IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

TUESDAY, THE 4TH DAY OF AUGUST 2015/13TH SRAVANA, 1937

LA.App..No. 352 of 2013 ()

AGAINST THE JUDGMENT IN LAR 10/2011 of SUB COURT,THODUPUZHA
DATED 27-09-2012

APPELLANTS/RESPONDENTS:
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1. STATE OF KERALA
REPRESENTED BY THE DISTRICT COLLECTOR, IDUKKI - 685602

2. THE EXECUTIVE ENGINEER
P.W.D. ROADS DIVISION, IDUKKI - 685 602.

BY SENIOR GOVERNMENT PLEADER SRI.R.PADMARAJ.

RESPONDENT/CLAIMANT:

SRI.BABY @ AUGEN MATHEW
S/O.MATHAI, KUSANILATHUPUTHENPURAYIL
THALAMATTOM. 685 584 (DIED)

*ADDITIONAL RESPONDENTS:

*2.SMT.SHEEBA BABY, W/O.SRI.BABY @ AUGEN MATHEW,
KUSHANILATH, PUTHENPURACKAL, MANAKKAD P.O.,
THODUPUZHA

*3. BABILA MARIYAM BABY, D/O.SRI.BABY @ AUGEN MATHEW,
KUSHANILATH, PUTHENPURACKAL, MANAKKAD P.O.,
THODUPUZHA

*4. BABITHA ELIZABATH BABY, D/O. SRI.BABY @ AUGEN MATHEW,
KUSHANILATH, PUTHENPURACKAL, MANAKKAD P.O.,
THODUPUZHA

*5.BIBY BABY MATHEW, S/O. SRI.BABY @ AUGEN MATHEW,
KUSHANILATH, PUTHENPURACKAL, MANAKKAD P.O.,
THODUPUZHA

(LR's OF THE DECEASED SOLE RESPONDENT ARE IMPLEADED AS ADDITIONAL RESPONDENTS 2 TO 5 VIDE ORDER DATED 8.7.2015 IN I.A.1902/13)

BY ADV. SRI. JOSEPH JOHN

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON 04-08-2015, ALONG WITH L.A.A.395/2013 AND CROSS OBJECTION NO. 133/2015 AND L.A.A.747/12 WITH CROSS OBJECTION 128/2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rka

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

L.A.A. Nos.352, 395 /2013 & 747 of 2012
& Cross Objection Nos. 120, 133 and 128 of 2015

Dated this the 4th day of August, 2015

JUDGMENT

T.R.Ramachandran Nair, J.

All these appeals are filed by the State aggrieved by the judgment and decree in the land acquisition reference cases and the claimants have come up by filing the respective Cross Objections.

2. The properties have been acquired for the purpose of approach road to Irrukkumpuzha Bridge and the notification under Section 4(1) of the Act is dated 24.10.2008.

3. The total extent of land acquired for the said purpose is 0.0396 Hectors comprised in Sy.No.797/2 of Manakkad Village and the Land Acquisition Officer categorized the properties into six categories and category No.VI as “dry land without road accessibility” and the

properties involved in these three cases are included in category No.VI. The land value fixed by the Land Acquisition Officer is @Rs.53,030/- per Are. The same has been enhanced by the Reference Court to Rs.1,37,271/- per Ares.

4. We heard learned Senior Government Pleader Sri.R.Padmaraj for the State and the learned counsel Sri.Joseph John for the claimants.

5. Before the Reference Court L.A.R. 81/2010 was tried together along with three reference cases and a common judgment was rendered. L.A.A. 747/2012 is from L.A.R. 81/2010. L.A.A. 352/2013 is from L.A.R.10/2011 and L.A.A. 395/2013 is from L.A.R. 8/12. The last two cases were tried separately. Claimants have produced Exts.A1 to A6 and the respondents have produced Exts.R1 to R11 in L.A.R. 81/2010. Exts.X1 to X3(a) are Commissioner's report and sketch etc. Similar documents were marked in the latter cases also.

6. The Reference Court, for the purpose of refixation of land value relied upon the judgement in L.A.R.No. 41/2010 of the same Court which also related to the same acquisition. The property involved therein was grouped as Group No.III by the Land Acquisition Officer. The Land Acquisition Officer had awarded the land value @Rs.73,400/- per Are in regard to Group-III lands, which was enhanced to Rs.1,90,000/- per Are by the Reference Court.

7. It is submitted by the learned counsel for the claimants that even though comparable documents have been produced, none of them were considered.

8. The learned Senior Government Pleader submitted that those documents were not accepted, as according to the finding of the Reference Court, properties covered by the said documents are situated in the heart of Thodupuzha town and hence the sale deeds do not provide an excellent comparison.

9. As far as the acquired properties are concerned, they are lying very close to important institutions which is clear from paragraph 6 of the award, which we extract below:

> "6) <u>Basis Valuation Report</u>
>
> The BVR was prepared and submitted to District Collector, Idukki.
>
> The proposed Irrukkumpuzha Bridge approach roads starts from west of Thodupuzha-Kothaikunnu Private Bus Stand, Thodupuzha – Pala State High way and ends at Manakkad-Kolani Municipal Road in Manakkad Village and these land is situated in Idukki District, Thodupuzha Taluk. The land under acquisition are mainly dry land and also wet lands and wet lands converted into dry lands having buildings, shops and agricultural lands. Thodupuzha-Kothaikunnu Private Bus stand, Pulimoottil Plaza, Jai Rani Public School and Convent, ITDP Women's Hostel, Cryptoms Factory, Cadbury's Factory, Thodupuzha Mini Civil Station, Police

> Station, Municipal Office, KSRTC Bus Stand, St.Mary's Hospital, Chazhikattu Hospital, St. Sebastians High School, Town church, Thenamkunnu Church, Co-operative Hospital, NSS High School, Manakkad, Depaul Public School, Boys High School, Girls High School, Vimala Public School, Mangattukavala Bus Stand, Newman College, Taluk Hospital, Government and quazi Government offices of the town and commercial establishments are also situated in the surroundings of 2 k.ms of proposed acquisition land.".

10. As far as these items of lands are concerned, it is submitted by the learned counsel for the claimants that they are located very near to and in between Group II and Group III items. As far as Group-II items are concerned, they are categorized as lands having mud road (public way) facility and Group-III items of properties are categorised as lands nearby the Municipal road. It is submitted by the learned counsel that the mud road facility for Group-II lands

is available to Group-VI lands also. It is therefore submitted that the value awarded by the Land Acquisition Officer, that also less than 27% than the land value fixed in Group-III, cannot be justified. The Reference Court was guided by the same yardstick, going by the judgment.

11. It is submitted by the Senior Government Pleader that the lands are lying without road accessibility and in all other categories such lands have got road accessibility. It is therefore submitted that the land value fixed by the Land Acquisition Officer cannot be faulted.

12. We have considered the rival submissions. The categories of acquired lands will show that Group-IA is in respect of dry lands having State Highway road frontage and Group-IB is similarly situated, but they are wet lands. But Group -VI properties are lying close by to Category II and III, they are having equal importance to those categories of lands. But what is lacking is the want of road frontage, and they are lying at a distance of about 15 Mtrs. from the properties in Group-II and Group-III.

Therefore the importance, as far as properties are concerned, is the same. But want of access is a factor, which will have to be considered for refixing the land value. It is recorded in the award, that "this group of lands is having great importance due to the above mentioned Government and quasi Government Institutions, commercial establishment and Public Institutions in Thodupuzha town".

13. In our judgment in L.A.A.No.775/2012, we have refixed the land value for Category -IA at Rs.6,20,000/- per Are and by a process of deduction, we have fixed the land value for Group-II items at Rs.3,72,000/- per Are and Rs.3,10,000/-, for Group-III items of properties. When we compare the method adopted by the Land Acquisition Officer, it can be seen that, in spite of importance of the acquired property, the absence of road facility has led to the fixation of lesser amount.

14. The aspect to be considered is the locational importance of the acquired property which practically are

only at a distance of 300 Mtrs from the State Highway. Therefore, it will fetch much potential value to the acquired property. According to us, by a reasonable deduction for absence of road facility, proper value can be fixed. Now a narrow way is available having facility for two wheelers. It will be appropriate to reduce only 20% from the land value fixed for Group-III items of properties, for absence of the road facility. It will make the land value for the acquired properties herein at Rs.2,48,000/- per Are which will be just and fair compensation. Accordingly, the appeals L.A.A No. 352, 395/2013 and 747 of 2012 are dismissed and Cross Objections 120, 133 and 128 of 2015 are allowed. The claimants are entitled for all statutory benefits as granted by the Reference Court. There is a delay of 382 days in filing the Cross Objection 128/2015. It is made clear that for this period interest under Section 28 is not granted and the grant of statutory benefit is subject to this rider.

The deficit court fee will be paid by the Cross Objectors within a period of two weeks and certified copy of the judgment and decree will be issued only after remitting the court fee. Parties will suffer their costs in this Court.

Sd/-
T.R.RAMACHANDRAN NAIR
JUDGE

Sd/-
K.P.JYOTHINDRANATH
JUDGE

rka /true copy/ P.S to Judge.