

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE SMT. JUSTICE P.V.ASHA

FRIDAY, THE 20TH DAY OF FEBRUARY 2015/1ST PHALGUNA, 1936

LA.App..No. 688 of 2011 ()

AGAINST THE JUDGMENT IN LAR 259/2000 of ADDL.SUB COURT,KOLLAM DATED
26-06-2007

APPELLANT/CLAIMANT:

THOBIAS ANTONY
RESIDING AT KINARUVILA VEEDU, KUREEPUZHA CHERRY
THRIKKADAVOOR VILLAGE, KOLLAM.

BY ADV. SRI.K.SUBASH CHANDRA BOSE

RESPONDENT/RESPONDENT

STATE OF KERALA
REPRESENTED BY THE DISTRICT COLECTOR, KOLLAM.

BY ADV. GOVERNMENT PLEADER SRI.ALOYSIOUS THOMAS

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON
20-02-2015, ALONG WITH LAA. 755/2011 & 756/2011, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:

**T.R.RAMACHANDRAN NAIR &
P.V.ASHA, JJ.**

L.A.A.Nos.688, 755, 756 OF 2011

Dated this the 20th day of February, 2015

JUDGMENT

Ramachandran Nair, J.

These three appeals arise from the judgments in L.A.R.Nos.259/200, 265/2000 and 269/2000 of the Additional Sub Court, Kollam. In L.A.A.No.688/2011 the extent involved is 1.30 Ares, in L.A.A.No.755/2011 the extent is 5.40 Ares and in L.A.A.No.756/2011, the extent is 2.40 Ares. In the first case, the notification under Section 4(1) is dated 30.3.1996. In the second case also, it is of the same date. In the third case, it is 20.2.1996. The land acquisition officer awarded land value @ ₹16032/- per Are in L.A.A.No.688/2011 and 755/2011, whereas in L.A.A.No.756/2011 the land value awarded by the land acquisition officer is ₹19,839/- per Are. The reference court has enhanced the land value to ₹25,651/- in the first two appeals and Rs.31742/- in L.A.A.No.756/2011.

2. These appeals are filed seeking enhancement upto

₹ 40,000/- per Are and now the amendment applications have been filed seeking enhancement to ₹ 64,225/- in L.A.A.No.688/2011 and 755/2011 and ₹.79,473/- in L.A.A.No.756/2011.

3. We heard the learned counsel for the appellants and the learned Senior Government Pleader for the respondents.

4. We find from the judgment that before the reference court evidence was let in by the claimants. The documents produced before the reference court are Exts.A1 and A2 which are sale deeds dated 18.4.1994 and 24.12.1996 respectively. The court below did not rely on these documents for want of evidence regarding similarity and potential nature of the land. Going by the evidence of the claimants, the properties are near to important public institutions, Government officers, churches and temples. Reference Court found that Ext.A1 sale deed will show that the consideration paid was ₹ 75,000/- per Are whereas in Ext.A2 it is ₹55555.55 per Are. After going through the documents, it is found by the reference court that the land involved in the three references are near Aravilakadavu in Kureeppuzha Cheri and

the lands do not have any road frontage, whereas the lands involved in Ext.A1 is adjacent to Kollam-Anchalummoodu PWD road and the property is having road frontage throughout its northern boundary. Therefore it is stated that it cannot be compared with the acquired property. The court below did not accept Ext.A2 because it is a post notification sale deed.

5. The learned counsel for the appellant after relying on the notes to award submitted that the property is near the PWD road and the property involved in L.A.A.No.756/2011 is in a junction also.

6. The learned Government submits that as far as categorisation of the property is concerned, no evidence was let in before the trial court to show that the categorization made by the land acquisition officer is not the correct one. What is emphasized by the learned counsel for the appellants is that as far as categorization of property under notification dated 30.11.1995 is concerned, better value has been given for similarly placed lands, namely land near PWD roads and there is no justification for reducing the land value in respect

of acquisition by the subsequent notification.

7. The judgment in L.A.A.No.1123/2009 is by a Division Bench of this Court which was referred to during arguments by the learned Government Pleader. There the notification under Section 4(1) is dated 3.2.1996 and the acquisition was for the same purpose of the properties in the same village. The land acquisition officer awarded land value @ ₹10,893/- per Are and the reference court refixed it at ₹43636/- per Are. This Court after going through the judgment of the reference court found that the reference court therein had relied upon Ext.A1 judgment in L.A.A.No.157/2000 for fixing the market value.

8. The learned Senior Government Pleader submits that the percentage of increase of land value from ₹10,893/- per Are to ₹43,636/- per Are in the said judgment cannot be safely adopted in this case since the trial court in that case had found that the categorization of the property therein was not correctly done and the trial court was of the view that the land should have been categorized along with lands to which the land acquisition officer had fixed land

value at ₹30094/- per Are namely category No.V- low lying dry land. Therefore it is submitted that the percentage of increase can be calculated only from ₹30094/- to ₹43,636/- per Are.

9. The learned counsel for the appellants submits that actually the rate of increase therein is from ₹10893/- to ₹43,636/- and therefore a parallel can be drawn in this case also. We have gone through the judgment in L.A.R.No.325/2000 which was under appeal in L.A.A.No.1123/2009. We also find that in paragraph 10 of that judgment the trial court found that the land acquisition officer went wrong in not granting ₹30094/- per Are for the acquired property therein and finally the land value has been enhanced to ₹43,636/- per Are. Of course the percentage of increase will be 65%, if value fixed by the Land Acquisition Officer is reckoned. But the real percentage of enhancement can be calculated only from ₹30094/-.

10. According to us, the notification in this case and the notification in L.A.A.No.1123/2009 are practically near in point of time. The acquisition is also for the same purpose. Rather than taking

the percentage of increase, the maximum value fixed by this court in the said judgment can be relied upon for awarding land value herein also. But the learned counsel for the appellants submitted that the claimants in these cases will be entitled to more value considering the importance of the locality and other factors. We find from the judgment of the reference court that actually no commission was taken out to assess the importance of the locality and other factors. As far as the land involved in L.A.A.No.756/2011 is concerned, it is in a junction. Therefore, a higher value has been granted by the reference court also to the said item of property.

11. Having considered all aspects and considering the nature of the property involved in these appeals, the appellants will be entitled for enhancement. Relying upon the judgment in L.A.A.No.1123/2009, we refix the land value in the following manner :

12. In L.A.A.Nos.688/2011 & 755/2011 we award an amount of ₹45,000/- per Are in total as market value for the acquired property and in L.A.A.No.756/2011, we award an amount of ₹ 48,000/- per Are

in total for the acquired property. In the order dated 18.11.2014 in C.M.A.Nos.1601/2011, 1711/2011 and 1710/2011, the delay in filing these appeals have been condoned with a specific condition that State will not be liable to pay interest for the period covered by the delay, if ultimately the appeals are allowed. We reiterate the same and the appellants will not be entitled for interest under Section 28 of the Land Acquisition Act for the respective periods i.e.1501 days, 1494 days,1497 days. The appellants will be entitled for all statutory benefits as granted by the trial court, subject to the above condition.

The appeals are accordingly allowed. The parties will bear their costs in the appeals.

T.R.RAMACHANDRAN NAIR, JUDGE

SV.

P.V.ASHA, JUDGE