

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

MONDAY, THE 3RD DAY OF AUGUST 2015/12TH SRAVANA, 1937

LA.App..No. 6 of 2013 ()

AGAINST THE JUDGMENT IN LAR 51/2010 of SUB COURT,THODUPUZHA DATED
14-02-2012

APPELLANTS/RESPONDENTS 1 AND 2:

1. THE DISTRICT COLLECTOR
IDUKKI.

2. THE EXECUTIVE ENGINEER
PUBLIC WORKS DEPARTMENT, ROADS DIVISION, IDUKKI.

BY SR. GOVERNMENT PLEADER SRI.R.PADMARAJ

RESPONDENTS/1ST CLAIMANT AND ADDL.CLAIMANTS 2-5:

1. CHACKO
S/O.THOMAS, KANIYAMMUZHIYIL HOUSE, THALAMATTOM (DIED).

2. MARY JACOB
W/O.THOMAS CHACKO, KANIYAMMUZHIYIL HOUSE, THALAMATTOM
PIN-685584.

3. BLESSY JACOB
D/O.THOMAS CHACKO, KANIYAMMUZHIYIL HOUSE, THALAMATTOM
PIN-685584.

4. JINCY JACOB
D/O.THOMAS CHACKO, KANIYAMMUZHIYIL HOUSE, THALAMATTOM
PIN-685584.

5. JAISY JACOB
D/O.THOMAS CHACKO, KANIYAMMUZHIYIL HOUSE, THALAMATTOM
PIN-685584.

R1-R4 BY ADV. SRI.JOSEPH JOHN

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON
03-08-2015, ALONG WITH CO. 103/2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

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

**L.A.A.No.6 of 2013 &
Cross Objection No.103 of 2015**

Dated this the 3rd day of August, 2015

JUDGMENT

Ramachandran Nair, J.

Both the appeal and the cross objection are filed from the judgment and decree in L.A.R.No.51/2010 of Sub Court, Thodupuzha. The State has come up in appeal in L.A.A.No.6/2013 and cross objection No.103/2015 is filed by the claimants.

2. The properties have been acquired (.0010 Hectares) as per notification under Section 4(1) of the Act dated 24.10.2008. The acquisition was for the construction of approach road to Irrukumpuzha bridge. The land acquisition officer has categorized various items of properties into different groups and as far as the acquired properties herein are concerned, they are grouped under Group II.

3. The land acquisition officer awarded land value @ Rs. 88,410/- per Are which was enhanced by the reference court to

Rs.2,28,854/- per Are.

4. Before the reference court, both sides have adduced evidence. The claimants have produced Exts.A1 to A8 documents and respondents have marked in evidence Exts.R1 to R5. They are mahazars, valuation statement, notes to award etc. Ext.X1 is the copy of the Commission report. Ext.X1 (a) is the rough sketch and one of the claimants was examined PW1. There was no oral evidence on the part of the respondent.

5. As far as the acquired properties herein are concerned, they were grouped as Group No.II by the land acquisition officer. It is clear from the categorization that they are treated as dry lands having mud road facility. It is stated in the notes to award that the acquired properties herein are very near to group I (A) and Group I (B) properties of Thodupuzha-Pala State Highway. They are near to various commercial establishments and public institutions.

6. The present case L.A.R.No.51/2010 was tried along with L.A.R.No.44/2010. As far as the acquired properties in L.A.R.No.44/2010 are concerned, the land value fixed by the reference

court is @ ₹ 4,16,110/- per Are. The State had come up in appeal as L.A.A.No.775/2012 and the claimant had filed Cross Objection No.100/2015. We have disposed of the appeal and the cross objection today by a common judgment and we have refixed the land value in respect of the properties acquired therein @ ₹6,20,000/- per Are. As far as the acquired property herein is concerned, the land acquisition officer fixed land value @ ₹ 88,410/- per Are only for the reason that it was on the side of a mud road (public way).

7. The learned counsel for the claimants Sri.Joseph John submits that the said property is lying contiguous to the property acquired in L.A.R.No.44/2010 and therefore the same advantage to the acquired property in L.A.R.No.44/2010 of the State Highway was there for the acquired property herein also. It is therefore pointed out that the categorization of the property in Group No.II by the land acquisition officer is without any supportable reason.

8. In this context, the learned counsel referred to the report of the Commissioner which was marked as Ext.X1. The report shows the

following details as regards the acquired property involved herein. It is stated in the penultimate paragraph that the property involved in L.A.R.No.51/2010 is lying contiguous to the property in L.A.R.No.44/2010. The said property has been converted and is a deemed dry land with the same importance as the acquired property in L.A.R.No.44/2010 is concerned. Through the side of the property, there is a mud road also. On the western side of the said property, the residential building of the claimant is situated. Therefore, the Commissioner concludes that the property involved in L.A.R.No.44/2010 and those involved in L.A.R.No.51/2010 are having the very same importance and will get the same value.

9. The learned Senior Government Pleader supported the award of the reference court.

10. According to us, there is no distinguishable feature to separate the acquired property in L.A.R.No.51/2010 from that of the acquired property in L.A.R.No.44/2010 since both the items of properties are dry lands and are enjoyed by the same claimant as a compact plot. True that there is a mud road on the side of the property,

but the advantages of the acquired property namely in L.A.R.No.44/2010 of being adjacent to the State Highway namely Pala - Thodupuzha road is available to the acquired property herein also is concerned. There are no worthwhile reasons for the land acquisition officer to separate it also. In that view of the matter, the said property has also to be recategorized as Group No.I (A). for the purpose of assessment of compensation. The evidence was common in both the cases and the reference court did not rely upon the documents produced by the claimants and relied upon the judgment in L.A.R.No.41/2010 which is in respect of Group No.III items of properties acquired for the same purpose.

11. We have already found in our judgment in L.A.A.No.775/2012 and Cross Objection No.100/2015 that the said method is not correct. We had relied upon the documents produced as Exts.A4 and A5 therein for refixing the land value as they are found to be comparable and located near the acquired property. Therefore, since the properties in both cases are lying contiguous and since both these cases were disposed of together by the reference court, we will be

justified in adopting the said land value for the acquired properties herein also. Therefore, we fix the market value of the acquired properties herein @ ₹ 6,20,000/- per Are.

12. The appeal L.A.A.No.6/2013 is dismissed and the Cross objection No.103/2015 is allowed to the above extent. The additional court fee for the amount refixed by this Court will be remitted by the claimants. The learned counsel for the claimants submits that it will be remitted forthwith.

There is a delay of 365 days in filing the cross objection. The delay has been condoned as per order in C.M.Appln.No.385/2015. We make it clear that the claimants will not be entitled for interest under Section 28 for the above period and will be entitled for all the statutory benefits as granted by the reference court subject to the above. The parties will suffer their costs in the appeal and the cross objection.

T.R.RAMACHANDRAN NAIR, JUDGE

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K.P. JYOTHINDRANATH, JUDGE