

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY, THE 16TH DAY OF FEBRUARY 2015/27TH MAGHA, 1936

LA.App..No. 776 of 2014 ()

AGAINST THE JUDGMENT IN LAR 4/2013 of SUB COURT, PALA DATED 27-03-2014

APPELLANTS/CLAIMANTS:

- 1. M.K. SHYLA
MURIKOLIL HOUSE, THALAPPALAM KARA, ERATTUPETTA.**
- 2. M.K.FAISAL
MURIKOLIL HOUSE, THALAPPALAM KARA, ERATTUPETTA.**
- 3. K.M.RESILI
MURIKOLIL HOUSE, THALAPPALAM KARA, ERATTUPETTA.**
- 4. M.K.ANAS
MURIKOLIL HOUSE, THALAPPALAM KARA, ERATTUPETTA.**
- 5. M.K.NABEEL
MURIKOLIL HOUSE, THALAPPALAM KARA, ERATTUPETTA.**

**BY ADVS.SRI.JAMES KURIAN
SRI.SANTHOSH MODAYIL
K.C. JOSEPH**

RESPONDENTS/RESPONDENTS:

- 1. THE STATE OF KERALA
REPRESENTED BY THE DISTRICT COLLECTOR
KOTTAYAM 686 001.**
- 2. THE EXECUTIVE ENGINEER
PWD ROADS DIVISION, KOTTAYAM 686 001.**

BY SENIOR GOVERNMENT PLEADER SRI. ALOYSIUS THOMAS

**THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON
16-02-2015, , THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

JJJ

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

L.A. Appeal No. 776 of 2014

Dated this the 16th day of February, 2015

J U D G M E N T

T.R.Ramachandran Nair, J.

This appeal is filed from the judgment in LAR No.4/2013 of the Subordinate Judges Court, Pala. The appellants are the claimants .

2. The property having an extent of 2.0452 Ares of dry land, comprised in Sy.No.31/2-1 in Block No.48 of Erattupetta Village, which belonged to the appellants, was acquired for the improvement of Ettumannoor – Poonjar State Highway. A notification under section 4(1) of the Land Acquisition Act was published in the locality on 22.10.2010. The Land Acquisition Officer, as per Award dated 21.07.2011, awarded land value at the rate of Rs.74,500/- per Are for the acquired property along with value of improvements and statutory benefits. The claimants sought

for enhancement of land value in the reference and the Court below fixed the land value at Rs.1,49,000/- per Are.

3. We have heard the learned counsel Sri. James Kurian appearing for the appellants and the learned Senior Government Pleader Sri.Aloysius Thomas appearing for the State .

4. Before the Court below, Exts.A1 to A3 documents were marked in evidence and AW1 to AW4 were also examined. Ext.C1 is the report of the Commissioner marked in evidence before the Court below and the reference file has been marked as Ext.R1.

5. The learned counsel appearing for the appellants submits that going by Ext.A1, it is seen that 2.83 Ares of property was purchased for Rs.49 lakhs. The sale deed is dated 2.3.2012. The report of the Commissioner will show that the property is 700 metres away from the acquired property and the value per Are is Rs.17.35 lakhs. As far as

Ext.A2 sale deed is concerned, it is dated 27.3.2013 and the land, including building therein, was purchased for Rs.2 crores 25 lakhs and going by the land value it will be Rs.27.41 lakhs per Are. Ext.A3 is the sale deed dated 14.07.2010. The sale consideration for 6 Ares and 7 sq. metre is Rs.65,25,000/-. The value of the land therein will be Rs.10.55 lakhs. The property is situated 1300 metres away from the acquired land.

6. The learned counsel further submits that the acquired property is situated at a more important locality. The Indian Overseas Bank is situated 70 metres to north of the property, there is Gas Agency just to the South of the property and to the east of the property at a distance of 70 metres there is Raihan Institute of Medical Science and Super Speciality Hospital. The Aruvithura St. George College is situated at a distance of one kilometre and the

private bus stand is at a distance of 65 metres. Apart from the same, there are so many trade centres and shops near the acquired property.

7. We find from the judgment of the Reference Court that the Reference Court fixed the land value on the basis of Ext.A1. It is recorded in the judgment that going by Ext.C1 report of the Commissioner, the acquired land is situated at a more important place than that of the land covered by Ext.A1. The property covered by Ext.A1 is situated near to a bye-road. After considering the value of the property in Ext.A1, it is recorded in the judgment that the reduction of the land value from that is reflected in Ext.A1 is necessary. It is also stated that since the property covered by Ext.A1 is situated 700 metres away from the acquired land and that too not adjacent to the Highway, it cannot be said that the acquired land is similar to or similarly situated

as that of land covered by Ext.A1. But considering the said fact, the value of the land at the time of acquisition was assessed as double that was fixed by the Land Acquisition Officer.

8. The learned Senior Government Pleader submits that Exts. A1 and A2 are post notification documents and herein Ext.A3 is the only pre-notification sale deed. It is submitted that normally post notification documents cannot be relied upon when pre notification sale deed is available. Learned counsel for the appellant relied upon the judgment of the Supreme Court in **Mehrawal Khewaji Trust v. State of Punjab - 2012 (2) KLT 542 (SC)** wherein it was held that "when there are several exemplars with reference to similar lands, highest of the exemplars, if it is satisfied that it is a *bona fide* transaction, has to be considered and accepted."

9. The property Ext.A1 was purchased by the Erattupetta Block Co-operative Urban Society. The President of the Society was examined as AW2. According to him the property covered by Ext.A1 is situated at a distance of 40 – 60 metres from the main road and 500 metres south of the private bus stand. Claimant no.2 was examined as AW1. According to him the acquired property is situated within the heart of Erattupetta town. There are so many important institutions like Masjid Noor Mosque, St.George College etc situated very near to the acquired property. The private bus stand is only at a distance of 65 metre from the property. It is also stated that the property in Ext.A3 lies at a distance of 1300 metres from the acquired property and the same is situated on the side of Aruvithura – Ambaraniirappel road, whereas the acquired property is on the side of the Highway.

10. According to the learned counsel for the appellants, even if a reasonable deduction is made of the land value reflected in Ext.A1, the claim raised by the appellants is reasonable. It is also submitted that at any rate if Ext.A3 document is accepted, then also by granting a reasonable percentage of enhancement, the claimants will be entitled for a just and fair compensation.

11. Documents Exts.A1 and A2 are post notification documents. The properties are actually very near to the acquired property also. When we come to Ext.A3 document, it is situated 1300 metres from the acquired property. The same is on the side of a road branching from the main road, whereas the acquired property is on the side of the State Highway. It is only 70 metres from the Super Specialty Hospital and other important institutions. Therefore, the importance of the acquired property is very evident from the

evidence in this case. Even if we are reducing value by a reasonable percentage from Ext.A1, which was accepted by the Reference Court, or we are increasing a reasonable percentage from Ext.A3, then also the claimants will be entitled for enhancement of land value. Even though the Court below was satisfied about the claim for enhancement, the Court has thought of fixing it double the value as granted by the Land Acquisition Officer.

12. According to us, at any rate Ext.A3 can be relied upon since it is a pre-notification document. Of course, the advantage for the acquired property, being on the side of the public road, will also add to its potential more than the property covered by Ext.A3. As far as Ext.A1 is also concerned it will indicate the potential value in the locality, that also for similar plots situated very near to the acquired property. For all these reasons, we are of the view that appellants are entitled for a reasonable enhancement.

The land value per Are in Ext.A3 being Rs.10.55 lakhs, we fix the value at Rs.11 lakhs per Are for the acquired property and the appeal is allowed to that extend. They will be entitled for statutory benefits as granted by the Court below. The parties will suffer their costs.

Sd/-
T.R.RAMACHANDRAN NAIR,
JUDGE.

Sd/-
P.V. ASHA,
JUDGE.

//TRUE COPY//

P.A. TO JUDGE

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