IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 10TH DAY OF FEBRUARY 2015/21ST MAGHA, 1936

LA.App..No. 408 of 2014 ()

AGAINST THE JUDGMENT IN LAR 94/2007 ON THE FILE OF THE SUB COURT,KOTTARAKKARA DATED 31-10-2013

APPELLANT/CLAIMANT:

S.NAJEEB RAWTHER
SHALIMAR MANZIL, NARANGAPURAM,
PIRAVANTHUR - 689 695.

BY ADV. SRI.S.ABDUL RAZZAK

RESPONDENTS/RESPONDENTS:
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1. SPECIAL TAHSILDAR
L.A (NH), CIVIL STATION, KOLLAM 01.

2. GOVERNMENT OF KERALA,
REPRESENTED BY SECRETARY, P.W.D (K.S.T.P)
GOVT. SECRETARIAT, THIRUVANANTHAPURAM- 01

R2 BY GOVERNMENT PLEADER SRI. ALOYSIOUS THOMAS

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON 10-02-2015, ALONG WITH LAA. 409/2014, LAA. 410/2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AL/-

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

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L.A.A. Nos.408 of 2014, 409/2014 & 410/2014

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Dated this the 10th day of February 2015

JUDGMENT

Ramachandran Nair, J.,

These three appeals are from the common judgment in L.A.R. Nos. 94/07, 3/2011 and L.A.R. No. 93/2007. The claimants are in appeal against the fixation of land value by the Land Acquisition Officer and reference court.

2. The bare facts for the disposal of these appeals are the following:

3. L.A.A. No.410//2014 is from the judgment in L.A.R. No. 93/2007. The acquired property is having an extent of 0.0160 Hectares comprised in Sy. No. 319/1/128-1 of Piravanthur Village in Pathanapuram Taluk, Kollam District which was acquired for the widening of Punalur-Muvattupuzha State Highway under KSTP Project. The notification under Section 4(1) was published on 8.4.2005. The Land Acquisition Officer fixed the land value

at the rate of Rs. 33,950/Are. The award was passed on 9.5.2006. The reference court granted enhancement by Rs. 20,000/- per are.

4. L.A.A. 408/2014 is from the judgment in L.A.R. No. 94/2007. Therein the extent of land involved is 0.0106 Hectares comprised in Sy. No. 319/1/228-1 of Piravanthur Village in Pathanapuram Taluk in Kollam District. The date of publication of the notification under Section 4(1) and the land value fixed by the Land Acquisition Officer etc are same as in LAR 93/2007 and the reference court granted enhancement at Rs. 20,000/- per are.

5. In L.A.A. 409/14, the land acquired is 0.0206 Hectares comprised in Sy. Nos. 319/1/128-3 & 319/1/228-3 of Piravanthur Village in Pathanapuram Taluk. The notification under Section 4(1) was dated 3.7.2008. The Land Acquisition Officer awarded land value at the rate of Rs. 17778/- per Are as per the award dated 31.3.2010. The reference court granted enhancement in land value at Rs. 23,000/- per are.

6. It is seen that the properties were taken possession in

all the three cases together. But as far as the properties involved in L.A.A. No. 409/14 are concerned on the basis of the judgment of this Court in a writ petition filed by the appellant, the property was re-surveyed and thereafter fresh notification was issued. But we have considered the cases together for considering the claim for enhancement.

7. Learned counsel for the appellant Sri. Razzak submitted that the claimant had produced Ext.A2 sale deed in respect of the transaction of the year 1998. The said property is only at a distance of 500 meters from the acquired property. There the properties were having 70 cents in extent and it was on the side of the same road and for 7 cents of property abutting the State Highway, the value has been fixed as Rs. 1 lakh per cent. For the remaining properties on the back side, the value as per the sale deed is Rs. 70,000/-. It is submitted that before the court below the claimant had adduced evidence by taking a commission and the report was submitted as Ext.C1 and the mahazar as Ext.C2.

8. It is therefore, submitted that going by the decisions of

the Apex Court by taking a reasonable percentage of increase for the time lag between the date of Ext.A2 transaction and the date of 4(1) notification, a reasonable amount should have been fixed by the reference court. It is submitted that the reference court accepted Ext.A2 for comparison but the value fixed is too low.

9. It is seen from paragraph 7 of the judgment that the reference court has refixed the land value by granting enhancement at the rate of Rs. 20,000/- per Are in L.A.R. Nos. 93/07 and 94/2007. It is observed that since the acquisition of the property in L.A.R. No. 3/2011 being two years after the acquisition of the property involved in L.A.R. No. 93/07 and L.A.R. No. 94/07, it will fetch 15% more land value and accordingly, an enhancement of Rs. 23,000/- per Are was given. Ext.A2 document was relied on to fix the land value in these cases.

10. In the course of judgment, in paragraph 10, the reference court has criticised the manner in which the Land Acquisition Officer has proceeded to fix the land value. The

reference court observed that even though, the property covered by the three references lie contiguously (the learned counsel for the appellant submitted that the properties involved in L.A.R. No. 94/07 and L.A.R. No. 3/2011 are lying contiguously), the value of the properties covered by L.A.R. No. 93/07 and L.A.R. No. 94/07 was fixed at Rs. 33,000/- per Are. At the same time, the Land Acquisition Officer fixed the land value of the property in L.A.R. No. 3/2011 acquired two years after the acquisition of the earlier two cases at Rs. 17,778/- per Are and no explanation has been offered by the State also . We find that no evidence was given by the Land Acquisition Officer either by producing the basic document or by producing other materials to support the land value fixed as per the award.

11. Arguments have been raised by the learned counsel for the appellant as to the method by which a proper value will have to be fixed by this Court. Learned Government Pleader Sri. Aloysius Thomas submitted that since the transaction under Ext.A2 is beyond a period of five years it may not be safe to fix the enhanced land value of the acquired property based on the

same. In this context our attention was invited to the judgment of the Apex Court reported in ***Valliyammal v. Special Tahsildar [(2011) (3) KLT SN.99],*** Learned counsel for the appellant relying upon various decisions of the Apex Court in ***Satish and Others v. State of U.P. And others [(2009) (14) SCC 758*** and ***Digamber and Others v. State of Maharashtra and Others [(2013) (14) SCC 406]*** as well as ***Salaha Begaum and Others v. Special Land Acquisition Officer [(2013) (11) SCC 426]*** submitted that a reasonable percentage of addition from the value of land covered by Ext.A2 can be adopted.

12. When evidence is there with regard to the transaction of nearby property for the time lag between the date of the document and the Section 4(1) notification, a uniform rate varying from 10% to 15% can be adopted, going by the decisions of the Apex court. It is submitted that the principle of taking such escalation for the gap of years between the date of transaction and the 4(1) notification will gave a clear indication in the light of the well accepted fact that there is a trend of

increase in land value whether it is rural area, a semi urban area or urban area.

13. In ***Valliyammal v. Special Tahsildar [(2011) (3) KLT SN.99],*** Their Lordships have observed that while increase in the market value in urban/semi urban area is 10% to 15% per annum, the corresponding increases in rural areas would be at best be only around half of the urban area i.e. 5% to 7.5% per annum. It is observed that if the gap between the transaction and the Section 4(1) notification is more than five years, it may be unsafe to adopt the said method. In ***Digamber and Others v. State of Maharashtra and Others [(2013) (14) SCC 406],*** the factors to be considered for fixing market value have been reiterated in paragraph 16, one of them being the market value of other land situated in the same locality/village/area, or adjacent or very near the acquired land.

14. In view of various factors pointed out by the learned counsel for the appellant, we can safely adopt Ext.A2 since the same is of a transaction of a property located nearby the acquired property. The same can be adopted by giving due

allowances for the importance of the property covered by Ext.A2 to that of the acquired property and by adopting a proper guess work. It is in evidence that Ext.A2 property is in a junction wherein another road joins the State High way. As far as the acquired property is concerned there is a junction at a distance of 500 metres going by the report of the Commissioner. There is no evidence of any sudden spurt in prices in between the date of Ext.A2 and the notification under Section 4(1).

15. We are therefore, of the view that Ext.A2 can be considered as already done by the reference court, but a proper method will have to be adopted for fixing the land value. Since it is a rural area, we will be justified in adopting 6% increase per year. If that be so, reasonable amount according to us will be Rs. 2,80,592/- per Are. After giving 20% deduction for the importance of Ext.A2 property it will be equivalent to Rs. 1,13,600/- per cent. The claimants have demanded more land value at the rate of Rs. 1,25,000/- per cent. The above fixation according to us is just and reasonable considering various factors including time lag by giving due allowances for the importance of

Ext.A2 property and other facts. Accordingly we allow the appeal and refix the land value at Rs.1,13,600/- per cent. We are also of the view that, all the three items of properties acquired in these cases can be given the same value as the properties were taken possession on the same date. Therefore, we are not adopting the method by which the reference court gave 15% more for the acquired property involved in L.A.A. 409/2014.

These appeals are allowed by fixing the market value at Rs. 1,13,600/- per cent. The appellants will be entitled to all the statutory benefits as already fixed by the reference court on the enhanced compensation. The appellants will suffer their costs in the appeals.

Sd/-

T.R.RAMACHANDRAN NAIR
(JUDGE)

Sd/-
P.V.ASHA
(JUDGE)

AL/-

True copy

P.A to Judge

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

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L.A.A. No.408 of 2014

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Dated this the 10th day of February 2015

JUDGMENT

Ramachandran Nair, J.,

These three appeals are from the common judgment in L.A.R. Nos. 94/07, 3/2011 and L.A.R. No. 93/2007. The claimants are in appeal against the fixation of land value by the Land Acquisition Officer.

2. The bare facts for the disposal of these appeal are the following:

3. L.A.A. No.410//2014 is from the judgment in L.A.R. No. 93/2007. The acquired properties are having an extent of 0.0160 Hectares comprised in Sy. No. 319/1/28-1 of Piravanthur Village in Pathanapuram Taluk, Kollam District was acquired for the

widening of Punalur-Muvattupuzha State Highway under KSTP Project. The notification under Section 4(1) was published 8.4.2005. The Land Acquisition Officer fixed the land value at the rate of Rs. 33,950/Are. The award was passed on 9.5.2006.

4. L.A.A. 408/2014 is from the judgment in L.A.R. No. 94/2007. Therein the extent of land involved is 0.0106 Hectares comprised in Sy. No. 319/1/228-1 of Piravanthur Village in Pathanapuram Taluk in Kollam District. The notification under Section 4(1) and the land value fixed by the Land Acquisition Officer etc are same.

5. L.A.A. 409/14, the land acquired is 0.0206 Hectares comprised in Sy. Nos. 319/1/128-3 & 319/1/228-3 of Piravanthur Village in Pathanapuram Taluk. The notification under Section 4(1) was dated 3.7.2008. The Land Acquisition Officer awarded land value at the rate of Rs. 17778/- per Are as per the award dated 31.3.2010.

6. It is seen that the properties were taken possession in all the three cases together. But as far as the properties involoved in L.A.A. No. 409/14 is concerned on the basis of the

judgment of this Court in a writ petition filed by the appellant, the property had been re-surveyed and thereafter fresh notification was issued. But we take all these cases together.

7. Learned counsel f or the appellant Sri. Razzak submitted that the claimant had produced Ext.A2 sale deed in respect of the transaction of the year 1998. The said property is only at a distance of 500 metres from the acquired property. There the properties were having 70 cents in extent and it was on the side of the same road and for 7 cents of property abutting the State Highway, the value has been fixed as Rs. 1 lakh per cent. For the remaining properties on the back side, the value as per the sale deed is Rs. 70,000/-. It is submitted that before the court below that the claimant had adduced evidence by taking commission and the report submitted as Ext.C1 and scene mahazar as Ext.C2.

8. It is therefore, submitted that going by the decision of the Apex Court by taking a reasonable percentage of increase for the time lag between the date of Ext.A2 transaction and the date of 4(1) notification a reasonable amount have been fixed by

the reference court. It is submitted that the reference court accepted Ext.A2 for comparison. But the value fixed is too low.

9. It is seen from paragraph 7 of the judgment that the reference court has refixed the land value by granting enhancement at the rate of Rs. 20,000/- per Are in L.A.R. Nos. 93/07 and 94/2007. It is observed that since the acquisition of the property in L.A.R. No. 3/2011 being two years after the acquisition of the property involved in L.A.R. No. 93/07 and L.A.R. No. 94/07, it will fetch 15% more land value and accordingly, an enhancement of Rs. 23,000/- per Are was given.

10. In the course of judgment in paragraph 10, the reference court has criticise the pain which the Land Acquisition Officer has proceeded to fix the land value. The reference court observed that even though, the property covered by the three references like contiguously (the learned counsel for the appellant submitted that the properties involved in L.A.R. No. 94/07 and L.A.R. No. 3/2011 are lying contiguously). The value of the properties covered by L.A.R. No. 93/07 and L.A.R. No.

94/07 is at Rs. 33,000/- per Are. At the same time, the Land Acquisition Officer fixed the land value of the property in L.A.R. No. 3/2011 two years after the acquisition of the earlier two cases at Rs. 17,778/- per Are and no explanation has been offered by the State also . We find that no evidence was given by the Land Acquisition Officer also either by producing the basic document or by producing other materials to support the land value as per the award.

11. Arguments have been raised by the learned counsel for the appellant as to the method by which a proper value will have to be fixed by this Court. Learned Government Pleader submitted that since the transaction under Ext.A2 is beyond a period of five years it cannot be safe to fix the enhanced land value of the acquired property based on the same. In this context our attention was invited to the judgment of the Apex Court reported in 2011 (3) KLT SN 1999. Learned counsel for the appellant submitted that relying upon the decision of the Apex Court in ***Satish and Others v. State of U.P. And others [(2009) (14) SCC 758*** and ***Digamber and Others v. State of***

Maharashtra and Others [(2013) (14) SCC 406] as well as ***Salaha Begaum and Others v. Special Land Acquisition Officer [(2013) (11) SCC 426]***.

12. When evidence is there with regard to the transaction nearby property a uniform rate varying from 10% to 50% can be adopted going by the decision of the Apex court. It is submitted that the principle of taking such escalation by taking the gap of years between the date of transaction and the 4(1) notification will gave a clear indication in the light of the well accepted fact that there is a trend of increase in land value whether it is rural area, a semi urban area or urban area.

13. In 2011 (3) KLT SN.1999, their Lordships have observed that while increase in the market value in semi urban and urban area is 10% to 50% per annum corresponding increases in rural area i.e. Only half of the urban area i.e. T% to 7.5%. It is observed that if the gap between the transaction and the Section 4(1) notification is more than five years it may be unsafe.

14. But going by the decision relied upon by the learned

counsel for the appellant also. We can safely adopt Ext.A2 since the same is of a transaction of property nearby the acquired property. The same can be adopted by giving due allowances for the importance of the property covered by Ext.A2 to that of the acquired property and by adopting a proper guess work. It is in evidence that Ext.A2 property is in a junction where another road joins the State High way. As far as the acquired property is concerned there is a junction at a distance of 500 metres going by the report of the Commission.

15. We are therefore of the view that Ext.A2 can be considered but a proper method will have to be adopted for fixing the land value since it is a rural area, we will be justified in adopting 6% increase per year. If that be so, reasonable amount according to us will be Rs. 2,80,592/- per Are. After giving 20% deduction for the importance of Ext.A2 property will be equivalent to Rs. 1,13,600/- per cent. The claimants have demanded more land value at the rate of Rs. 1,25,000/- per cent. The above fixation according to us is just and reasonable considering various factors including time lag by giving due

allowances for the importance of Ext.A2 property and other facts . Accordingly we allo the appeal and refix the land value. We are also of the view that for all the three properties can be given the same value and therefore, as the properties were taken possession on the same date. Therefore, we are not adopting the method adopted by the reference court by giving 50% more for the acquired property involved in L.A.A. 409/2014.

Therefore, all the appeals are allowed by fixing the market value of Rs. 1,13,600/- per cent. (per Are the claimant will be entitled to all the statutory benefits as already fixed by the reference court only on the enhanced compensation. The appellants will be suffered their cost in the appeal.

T.R.RAMACHANDRAN NAIR
(JUDGE)

P.V.ASHA
(JUDGE)

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