

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

MONDAY, THE 16TH DAY OF NOVEMBER 2015/25TH KARTHIKA, 1937

LA.App..No. 53 of 2013 (C)

**AGAINST THE ORDER/JUDGMENT IN LAR 441/2007 of II ADDL.SUB
COURT,TRIVANDRUM DATED 30-01-2010**

APPELLANT(S) /APPELLANTS:

1. STATE OF KERALA
REPRESENTED BY THE DISTRICT COLLECTOR
THIRUVANANTHAPURAM.

2. THE EXECUTIVE ENGINEER
PWD ROADS DIVISION, THIRUVANANTHAPURAM.

BY SENIOR GOVERNMENT PLEADER SRI. R. PADMARAJ

RESPONDENT/CLAIMANT:

SURESH
S/O. GOPALAN, MELEPUTHEN VEEDU, PERIMTHOTTAM-695001.

BY ADV. SRI.J.HARIKUMAR

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON 16-11-2015, ALONG WITH LAA. 139/2013, LAA. 590/2013, LAA. 156/2014, LAA. 450/2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R. RAMACHANDRA MENON

&

ANIL K. NARENDRA, JJ.

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L.A.A. Nos. 53, 139 and 590  
of 2013 and L.A.A. No. 156 and 450  
of 2014

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Dated, this the 16th day of November, 2015

JUDGMENT

Ramachandra Menon, J.

These appeals pertain to the acquisition of the properties in connection with the widening of Thrikkannapuram - Poozhiukkunnu road in Nemom village of Thiruvananthapuram taluk. Four appeals have been preferred by the State [LAA Nos. 53, 139 and 590 of 2013 and LAA No. 450 of 2014], wherein the challenge is with regard to the exorbitant amounts awarded by the Reference Court. The other appeal i.e. LAA No. 156 of 2014 has been filed by the claimant, being aggrieved of the extent of reduction made by the Reference Court in relation to the value of the property covered by Ext. A1 deed dated 26.05.2005, whereby the value of the property categorized as 'A' came to be reduced by 60% of the value shown in Ext. A1 document.

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connected cases.*

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2. The sequence is as follows : In connection with the steps for widening the Thrikkannapuram - Poozhiukkunnu road, Section 4 (1) notification was issued on 19.09.2005. Pursuant to this, Award was passed by the Land Acquisition Officer categorizing the property as A, B and C, fixing the land value as Rs.73,813/-, Rs.59,050/- and Rs.45,092/- per Are respectively; also granting all statutory benefits. The claimants, being aggrieved of the said Award, sought for reference under Section 18 of the Land Acquisition Act. On culmination of the trial, the Reference Court enhanced the land value in respect of categories A, B and C as Rs.3 lakhs, Rs.2.5 lakhs and Rs.2 lakhs per Are respectively. The course pursued by the Reference Court was sought to be challenged by the State pointing out that there was absolutely no rhyme or reason for having the land value enhanced to such an extent, more so when a specific finding was rendered by the Reference Court to the effect that, the one and only document produced from the part of the claimant i.e. Ext. A1 dated 26.05.2005 could not have been relied on under any circumstances, being situated far away from the property under acquisition and much near to the N. H. 47. LAA No. 286 of 2011 filed by the State was considered in the said

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circumstances, and after hearing both the sides, this Court, as per the judgment dated 29.06.2011, made some deductions deprecating the course pursued by the Reference Court as based on a guess work. The land value in respect of category A was reduced from Rs. 3 lakhs to Rs. 2 lakhs per Are. In respect of category B (thought it was not an issue in appeal) it was reduced from Rs.2.5 lakhs to Rs. 1.6 lakhs per Are. No mention was made with regard to category 'C'. Even the said extent, according to the State, was much on the higher side and hence it was subjected to challenge before the Apex Court. The matter was admitted and subsequently, a judgment dated 08.05.2012 passed in C.A. No. 433 of 2011, whereby the course pursued by this Court was deprecated stating that there was nothing on record but for the 'guess work' by the High Court, as similar to the course pursued by the Reference Court. It was in the said circumstances, that the verdict passed by this Court was set aside and the matter was remanded to the Reference Court for being considered afresh, granting an opportunity to establish the facts and figures. It was also observed by the Supreme Court that the amount deposited by the State to an extent of 50% while granting the interim order of

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stay need not be refunded for the time being and that the same will be subject to the verdict to be passed by the Reference Court.

3. After the remand, no further evidence was adduced and no document was produced from the part of the claimants. The only document produced from the part of the claimant before the Reference Court is Ext. A1. It is contended that, as a short cut method, the Reference Court simply reduced 60% of the value shown in Ext. A1 document and fixed the land value for category A as Rs.2.5 lakhs per Are as per judgment dated 31.12.2012; which in turn is under challenge in LAA No. 590 of 2013 filed by the State. Challenge is raised from the part of the claimant as well, pointing out that, despite the evidence adduced by the claimant as AW1, the Reference Court quite arbitrarily effected reduction to an extent of 60% from the land value shown in Ext.A1, which hence is sought to be interfered by way of LAA No. 156 of 2014. Some enhancement is sought for in respect of the structures/improvements as well. The other appeals have been preferred by the State in respect of similar properties involved. In LAA No. 53 of 2013 and 450 of 2013 the property involved is category A, whereas in the case of LAA No. 139 of 2013 it comes under category B. The land value

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awarded in respect of the property under category A (involved in LAA No. 53 of 2013) as per judgment dated 31.01.2010 in LAR No. 441 of 2007 is Rs.3,00,000/- per Are, which appears to be based on the similar verdict passed earlier. Same is the position with regard to LAA No. 139 of 2013 (category B property) whereby the judgment and decree dated 30.03.2011 cast an obligation upon State to satisfy compensation to an extent of Rs.2.5 lakhs per Are in respect of the property. However, coming to LAA No. 450 of 2014 (category A property), the judgment and decree dated 24.07.2013 place reliance on similar verdict passed earlier and thus awarded enhancement to the tune of Rs. 3 lakhs per Are, despite the fact that even prior to the date of the said verdict, the Reference Court had already found, pursuant to the remand, that the land value payable in respect of category A as per judgment dated 31.12.2012 in LAR No. 383 of 2007 was only Rs. 2.5 lakhs per Are.

4. Heard the learned senior Government Pleader appearing for the State as well as Sri. Suman Chakravarthy, the learned counsel for the appellant in LAA No. 156 of 2014 (respondent in LAA No. 590 of 2015) as well as Mr. Harikumar the learned counsel appearing for the respondent/claimant in the other appeals.

5. The learned Government Pleader submits that despite the opportunity granted on remand, for establishing actual facts and figures, no further oral evidence was adduced; no additional document was produced, no Advocate-commission was taken. No effort was taken to establish the factual particulars with regard to the proximity and such other relevant aspects, as to the alleged potential value of the property, which was acquired. It is pointed out that, it was not correct or proper for the Reference Court to have ignored the basic deed bearing No.1683/2005 dated 26.05.2005, which was executed just prior to the date of 4(1) notification, which in fact was relied on by the Awarding Officer for fixing the land value. As per the basic deed, the value of the land involved therein was Rs.6,28,726/-. Merely for the reason that the said document was never produced before the Reference Court, no discussion was made with regard to the value of the property shown therein, in spite of the fact that the 'Award Note' was forming part of the records.

6. The learned counsel appearing for the claimants submits that the properties acquired from them stand on a better footing than the property covered by Ext. A1 deed. It is stated, with

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reference to the deposition of AW1, that the property covered by Ext.A1 was situated hardly 400m away from the acquired property. It is also stated that the property belonging to the claimants was not actually situated on a lower level, as observed by the Awarding Officer, and that the property was having close proximity with various other buildings/institutions and such other establishments, which have not been properly considered by the Awarding Officer and also by the Reference Court.

7. After hearing both the sides, this Court finds that judgment has been rendered by the Reference Court, pursuant to the remand ordered, as evident from the judgment and decree dated 31.12.2012 in LAR No. 383 of 2007, whereby the land value for category A was re-fixed as Rs.2,51,490/- per Are. It was without any regard to the said proceedings, that the land value in respect of the similar A category land came to be fixed as Rs. 3 lakhs per Are in LAR No. 441/2007 (LAA No. 53 of 2013) and LAR 149/2009 (LAA No. 450 of 2014). In the case of LAR No. 149 of 2009, the verdict was passed only on 24.07.2013. The learned Government Pleader who entered appearance on behalf of the State in the said case was the same learned Government Pleader,

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who appeared on behalf of the State in LAR No. 383 of 2007, which is subjected to challenge in LAA No. 590 of 2013. This only shows the casual manner in which the case was being conducted by the learned Government Pleader and she did not even take the minimum effort to bring it to the notice of the concerned Court as to the verdict already passed in LAR No. 383/2007 fixing the value in respect of 'A category' as Rs.2,51,490/- per Are, pursuant to the remand ordered by the Apex Court. This Court cannot but deprecate the course and proceedings in conducting the cases without any regard to the public money involved.

8. Since enhancement was effected by the Reference Court, merely based on the 'guess work', even after arriving at a finding that Ext. A1 property could not have been considered or relied on under any circumstances, it was intercepted by this Court in the earlier round of litigation, bringing down the value in respect of the categories A, B and C respectively. Fixation of land value at such reduced rate was deprecated by the Supreme Court, equating the same as to the course pursued by the Reference Court, thus setting aside the judgment, ordering remand to the Reference Court for being considered afresh. This being the position, the

Reference Court should have taken more care and caution in discussing the matter and fixing the compensation accordingly. But the fact remains that no effort was taken from the part of the claimants or by the State in ensuring that adequate materials were placed for consideration before the Reference Court to substantiate their contentions. No attempt was made by the Government to produce the basic deed before the Court below or to examine the Valuation Officer. Similarly, no effort was taken by the claimants at least to locate the property concerned i.e. property under acquisition, the property which is covered by the basic deed and also the property covered by Exts. A1 and A2 and to have the 'plus' and 'minus' points highlighted, at least as on date and to have reasonable guess work with regard to the probable position as it existed at the time of acquisition.

13. In the said circumstances, the matter requires to be reconsidered in the light of the above observations, giving an opportunity to both the sides to adduce further evidence in support of their rival contentions and to have the matter finalized accordingly. The judgment and decree in all these cases are set aside and the matters are remanded to the Court below, to be

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considered and dealt with afresh, in accordance with law. As different rounds of litigation are over, we alert the Court below to have the course pursued and finalized within a specific time frame and we fix the same as 'four months' from the date of receipt of a copy of this judgment.

In view of the remand, all the pending applications in these appeals stand closed. Since the matter is remanded to the Court below, the court fee paid in respect of LAA No. 156 of 2014 will stand refunded to the said appellant.

Appeals are disposed of accordingly.

sd/-

**P. R. RAMACHANDRA MENON,
JUDGE**

sd/-

**ANIL K. NARENDRAN,
JUDGE**

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"L.A.A. No. 450 of 2013" occurring in the last sentence at page 4 and "L.A.A. No. 590 of 2015" occurring in paragraph 4 at page 5 of the common judgment dated 16/11/2015 in L.A.A. No. 53/2013 and connected cases are corrected as "L.A.A. No. 450 of 2014" and L.A.A. No. 590 of 2013" respectively, vide order dated 23.12.2015 in L.A.A. No. 53/2013 and connected cases.

sd/-

Registrar, Judicial