IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

WEDNESDAY, THE 10TH DAY OF JUNE 2015/20TH JYAISHTA, 1937

LA.App..No. 149 of 2015 ()

AGAINST THE ORDER/JUDGMENT IN LAR 425/2006 of III ADDL.SUB COURT, ERNAKULAM
DATED 02-09-2010

APPELLANTS/CLAIMANTS:
----

1. C.K. VIJAYAN, AGED 63 YEARS,
   S/O LATE C. KUNJIKRISHNA MENON, VAYALIL "ANURAG"
   VAYALIL CROSS ROAD, THIRUVANKULAM, KOCHI-682 305.

2. P.K.THANKAM, AGED 68 YEARS,
   D/OLATE C.KUNJUKRISHNA MENON, PRABHATH HOSUE, 43/2358
   TEMPLE ROAD, KADAVANTHARA P.O., KOCHI-20.

3. RAJALAKSHMI, AGED 57 YEARS,
   D/O LATE C.K.KUNJIKRISHNA MENON, D.NO.10-1-3
   VISAKHAPATNAM-3, REPRESENTED BY HER POWER OF ATTORNEY HOLDER
   C.K.VIJAYAN VAYALIL "ANURAG", VAYALIL CROSS ROAD, THIRUVANKULAM
   KOCHI-682 305.

   BY ADV. SRI.T.R.S.KUMAR

RESPONDENT/RESPONDENT IN LAR NO.425 OF 2006 SUB COURT, ERNAKULAM:
----

1. STATE OF KERALA
   REPRESENTED BY SPECIAL THAHASILDAR (LA)
   CORPORATION OF KOCHI.

2. THE SECRETARY
   CORPORATION OF KOCHI, ERNAKULAM.

   R1 BY SR. GOVERNMENT PLEADER SRI.ALOYSIUS THOMAS
   R2 BY SRI.BABU KARUKAPADATH, SC, COCHIN CORPORATION

   THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON 10-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

VPV

P.N.RAVINDRAN & ANU SIVARAMAN, JJ.
=-=
L.A.A.No.149 of 2015
=-=
Dated this the 10th day of June, 2015

JUDGMENT

P.N.Ravindran, J.

The appellants are the claimants in L.A.R.No.425 of 2006 on the file of the Court of the IIIrd Additional Subordinate Judge of Ernakulam. A parcel of land, 1.26 Ares in extent, situate in Sy.No.674/1 part of Elamkulam Village, Kanayannur Taluk, Ernakulam District lying on the southern side of Sahodaran Ayyappan Road and belonging to them was acquired pursuant to the notification dated 13.10.2004 issued under section 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act" for short). The acquisition was for the purpose of widening the Sahodaran Ayyappan Road. The Land Acquisition Officer awarded land value at the rate of Rs.6,17,250/- per Are. He also awarded the sum of Rs.72,208/- as value of the building standing in the property. Before the Land Acquisition Officer the land owners had claimed land value at the rate of Rs.30,00,000/- per cent. Since they were not satisfied with the land value awarded by the Land Acquisition Officer, they received the compensation awarded by the Land Acquisition Officer under protest and sought a reference of the dispute to the civil court. A reference was accordingly made to the Court of the Subordinate Judge of Ernakulam where it was taken on file and numbered as L.A.R.No.425 of 2006.

2. Before the reference court, the appellants filed a statement claiming land value at the rate of Rs.30,00,000/- per cent. In the reference court the first claimant was examined as AW1, the valuer who had valued the building standing in the property was examined as AW2 and the Commissioner who was deputed in O.S.No.948 of 2006 on the file of the Court of the Munsiff of Ernakulam to inspect the building standing in the acquired land was examined as AW4. The claimants also produced and marked Exts.A1 to A9 on their side. On the side of the respondents, Exts.R1 to R4 were produced and marked. Before the reference court, the appellants pressed into service Ext.A7 sale deed dated 1.2.2002 in support of their claim for enhanced land value. The reference court held that though the Advocate Commissioner has identified the property covered by Ext.A7 and it lies near the acquired property, it cannot be relied on for the reason that the document takes in a building also and it is not possible to ascertain the value of the land covered by the document. As regards Exts.A1 to A5 which were also pressed into service, the reference court held that the lands covered by Exts.A1 to A5 are lying 2 kilometres from the acquired property and by the side of M.G.Road and therefore, they

cannot be relied on to fix the land value payable. As regards Ext.A6, the court below held that the lands covered by it has not been identified. Ext.A8 sale deed was ignored on the ground that it is a post notification document. The reference court however held that having regard to the location of the property and its importance, the land value fixed by the Land Acquisition Officer has to be enhanced. The reference court held that a 75% increase over the land value fixed by the Land Acquisition Officer is warranted and accordingly fixed the land value at Rs.10,80,187/- per Are. The claimants were held entitled to all statutory benefits. The claimants have, dissatisfied with the land value awarded by the reference court, filed this appeal.

3. We heard Sri.T.R.S.Kumar, learned counsel appearing for the appellants and Sri.Aloysius Thomas, learned Government Pleader appearing for the first respondent. Sri.T.R.S.Kumar, learned counsel appearing for the appellants contended that the reason given by the reference court in paragraph 14 of the impugned judgment for not placing reliance on Ext.A7 sale deed is not tenable. The learned counsel submitted that the Advocate Commissioner has in Ext.C1 report stated that the land covered by Ext.A7 is situate 100 metres away from the acquired land by the side of the Sahodaran Ayyappan Road (to the west of the acquired land), that Ext.C1(a) sketch which accompanies the report shows that the acquired land is situate in close

proximity by the side of Sahodaran Ayyappan Road to the land covered by Ext.A7 and therefore, there is no reason why the said document cannot be relied on. Inviting our attention to the recitals in Ext.A7, the learned counsel contended that the land covered by Ext.A7 having an extent of 19.462 cents (corresponding to 7.876 Ares) was purchased by M/s. Bharti Cellular Ltd, a company incorporated under the Companies Act, 1956 for a total sale consideration of Rs.2,50,00,000/- after obtaining a no objection order dated 20.12.2001 from the income tax authorities, that the said document recites that out of the agreed sale consideration of Rs.2,50,00,000/-, the sum of Rs.1,10,00,000/- represents the value of the building therein and the balance amount (Rs.1,40,00,000/-) is the value of the land and therefore, the court below erred in holding that from Ext.A7 it is not possible to ascertain the exact land value. The learned counsel contended that as Ext.A7 sale deed was executed more than two years prior to the date of the section 4(1) notification and it is a document evidencing purchase of land by a company incorporated under the Companies Act, 1956, it can be safely relied on for the purpose of computing the market value of the acquired land. The learned counsel contended that as the notification under section 4(1) of the Act was issued more than two years after Ext.A7 sale deed was executed, the petitioners are entitled to land value over and above the land value shown in Ext.A7 and therefore, the instant appeal is liable to be allowed and enhanced land value awarded.

4. Per contra, Sri.Aloysius Thomas, learned Government Pleader appearing for the first respondent submitted that in respect of similar type of land this court has in L.A.A.No.1505 of 2008 awarded land value only at the rate of Rs.9,87,600/- per Are as against the land value awarded by the reference court namely Rs.8,64,150/- and therefore, as the land involved in the instant case is of the same type of land, viz., the land situate in Elamkulam Village which falls in 'C' category in the basic valuation report prepared by the Special Tahsildar, Land Acquisition, Cochin Corporation and approved by the District Collector, Ernakulam, the appellants cannot contend that they are entitled to land value in excess of the amount awarded as land value by this court in L.A.A.No.1505 of 2008. The learned Government Pleader also submitted that the purchaser under Ext.A7 would have paid a fancy price for the land out of business compulsions and therefore, the said document cannot be relied on.

5. We have considered the submissions made at the Bar by learned counsel appearing on either side. We have also gone through the pleadings and the materials on record. The fact that the land covered by Ext.A7 is situate very close to the acquired land is not in dispute. No portion of the land covered by Ext.A7 was acquired for

widening the Sahodaran Ayyappan Road. It lies on the southern side of the Sahodaran Ayyappan Road. The acquired land is also lying by the side of the Sahodaran Ayyappan Road further to the east. These facts are not in dispute. Going by the location and lie of the property, one can therefore safely assume that the land covered by Ext.A7 as well as the lands acquired in the instant case had the same potential and same advantages. The recitals in Ext.A7 sale deed which, as stated earlier relate to 19.462 cents of land (corresponding to 7.876 Ares), show that the sale consideration agreed upon for the land was Rs.1,40,00,000/- and the sale consideration agreed upon for the building was Rs.1,10,00,000/-. The document also recites that prior to its execution, permission of the appropriate authority under section 269 UL(1) of the Income Tax Act, 1961 was also obtained. The court below has however chosen to ignore Ext.A7 on the ground that the exact land value cannot be ascertained from the document. In our opinion, the said finding cannot be accepted. The mere fact that the document took in building also is not a reason in our opinion to ignore it for the reason that the building had been separately valued. It cannot therefore be said that the exact value of the land covered by Ext.A7 sale deed cannot be ascertained. That apart, Ext.A7 sale deed was executed on 1.2.2002, more than two years and eight months prior to the notification issued under section 4(1) of the Land

Acquisition Act. Since the appellants are not parties to Ext.A7 transaction and it is a transaction entered into by a company registered under the Companies Act, 1956, after the Board of Directors adopted a resolution to purchase the property and after the competent authority under the income tax gave approval for such purchase, it cannot be said that the document was got executed in view of the then pending proposal for widening the Sahodaran Ayyappan Road for the purpose of claiming enhanced land value. Since Ext.A7 was not executed in close proximity with 4(1) notification and was executed more than two and a half years prior to the notification, we are of the opinion that it can safely be relied on. That apart, as stated earlier, the land involved in the instant case lies a few metres (according to the Advocate Commissioner only 100 metres) away from the land covered by Ext.A7. We are therefore of the considered opinion that the appellants/claimants are entitled to have the land value awarded in terms of the land value shown in Ext.A7, which is Rs.17,77,554/- per Are. As stated earlier, the land value awarded by the Land Acquisition Officer is Rs.6,17,250/- per Are. The land value awarded by the reference court is Rs.10,80,187/- per Are. The difference in the land value claimed in the appeal is Rs.6,17,500/- per Are. In other words, the enhanced land value claimed in the instant appeal is only Rs.16,97,687/- per Are, which is below the sum of Rs.17,77,554/-

which really ought to have been awarded as land value. We are therefore of the considered opinion that the enhanced land value as claimed in the appeal is liable to be awarded.

For the reasons stated above, we allow the appeal and award land value at the rate of Rs.16,97,687/- per Are in respect of the land involved in L.A.R.No.425 of 2006 on the file of the Court of the IIIrd Additional Subordinate Judge of Ernakulam. The appellants/claimants will be entitled to all statutory benefits on that basis. Needless to say, the appellants will also be entitled to costs in this court.

Sd/-
P.N.RAVINDRAN
JUDGE

Sd/-
ANU SIVARAMAN
JUDGE

/true copy/

P.A. To Judge

vpv