

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

WEDNESDAY, THE 20TH DAY OF MAY 2015/30TH VAISAKHA, 1937

LA.App..No. 1120 of 2010 (D)

AGAINST THE ORDER/JUDGMENT IN LAR 10/2006 of SUB COURT, THODUPUZHA
APPELLANT(S)/CLAIMANTS:

1. K.E.BHASKARAN, KUZHINJAKALLUNKAL HOUSE,
KOLANI, THODUPUZHA.

2. DEVAKI, W/O.BHASKARAN, DO. DO.

BY ADVS.SRI.MATHEW JOHN (K)
SRI.DOMSON J.VATTAKUZH

RESPONDENT(S)/RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY
DISTRICT COLLECTOR, IDUKKI.

2. THE EXECUTIVE ENGINEER,
K.S.T.P. DIVISION, P.W.D., PONKUNNAM.

BY GOVERNMENT PLEADER SHRI K.K. SAIDALAVI

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON 20-05-2015, ALONG WITH LAA. 362/2010, LAA. 1148/2010, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**T.R. RAMACHANDRAN NAIR &
K.P. JYOTHINDRANATH, JJ.**

L.A.A.Nos.1120, 1148 & 362 of 2010

Dated this the 20th day of May, 2015

JUDGMENT

Ramachandran Nair, J.

These appeals have been heard together, as the same are from the common judgment in L.A.R. Nos.10/2006 and 12/2006 of the Subordinate Judge's Court, Thodupuzha. In the first two appeals the common claimants are the appellants whereas L.A.A. No.363/2010 is filed by the State aggrieved by the judgment and decree in L.A.R. No.12/2006 alone.

2. At the outset, learned counsel for the claimants, Shri Mathew John submitted that the State has not challenged the judgment and decree in L.A.R. No.10/2006 and therefore the challenge against the decree in L.A.R. No.12/2006 is now barred by the principles of res judicata.

3. The bare facts for the disposal of the appeals are the following: The properties have been acquired for widening of

Ponkunnam - Thodupuzha road. The notification under Section 4(1) of the Act was published in the gazette on 19.10.2004. L.A.R. No.10/2006 is from L.A.C.315/2005 and the property acquired is having an extent of 4 ares of land comprised in Sy. No.641/2/1 of Thodupuzha Village. L.A.R. No.12/2006 is from LAC 322/2005 and the extent of the property involved is 1.10 ares of land comprised in Sy. No.653/1-3-1 of Thodupuzha Village. The judgment of the reference court shows that both parties have adduced evidence oral and documentary. Claimant No.1 in both the cases was examined as P.W.1 and P.W.2 is the Advocate Commissioner who had filed Ext.X1 report. The claimants have relied upon Exts.A1 to A4 and the respondents have marked in evidence Exts.R1 to R5.

4. Learned counsel for the appellants at the outset, submitted that the properties have been grouped as III-C which is clear from the Notes to Award. The categorisation as group III-C, going by the description in the Notes to Award, shows that they are properties having less importance than group III-A and III-B. The categorisation noted as III-

A are lands having main road frontage but not included in Ist group or 2nd Group and the categories included in group III-B are lands situated about 300 metres from Nadukandom and in between Manjakkadambu and Plantation.

5. We find from the judgment of the reference court that the land value fixed by the Land Acquisition Officer is at Rs.20,253/- per are (Rs.8,196/- per cent) which has been enhanced to Rs.59,926/- per are.

6. We heard both sides.

7. Learned counsel for the claimants, Shri Mathew John relied upon the judgment of a Division Bench of this Court in L.A.A. No.925/2010 (L.A.R. No.107/2006) which case was also one relating to the same acquisition. It is submitted that the land value fixed by the Land Acquisition Officer was at the rate of Rs.21,444/- per are which was enhanced by the reference court to Rs.63,450/- and this Court refixed the same at Rs.42,500/- per cent. Therefore, it is submitted that the said judgment being relevant, can be relied upon for granting enhancement in these cases also.

8. Learned Government Pleader argued that as Exts.A1 to A4 have been rejected, the claimants are not entitled for enhancement of land value.

9. Before going into the contentions raised in the appeals, we will refer in brief the findings rendered by the reference court. We find from paragraph 13 of the judgment that Exts.A1 to A4 properties were not found comparable to the properties acquired in these cases as they are situated near Kolani junction on the side of Thodupuzha - Pala road and the acquired properties are situated near Nadukandom junction. It was found that Kolani junction is nearer to Thodupuzha town than Nadukandom junction. Apart from the same, Exts.A1 to A4 documents were executed after publication of Section 4(1) notification in the present cases. Further, the documents showed that the land value was inclusive of rehabilitation charges also. We find no reason to disagree with the above view. Paragraph 14 of the judgment will show that the reference court relied upon the judgment in L.A.R.No.68/2006 of the same court relating to acquisition for the same purpose. In that

case the land value fixed by the Land Acquisition Officer was at the rate of Rs.26,296/- per are which was enhanced to Rs.77,806/- per are.

10. Since learned counsel for the claimants relied upon the judgment of this Court in L.A.A. No.925/2010, we will just refer to the facts of the said case. The notification under Section 4(1) of the Act in the said case also was published on 19.10.2004. The Division Bench, after assessing various aspects, fixed the land value at the rate of Rs.42,500/- per cent. It was found that the property was situated within the limits of Thodupuzha Municipality and after considering the importance of the locality, the land value was fixed. Herein also, we find that the property is within Thodupuzha Municipality and the importance of the area has been found by the reference court also, going by the findings in paragraph 14 of the judgment. The report of the Advocate Commissioner, Ext.X1 shows the details regarding importance of the locality. Apart from the same, the property is acquired for widening the same highway. Therefore, according to us, the reliance placed on the judgment in L.A.A. No.925/2010 is justified.

11. If that be so, the same percentage of increase can be granted herein also as in the above referred judgment and by adopting the same, the land value for the purpose of this case will be Rs.99,184.8 per are which we round off to Rs.99,180/-.

12. Learned counsel for the claimants submitted that as far as value of structures is concerned, the reference court was not right in rejecting the Commissioner's report. Our attention was invited to the report Ext.X1 wherein the Commissioner has assessed an amount of Rs.50000/- towards the value of demolished boundary wall, gate and pillar. It is submitted that the assessment was only reasonable. The reference court did not grant the said amount in the light of the fact that the Commissioner was not accompanied by any expert. We have gone through the report. In paragraph 4, the Commissioner has assessed an amount of Rs.50,000/- for re-building the concrete wall, gate and pillar. Learned Government Pleader was therefore right in submitting that the denial of the said amount by the reference court is justifiable. But we find from the award that an amount of Rs.29,690/-

has been fixed by the Land Acquisition Officer for those structures. Obviously, the assessment is based on P.W.D. rates. In respect of valuation of buildings, this Court has been enhancing the value by 30% over the rate fixed by the Land Acquisition Officer and since P.W.D. rates may not represent the market rate, we feel it safe to adopt the said method herein also. Therefore, we hold that the claimants in LAR No.10/2006 will be entitled for an additional amount of 30% over Rs.29,690/- granted as value of structures.

13. Therefore, L.A.A. Nos.1120/2010 and 1148/2010 are allowed refixing the land value at Rs.99,180/- per are for the acquired properties and for the said reason, we dismiss L.A.A. No.362/2010.

13. Learned Government Pleader points out that in both the appeals filed by the claimants, delay petitions have been filed to condone the delay of 270 days and 274 days in filing the appeals and therefore this Court may restrict the grant of interest under Section 28 of the Act by excluding the said period. We accede to the said request. Therefore, we make it clear that the claimants in L.A.A.Nos.1120/2010

and 1148/2010 will not be entitled for interest under Section 28 of the Land Acquisition Act, 1884 for the period of 270 days and 274 days respectively. The appellants will be entitled for the other statutory benefits granted by the trial court, subject to the above.

The parties will bear their costs in the appeals.

(T.R. RAMACHANDRAN NAIR, JUDGE.)

(K.P. JYOTHINDRANATH,, JUDGE.)

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