

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE ANIL K.NARENDHAN

TUESDAY, THE 22ND DAY OF DECEMBER 2015/1ST POUSHA, 1937

LA.App.No. 593 of 2015 (C)

JUDGMENT & DECREE IN IAR NO.91/2011 OF THE SUB COURT, THIRUVALLA
DATED 21.10.2014

APPELLANT(S) /CLAIMANTS:

1. ALICE MAMMEN, W/O.A.M. MAMMEN
ANJILIVELIL, KATTUKARA MURI, TIRUVALLA - 689101.
2. A.M. MATHEW, ANJILIVELIL,
KATTUKARA MURI, TIRUVALLA - 689101.

BY ADV. SRI.PAUL JACOB (P)

RESPONDENT(S) /RESPONDENTS:

1. STATE OF KERALA
REPRESENTED BY THE DISTRICT COLLECTOR, COLLECTORATE
PATHANAMTHITTA DISTRICT.
2. SOUTHERN RAILWAY
ERNAKULAM
REPRESENTED BY ITS DEPUTY CHIEF ENGINEER (CONSTRUCTIONS)
ERNAKULAM - 682 011.

R1 BY SENIOR GOVERNMENT PLEADER SRI.R.PADMARAJ

R2 BY ADV. SRI.JOHN MATHEW, SC, RAILWAYS

R2 BY SRI.C.S.DIAS, SC, RAILWAYS

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD
ON 22-12-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

BKA/-

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

L.A.A. No. 593 of 2015

Dated this the 22nd day of December, 2015

J U D G M E N T

Anil K. Narendran, J.

This appeal arises out of the judgment and decree of the Subordinate Judge's Court, Thiruvalla dated 21.10.2014 in LAR No.91/2011.

2. The property owned by the appellants, having an extent of 8.30 Ares situated in Sy.No.210/96 of Thiruvalla Village in Thiruvalla Taluk, has been acquired for construction of railway platform at Thiruvalla, based on Section 4(1) notification issued on 18.07.2009, for the purpose of doubling of Chengannoor - Chingavanam Railway Track. The Land Acquisition Officer fixed the land value at ₹1,17,072/- per Are. Dissatisfied with the land value fixed by the Land Acquisition Officer, a reference was made under Section 18 of the Land

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Acquisition Act, claiming the land value @ ₹10,00,000/- per cent. The reference court, by award dated 21.10.2014, enhanced the land value @ ₹7,00,000/- per Are. Dissatisfied with the land value fixed by the reference court, the appellants/claimants are before this Court in this appeal.

3. We heard the learned counsel for the appellants, the learned Government Pleader for the 1st respondent State and also the learned Standing Counsel for the 2nd respondent.

4. The judgment of the reference court in LAR No.91/2011 was under challenge in LAA No.191/2015. By a common judgment dated 14.12.2015 in LAA No.18/2015 and connected cases, this Court remanded the appeals filed by the State, including LAA No.191/2015; and the reference court has been directed to refix the land value, keeping in mind the observations contained in the said judgment, and after affording both sides an opportunity to adduce additional evidence, if sought for. Paras 9 to

15 of the judgment read as follows;

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

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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,

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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.

5. Since the connected appeal filed by the State, i.e., LAA No.191/2015 has already been remanded to the reference court for refixation of land value, we dispose of this appeal as well, remanding the matter to the reference court for refixation of land value in terms of the observations contained in the common judgment dated 14.12.2015 in LAA No.18/2015 and connected cases.

6. It is pointed out by the learned counsel for the appellants that, by order dated 04.09.2015 in LAA No.191/2015, this Court granted interim stay of execution of the judgment and decree in LAR No.91/2011, on the State depositing 50% of the amount awarded by the reference court on or before 02.10.2015. The learned counsel for the appellants would submit that, since the State have already deposited the said amount before the reference court, the appellants/claimants may be permitted to withdraw the aforesaid amount on

furnishing adequate security.

7. Considering the fact that 50% of the amount awarded by the reference court in LAR No.91/2011 has already been deposited by the State, we deem it appropriate to permit the appellants/claimants to withdraw the aforesaid amount on furnishing security to the satisfaction of the reference court.

Since the appeal is disposed of, remanding the matter to the reference court, the Registry shall refund the court fee paid by the appellants/claimants in this appeal.

Sd/-
P.R. RAMACHANDRA MENON
JUDGE

Sd/-
ANIL K. NARENDRA
JUDGE

bka/-