IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

THURSDAY, THE 2ND DAY OF JULY 2015/11TH ASHADHA, 1937

LA.App..No. 622 of 2010 ( )

AGAINST THE ORDER/JUDGMENT IN LAR 77/2005 of SUB COURT,THODUPUZHA DATED 31-07-2009

APPELLANT(S)/CLAIMANT:

THOMAS
KANIYARKUZHIYIL HOUSE, KARIMKUNNAM.

BY ADVS.SRI.P.MARTIN JOSE
SRI.NIREESH MATHEW

RESPONDENT(S)/RESPONDENT:

STATE OF KERALA
REPRESENTED BY DISTRICT COLLECTOR, IDUKKI.
BY GOVERNMENT PLEADER SHRI R. PADMARAJ

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON 02-07-2015, ALONG WITH LAA. 801/2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

T.R. RAMACHANDRAN NAIR &
K.P. JYOTHINDRANATH, JJ.
- -
L.A.A.Nos.622/2010 & 801/2014
- -
Dated this the 2nd day of July, 2015

JUDGMENT

Ramachandran Nair, J.

These appeals are filed by the common claimant in LAR Nos.77/2005 and 64/2005 of the Sub Court, Thodupuzha. Both the cases were tried together by the reference court and it was acquired for the common purpose. The notification under Section 4(1) was published on12.6.2002. The land was acquired for forming Kolani – Vengalloor bypass road. The land value for the acquired property in LAR No.77/2005 was fixed at the rate of Rs.4,402/- per are by the Land Acquisition Officer which has been enhanced by the reference court to a total amount of Rs.13,025/- per are and as far as LAA No.801/2014 is concerned, the Land Acquisition Officer fixed the land value at Rs.19,512/- which has been enhanced to Rs.57,343/- (in total) by the reference court.

2. The claimant has adduced evidence by examining A.Ws.1 to 3

and Exts.A1 and A2 have been marked. No oral evidence was adduced on the part of the respondents, but Exts.R1 to R3 have been marked. The report of the Commissioners have been marked as Exts.X1 and X2.

3. The learned counsel for the appellants submitted that as far as the categorisation is concerned, the appellant has got an argument that these two items of properties should have been categorised as having road frontage and Rs.19,512/- was fixed as land value per are, (with land value at Rs.17,561/- per are). It is submitted that for category 1, i.e. Dry land with main road frontage, the land value fixed by the Land Acquisition Officer is at the rate of Rs.27,155/-. Category 2 is dry land having sub road frontage, category 3 is dry land without road frontage and category 4 is wet land without road frontage. It is submitted that as far as the property acquired in LAA No.622/2010 is concerned, the same is a contiguous plot to that of the property acquired in LAA No.801/2014. The front portion forms the property in LAA No.801/2014 and the other is on the rear side. Since it was being enjoyed together the entire properties should be treated as having road

access and the property involved in LAR No.77/2005 should have been treated at least as category 2.

4. Learned Senior Government Pleader submitted that even though the claimant produced Exts.A1 and A2 documents, both were not accepted by the reference court. Ext.A1, according to the learned Senior Government Pleader, was rightly rejected since the same is a document of the year 1997. It is further submitted that the property in LAR No.77/2005 is practically paddy land (wet land) and therefore that cannot get equal importance and similar value as that of the property in the other reference case.

5. As far as Exts.A1 and A2 are concerned, it is seen that the property involved in Ext.A1 was purchased by the Government for constructing a tribal hostel. The value per cent as far as Ext.A1 is concerned, is Rs.29,000/- and in respect of Ext.A2, it is Rs.31,333/- per cent. Both were owned by the same person.

6. As rightly pointed out by the learned Senior Government Pleader, Ext.A1 being of the year 1997, according to us, it will not be

safe to rely upon the same. The Government has already constructed a hostel there. Of course, only to understand the nature of the land it could be referred to and it is seen that it is a dry land like the property involved in LAR No.64/2005. Even though the reference court found that there is no satisfactory evidence to show the similarity of Exts.A1 and A2 with the acquired properties, according to us, the report of the Commissioner will show that he has inspected both the items of land and found that they are lying close to the acquired properties and with same advantages. The locality is the same, going by the report of the Commissioner and the distance is only 300 metres also. As far as the nature of the land is concerned, Ext.A2 is in respect of a dry land. The same could be found similar to the property involved in LAR No.64/2005 (LAA No.801/2014). The the land value reflected in Ext.A2 could be safely relied upon here for granting enhancement.

7. The properties are situated within Thodupuzha municipal limits and St. Sebastian's Higher Secondary School and Co-operative Hospital are situated near to the acquired properties. There is also a

factory known as Cryptoms Confectioneries (India) Pvt. Ltd. which is situated very near to the acquired properties. The properties have got due importance and potential.

8. One of the aspects to be noticed is that as far as the acquired property in LAR No.77/2005 is concerned, it is described as 'nilam' (wet land) by the Land Acquisition Officer. According to the learned counsel for the appellant, the property has not been cultivated for a long time and it has been remaining as a residential plot itself. According to him, going by the report of the Commissioner, it is a land which was utilised for cultivating paddy by the appellants, even though it was not actually a nilam. According to him, even the owners of garden land used to cultivate paddy in those areas. It is described as 'kara nilam' by the Advocate Commissioner in his report.

9. Ext.X1 is the report of the Commissioner in LAR No.64/2005. It is clear from paragraph 1 that the property is having 4.25 cents in extent. It is situated 1200 metres away from Manakkad junction in Thodupuzha town. It is bounded by Thoudpuzha -

Irukkumpuzha road. It is only at a distance of 800 metres from Mundekkad junction in Thodupuzha - Ramangalam road. Thodupuzha St. Sebastian's High School and Cryptoms company factory are also situated on the side of the said road. The property is lying very close to the said road itself. It is situated at a point where the Thodupuzha village terminates and the Manakkad village starts. The property in LAR No.77/2005 is lying contiguous to it, in Manakkad Village.

10. In Ext.X2 report in LAR No.77/2005 the same features have been noted. It is stated that the property is on the eastern side of Thodupuzha - Irukkumpuzha road. It is also stated that since the property is lying as 'kara nilam' even without filling, a building either residential or commercial can be constructed. It is stated further that as the claimant is having property on the side of the road leading to the plot acquired also, it could be sold by earmarking as plots.

11. It is therefore clear that both items of properties are bounded by roads and the benefit of road frontage is there as far as the properties involved in both the land acquisition references. The property in LAR

No.77/2005 is lying slightly below the road level. In the light of the above, the categorisation of both items should be as properties having frontage to road and therefore, the market value will have to be fixed accordingly.

12. Both the properties are lying adjacent and therefore, it can be seen that those have the potential to be used for different purposes, since they are situated within Municipal limits and within a developing area. But one item, viz. that is included in LAR No.64/2005 is a dry land and the difference between the other items is obvious also.

13. Therefore, even though it is vehemently submitted by the learned counsel for the appellant that both the properties should be treated as dry lands, we cannot agree. But at the same time, being a property within the municipal limits, the land involved in LAR No.77/2005 could also be used even for commercial purposes. The property is situated in a commercially important area and it is a fast developing locality, as is clear from the Reports Exts.X1 and X2. In close proximity important institutions like school and hospital are

there. That will give advantage to the property for use like commercial purpose also.

14. The reference court granted enhancement in the land value based on the submission made by the learned Addl. Government Pleader that in LAR Nos.65/2005 and 76/2005 the same court has granted land value in respect of the property included in Group II, at the rate of Rs.57,733/- per are. The said value was adopted in respect of LAR No.64/2005. It is not evident from the judgment whether in respect of LAR No.77/2005 any other material has been there and the land value has been fixed at Rs.13,025/- per are.

15. We have gone through the mahazar prepared by the Land Acquisition Officer, as we have already noticed, the property in LAR No.77/2005 is having much potential. But the nature is noted as wet land. But going by the reports of the Commissioners (Exts.X1 and X2), it is not purely a wet land as commonly known. The learned Advocate Commissioner had occasion to visit the locality and note about the importance of the locality also. Therefore, in the light of the

evidence in this case, we are of the view that the acquired land in LAR No.77/2005 cannot be treated purely as a wet land. It is lying contiguous to the property in LAR No.64/2005.

16. The property covered by Ext.A2 being near to the acquired properties, according to us, the same can be reckoned for the purpose of awarding land value in this case. The land value reflected therein is Rs.31,333/- per cent (Rs.77,392/- per are). The document is dated 28.8.2000. We grant a reasonable enhancement, viz. 20% for the time lag of nearly 2 years and fix the land value at the rate of Rs.92,870/- per are (rounded of to Rs.93,000/-).

17. Therefore, the appellant in LAA No.801/2014 will be entitled for the land value at the rate of Rs.93,000/- per are.

18. As far as LAA No.622/2010 is concerned, we will adopt 75% of the land value granted in LAA No.801/2014. Therefore, the land value for the property therein will be at Rs.69,750/- per are.

The appeals are accordingly allowed and the appellant will be entitled for all the statutory benefits as granted by the reference court. He is entitled for proportionate costs also in the appeals.

(T.R. RAMACHANDRAN NAIR, JUDGE.)

(K.P. JYOTHINDRANATH,, JUDGE.)

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