IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THURSDAY, THE 6TH DAY OF AUGUST 2015/15TH SRAVANA, 1937

LA.App..No. 372 of 2011 ( )

AGAINST THE JUDGMENT IN LAR 36/2003 OF SUB COURT,THODUPUZHA
DATED 09-04-2010

APPELLANT/RESPONDENT NO. 1 IN LAR:

THE REVENUE DIVISIONAL OFFICER
IDUKKI-685603.

BY ADVS.SRI.K.A.JALEEL, ADDL. ADVOCATE GENERAL
SENIOR GOVERNMENT PLEADER SRI. ALOYSIUS THOMAS

RESPONDENTS/CLAIMANT AND ADDL. RESPONDENT NO. 2 IN LAR:
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1. THE MANAGING DIRECTOR,MALANKARA RUBBER
AND PRODUCE COMPANY LTD., KOTTAYAM-686001.

2. MAHATMA GANDHI UNIVERSITY,
KOTTAYAM REPRESENTED BY THE REGISTRAR,
MAHATMA GANDHI UNIVERSITY, PRIYADARSINI HILLS
KOTTAYAM-686001.

R1 BY ADVS. SRI.V.ABRAHAM MARKOS (SR.)
SRI.MATHEWS K.UTHUPPACHAN
SRI.BINU MATHEW
SRI.TERRY V. JAMES
SRI.JOHN PRAKASH B.
SRI.TOM THOMAS (KAKKUZHIYIL)

R2 BY ADVS. SRI.T.A.SHAJI (SR.)
SRI.P.G.PARAMESWARA PANICKER (SR.)
SRI.P.JACOB VARGHESE (SR.)
SRI.VARUGHESE M.EASO, SC, M.G.UNIVERSITY

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON 06-08-2015, ALONG WITH CO. 79/2011, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

shg/sd

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

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L.A.A.372/2011 & Cross Objection No.79/2011

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Dated this the 6th day of August, 2015

J U D G M E N T

Ramachandran Nair, J.

LAA No.372/2011 is filed filed by the Revenue Divisional Officer, Idukki aggrieved by the judgment and decree in LAR No.36/2003 of the Subordinate Judge's Court, Thodupuzha and Cross Objection 79/2011 is filed by the claimant.

2. The property having an extent of 10.08.94 hectares (24.93.090 acres) of land comprised in Survey No.18/05 of Muttom Village was acquired for Mahatma Gandhi University, Kottayam, the second respondent, for construction of University College of Engineering, Muttom. Notification under Section 4 (1) was published in the Kerala Gazette dated 21.10.1997. The land value awarded by the Land Acquisition Officer was at the rate of Rs.6,160/- per cent. The reference court has re-fixed the land value by fixing the amount at Rs.18,000/- per cent and the claimant

in the cross objection has claimed the land value at the rate of Rs.30,000/- per cent.

3. We heard learned Senior Government Pleader Sri. Aloysius Thomas for the appellant in LAA No.372/2011, learned Senior Counsel Sri. P. Jacob Varghese for the University and the learned Senior Counsel Sri.V. Abraham Markos for the cross objector.

4. The learned Senior Government Pleader submitted that the enhancement granted by the reference court cannot be justified. It is submitted that the land acquired is having an extent of nearly 25 acres and it is purely an agricultural land. There is no evidence to show that it was located near any developed area or a township. It is therefore submitted that merely by relying upon the report of the Commissioner who was assisted by an expert the court below ought not have enhanced the land value. It is further submitted that even though the claimant has produced Exts.A1 to A31 and T1 to T1(x), it can be seen that the sale transactions relied upon are the documents

executed by the claimant to various parties; that also very near to the date of Section 4(1) notification. Therefore, the land value reflected in those sale deeds are really inflated. It is further submitted that Ext.A20 even though was relied upon by the reference court for the purpose of considering the claim that land value in the locality is on a higher side; that also is a document executed by the claimant itself. Therefore the learned Senior Government Pleader submitted that the enhancement granted cannot be supported.

5. The learned Senior Counsel for the University supported the argument of the learned Senior Government Pleader. It is his argument that the relied on documents are seen to be executed in favour of various parties including lawyers and engineers as the District Court complex was coming up in the locality and therefore it can be easily seen that they had approached the claimant to obtain the properties. It is also the case of the learned Senior Counsel for the University that the acquired land

being purely an agricultural land, the assessment made by the Land Acquisition Officer that also based on a document concerning basic land which was also comparable to them cannot be said to be wrong. It is further submitted that at any rate the enhancement granted is excessive.

6. The learned Senior Counsel for the claimant submitted that as far as the sale transactions relied upon by the claimant are concerned all of them, except one, relate to the sale deeds of properties on the side of the road leading to the court complex at Muttam. It is submitted that the property herein is bounded by the Thodupuzha - Moolamattom State Highway. The road frontage is about 500 mtrs. It was a well developed rubber plantation belonging to the claimant company. The entire plantation is only 2.5 k.m. away from the Thodupuzha Municipal Town and 500 mtrs. from Muttom junction. Therefore it is submitted that these factors were considered by the reference court, rightly. It is therefore submitted that the contentions raised by the learned Senior Government

Pleader and the learned Senior Counsel for the University that the property is not in an important locality is wrong. It is also submitted by the learned Senior Counsel that Ext.A20 is the document which was produced by the claimant to prove the real land value in the locality and the property therein was sold by the appellant to a Doctor for an amount of Rs.50,000/- per cent. It is a plot on the side of Thodupuzha - Moolamattom Highway. The learned Senior Counsel further submitted that the very same argument raised by the appellant and the counsel for the requisitioning authority before the trial court, that the sale deeds relied upon the claimant reflect inflated price was rejected by the reference court. The reference court has elaborately considered various aspects and found that the transactions were bonafide and genuine. It is submitted that many of the parties have been examined and they have given evidence also. Our attention is also invited to the fact that proceedings were initiated under the Stamp Act for proper valuation and the same has also been confirmed by

RW1-the R.D.O. and also the District Registrar AW3. Therefore it is submitted that the appellant and the requisitioning authority cannot be heard to say that the transactions are not of a genuine nature.

7. In support of the claim for further enhancement even though Ext.X1 report of the Commissioner and Ext.X2 report of the valuer were there, the learned Senior Counsel for the claimant submitted that actually belting method was not adopted by the Land Acquisition Officer. It is submitted that the property has been divided into three under the said method by the valuer. Even though the entire property is facing the road, out of the total extent only 5 acres are treated as having the value of Rs.35,000/- per cent, another 7.50 acres behind it was valued at Rs.20,000/- per cent and the balance area of 12.50 acres of land was valued at Rs.10,000/- per cent and the average price is arrived at Rs.18,000/- per cent. Learned Senior Counsel therefore submitted that the method adopted by the valuer cannot be said to be a proper one. Even though the claimant had filed

objections to the Commissioner's report and the valuation adopted by the valuer those were not properly considered by the reference court. It is submitted therefore that this Court will be justified in relying upon Ext.A20 itself for fixing the land value.

8. The important aspects to be considered include the location of the property, its nearness to any developed area and the potential value which it would fetch. That the property viz. the acquired property herein was part of a large estate cannot be disputed. It was a well developed plantation. The property is having 500 mtrs. road frontage. The property is only 2 ½ k.ms. from the Thodupuzha town. Therefore it is not located at an interior place as contended by the learned Senior Government Pleader.

9. When we come to the evidence adduced by the parties it can be seen that the documents relied upon by the claimant include sale deeds of nearby properties. Of course they are not on the main road side but on the side of Polytechnic road leading to the Court Complex except

Ext.A20. Exts.A3 to A20 are certified copies of sale deeds and all the documents are of the year 1997. Ext.A21 is in the year 1995, and Ext.A22 is of the year 1996. Ext.A24 is the certified copy of the order dated 25.11.2002 in E.P.5/2001 in LAR 1/79 of Sub Court, Thodupuzha. The Company has adduced evidence by marking the annual report to show that the sale consideration obtained through Exts.A3 to A20 sale deeds has been accounted properly in their records which was accepted by the trial court. The notices issued under the Stamp Act have also been produced as Exts.T1 series.

10. Even though the learned Government Pleader persisted with his argument that Exts.A3 to A19 sale deeds cannot be considered even for considering the question whether the land value was increasing in the locality, as rightly pointed out by the reference court, those transactions cannot be said to be not genuine or not bonafide or exaggerated consideration was provided therein. It is not proved in evidence that merely because

there was a proposal to acquire the present property there was a trend in increase in the land value in the locality. Therefore merely because the documents are of the year 1997 they cannot be ignored. It is seen that those plots are lying on the side of the road leading to the Muttom Court Complex known as Polytechnic road. To cite certain examples we refer to the following details:

Ext.A3 document is dated 24.3.1997, which is in respect of 16.187 ares of land and the sale consideration is Rs.4,80,000/-. Therefore, the land value will be Rs.29,653/- per are. In Ext.A4 the sale consideration shown is Rs.10,92,000/- for 36.826 ares of land and the document is dated 2.6.1997. Ext.A5 sale deed is dated 31.7.1997 and the extent involved is 6.70 ares of land sold for Rs.2,25,000/-. Ext.A6 is dated 31.07.1997 conveying 6.70 are of land for Rs.3 lakhs. Similarly Exts.A7 to A9 are also having extent of 6.70 ares and sold for Rs.3 lakhs and the date is 31.7.1997. Of course, these documents have been executed by the claimant company.

11. We will now come to the document Ext.A20. The said property abuts the Thodupuzha – Moolamattom State Highway itself. Ext.A20 is dated 9.8.1997. The reference court in paragraph 13 held that as far as Exts.A3 to A19 are concerned they were having the frontage of Polytechnic road and since the property covered by Ext.A20 had Thodupuzha-Moolamattom road frontage and the frontage of the polytechnic road, it fetched a higher value of Rs.50,000/- per cent. It was also held that there is nothing to indicate that an exaggerated or inflated consideration was shown in those documents. The purchasers as per Exts.A3 to A20 are Advocates, Doctors, Engineers etc. and it was also held that it cannot be held that they were in collusion with the Company to show inflated consideration.

12. The court below then considered the legal principles that when sale deeds of comparably small extent are relied upon and when acquired properties are of a large extent, the appreciation for a small extent will be much higher.

13. When we come to Ext.A20, we are of the view that the document being a bonafide transaction the land value therein can be relied upon subject to deductions permissible as per the well settled legal principles. Therein the extent of property involved is 4.998 ares (12.350 cents) and the value per cent is Rs.50,000/-.

14. The next question is whether the belting method adopted by the Advocate Commissioner which was accepted by the trial court in fixing the land value could be the best method. We have gone through Ext.X1 report of the Advocate Commissioner and Ext.X2 report of the valuer. The valuer has adopted the following method to fix the land value:

1. Comparative prices of properties sold in the surrounding areas during 1997 period.
2. Advantages and disadvantages of the property acquired, when compared to the properties considered in 1 above.
3. Present market price of similar properties and the general price escalation of land value since 1997.
4. Approximate price of rubber in 1997 and now.

15. The valuer has also considered the selling price of

five properties in the locality. Out of the transactions considered, item A reflects the selling price of 15 cents belonging to MVIP sold on 14.10.2004 in court auction in E.P.No.5/2001 in LAR 1/79 of Sub court Thodupuzha and the price approximately is Rs.46,666/- per cent. The same is proved by producing Ext.A24.

16. In paragraph 2 as far as the description of acquired property is concerned it is stated that the same is facing the main Thodupuzha - Moolamattom Road and has road frontage of about 500 meters and it is approximately flat in lie near the roadside. The valuer also describes the details of the other properties.

17. The assessment report of the valuer is attached to the Report of the Advocate Commissioner. We find in paragraph 2 that item 'a' which is the property sold in court auction in E.P.No.5/2001 is in Re. Survey No.18/5 of Muttom village which lies opposite to the acquired property herein for the Engineering College and it is facing the main Thodupuzha - Moolamattom road. The extent involved is

15 cents and the approximate price is Rs.46,666/- per cent. The said property is slightly slopping down towards road. It is pointed out that it is somewhat similar in nature to the property acquired, except that it is smaller in extent. Item 'b' is also in Re.Sy. No.18/2 of the same village which has access from the main Thodupuzha - Moolamattom road on the eastern side and the Polytechnic road on the southern side and the value per cent is Rs.50,000/-. Finally under the heading method of valuation, for the 5 acres facing the road approximately Rs.35,000/- is calculated as noted already and the remaining extent have been assessed at Rs.20,000/- (for 7.50 acres) and Rs.10,000/- (for 12.50 acres) and the average rate has been worked out for Rs.18,000/- per cent.

18. The acceptability of the belting method was considered by the trial court by referring to the decision reported in **Ramesan v. State of Kerala 1997 (1) KLT S.N.51 (Case No.67)**. The property herein is a well developed rubber plantation. The various factors considered in the report of the Commissioner are relevant

to understand the prevailing land value in the locality even before the date of Section 4(1) notification. What is noticed is that as far as item 'a' is concerned it is a property sold in court auction and in 2004 the value was nearly Rs.46,000/- and above. Of course, the extent is 15 cents.

19. We have before us Ext.A20 and as well as the report of the Commissioner. Ext.A20, cannot said to be a sale deed which is not relevant for consideration. It was executed in August 1997 before the 4(1) notification issued. As already noticed it is a genuine transaction, which is the finding by the reference court also. Therefore, there is no harm in accepting Ext.A20 for fixing the land value. Rather than the approximate estimated value arrived at by the valuer Ext.A20 can be preferred. Then the question is that what shall be the deduction for the larger extent of the acquired property.

20. Learned Senior Counsel for the claimant invited our attention to the judgment of the Apex Court in Civil Appeal No.20/2001. Therein also the claimant was the

respondent and the State was the appellant. The property was acquired as per the notification under Section 3(1) of the Land Acquisition Act Kerala dated 10.10.1978 and acquisition was for the Muvattupuzha Valley Irrigation Project. The Apex Court after considering various aspects held that for development activities at least 40% has been deducted. The learned Senior Counsel therefore submitted that the same yardstick can be adopted herein also.

21. As far as deductions for developmental activities are concerned the Apex Court has considered the principles in various judgments. In **Trishala Jain v. State of Uttaranchal [(2011) 3 SCC (Civ) 178]** various earlier judgments were considered and it was held that deductions depend upon facts and circumstances of each case and may vary widely from 10% to 86.33% and it would depend upon the nature of the land, its situation and the purpose and stage of development.

22. Herein the property was acquired for the purpose of construction of the Engineering College and the property

is on the side of the Highway. For development charges various amounts will have to be spent for providing civic amenities, drainage, electricity, roads and other facilities. Therefore, a considerable percentage of expenses will be incurred for those developmental activities.

23. Apart from the same, it cannot be ignored that it was an agricultural land and cannot be said to be fully developed with civic amenities. Of course the township is at a distance of 2.5 k.ms. and the property is situated in a Panchayat area. All these factors will have to be considered by this court for fixing an appropriate market value. According to us, a deduction of 50% can be made towards development charges and another 10% can be deducted for various other factors including ares to be left out as set back while making construction. Therefore, by providing 60% deduction to the land value covered by Ext.A20 it will be Rs.20,000/- per cent and we fix the land value at Rs.20,000/- per cent for the acquired property.

24. LAA No.372/2011 is thus dismissed and the Cross

Objection No.79/2011 is accordingly allowed. We hold that cross objector will be entitled for all the statutory benefits as granted by the trial court.

There will be no order as to costs in the appeal and the cross objection.

Sd/-

T.R. RAMACHANDRAN NAIR
JUDGE

Sd/-

K.P. JYOTHINDRANATH
JUDGE

//True copy//

P.A. TO JUDGE

shg/