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. 681 of 2011 ( )

AGAINST THE ORDER/JUDGMENT IN LAR 31/2010 of III ADDL.SUB COURT, ERNAKULAM DATED 23-03-2011

APPELLANT(S):FIRST RESPONDENT

STATE OF KERALA,
REP BY THE SPECIAL TAHSILDAR LA
KOCHI REFINERIES LTD, VYTTILA.

BY SR.G.P. SHRI R. PADMARAJ

RESPONDENT(S):CLAIMANT AND R2
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1. N.V.AYESHA,
W/O, MOHAMMED ASLAU, AYSHA MANZIL
HMT COLONY, VADACODE KARA, THRIKKAKKARA NORTH VILLAGE
KALAMASSERY.

2. THE MANAGING DIRECTOR
KINFRA HOUSE ANNEXE, TC.9/2595, ELAMKOM GARDENS
VELLAYAMBALAM, THIRUVANANTHAPURAM.

R2 BY ADV. SRI.G.S.REGHUNATH
R1 BY ADV. SRI.VARGHESE K.PAUL
R1 BY ADV. SRI.ANITH JAMES

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON 04-08-2015, ALONG WITH LAA. 706/2011, LAA. 737/2011, CO. 86/2012, CO. 89/2012, CO. 36/2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

T.R. RAMACHANDRAN NAIR &
K.P. JYOTHINDRANATH, JJ.
- -
L.A.A.Nos.681, 706 and 737 of 2011
&
C.O.Nos.86/2012, 36/2015 and 89/2012
- -
Dated this the 4th day of August, 2015

JUDGMENT

Ramachandran Nair, J.

These three appeals have been filed by the State respectively from the judgments and decree in LAR Nos.31/2010, 22/2010 and 23/2010 on the file of the III Additional Sub Court, Ernakulam. The claimants have filed respective Cross Objections seeking enhancement of land value. All the three reference cases were tried together and disposed of by a common judgment. Altogether there were four cases tried by the reference court as evident from the common judgment. Second respondent is the requisitioning authority, viz. Kerala Infrastructure Development Corporation (for short "KINFRA"). The land was acquired for their purpose for forming an access road to the High Tech Park. The total extent of land acquired from various claimants is 1.8126 hectares. The properties were categorised into 9 categories by the Land Acquisition Officer. Hereinbelow we give a table showing the category, the land value awarded by the Land Acquisition Officer, the nature and description of the acquired property and the basic document relied on by the Land Acquisition Officer:

Category	***Land value awarded by the LAO***	***Nature and description of the acquired property***	***Basic document relied on by the LAO***
1	Rs.2,71,765/- per are (Rs.1,09,982/- per cent)	Dry land having direct access from tarred road	Sale Deed No.79/07 of SRO Edappally (Sel.No.12)
1A	Rs.2,44,589/- per are (Rs.98,983/- per cent)	Dry land having direct access from tarred road but low lying	Sale Deed No. 79/06 of SRO Edappally (Sel.No.12)
2	Rs.1,11,197/- per are (Rs.45,000/-per cent)	Wet land having direct access from tarred road	Sale Deed No.2245/06 of SRO Edappally (Sel.No.3)
3	Rs.1,01,930/- per are (Rs.41,251/- per cent)	Wet land having access from pocket road	Sale Deed No.2245/06 of SRO Edappally (Sel.No.3)
4	Rs.1,20,463/- per are (Rs.48,751/- per cent)	High level land having access from pocket road	Sale Deed No.2245/06 of SRO Edappally (Sel.No.3)
5	Rs.83,398/- per are (Rs.33,751/- per cent)	Wet land having no access	Sale Deed No.2245/06 of SRO Edappally (Sel.No.3)
6	Rs.2,03,378/- per are (Rs.82,306/- per cent)	Reclaimed land having direct access from tarred road	Sale Deed No. 3251/06 of SRO, Edappally (Sl.No.5)
7	Rs.1,73,958/- per are (Rs.70,400/- per cent)	Dry land having no access	Sale Deed No. 3483/07 of SRO Edappally (Sel.No.15)

Category	*Land value awarded by the LAO*	*Nature and description of the acquired property*	*Basic document relied on by the LAO*
8	Rs.2,39,193/- per are (Rs.96,800/- per cent)	Dry land having access from pocket road	SaleDeedNo.3483/07 of SRO Edappally (Sel.No.15)
9	Rs.1,08,417/- per are (Rs.43,876/- per cent)	High level land having no means of access	Sale Deed No. 2245/06 of SRO Edappally (Sl.No.3)

As far as the acquired properties involved in LAA Nos.706/2011 (LAR No.22/2010) and 737/2011 (LAR No.23/2010) are concerned, they were included in category 5 viz. wet land having no access. As far as LAA No.681/2011 (LAR No.31/2010) is concerned, it was included in category 9, viz. high level land having no means of access.

2. The Land Acquisition Officer awarded land value at the rate of Rs.83,398/- per are for the lands included in category 5 (LAR Nos.22/2010 and 23/2010) and it was Rs.1,08,417/- per are in LAR No.31/2010 after including the land in category 9. Before the reference court, evidence was let in by both parties and the claimants produced Exts.A1 to A5 and the respondents have marked in evidence Exts.R1 to R9. Exts.C1 and C1(a) are the Commission report and rough sketch. The claimant was examined as A.W.1 and R.W.1 was examined on

the side of the respondents.

3. The contention raised by the learned Senior Government Pleader, Shri Padmaraj and the learned Standing Counsel for the requisitioning authority, Shri G.S. Reghunath is that the enhancement granted by the reference court is highly excessive. As far as properties in category 5 are concerned, they have been recategorised into category 3 and the land value has been fixed accordingly, which is not correct. It is also submitted that the documents relied upon by the claimants have been rejected and as far as category 9 is concerned (LAA No.681/2011), the reference court relied upon Ext.A3 judgment in LAR No.18/2010. The land value enhanced by the reference court therein has been adopted which also is wrong, contended, the learned counsel. Comparable sale deeds have not been produced in evidence by the parties.

4. Learned counsel for the claimants in all these cases, Shri Varghese Paul raised the following arguments: It is submitted that as far as properties involved in LAA Nos.706/2011 and 737/2011 are

concerned, the Land Acquisition Officer went wrong in including them in category 5 (wet land having no access). The properties are bounded by a municipal road and evidence was produced by the claimants showing the same and the above argument was accepted by the reference court also. Learned counsel submitted that Ext.A4 is the attested copy of the asset register issued by Kalamassery Municipality. Our attention was drawn to the said document. It is submitted that a municipal road was there even before the acquisition which has been rightly found in favour of the claimants, by the reference court also. Therefore, these properties have to be categorised as category 1A itself. The width of the road, going by Ext.A4, is 4.45 metres. The said advantage should have been properly considered by the reference court. Learned counsel submitted that it is clear from Ext.A5, that the road was formed in 2003, in the People's Planning Programme and has been included in the Road Asset Register of the Municipality. As far as this aspect is concerned, the reference court, in paragraph 15 of the judgment, found on the evidence of the claimants as well as from the evidence of R.W.1 that there was a road as claimed. R.W.1 admitted that the road seen on the side of the acquired property mentioned as Korakkampilly road in Exts.A4 and A5, was there at the time of acquisition. Therefore, the reference court concluded that the road was constructed in 2003 and the acquired properties are having advantage of the said road. Therefore, the properties were recategorised as category 3. Categories 1 and 1A are properties (dry lands) having direct access from tarred road. Regarding that, the argument of the learned counsel for the claimants is that the evidence available from the Commission report can be relied upon.

5. We have gone through the report of the Commissioner marked as Ext.C1. As far as the property in LAR No.22/2010 is concerned, the Commissioner has reported that the acquired property is a wet land and in the property there was mud and water at the time of inspection. It is lying at a level ½ metres below the road level, as a vacant plot. The Municipal road is on the western side and on the eastern side other acquired properties are situated and on the southern side the property

acquired in LAR No.23/2010 is situated. As far as LAR No.23/2010 is concerned, it is stated that the property is lying ½ metres below the Municipal road which is lying on the eastern side of the acquired property and it is lying as a wet land filled with mud and water.

6. Shri Reghunath, learned Standing Counsel for the requisitioning authority submitted that the property can only be treated as a wet land. The argument raised by the learned counsel for the claimants is that they could be treated at par with the dry land in category 1 and 1A, as they could be easily filled up. Being wet land, going by the report of the Commissioner also, the categorisation given as category 3, by the reference court is perfectly justified. Learned counsel further submitted that as far as the property in LAR No.31/2010 is concerned, it is a high level reclaimed land. Our attention was invited to the mahazar prepared by the Land Acquisition authorities. Of course, it is stated in the mahazar that it is lying as an improved land with permanent cultivations. The reference court in paragraph 15 found that high level wet land means reclaimed land

itself, going by the categorisation given by the Land Acquisition Officer. But as far as the property involved in LAR No.31/2010 is concerned, the property is having no means of access.

7. The reference court relied upon the judgment in LAR No.18/2010 for fixing the land value for high level land (Ext.A3) and as far as the properties involved in LAR Nos.22/2010 and 23/2010 are concerned, after refixing the category as 3 for which the Land Acquisition Officer had fixed land value at Rs.1,01,830/- per are, the reference court granted 75% increase in view of the importance of the locality and the potential value. Thus, the land value awarded by the reference court is at the rate of Rs.1,78,377/- per are in those cases.

8. The claimants have relied upon Ext.A2 for refixation of land value for category 3 properties. The reference court did not rely upon Ext.A2 as the nature and importance of the properties is entirely different and Ext.A1 was found to be a post notification document also.

9. It has been brought to our notice that the reference court has granted enhancement of land value as per the judgment in LAR

No.41/2010 in respect of category 1 property and the judgment in LAR No.22/2010 in respect of category 1A property. The copies of the judgments were made available and we have gone through them and heard the arguments of both sides. As far as category 1 is concerned, from Rs.2,71,765/- granted by the Land Acquisition Officer, the land value has been increased to Rs.4,75,588/- per are and as far as category 1A is concerned, the land value has been increased from Rs.2,44,589/- to Rs.3,91,342/-.

10. Learned counsel for the claimants heavily relied upon these two judgments. In the Cross Objections in the respective appeals the claimants are claiming land value at the rate of Rs.7,41,300/- per are.

11. The land involved in LAR No.22/2010 is 10.65 ares, in LAR No.23/2010 the same is 2.66 ares and in LAR No.31/2010 it is 1.32 ares. Therefore, they are not much in extent requiring reduction of a higher percentage towards development charges. Apart from the same, in these cases it can be seen that the properties are acquired for developing a road alone and not for any other residential or commercial

or industrial purposes.

12. As far as the importance of the locality is concerned, there cannot be any dispute. It is submitted that the locality is very important both industrially and commercially. Several important institutions like Co-operative Medical College, Co-operative Bank, Hindustan Machine Tools (HMT), bus stand, Municipal Shopping Complex, and several religious institutions are situated very near to the acquired property as is clear from the Commissioner's report, Ext.C1.

13. In our judgment in LAA Nos.4/2012 and 697/2012 (LAR No.1/2011) we have refixed the land value for category 2 items of properties, viz. wet land having direct access from tarred road. A comparison of the table adopted by the Land Acquisition Officer will show that for item 2 properties the land value fixed by the Land Acquisition Officer is at the rate of Rs.1,11,197/- per are. By giving a reduction of 10% for category 3, viz. wet land having access from pocket road, the land value fixed for category 3 is at the rate of Rs.1,01,930/-. For item 9, viz. high level land having no means of

access, the land value fixed by the Land Acquisition Officer is at the rate of Rs.1,08,417/- per are. These factors are also relevant for fixing the compensation. For categories 2, 3 and 9, the same basic land has been adopted by the Land Acquisition Officer. We have fixed the land value at the rate of Rs.2,93,500/- for category 2, in the judgment in LAA Nos.4/2012 and 697/2012. By giving a reduction of 10% as adopted by the Land Acquisition Officer as far as item 3 properties included in LAA Nos.706/2011 and 737/2011 are concerned, the land value will be Rs.2,64,150/- which we round off to Rs.2,64,000/- per are and the land value is accordingly refixed.

14. Cross Objection No.89/2012 in LAA No.737/2011 and 36/2015 in LAA No.706/2011 are allowed and LAA Nos.706/2011 and 737/2011 are dismissed.

15. As far as Cross Objection No.86/2012 is concerned, the property is in category 9. The same is really a reclaimed land but it is not on the side of the road. The land value fixed by comparing the value fixed for items 2 and 9, will show that it will be less than about

Rs.3,000/- than the value fixed for item 2 (Rs.1,11,197/- and Rs.1,08,417/-). The basic land adopted for category 9 is also the same as in category 2. The Land Acquisition Officer had granted 30% more for reclamation and for time lag 20% was added and reduced 10% for non access. We have fixed the land value at the rate of Rs.2,93,500/- for category 2, relying upon the judgment in LAR No.20/2010. Since the said property is also acquired for the same purpose and is lying in the adjoining locality to the property acquired in LAA No.737/2011, the said judgment can be safely relied upon, especially in the light of the decision of the Apex Court in **Trishala Jain and another v. State of Uttaranchal and another** {(2011) 3 SCC (Civ) 178}, wherein it has been held that the judgments in respect of other cases could also be relied upon safely. Therefore, we will have to reduce a reasonable amount for non access. The Land Acquisition Officer reduced 10% for non access and for awarding just and fair compensation, we grant a reduction of 7.5% for non access. While fixing so, we have considered the importance of the locality and potential nature of the acquired land

and it is also clear that the nearby lands are having access to road.

16. Therefore, the land value for the acquired property in LAR No.31/2010 will be Rs.2,71,488/- which we round off to Rs.2,71,500/- per are which will be just and fair compensation. Accordingly, Cross Objection No.86/2012 is allowed and LAA No.681/2011 is dismissed. The claimants in all the cases will be entitled for all the statutory benefits as granted by the reference court.

The parties will suffer their costs in the appeals and cross objections.

(T.R. RAMACHANDRAN NAIR, JUDGE.)

(K.P. JYOTHINDRANATH,, JUDGE.)

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