IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

WEDNESDAY, THE 9TH DAY OF DECEMBER 2015/18TH AGRAHAYANA, 1937

LA.App..No. 556 of 2014 ()
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AGAINST THE JUDGMENT AND DECREE DATED 31/07/2013 IN LAR. NO.944/2009
OF II ADDITIONAL SUB COURT, THIRUVANANTHAPURAM.
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APPELLANT/1ST RESPONDENT IN LAR:
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STATE OF KERALA,
REPRESENTED BY THE DISTRICT COLLECTOR (LA),
THIRUVANANTHAPURAM.

BY SR. GOVT. PLEADER SRI.R. PADMARAJ.

RESPONDENTS/CLAIMANTS & 2ND RESPONDENT.:
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1. NATARAJA SUNDARAM,
   S/O. RAMAKRISHNA IYER, T.C. 28/1510,
   THAKARAPARAMBU ROAD, PONNAPURAM - 695 102.

2. THE SECRETARY
   TRIDA, THIRUVANANTHAPURAM - 695 001.

R1 BY ADV. SRI.BASANT BALAJI.
R2 BY ADV. SRI.K.A.JALEEL, SC.

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON 13/11/2015, ALONG WITH LAA NO.646 OF 2014 AND CONNECTED CASES, THE COURT ON 09/12/2015 DELIVERED THE FOLLOWING:

rs.

**P.R. RAMACHANDRA MENON & ANIL K. NARENDRAN, JJ.**
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L.A.A. Nos. 556, 646, 751, 752, 753, 761, 769, 771, 785 of 2014 & 4, 17, 48, 57, 58, 83, 128, 163, 169, 209, 231, 252, 315, 337, 347, 350, 355, 369, 390, 410, 419, 428, 457, 458, 475, 476, 477, 510, 512 of 2015

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Dated this the 9th day of December, 2015

## JUDGMENT

RAMACHANDRA MENON,J

These appeals have been filed by the State being aggrieved of the extent of enhancement of compensation awarded by the reference court in the concerned cases, re-fixing the land value much above the rate already fixed by the Land Acquisition Officer, wrongly placing reliance on the judgment passed by this Court in L.A.A.No.353/2012, re-fixing the land value as 27,50,000/- per Are. It was without noting the factual distinction that in the said case, the notification under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act' for short) was issued on 24.4.2008, whereas in the instant appeals

Section 4(1) notification was issued much prior to the said date, on 21.11.2007. As such, it is contended that the extent of enhancement is not sustainable and the same requires to be brought down by '5% ' to have it re-fixed as 26,12,500/- per Are.

2. The factual position revealed from the proceedings is that, different extents of lands were sought to be acquired on the basis of a requisition made by the Trivandrum Development Authority, for the purpose of widening of *Pattoor – Choorakattu Palayam road*. The properties are situated in Vanchiyoor, Thiruvananthapuram Taluk. After completing the procedural formalities and considering all the relevant facts and figures, the Land Acquisition Officer awarded compensation based on the land value fixed as Rs.4,44,867/- per Are. Being dissatisfied with the extent of compensation awarded, the claimants sought for reference under Section 18 of the Act, pursuant to which the matter came up for consideration before the reference court. After evaluating the evidence on record and after hearing both the sides, the reference court, placing reliance on the judgment passed by this Court in L.A.A.No.353/2012 observed that the

property involved therein was also acquired for the very same purpose and that the land value fixed by the Land Acquisition Officer as Rs.4,44,867/- per Are was enhanced to 27,50,000/- per Are. It was accordingly, that the land value fixed by the Land Acquisition Officer in the instant cases as Rs. 4,44,867/- was also enhanced and re-fixed as 27,50,000/- per Are, granting all consequential benefits.

3. The contention of the appellant State is that, in the case of L.A.A.No.353/2012, Section 4(1) notification was issued on 24.4.2008 and not on 21.11.2007 as involved in the instant appeals. This being the position, the land value in respect of the properties involved in these cases which were notified to be acquired as per Section 4(1) notification dated 21.11.2007 (about five months prior to the date of 4(1) notification mentioned in L.A.A.No. 353/2012) could only be much lesser and as such, proportionate deduction is sought to be made. Considering the rate of escalation, it was necessary to have the compensation scaled down by '5%' and thus seek to have it re-fixed as 26,12,500/- per Are. It is also stated that the factual position as

above was accepted by the reference court in several subsequent cases and it was accordingly, that proportionate deduction was being made and the land value was being fixed as 26,12,500/- per Are by the reference court itself as in L.A.R.No. 29/2010. Interference to the said extent is sought for, in most of these appeals.

4. In the case of L.A.A.No.556/2014, it is submitted by the learned Government Pleader that under the very same acquisition proceedings involving 4(1) notification dated 21.11.2007, the land value was fixed by the Awarding Officer as 4,44,600/- per Are. But the same came to be enhanced by the reference court as 34,45,650/- per Are, absolutely without any rhyme or reason, more so when, the reference court has been ordering enhancement in similar cases placing reliance on the verdict passed by this Court in L.A.A.No.353 of 2012, raising the land value from Rs.4,44,867/- per Are to Rs.27,50,000/- per Are only. This being the position, interference is to be made in these cases, to scale down the liability to appropriate extent.

5. Coming to L.A.A.No.17/2015, it is pointed out by the learned Government Pleader that the land value fixed by the Land Acquisition Officer was only Rs. 3,91,671/- per Are and as such, enhancement ordered to an extent of Rs.27,50,000/- per Are (as awarded in other cases where the land value fixed by the awarding Officer was Rs.4,44,867/- per Are) is not correct or sustainable and requires to be scaled down. Similar contention is raised in respect of LAA.No.17 of 2015 as well; where the Awarding Officer had fixed the land value only as Rs.391671..42/- per Are, which came to be enhanced by the Reference Court as Rs.2750000/- per Are and hence sought to be reduced.

6. Heard Sri. R. Padmarajan, learned Senior Government Pleader, Sri. Basant Balaji, learned counsel for the respondents-claimants in the concerned cases, Sri. Harikumar, learned counsel appearing for the claimants in L.A.A.No.169/2015 and 252/2015 and the learned counsel appearing on behalf of the claimants in other cases.

7. Sri. Basant Balaji, learned counsel for the

respondents/claimants in the concerned cases submits that, there is absolutely no merit or bonafides in the appeals filed by the State, pointing out that the actual date of 4(1) notification involved in the judgment passed by this Court in L.A.A.No.353/2012 was the same, i.e., on 21.11.2007 and not on 24.4.2008. The mistake was in fact committed by the reference court in wrongly noting the date of Section 4(1) notification as 24.4.2008, which mistake was repeated/reproduced while passing the judgment in L.A.A.No.353/2012 as well. Since the actual date of Section 4(1) notification is the same, being 21.11.2007, as in L.A.A.No.353/2012 already decided by this Court, no interference is warranted in any of these appeals and the amount awarded by the reference court is liable to be sustained. The learned counsel also places reliance on the verdict passed by the Apex Court in Larsen & Toubro Ltd. v. Fertilizer and Chemical Travancore Ltd 2008 (14) SCC 745 as to the norms for fixing the market value, pointing out that the market value ought to have been fixed granting cumulative increase, instead of flat rate increase, as discussed in paragraph

18 of the said judgment and if such a course is pursued, the actual amount payable will be much more. No interference is warranted for this reason as well, submits the learned counsel.

8. Mr. Harikumar, learned counsel appearing for the respondents-claimants in the concerned appeals submits that the rate of escalation of market value as held by the Apex Court in Larsen & Toubro Ltd. v. Fertilizer and Chemical Travancore Ltd (supra), has to be by reckoning the cumulative increase of the market value. It is stated that annual increase of 10% to 15% is accepted as sustainable, in so far as 'urban area' is concerned; whereas in rural area, it is 5% to 7% as ordered by the Apex Court in the above case. Similar course is stated as pursued by the Apex Court in subsequent decision in Haryana State Industrial Development Corporation Limited v. Udal AIR (2013) SC 3111 as well. The learned counsel submits that the decision rendered by this Court in L.A.A.No.353/2012, where the land value awarded by the Land Acquisition Officer as Rs.4,44,867/- per Are, re-fixed as Rs.27,50,000/- does not warrant any reconsideration.

9. The submission of the learned Government Pleader is that, if the actual date of 4(1) notification was 21.11.200, this much of enhancement, i.e., to the tune of Rs.27,50,000/- per Are would not have been awarded by this Court while passing the verdict in L.A.A.No.353/2012 and in the said circumstances, proportionate reduction is sought for.

10. Mr. Harikumar, the learned counsel appearing for the concerned respondents-claimants submits that there is no much merit in the submission made by the learned Government Pleader with reference to the date of notification and the amount awarded by this Court in L.A.A.No.353/2012. As a matter of fact, though reference has been made to the date of Section 4(1) notification, re-fixation of the land value was effected by this Court with reference to the land value already fixed in <u>L.A.A.No.284/2012</u>. In the said case, acquisition for the very same purpose was considered, based on Sec. 4(1) notification issued earlier. The land value fixed by the Awarding Officer as Rs.3,70,500/- per Are was enhanced by this Court as Rs.23,00,000/- per Are. The <u>same ratio</u> was sought to be

followed by this Court while passing the judgment in L.A.A.No.353/2012, re-fixing the land value with reference to the land value fixed by the awarding Officer as Rs.4,44,867/- per Are, pursuant to subsequent notification dated 21.11.2007; in turn fixing the same as Rs.27,50,000/- per Are. The question to be considered is whether any deduction has to be made, if at all the date of Sec.4(1) notification as involved in L.A.A.No.353/2012 was actually 21.11.2007 and not 24.4.2008 as referred to in the said judgment.

11. We have gone through a copy of the judgment in L.A.A.No.353/2012 placed before us. The opening paragraph (which forms the basis for the fixation) reads as follows:

> *"Having examined the grounds raised in this appeal preferred by the claimants and having considered the submissions addressed at the Bar by Sri. Basant Balaji learned Counsel for the appellants and by Sri Aloysious Thomas learned Senior Government Pleader, we are of the view that the issue raised by the appellants in this case is covered to a considerable extent in favour of the appellants by the judgment of this Court in LAA No.284/2012. The acquisition in this case was pursuant to Section 4(1) notification published on 24/4/2008*

> *whereas the acquisition in L.A.A.No.284/2012 was pursuant to a publication on 19/5/2006. The acquisition was for the purpose of widening of Pattoor -Choorakktupalayam (Reach III). The Land acquisition officer awarded land value at the rate of Rs.444867/- per Are. The Reference Court under the impugned judgment refixed the same at Rs.15,56,100/- per Are. We find that this court by judgment in L.A.A.No.284/2012 refixed the value of land in the same village acquired for the same purpose, for which the Land acquisition Officer awarded only Rs.3,70,500- at Rs.23 lakhs. According to us, relying on the judgment in L.A.A. No.284/2012, the market value of the land under acquisition in this case can be safely refixed at Rs.2750000/-.*

From the above, it is very much evident that, though reference was made to Sec.4(1) notification stated as published on 24.4.2008 (which actually was of the date 21.11.2007), re-fixation was actually effected, based on the course pursued by this Court as per judgment in L.A.A.No.284/2012 with reference to the property involved in the same Village, acquired for the same purpose. In L.A.A.No.284/2012, the Land Acquisition Officer, considering the relevant facts and circumstances fixed the land value as Rs.3,70,500/-per Are. Considering the extent of enhancement awarded by the reference court and the nature of challenge raised, it came to be re-fixed by this Court as Rs.23,00,000/- per Are. The category/nature of property involved remains to be the same and it was accordingly, that the market value of the land under acquisition in L.A.A.No.353/2012 was re-fixed, applying the same ratio holding that it could be safely re-fixed as Rs. 27,50,000/- per Are.

12. The verdict passed by this Court in L.A.A.No.284/2012 has become final, as no challenge has been raised , either by the acquisitioning authority or requisitioning authority before the Supreme Court. If this be the position, proportionate enhancement has to be awarded in respect of the acquisition proceedings pursuant to subsequent notification dated 21.11.2007, applying the same ratio as adopted and accepted by this Court in L.A.A.No.284/2012. The calculation behind the re-fixation of land value adopted by this Court while passing judgment in L.A.A.No.353/2012 appears to be by applying the ratio, i.e., what would be the compensation payable in respect of

the land, for which market value was fixed by the Land Acquisition Officer at Rs.4,44,867/- per Are if the market value fixed by the Awarding Officer as Rs. 3,70,500/-, in respect of similar property pursuant to Sec.4(1) notification issued on a prior date was enhanced by this Court to Rs.23,00,000/- per Are. In other words, the application of the ratio in arithmatical terms appears to be Rs.3,70,500 : 23,00,000 = 4,44,867:-(?). It means 23,00,000 X 4,44,867/3,70,500 which comes to 2761657.49. This was accordingly rounded and fixed by this Court in L.A.A.No.353/2012 as Rs.27,50,000/- per Are. Applying the same logic and reasoning, in so far as the land value awarded by the Land Acquisition Officer happens to be the same as Rs.4,44,867/- per Are, the enhancement also has to be based on the same ratio, which will come to Rs.27,50,000/- per Are since Sec.4(1) notification is actually the same, both in L.A.A.No.353/2012 and in the present appeals. In the said circumstances, we find that no interference is warranted in any of these appeals except L.A.A.Nos.556 of 2014, 17 and 57 of 2015 which have to be dealt with separately. Accordingly, the remaining appeals are devoid of any merit and they stand dismissed.

13. Coming to L.A.A.No.556 of 2014, the case as put forth by the learned Government Pleader is that, the land value of Rs.4,44,867/- per Are fixed by the Awarding Officer has been enhanced by the reference court as Rs.34,45,650/- per Are in spite of the fact that the enhancement awarded by the reference court itself in similar cases is only to an extent of Rs. 27,50,000/- per Are, based on the verdict passed by this Court in L.A.A.No.353/2012. As mentioned already, the enhancement ordered by this Court in L.A.A.No.353/2012 was based on the enhancement awarded by this Court in L.A.A.No.284/2012, whereby the land value fixed by the Awarding Officer as Rs.3,70,500/- per Are was enhanced to 23,00,000/- per Are. Considering this aspect, proportionate extent can be ordered in respect of the cases where the land value was fixed by the Awarding Officer as 4,44,867/- per Are. The same logic, reasoning and the ratio accepted by this Court to sustain the contentions of the claimants in the concerned cases ( dismissing

the appeals preferred by the State as mentioned in the previous paragraphs)have to he applied in these cases as well. Accordingly, we find that the compensation awarded in respect of the lands having market value fixed by the Awarding Officer as Rs.4,44,867/- could not have been anything more than Rs.27,50,000/- per Are, as there is no dispute with regard to the date of 4(1) notification or as to the nature and category of the land in question. As the matter stands so, the enhancement awarded by the reference court in these cases, re-fixing the land value as Rs.34,45,650/- is not correct or sustainable and the same requires to be scaled down and re-fixed as Rs.27,50,000/- per Are as in the other cases. In the above circumstances, the judgment and decree passed by the reference court fixing the land value as Rs.34,45,650/- in the concerned LAR, forming the subject matter of LAA.No.556 of 2014 are set aside and the land value is re-fixed as Rs.27,50,000/- per Are. It is made clear that the 1st respondent/claimant in the said case will be entitled to get compensation only to the said extent, along with all the statutory benefits flowing therefrom. Accordingly, LAA.556 of 2014 is allowed to the said extent.

14. With regard to **LAA.No.17 of 2015**, it is seen that the land value has been fixed by the Awarding Officer only at a lower level of Rs.391671.42/- per Are (unlike the other case, wherein the land value was fixed as Rs.444867/-). The above amount was enhanced by the Reference Court only to the level of Rs.27,50,000/- per Are. Applying the ratio of enhancement adopted and accepted by this Court in the cases discussed above, the proportionate extent can be worked out as follows: Rs.444867:2750000 :: 391671 : ........(?).i.e. 2750000 x 391671/444867 =**Rs.2421162.39 per Are.** Since the Reference Court has awarded Rs.2750000/- per Are, it is on the higher side and stands reduced to Rs.2421162.39/-per Are(rounded to **Rs.2421162/- per Are**). 1st respondent/claimant is entitled to get all statutory benefits flowing therefrom.

15. In the case of **L.A.A.No.57 of 2015**, it is seen that the land value has been fixed by the Awarding Officer only at a lower level of Rs.425095/- per Are (unlike the other case, wherein the land value was fixed as Rs.444867/-). The above

amount was enhanced by the Reference Court only to the level of Rs.2612500/-per Are. Applying the ratio of enhancement adopted and accepted by this Court in the cases discussed above, the proportionate extent can be worked out as follows: Rs.444867:2750000 :: 425095 : ........(?)

i.e., **2750000 x 425095/444867 = Rs.2627776.95 per Are .**

Since the Reference Court has enhanced the amount only at Rs.2612500/- per Are, no interference is required and hence this appeal stands dismissed.

**P.R. RAMACHANDRA MENON,**
**JUDGE**

**ANIL K. NARENDRAN,**
**JUDGE**

The judgment dated 09/12/2015 in L.A.A.No.556/2014 and connected cases is corrected as follows, vide order dated 01/09/2016 with the subsequent correction dated 08/12/2016 in I.A.No.939/2016 in L.A.A.No.17/2015.

The figure "Rs.391671.42 per Are" occurring in the 3rd line of paragraph 14 is substituted as "Rs.4,44,600/- per Are" and the figure "Rs.24,21,162.39/- per Are" occurring in the 10th and 12th lines of paragraph 14 is corrected as "Rs.27,48,349/- per Are".

**Sd/- Registrar (Judicial)**

kp/lk