IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY, THE 14TH DAY OF DECEMBER 2015/23RD AGRAHAYANA, 1937

LA.App..No. 18 of 2015

LAR NO.86/2012 OF SUB COURT, THIRUVALLA

APPELLANT(S)/1ST RESPONDENT IN L.A.R.:-:

STATE OF KERALA,
REPRESENTED BY THE DISTRICT COLLECTOR,
PATHANAMTHITTA.

BY SENIOR GOVERNMENT PLEADER SRI.ALOSIOUS THOMAS

RESPONDENT(S)/CLAIMANT AND 2ND RESPONDENT IN L.A.R.:-:
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1. THOMAS,
PUTHENKALAYIL, ERUVELLIPRA MURI.

2. SOUTHERN RAILWAY, ERNAKULAM,
REPRESENTED BY DEPUTY CHIEF ENGINEER (CONSTRUCTION).

R1 BY ADV. SMT.ASHA ELIZABETH MATHEW
R2 BY SRI.C.S.DIAS,SC

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON 09-11-2015, ALONG WITH LAA.NO.107/2015 AND CONNECTED CASES, THE COURT ON 14-12-2015 DELIVERED THE FOLLOWING:

PJ

"CR"

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

L.A.A.Nos.18, 107, 154, 159, 161, 166, 170, 179, 183, 189, 191, 204, 218, 219, 222, 230 259, 263, 270, 287, 298, 301, 303,304, 311, 330, 333, 363,366, 374, 386, 393, 396, 398 of 2015 & C.O.No.160/2015 in L.A.A.No.303/15, C.O.No.161/15 in L.A.A..No.311/15 & C.O.No. …../15 in L.A.A.No.363/15

DATED THIS THE 14th DAY OF DECEMBER, 2015

JUDGMENT

ANIL K.NARENDRAN, J.

These Land Acquisition Appeals arise out of a Section 4(1) notification dated 18.7.2009 published under the Land Acquisition Act, 1894 for the doubling work of Chengannur-Chingavanam Railway track. Since identical issues are raised in these appeals and common arguments were advanced, we propose to dispose of these appeals by a common judgment.

2.1. L.A.A.No.18/2015:- This appeal arises out of the judgment and decree dated 30.9.2014 of the Sub Court, Thiruvalla in L.A.R.No.86/2012. An extent of 1.20 Ares of dry land in Sy.No.789/19 of Kuttappuzha Village in Thiruvalla Taluk was acquired based on Section 4(1) notification published on 18.7.09. The Land Acquisition Officer awarded land value at ₹1,05,364/- per Are. The Reference Court based on Ext.A1 sale deed No.291/09 of

SRO, Thiruvalla dated 30.1.2009 refixed the land value at ₹4,00,000/- per Are. Against the refixation of land value, the State is in appeal contending that the re-fixation so made is without any evidence and is highly excessive and exorbitant.

2.2. L.A.A.No.107/2015:- This appeal arises out of the judgment and decree dated 31.10.2013 of the Sub Court Thiruvalla in L.A.R.No.69/2011. An extent of 3.29 Ares of dry land in Sy.No.249/21 of Kuttoor village in Thiruvalla Taluk was acquired based on Section 4(1) notification dated 18.7.2009. The Land Acquisition Officer awarded land value at the rate of ₹43,636/- per Are. The Reference Court refixed the land value at the rate of ₹75,000/- per Are based on Ext.A2 sale deed No.1698/2009 of SRO, Thiruvalla dated 9.7.09. The State is in appeal before this Court contending that the refixation of land value is on a higher side when compared to the land value reflected in Ext.A2 sale deed.

2.3. L.A.A.No.154/2015:- This appeal arises out of the judgment and decree dated 29.10.2014 of the Sub Court, Thiruvalla in L.A.R.No. 98/2011. An extent of 1.20 Ares of land in

Sy.No.215/56 of Thiruvalla Village in Thiruvalla Taluk was acquired based on Section 4(1) notification dated 18.7.2009. The Land Acquisition Officer awarded land value at the rate of ₹87,804/- per Are. The Reference Court enhanced the land value at the rate of ₹6,00,000/- per Are. The State is in appeal contending that the refixation of land value is without any cogent evidence and is highly exorbitant and excessive.

2.4. L.A.A.No.159/2015:- This appeal arises out of the judgment and decree dated 29.10.2014 of the Sub Court, Thiruvalla in L.A.R.No.97/2011. An extent of 0.40 Ares of land in Sy.No.215/53 of Thiruvalla Village in Thiruvalla Taluk was acquired based on Section 4(1) notification dated 18.7.2009. The Land Acquisition Officer awarded land value at the rate of ₹87,804/- per Are. The Reference Court enhanced the land value at the rate of ₹6,00,000/- per Are. The State is in appeal contending that the refixation of land value is without any documents and is highly exorbitant and excessive.

2.5. L.A.A.No.161/2015:- This appeal arises out of the judgment and decree of the Sub Court, Thiruvalla dated

29.10.2014 in L.A.R.No.85/2011. An extent of 4.50 Ares of land in Sy.No.214/28 of Thiruvalla Village in Thiruvalla Taluk was acquired based on Section 4(1) notification dated 18.7.2009. The Land Acquisition Officer awarded land value at the rate of ₹87,804/- per Are. The Reference Court without relying on any documents refixed the land value at ₹6,00,000/- per Are. Against the refixation of land value, the State is in appeal contending that the re-fixation so made is without any evidence and is highly excessive and exorbitant.

2.6. L.A.A.No.166/2015:- This appeal arises out of the judgment and decree dated 29.10.2014 of the Sub Court, Thiruvalla in L.A.R.No. 84/2011. An extent of 2.50 Ares of land in Sy.No.214/27 of Thiruvalla Village in Thiruvalla Taluk was acquired based on Section 4(1) notification dated 18.7.2009. The Land Acquisition Officer awarded land value at the rate of ₹87,804/- per Are. The Reference Court enhanced the land value at the rate of ₹6,00,000/- per Are. The State is in appeal contending that the refixation of land value is without any cogent evidence and is highly exorbitant and excessive.

2.7. L.A.A.No.170/2015:- This appeal arises out of the judgment and decree of the Sub Court, Thiruvalla dated 30.10.2014 in L.A.R.No.32/2012. An extent of 7.90 Ares of land in Re-Sy.No.758/11 was acquired from Kuttappuzha Village in Thiruvalla Taluk based on Section 4(1) notification published on 18.7.2009. The Land Acquisition Officer awarded land value at the rate of ₹2,962/- per Are. The Reference Court refixed land value at the rate of ₹40,000/- per Are. The State is in appeal aggrieved by the refixation of land value, contending that the land value fixed at the rate of ₹40,000/- per Are for paddy field is highly exorbitant. By order dated 19.6.2015 in I.A.No.431/2015, this Court granted an interim stay of the execution of the award in L.A.R.No.32/2012 of the Sub Court, Thiruvalla on the appellant depositing 50% of the amount awarded by the Reference Court within two months from the date of order. Upon such deposit being made, the amount shall be released to the 1st respondent/claimant.

2.8. L.A.A.179/2015:- This appeal arises out of the judgment and decree dated 9.10.2014 of the Sub Court, Thiruvalla in L.A.R.No.83/2011. An extent of 2.65 Ares of land in Re-Sy.No.213/49 of Thiruvalla Taluk was acquired based on Section 4(1) notification published on 18.7.2009. The Land Acquisition Officer awarded land value at the rate of ₹87,804/- per Are. The Reference Court refixed land value at the rate of ₹7,00,000/- per Are and granted 100% compensation towards injurious affection. The State is in appeal contending that the refixation of the land value is highly excessive and that, the compensation awarded towards injurious affection is also exorbitant.

2.9. L.A.A.No.183/2015:- This appeal arises out of the judgment and decree dated 30.10.2014 of the Sub Court, Thiruvalla in L.A.R.No.31/2012. An extent of 2.85 Ares of land in Re-Sy.No.758/1 and another extent of 9.10 Ares in Sy.No.758/8 in Kuttappuzha Village in Thiruvalla Taluk were acquired based on Section 4(1) notification published on 18.7.2009. The Land Acquisition Officer awarded land value at the rate of ₹2,962/- per Are. The Reference Court refixed the land value at ₹40,000/- per Are. The State is in appeal aggrieved by the refixation of land value, contending that the land value fixed at the rate of ₹40,000/- per Are for paddy field is highly exorbitant.

2.10. L.A.A.No.189/2015:- This appeal arises out of the judgment and decree dated 31.10.2014 of the Sub Court, Thiruvalla in L.A.R.No.88/2012. An extent of 12.00 Ares of land in Sy.No. 496/6 of Kuttappuzha Village in Thiruvalla Taluk was acquired based on Section 4(1) notification dated 18.7.2009. The Land Acquisition Officer awarded land value at the rate of ₹1,05,364/- per Are. The Reference Court enhanced the land value at the rate of ₹6,00,000/- per Are. The State is in appeal contending that the refixation of land value is without any cogent evidence and is highly exorbitant and excessive.

2.11. L.A.A.No.191/2015:- This appeal arises out of the judgment and decree dated 21.10.2014 of the Sub Court, Thiruvalla in L.A.R.No.91/2011. An extent of 8.30 Ares of land in Sy.No.210/96 of Thiruvalla Village in Thiruvalla Taluk was acquired based on Section 4(1) notification dated 18.7.2009. The Land Acquisition Officer awarded Land value at the rate of ₹1,17,072/- per Are. The Reference Court enhanced the land value at the rate of ₹7,00,000/- per Are. The State is in appeal contending that the refixation of land value without relying on any documents is highly exorbitant and excessive. By order dated 4.9.2015, this Court granted interim stay of execution of the award in L.A.R.No.91/2011 on the appellant depositing 50% of the amount awarded by the Reference Court on or before 2.10.2015. Upon such deposit being made, half of the amount deposited shall be released to respondents 1 and 2/claimants.

2.12. L.A.A.No.204/2015:- This appeal arises out of the judgment and decree of the Sub Court, Thiruvalla dated 15.10.2014 in L.A.R.No.42/2012. An extent of 11.10 Ares of dry land in Sy.No.199/6 and 199/7 of Kuttappuzha Village in Thiruvalla Taluk was acquired based on Section 4(1) notification published on 18.7.2009. The Land Acquisition Officer awarded land value at the rate of ₹1,05,364/- per Are. The Reference Court refixed the land value at ₹6,00,000/- per Are based on Ext.A2 Gazette notification dated 14.12.2009 fixing fair value of the properties comprised in Sy.No.199/1-5, for the purpose of stamp duty. The State is in appeal contending that, in view of the law laid down by the Apex Court in Krishi Utpadan Mandi Samiti v. Bipin Kumar and another (2004 (2) SCC 283), notification fixing fair value of land for the purpose of stamp duty shall not be looked into while fixing market value of the land for awarding compensation. Therefore, refixation of land value is highly excessive and exorbitant.

2.13. L.A.A.No.218/2015:- This appeal arises out of the judgment and decree dated 29.10.2014 in L.A.R.No.95/2011 of the Sub Court, Thiruvalla. An extent of 1.30 Ares of land in Sy.No.215/55 of Thiruvalla Village in Thiruvalla Taluk was acquired based on Section 4(1) notification published on 18.7.2009. The Land Acquisition Officer awarded land value at the rate of ₹87,804/- per Are. The Reference Court refixed land value at ₹6,00,000/- per Are. Against the refixation of land value the State is in appeal contending that the refixation of land value was made without relying any documents and without any cogent and convincing evidence and as such highly illegal and exorbitant.

2.14. L.A.A.No.219/2015:- This appeal arises out of the judgment and decree dated 31.10.2014 of the Sub Court, Thiruvalla in L.A.R.No.78/2012. An extent of 6.50 Ares of land in Sy.No.66/6 of Kuttappuzha Village in Thiruvalla Taluk was acquired based on Section 4(1) notification dated 18.7.2009. The Land Acquisition Officer awarded land value at the rate of ₹2,962/- per Are. The Reference Court enhanced the land value at the rate of ₹30,000/- per Are. The acquired property was paddy land situated at a depth of 3 Meters from the railway track and the same has been included in Category No.6. The State is in appeal contending that the refixation of land value is without any cogent evidence and is highly exorbitant and excessive.

2.15. L.A.A.No.222/2015:- This appeal arises out of the judgment and decree dated 25.11.2014 of the Sub Court, Thiruvalla in L.A.R.No. 89/2012. An extent of 0.63 Ares of land in Re-Sy.No.782/31 of Kuttappuzha Village in Thiruvalla Taluk was acquired based on Section 4(1) notification dated 18.7.2009. The Land Acquisition Officer awarded land value at the rate of ₹78,048/- per Are, including the property in Category No.3. The Reference Court enhanced the land value at the rate of ₹4,00,000/- per Are. The State is in appeal contending that the refixation of land value is without any cogent evidence and is highly exorbitant and excessive.

2.16. L.A.A.No.230/2015:- This appeal arises out of the judgment and decree dated 22.11.2014 of the Sub Court, Thiruvalla in L.A.R.No.93/2012. An extent of 44 Ares of land in Sy.No.777/29 of Kuttappuzha Village in Thiruvalla Taluk was acquired based on Section 4(1) notification published on 18.7.2009. The Land Acquisition Officer awarded land value at the rate of ₹1,05364/- per Are, including the property in Category No.1. The Reference Court refixed the land value at ₹7,00,000/- per Are. The State is in appeal contending that the refixation of land value is without any evidence and the same is highly excessive and exorbitant.

2.17. L.A.A.No.259/2015:- This appeal arises out of the judgment and decree dated 25.11.2014 of the Sub Court, Thiruvalla in L.A.R.No.91/2012. An extent of 1.14 Ares of land in Re-Sy.No.782/30 in Kuttappuzha Village in Thiruvalla Taluk was acquired based on Section 4(1) notification published on 18.7.2009. The Land Acquisition Officer land value at the rate of

₹78,048/- per Are, including the property in Category No.3. The Reference Court refixed the land value at ₹4,00,000/- per Are. The State is in appeal contending that the refixation of land value is without any evidence and the same is highly excessive and exorbitant.

2.18. L.A.A.No.263/2015:- This appeal arises out of the judgment and decree dated 25.11.2014 of the Sub Court, Thiruvalla in L.A.R.No. 44/2011. An extent of 2.05 Ares of land in Re-Sy.No.372/8 of Kuttoor Village in Thiruvalla Taluk was acquired based on Section 4(1) notification dated 18.7.2009. The Land Acquisition Officer awarded land value at the rate of ₹54,545/- per Are. The Reference Court enhanced the land value at the rate of ₹4,00,0000/- per Are. The State is in appeal contending that the refixation of land value is without any cogent evidence and is highly exorbitant and excessive.

2.19. L.A.A.No.270/2015:- This appeal arises out of the judgment and decree dated 25.11.2014 of the Sub Court, Thiruvalla in L.A.R.No.45/2011. An extent of 1.05 Ares of land in Re-Sy.No.372/9 of Kuttoor Village in Thiruvalla Taluk was acquired based on Section 4(1) notification dated 18.7.2009. The Land Acquisition Officer awarded land value at the rate of ₹54,545/- per Are. The Reference Court enhanced the land value at the rate of ₹3,75,000/- per Are. The State is in appeal contending that the refixation of land value is without any evidence and is highly exorbitant and excessive.

2.20. L.A.A.No.287/2015:- This appeal arises out of the judgment and decree of Sub Court Thiruvalla, dated 28.1.2015 in L.A.R.No.80/2011. An extent of 0.18 Ares of land in Re-Sy.No.263/17 of Kuttoor Village was acquired based on Section 4(1) notification dated 18.7.2009. The Land Acquisition Officer awarded land value at the rate of ₹43,636/- per Are. The Reference Court refixed land value at ₹3,25,000/- per Are. The State is in appeal contending that the refixation of land value is without any evidence and the same is highly excessive and exorbitant.

2.21. L.A.A.No.298/2015:- This appeal arises out of the judgment and decree dated 31.10.2014 of the Sub Court, Thiruvalla in L.A.R.No.79/2012. An extent of 8.10 Ares of land in

Re Sy.No.66/11 of Kuttappuzha Village in Thiruvalla Taluk was acquired based on Section 4(1) notification dated 18.7.2009. The Land Acquisition Officer awarded land value at the rate of ₹2,962/- per Are. The reference Court enhanced the land value at the rate of ₹30,000/- per Are. The State is in appeal contending that the refixation of land value is without any cogent evidence and is highly exorbitant and excessive.

2.22. L.A.A.No.301/2015:- This appeal arises out of the judgment and decree dated 24.1.2015 of the Sub Court, Thiruvalla in L.A.R.No. 94/2011. An extent of 2.35 Ares of land in Re-Sy.No.210/101 of Thiruvalla Village in Thiruvalla Taluk was acquired based on Section 4(1) notification dated 18.7.2009. The Land Acquisition Officer awarded land value at the rate of ₹87,804/- per Are. The Reference Court enhanced the land value at the rate of ₹7,50,000/- per Are. The State is in appeal contending that the refixation of land value by the reference court is without any cogent evidence and is highly exorbitant and excessive.

2.23. L.A.A.No.303/2015:- This appeal arises out of the judgment and decree dated 28.1.2015 of the Sub Court Thiruvalla in L.A.R.No.104/2011. An extent of 1.65 Ares of property in Sy.No.210/98 of Thiruvalla Village was acquired based on Section 4(1) notification published on 18.7.2009. The Land Acquisition Officer awarded land value at the rate of ₹1,17,072/-. The Reference Court refixed land value at the rate ₹7,20,000/- per Are. The State is in appeal contending that the refixation of land value is without any evidence and the same is highly excessive and exorbitant.

2.24. C.O.No.160/2015 in L.A.A.No.303/2015:- On receipt of notice in the L.A.A., the claimant in L.A.R.No.104/2011 filed this Cross Objection claiming enhanced land value at the rate of ₹12,00,000/- per Are and ₹2,00,000/- as compensation for the compound wall demolished.

2.25. L.A.A.No.304/2015:- This appeal arises out of the judgment and decree dated 28.1.2015 of the Sub Court, Thiruvalla in L.A.R.No.81/2011. An extent of 4.50 Ares of land in Re-Sy.No.263/18 of Kuttoor Village in Thiruvalla Taluk was acquired based on Section 4(1) notification dated 18.7.2009. The

Land Acquisition Officer awarded land value at the rate of ₹43,636/- per Are. The Reference Court enhanced the land value at the rate of ₹3,50,000/- per Are. The State is in appeal contending that the refixation of land value is without any cogent evidence and is highly exorbitant and excessive.

2.26. L.A.A.No.311/2015:- This appeal arises out of the judgment and decree dated 5.11.2014 of the Sub Court, Thiruvalla in L.A.R.No.86/2011. An extent of 7.10 Ares of land in Re-Sy.No.214/29 of Thiruvalla Village in Thiruvalla Taluk was acquired based on Section 4(1) notification dated 18.7.2009. The Land Acquisition Officer awarded land value at the rate of ₹1,17,072/- per Are. The Reference Court enhanced the land value at the rate of ₹7,00,000/- per Are. The State is in appeal contending that the refixation of land value is without any evidence and is highly exorbitant and excessive.

2.27. C.O.No.161/2015 in L.A.A.No.311/2015:- On receipt of notice in the L.A.A., the claimant in L.A.R.No.86/2011 filed this Cross Objection claiming enhanced land value at the rate of ₹10,00,000/- per Are, additional compensation of ₹3,00,000/- for the structures demolished and ₹57,55,000/- towards compensation for injurious affection for the remaining property having an extent of 11.51 Ares.

2.28. L.A.A.No.330/2015:- This appeal arises out of the judgment and decree dated 28.1.2015 of the Sub Court, Thiruvalla in L.A.R.No.92/2011. An extent of 1.05 Ares of land in Sy.No.210/99 of Thiruvalla Village was acquired based on Section 4(1) notification published on 18.7.2009. The Land Acquisition Officer awarded land value at the rate of ₹87,804/- per Are. The Reference Court refixed the land value at the rate of ₹6,00,000/- per Are. The State is in appeal contending that the refixation of land value is without any evidence and is highly excessive and exorbitant.

2.29. L.A.A.No.333/2015:- This appeal arises out of the judgment and decree dated 25.11.2014 of the Sub Court, Thiruvalla in L.A.R.No. 13/2012. An extent of 0.50 Ares of land in Re.Sy.No.782/32-H of Kuttappuzha Village in Thiruvalla Taluk was acquired based on Section 4(1) notification dated 18.7.2009. The Land Acquisition Officer awarded land value at the rate of

₹1,05,364/- per Are, including the property in Category No.2. The Reference Court enhanced the land value at the rate of ₹6,00,000/- per Are. The State is in appeal contending that the refixation of land value is without any evidence and is highly exorbitant and excessive.

2.30. L.A.A.No.363/2015:- This appeal arises out of the judgment and decree dated 24.1.2015 of the Sub Court, Thiruvalla in L.A.R.No. 101/2011. An extent of 1.60 Ares of land in Re.Sy.No.210/104 of Thiruvalla Village in Thiruvalla Taluk was acquired based on Section 4(1) notification dated 18.7.2009. The Land Acquisition Officer awarded land value at the rate of ₹87,804/- per Are. The Reference Court enhanced the land value at the rate of ₹7,50,000/- per Are. The State is in appeal contending that the refixation of land value is without any cogent evidence and is highly exorbitant and excessive.

2.31. C.O.No……./2015 in L.A.A.No.363/2015:- On receipt of notice in the L.A.A., the claimant in L.A.R.No. 101/2011 filed this Cross Objection claiming ₹4,31,250/- towards compensation for the injurious affection of 2.30 Ares of land and a sum of

₹4,00,000/- as compensation for the structures demolished.

2.32. L.A.A.No.366/2015:- This appeal arises out of the judgment and decree dated 24.1.2015 of the Sub Court, Thiruvalla in L.A.R.No.100/2011. An extent of 0.80 Ares of land in Sy.No.210/103 of Thiruvalla Village in Thiruvalla Taluk was acquired based on Section 4(1) notification dated 18.7.2009. The Land Acquisition Officer awarded Land value at the rate of ₹87,804/- per Are. The Reference Court enhanced the land value at the rate of ₹7,25,000/- per Are. The State is in appeal contending that the refixation of land value is without any cogent evidence and is highly exorbitant and excessive.

2.33. L.A.A.No.374/2015:- This appeal arises out of the judgment and decree dated 24.1.2015 of the Sub Court, Thiruvalla in L.A.R.No. 103/2011. An extent of 3.80 Ares of land in Sy.No.210/106 of Thiruvalla Village in Thiruvalla Taluk was acquired based on Section 4(1) notification dated 18.7.2009. The Land Acquisition Officer awarded land value at the rate of ₹1,17,072/- per Are. The Reference Court enhanced the land value at the rate of ₹10,00,000/- per Are. The State is in appeal contending that the refixation of land value is without any cogent evidence and is highly exorbitant and excessive.

2.34. L.A.A.No.386/2015:- This appeal arises out of the judgment and decree dated 23.3.2015 of the Sub Court, Thiruvalla in L.A.R.No. 88/2011. An extent of 1.50 Ares of land in Sy.No.215/49 of Thiruvalla Village in Thiruvalla Taluk was acquired based on Section 4(1) notification dated 18.7.2009. The Land Acquisition Officer awarded land value at the rate of ₹1,17,072/- per Are. The Reference Court enhanced the land value at the rate of ₹7,25,000/- per Are. The State is in appeal contending that the refixation of land value is without any cogent evidence and is highly exorbitant and excessive.

2.35. L.A.A.No.393/2015:- This appeal arises out of the judgment and decree dated 21.3.2015 of the Sub Court, Thiruvalla in L.A.R.No.52/2011. An extent of 0.45 Ares of land in Sy.No.358/23 of Kuttoor Village in Thiruvalla Taluk was acquired based on Section 4(1) notification published on 18.7.2009. The Land Acquisition Officer awarded land value at the rate of ₹54,545/- per Are. The Reference Court refixed the land value at

₹3,75,000/- per Are. The State is in appeal contending that the refixation of land value is without any evidence and the same is highly excessive an exorbitant.

2.36. L.A.A.No.396/2015:- This appeal raises out of the judgment and decree dated 21.3.2015 of the Sub Court, Thiruvalla in L.A.R.No.54/2011. An extent of 0.07 Ares of land in Sy.No.358/25 of Kuttoor Village in Thiruvalla Taluk was acquired based on Section 4(1) notification published on 18.7.2009. The Land Acquisition Officer awarded land value at the rate of ₹54,545/ per Are. The Reference Court refixed the land value at the rate of ₹3,00,000/- per Are. The State is in appeal contending that the refixation of land value is without any evidence and the same is highly excessive and exorbitant.

2.37. L.A.A.No.398/2015:- This appeal arises out of the judgment and decree dated 21.3.2015 of the Sub Court, Thiruvalla in L.A.R.No.50/2011. An extent of 5.20 Ares of land in Sy.No.358/21 of Kuttoor Village In Thiruvalla Taluk was acquired based on Section 4(1) notification dated 18.7.2009. The Land Acquisition Officer awarded land value at the rate of ₹54,545/-

per Are. The Reference Court refixed land value at ₹4,00,000/- per Are. The State is in appeal contending that refixation of land value is without any evidence and the same is highly excessive end exorbitant.

3. Heard arguments of the learned Senior Government Pleader appearing for the appellant/State, the learned counsel appearing for the claimants in the respective appeals and also the learned Standing Counsel for Southern Railway.

4. The learned Senior Government Pleader would contend that, the refixation of land value by the Reference Court is highly exorbitant and made absolutely without any legal basis. The Reference Court failed to state any reasons whatsoever for enhancing the land value at such an exorbitant rate. Having found that the properties covered by the documents relied on by the claimants have absolutely no comparison with the property under acquisition, the Reference Court went wrong in granting such an exorbitant enhancement in the land value. The enhancement so made by the Reference Court is not supported by any cogent and convincing materials on record. The learned

Senior Government Pleader would point out that, when the purpose of acquisition is for doubling of railway track, the properties under acquisition are lying by the side of an existing railway line. Such properties will not have any commercial importance as in the case of properties having MC road frontage. In that view of the matter, the Reference Court ought to have concluded that, the land value awarded by the Land Acquisition Officer was just and reasonable, warranting no interference. The learned Senior Government Pleader, relying on the judgment of the Apex Court in Krishi Utpadan Mandi Samiti v. Bipin Kumar and another (2004 (2) SCC 283), would contend that, the Reference Court ought not to have relied on the Gazette notification published by the Government fixing fair value of land for the purpose of stamp duty, while determining the market value of the land under acquisition.

5. Per contra, the learned counsel appearing for the claimants in the respective appeals would contend that, the land value refixed by the Reference Court reflects the market value of the properties under acquisition as on the date of Section 4(1)

notification. According to the learned counsel, the Reference Court refixed the land value considering the potentiality of the properties under acquisition and also the importance of the locality in which it situate. In such circumstances, the refixation of land value by the Reference Court would not become illegal for the mere absence of valid reasons stated in the impugned judgment. The learned counsel would contend further that, the notifications issued by the Government under the Kerala Stamp (Fixation of Fair Value of Land) Rules 1995 can be the basis for fixation of market value of the properties under acquisition and that, the judgment of the Apex Court in Krishi Utpadan Mandi Samiti's case (supra) is on an entirely different factual matrix and has no application in the matter of fixation of fair value under the Rule referred to above.

6. In **Viluben Jhalejar Contractor v. State of Gujarat (2005 (4) SCC 789)** the Apex Court held that, Section 23 of the Land Acquisition Act, 1894 specifies the matters required to be considered in determining the compensation; the principal among which is the determination of the market value of the land on the

date of the publication of the notification under Section 4(1) of the Act. One of the principles for determination of the amount of compensation for acquisition of land would be the willingness of an informed buyer to offer the price therefor. It is beyond any cavil that the price of the land which a willing and informed buyer would offer would be different in the cases where the owner is in possession and enjoyment of the property and in the cases where he is not. Market value is ordinarily the price the property may fetch in the open market if sold by a willing seller unaffected by the special needs of a particular purchase. Where definite material is not forthcoming either in the shape of sales of similar lands in the neighbourhood at or about the date of notification under Section 4(1) or otherwise, other sale instances as well as other evidences have to be considered. The amount of compensation cannot be ascertained with mathematical accuracy. A comparable instance has to be identified having regard to the proximity from time angle as well as proximity from situation angle. For determining the market value of the land under acquisition, suitable adjustment has to be made having regard to various positive and negative factors vis-à-vis the land under acquisition by placing the two in juxtaposition. The purpose for which acquisition is made is also a relevant factor for determining the market value.

7. In **Karnataka Urban Water Supply and Drainage Board v. K.S.Gangadharappa (2009 (11) SCC 164)** the Apex Court laid down the factors which merit consideration as comparable sales as under; The element of speculation is reduced to minimum in fixation of market value with reference to comparable sales, when sale is within a reasonable time of the date of notification under Section 4(1) of the Act. It should be a bona fide transaction. It should be of the land acquired or of the land adjacent to the land acquired and it should possess similar advantages. It is only when these factors are present, it can merit a consideration as a comparable case.

8. In **Kapil Mehra v. Union of India (2015 (2) SCC 262)** the Apex Court reiterated that, the preferable mode for determination of market value is comparative sales method. In fixation of market value, the first question that emerges is what

would be the reasonable market value which the acquired lands are capable of fetching. While fixing the market value of the acquired land, the Land Acquisition Officer is required to keep in mind the following factors; (i) existing geographical situation of the land; (ii) existing use of the land; (iii) already available advantages, like proximity to National or State Highway or road and/or developed area; and (iv) market value of other land situated in the same locality/village/area or adjacent or very near to the acquired land. The standard method of determination of the market value of any acquired land is by the valuer evaluating the land on the date of publication of notification under Section 4 (1) of the Act, acting as a hypothetical purchaser willing to purchase the land in open market at the prevailing price on that day, from a seller willing to sell such land at a reasonable price. Thus, the market value is determined with reference to the open market sale of comparable land in the neighbourhood, by a willing seller to a willing buyer, on or before the date of preliminary notification, as that would give a fair indication of the market value.

9. While fixing the market value of the acquired land, comparable sales method of valuation is preferred rather than methods of valuation of land such as capitalization of net income method or expert opinion method, because it furnishes the evidence for determination of the market value of the acquired land at which the willing purchaser would pay for the acquired land if it had been sold in the open market at the time of issuance of notification under Section 4(1) of the Act. However, while taking comparable sales method of valuation of land for fixing the market value of the acquired land, the factors referred to above, as laid down by the Apex Court, are required to be satisfied and only on fulfillment of those factors, compensation can be awarded according to the land value stated in the sale deeds. In the cases on hand, such an exercise was never undertaken by the Reference Court. Instead, the Reference Court granted enhanced land value absolutely without any legal basis and no reasons whatsoever have been stated for granting enhanced land value at such an exorbitant rate. Further, the Reference Court did not accept the documents relied on by the

claimants.

10. In some of these cases, the claimants relied on the report of the Advocate Commissioner for determining the market value of the land under acquisition. In **Special Land Acquisition Officer v. Siddappa Omanna Tumari (1995 Supp (2) SCC 168)** the Apex Court held that, when a report of an expert is got produced by a claimant before the Court giving market value of the acquired land, the Court may, choose to act upon such report for determination of the amount of compensation payable for the acquired land, if the data or the material on the basis of which such report is based is produced before the Court and the authenticity of the same is made good and the method of valuation adopted therein is correct. In that view of the matter, the Reference Court is not expected to accept such reports for determining the land value of the acquired land.

11. The learned Senior Government Pleader, relying on the judgment of the Apex Court in **Krishi Utpadan Mandi Samiti v. Bipin Kumar and another (2004 (2) SCC 283)**, would contend that, the Reference Court ought not to have relied on the

Gazette notification published by the Government fixing fair value of land for the purpose of stamp duty, while determining the market value of the land under acquisition. The learned Senior Government Pleader would point out that, when the purpose of acquisition is for doubling of railway track, the properties under acquisition are lying by the side of an existing railway line. Such properties will not have any commercial importance as in the case of properties having MC road frontage. Per contra, The learned counsel for the claimants would contend that, the notifications issued by the Government under the Kerala Stamp (Fixation of Fair Value of Land) Rules 1995 can be the basis for fixation of market value of the properties under acquisition and that, the judgment of the Apex Court in Krishi Utpadan Mandi Samiti's case (supra) is on an entirely different factual matrix and has no application in the matter of fixation of fair value of land under the Rule referred to above.

12. In **Krishi Utpadan Mandi Samiti v. Bipin Kumar and another (2004 (2) SCC 283)**, a decision relied on by the learned Senior Government Pleader, the Apex Court held that,

the market value under Section 23 of the Land Acquisition Act, 1894 cannot be fixed on the basis of basic valuation register maintained by the registering authority for collection of stamp duty. Para.7 of the judgment reads thus;

> "**7.** It has been held by this Court in the case of Jawajee Nagnatham v. Revenue Divisional Officer (1994 (4) SCC 595) that market value under Section 23 of the Land Acquisition Act, 1894 cannot be fixed on the basis of a basic valuation register maintained by the registering authority for collection of stamp duty. Therefore, the reliance by the Reference Court on the values of land fixed by the District Magistrate for stamp duty purposes is clearly erroneous. For the purposes of Land Acquisition Act the market value must be determined on the baste of sale deeds of comparable lands. ...."

13. However, in **Lal Chand v. Union of India (2009 (15) SCC 769)**, a decision relied on by the learned counsel for the claimants, the Apex Court held that guideline market value determined by Expert Committees constituted under the State Stamp laws, by following the detailed procedure laid down under the relevant rules, and published in the State Gazette can be a relevant piece of evidence for determining the market value in

land acquisition cases, if they are assessed by statutorily appointed Expert Committees, in accordance with the prescribed assessment procedure (either street-wise, or road-wise, or area-wise, or village-wise) and finalised after inviting objections and published in the Gazette. Paras.41 to 44 of the judgment read thus;

> "**41.** It should however be noted that as contrasted from the assessment of market value contained in non-statutory basic value registers, the position may be different, where the guideline market values are determined by Expert Committees constituted under the State Stamp Law, by following the detailed procedure laid down under the relevant rules, and are published in the State Gazette. Such State Stamp Acts and the Rules thereunder, provide for scientific and methodical assessment of market value in different areas by Expert Committees.
>
> **42.** These statutes provide that such committees will be constituted with officers from the Department of Revenue, Public Works, Survey & Settlement, Local Authority and an expert in the field of valuation of properties, with the Sub-Registrar of the sub-registration district as the Member Secretary. They also provide for different methods of valuation for lands, plots, houses and other buildings. They require determination of the market value of agricultural lands by classifying them with reference to soil, rate of

revenue assessment, value of lands in the vicinity and locality, nature of crop yield for specified number of years, and situation (with reference to roads, markets etc.).

43. The rates assessed by the committee are required to be published inviting objections/suggestions from the members of public. After considering such objections/ suggestions, the final rates are published in the Gazette. Such published rates are revised and updated periodically. When the guideline market values, that is, minimum rates for registration of properties, are so evaluated and determined by expert committees as per statutory procedure, there is no reason why such rates should not be a relevant piece of evidence for determination of market value.

44. One of the recognised methods for determination of market value is with reference to opinion of experts. The estimation of market value by such statutorily constituted expert committees, as expert evidence can therefore form the basis for determining the market value in land acquisition cases, as a relevant piece of evidence. It will be however open to either party to place evidence to dislodge the presumption that may flow from such guideline market value. We however hasten to add that the guideline market value can be a relevant piece of evidence only if they are assessed by statutorily appointed Expert Committees, in accordance with the prescribed assessment procedure (either street-wise, or road-wise, or area-wise, or village-wise) and finalised after inviting objections and published in the Gazette."

14. In some of the cases, the claimants relied on the notification issued by the Revenue Divisional Officer concerned, notifying fair value of the land as required under Section 28A of the Kerala Stamp Act, 1959 read with Rule 3(7) and Rule 4 of the Kerala Stamp (Fixation of Fair Value of Land) Rules, 1995 for determining the market value of the land under acquisition. Rule 3 of the said Rules contains detailed procedure for fixation of fair value of the land by the Revenue Divisional Officer concerned, which includes classification and categorisation of land, fixation of draft fair value, publication of draft fair value in official Gazette calling for objections and suggestions, fixation of final fair value after considering such objections and suggestions, etc. Similarly, Rule 4 deals with publication of fair value of land in official Gazette. Therefore, the fair value fixed by the Revenue Divisional Officer following the detailed procedure under Rules 3 and 4 of the Kerala Stamp (Fixation of Fair Value of Land) Rules, 1995 and published in the official Gazette can be a relevant piece of evidence for determining the market value of the land under

acquisition. However, such fixation of fair value should be within a reasonable time of the date of notification under Section 4(1) of the Land Acquisition Act and while determining the market value based on such fair value, suitable adjustment has to be made having regard to various positive or negative factors, if any, of the land under acquisition.

15. As we have already noticed, in the cases on hand, the Reference Court granted enhanced land value absolutely without any legal basis and no reasons whatsoever have been stated for granting enhanced land value at such an exorbitant rate. In such circumstances, the only course left open to this Court is to set aside the judgments and decrees of the Reference Court, which are under challenge in these appeals filed by the State and remand the matter for fresh consideration for fixing the market value of the land under acquisition for awarding a just and reasonable compensation to the claimants. The Reference Court shall undertake such exercise, keeping in mind the observations contained in this judgment, and after affording both sides an opportunity to adduce additional evidence, if sought for. The

Reference Court shall finally dispose of the matter, as expeditiously as possible, at any rate within a period of four months from the date of receipt of a certified copy of this judgment. The parties shall appear before the Reference Court on **4.1.2016**. The appeals filed by the State are disposed of accordingly.

C.O.No.160/2015 in L.A.A.No.303/2015 is filed by the claimant in L.A.R.No.104/2011 claiming enhanced land value at the rate of ₹12,00,000/- per Are and ₹2,00,000/- as compensation for the compound wall demolished. C.O.No.161/2015 in L.A.A.No.311/2015 is filed by the claimant in L.A.R.No.86/2011 claiming enhanced land value at the rate of ₹10,00,000/- per Are, additional compensation of ₹3,00,000/- for the structures demolished and ₹57,55,000/- towards compensation for injurious affection for the remaining property having an extent of 11.51 Ares. C.O.No……./2015 in L.A.A.No.363/2015 is filed by the claimant in L.A.R.No. 101/2011 claiming ₹4,31,250/- towards compensation for the injurious affection of 2.30 Ares of land and a sum of ₹4,00,000/- as compensation for the structures demolished. Since the appeals filed by the State are disposed of remanding the matter to the Reference Court for fixing the market value of the land under acquisition for awarding a just and reasonable compensation to the claimants, the learned counsel for the cross objectors sought permission to withdraw these Cross Objections, without prejudice to their right to agitate the issues raised in the Cross Objections before the Reference Court. Permission is granted. The Cross Objections are accordingly dismissed as withdrawn without prejudice to the aforesaid right of the cross objectors. The Registry shall refund the court fee paid by the cross objectors.

Sd/-
P.R.RAMACHANDRA MENON,
JUDGE

Sd/-
ANIL K.NARENDRAN,
JUDGE

dsn

True copy

P.S.to Judge

Continued at Page No.38

The word "**blindly"** is inserted between the words "**reports"** and "**for**" occurring in the last sentence of the 10th paragraph of the common judgment dated 14.12.2015 in L.A.A.No.18/2015 and connected cases. Suo motu corrected as per common order dated 26/02/2016 in L.A.A.No.18/2015 and connected cases.

Sd/- Registrar (Judicial)