court by judgment dated 14.8.2003 set aside the judgment and decree of the Reference Court and remanded the matter to that Court, giving liberty to claimants, the Requisitioning Authority and the State to adduce further evidence in the matter.

10. By a separate judgment dated 27.8.2003 the Division Bench dismissed L.A.A.No.16 of 2003 filed by the claimant as infructuous, since the judgment and decree of the Reference Court in L.A.R.No.597 of 1998 has already been set aside in L.A.A.No.66 of 2003 filed by the Requisitioning Authority and the matter was remanded to the Reference Court for fresh

consideration. However, the Division Bench made it clear that, the appellant/claimant will be free to argue his contentions before the Reference Court.

11. After the order of remand, the claimant as AW1 adduced further evidence and Exts.A2 to A6 were marked on his side. Exts.A2 and A2(a) are the report and sketch of the Advocate Commissioner who conducted local inspection on 30.8.2004. Ext.A3 is certified copy of the judgment in L.A.R.No.145 of 1987, Ext.A4 is certified copy of the award in L.A.C.No.160 of 2000, Ext.A5 is certified copy of registered lease deed No.4575 of 1999 and Ext.A6 is certified copy of the judgment in L.A.A.No.412 of 2001. The Land Acquisition Officer was examined as AW2 on the side of the claimant and Ext.X1 notice was marked through AW2. On the side of the Requisitioning Authority certified copy of the judgment in L.A.R.No.28 of 1998 was marked as Ext.R5 and the L.A.C. file was marked as Ext.R6.

12. After considering the oral as well as documentary evidence on record, the Reference Court came to the conclusion that the claimant is entitled to get the categorisation of the

acquired land changed to 'dry land lying interior' instead of 'double crop wet land interior (reclaimed)'. The Reference Court, after taking into consideration the land value fixed in Ext.A6 judgment in L.A.A.No.412 of 2001, arising out of Ext.A1 judgment in L.A.R.No.134 of 1998, re-fixed the land value at Rs.8,294/- per Are, thereby awarding the claimant enhanced land value at the rate of Rs.6,169/- per Are, along with other statutory benefits. In the absence of any tangible evidence, the Reference Court rejected the claim made for enhanced compensation for the structures and improvements. By judgment and decree dated 30.11.2005 the Reference Court allowed L.A.R.No.597 of 1998 to the extent indicated above.

13. Challenging the judgment and decree of the Reference Court in L.A.R.No.597 of 1998 the claimant is in appeal in L.A.A.No.89 of 2007 contending that, the Reference Court ought to have re-fixed the land value at Rs.26,840 per Are along with other statutory benefits. The State is also in appeal in L.A.A.No.886 of 2007 contending that, the Reference Court went wrong in categorising the acquired land as 'dry land lying interior' and that, it committed a grave error in re-fixing the land value of

the acquired land relying on Ext.A6, which was in respect of dry land lying on the side of Panchayat road and acquired based on a separate Section 4(1) notification for the purpose of construction of the Terminal for the International Airport.

14. We heard the arguments of the learned counsel for the claimant, the learned Senior Government Pleader appearing for the State and also the learned Senior Counsel appearing for the Requisitioning Authority.

15. The issues that arise for consideration in these appeals are whether the Reference Court was correct in changing the category of the acquired land as 'dry land lying interior' instead of 'double crop wet land interior (reclaimed)'; whether the Reference Court was correct in re-fixing the land value of the acquired land at Rs.8,294/- per Are relying on Ext.A6; and whether the claimant is entitled for enhanced land value for the acquired land at the rate of Rs.26,840/- per Are, as claimed in L.A.A.No.89 of 2007.

16. The claimant would contend that the acquired property was dry land at the time of Section 4(1) notification and as such the Land Acquisition Officer was not justified in categorising the

land as 'double crop wet land interior (reclaimed)', instead it should have been categorised as 'dry land lying interior'. Now the Reference Court correctly categorised the land as 'dry land lying interior' which warrants no interference in this appeal.

17. The Reference File, which forms part of the records contain a reply dated 1.2.1996 submitted by the claimant before the Land Acquisition Officer, in response to a notice dated 15.1.1996 in L.A.C.No.12 of 1995, in which the claimant had admitted that the land under acquisition is a reclaimed land in which he had planted 135 coconuts saplings about 6 years back and 350 arecanut saplings about 3 years back. In addition to this, he had also planted tapioca.

18. As borne out from the Reference File, the lands under acquisition were categorised as Group-A to Group-G. Group-A consists of double crop wet land (reclaimed) with PWD road frontage; Group-B consists of double crop wet land with PWD tar road frontage; Group-C consists of double crop wet land with cart road frontage; Group-D consists of double crop wet land (reclaimed) with proximity to PWD road; Group-E consists of double crop wet land with proximity to PWD road; Group-F

consists of double crop wet land interior (reclaimed); and Group-G consists of double crop wet land interior. Therefore, the entire land acquired for the purpose of rehabilitation of the evictees of the International Airport falls under the category of double crop wet land, either remaining as wet land or reclaimed.

19. Ext.R3 mahazar and Ext.X1 notice relied on by the claimant would only show that the acquired land is reclaimed wet land. Further, in the judgment in L.A.A.No.66 of 2003 and connected cases, while remanding L.A.R.No.597 of 1998 and connected cases to the Reference Court, a Division Bench of this Court has categorically held that, since the land involved in L.A.R.No.134 of 1998 and connected cases are dry land, which are acquired for the construction of International Airport, the same proportionate increase cannot be given for the land acquired in L.A.R.No.597 of 1998 and connected cases, which were acquired for rehabilitation of the evictees.

20. The fact that the acquired land was not having any road frontage and it was lying in an interior place as on the date of Section 4(1) notification is not in dispute. The claimant has also no case that the acquired land was originally dry land.

Section 4(1) notification was published on 20.7.1995 and the land was taken possession on 19.2.1996. The Advocate Commissioner who submitted Ext.A2 report and Ext.A2(a) sketch inspected the acquired land only on 30.8.2004, much after the evictees were rehabilitated in the said land. Therefore, the Advocate Commissioner could not notice the features of the acquired land as on the date of Section 4(1) notification.

21. The claimant who was examined as AW1 has admitted that the acquired land is reclaimed wet land. AW1 has also not disputed the fact that the property in L.A.R.No.134 of 1998, covered by Exts.A1 and A6, is dry land. Therefore, merely for the reason that the claimant reclaimed the wet land and planted coconuts and arecanut saplings few years prior to Section 4(1) notification it cannot be contended that while fixing land value the said land should have been categorised as dry land. For the purpose of fixing land value, the said land can only be categorised as reclaimed wet land and not as dry land. Therefore, the findings of the Reference Court that, the categorisation of land made by the Land Acquisition Officer is wrong and that the claimant is entitled to have the acquired land categorised as 'dry

land lying interior' instead of 'double crop wet land interior (reclaimed)' are perverse and patently illegal, which cannot be sustained in law. In that view of the matter, the acquired land can only be categorised as 'double crop wet land interior (reclaimed)' for the purpose of fixing land value and we hold so.

22. The next issue that arises for consideration is as to whether the claimant is entitled for land value in excess of that awarded by the Land Acquisition Officer. The acquisition of land was based on a Section 4(1) notification published on 20.7.1995. The Land Acquisition Officer awarded land value at the rate of Rs.2,125/- per Are, after categorising the land as 'double crop wet land interior (reclaimed)'. However, the Reference Court changed the category of the acquired land as 'dry land lying interior' and re-fixed the land value at Rs.8,294/- per Are, relying on Ext.A6 judgment in L.A.A.No.412 of 2001. Insofar as the change in the category of the acquired land is concerned, we have already held that the acquired land can only be categorised as 'double crop wet land interior (reclaimed)' for the purpose of fixing land value.

23. Ext.A6 judgment of this Court in L.A.A.No.412 of 2001

arises out of Ext.A1 judgment of the Reference Court in L.A.R.No.134 of 1998, which relates to acquisition of 23.20 Ares of dry land comprised in Sy.No.535/9 of Nedumbassery Village, lying on the side of Panchayat road, for the construction of the Terminal for the International Airport, based on a Section 4(1) notification dated 8.7.1994. The Land Acquisition Officer fixed land value at Rs.8,000/- per Are. In Ext.A1 judgment in L.A.R.No.134 of 1998, the Reference Court granted enhanced land value of Rs.7,680/- per Are, thereby enhancing the land value fixed by the Land Acquisition Officer by 96%. This Court by Ext.A6 judgment in L.A.A.No.412 of 2001 reduced the enhancement from 96% to 45%, thereby re-fixing the land value at Rs.11,600/- per Are. The judgment in L.A.A.No.412 of 2001 and connected cases was under challenge in S.L.P.(Civil) No.15977 of 2003 and connected cases filed by the claimants before the Apex Court, which ended in dismissal.

24. The claimant as AW1 has admitted that, the property covered by Ext.A6 judgment is having advantages over the acquired land owned by him. AW1 has admitted that, the acquired land is a reclaimed wet land, whereas, the property

covered by Ext.A6 judgment is a dry land. Similarly, the property covered by Ext.A6 judgment is lying on the side of a Panchayat road, whereas, the acquired land owned by AW1 is lying in an interior place without any road access. The claimant could not adduce any evidence to prove the comparability of the acquired land and that covered by Ext.A6 judgment. Though the claimant has taken out a Commission, the Advocate Commissioner was not asked to take note of the comparability of the acquired land and that under Ext.A6 judgment. In the absence of any tangible evidence on record as to the comparability of the acquired land and that under by Ext.A6 judgment, no reliance can be placed on the land value fixed by this Court in Ext.A6 judgment, especially when the land covered by Ext.A6 is a pucca dry land lying on the side of the Panchayat road, which has no comparison with the acquired land owned by AW1, which is only a reclaimed wet land lying in an interior place without any road access.

25. Relying on Ext.A3 judgment of the Reference Court in L.A.R.No.157 of 1987, the claimant contended that, he is entitled for enhanced land value for the acquired land. L.A.A.No.157 of 1987 arises out of acquisition of 1.05 Ares of land in

Sy.No.546/12 of Chengamanad Village, based on a Section 3(1) notification published under the Kerala Land Acquisition Act, for the doubling of Aluva-Angamaly railway line. In that case, Section 3(1) notification was published on 19.5.1983 and the Land Acquisition Officer awarded land value of Rs.4,720/- per Are. By Ext.A3 judgment, the Reference Court re-fixed the land value of dry land as Rs.11,000/- per Are and accordingly awarded the claimant in L.A.R.No.157 of 1987 enhanced land value at the rate of Rs.6,280/- per Are. A reading of Ext.A3 judgment would make it explicitly clear that, the land under acquisition in L.A.R.No.157 of 1987 was dry land, which has absolutely no comparison with the acquired land owned by AW1, which is only a reclaimed wet land.

26. Though the claimant has taken out a Commission and the Advocate Commissioner submitted Ext.A2 report and Ext.A2 (a) sketch, as noticed by the Reference Court, the Commissioner could not note the features of the acquired land and that in L.A.R.No.157 of 1987 due to the changes made in those properties after acquisition. It was in such circumstances, the Reference Court came to the conclusion that, no tangible

evidence is available on record to prove the comparability of the acquired land and that in L.A.R.No.157 of 1987 and as such Ext.A3 document is of little assistance to the claimant in proving his claim.

27. Similarly, Ext.A4 award passed by the Land Acquisition Officer in L.A.C.No.160 of 2000 does not contain anything to prove the comparability with the acquired land owned by AW1. The Reference Court has also noticed that, Ext.A5 lease deed produced by AW1 cannot also form the basis for any enhancement of land value of the acquired land.

28. The document marked as Ext.R5 is certified copy of the judgment in L.A.R.No.28 of 1998, in which an extent of 21.90 Ares comprised in Sy.No.161/7 of Nedumbassery Village was acquired for the purpose of rehabilitation of the evictees of the International Airport, as per Section 4(1) notification dated 20.7.1995. The Land Acquisition Officer awarded a total compensation of Rs.64,191/-. The Land Acquisition Officer categorised the said land in Group-G, which consists of 'double crop wet land interior', and fixed land value at Rs.2,025/- per Are. The Reference Court in Ext.R5 judgment enhanced the land

value fixed by the Land Acquisition Officer by 30% and awarded enhanced land value at the rate of Rs.608/- per Are (2025x30/100=607.5).

29. As we have already noticed, by judgment dated 14.8.2003 in L.A.A.No.66 of 2003 filed by the Requisitioning Authority, this Court set aside the judgment and decree dated 5.4.2002 of the Reference Court in L.A.R.No.597 of 1998, since there was no materials on record to fix the market value of the acquired land, and the matter was remanded to the Reference Court, giving liberty to the claimant, the Requisitioning Authority and the State to adduce further evidence in the matter. Subsequently, by judgment dated 27.8.2003, the Division Bench dismissed L.A.A.No.16 of 2003 filed by the claimant as infructuous, since the judgment and decree of the Reference Court in L.A.R.No.597 of 1998 has already been set aside in L.A.A.No.66 of 2003. However, this court made clear that the claimant will be free to argue his contentions before the Reference Court. Even after the order of remand, the claimant could not adduce any reliable evidence in support of his claim for enhanced land value. The documents relied on by the claimant

before the Reference Court are of no assistance in proving his claim for enhanced land value for the land categorised as 'double crop wet land interior (reclaimed)'.

30. However, as evident from Ext.R5 judgment in L.A.R.No.28 of 1998, a judgment relied on by the Requisitioning Authority and also the State, the land value awarded by the Land Acquisition Officer in respect of 21.90 Ares of land comprised in Sy.No.161/7 of Nedumbassery Village, which was acquired for the purpose of rehabilitation of the evictees of the International Airport, as per Section 4(1) notification dated 20.7.1995, which land was categorised in Group-G, which consists of double crop wet land lying interior, the Reference Court enhanced the land value fixed by the Land Acquisition Officer at Rs.2,025/- per Are by 30% and awarded enhanced land value at the rate of Rs.608/- per Are. During the course of arguments, the learned Senior Government pleader has also pointed out that, in 36 cases in which the Reference Court enhanced the land value fixed by the Land Acquisition Officer by 30% no appeals were filed, either by the claimants or by the Requisitioning Authority. Similarly, in 172 cases in which the Reference Court enhanced the land value fixed

by the Land Acquisition Officer by 45% no appeals were filed. In respect of dry land acquired for the construction of the Terminal for the International Airport, this Court by Ext.A6 judgment in L.A.A.No.412 of 2001 enhanced the land value fixed by the Land Acquisition Officer by 45%, as against 96% enhancement granted by the Reference Court. The said re-fixation was upheld by the Apex Court in S.L.P.(Civil)No.15977 of 2003. Considering the fact that the acquisition in the case on hand is in respect of land categorised as 'double crop wet land interior (reclaimed)' and not 'double crop wet land interior', we hold that the claimant is entitled for enhancement of the land value fixed by the Land Acquisition Officer by 45%.

31. In the result, L.A.A.No.886 of 2007 filed by the State is allowed re-fixing the land value of the acquired land in L.A.R.No.597 of 1998 as Rs.3,081/- per Are, thereby awarding the claimant enhanced land value at the rate of Rs.956/- per Are (2125x45/100=956.25) together with all statutory benefits.

32. By interim order dated 6.11.2013 in L.A.A.No.886 of 2007, this Court granted stay of execution of the judgment and decree of the Reference Court in L.A.R.No.597 of 1998 on

condition that the appellant State shall pay the claimant compensation at the rate of Rs.956/- per Are with statutory benefits applicable to that land value within one month, which can be withdrawn by the claimant. Since enhanced land value is re-fixed in this appeal at Rs.956/- per Are, the claimant will not be entitled for any amount in excess of that disbursed in terms of interim order dated 6.11.2013 in L.A.A.No.886 of 2007. L.A.A.No.89 of 2007 filed by the claimant is dismissed.

The parties shall bear their respective costs.

Sd/-
P.R.RAMACHANDRA MENON,
JUDGE

Sd/-
ANIL K.NARENDRAN,
JUDGE

dsn

True copy

P.S.to Judge