

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 8TH DAY OF SEPTEMBER 2015/17TH BHADRA, 1937

LA.App..No. 1612 of 2008

AGAINST THE JUDGMENT IN LAR 110/2001 of SUB COURT,
MAVELIKKARA DATED 16-01-2006

APPELLANT(S)/ADDITIONAL 2ND RESPONDENT:

INLAND WATERWAYS AUTHORITY OF INDIA,
PARAMARA SHOPPING COMPLEX, PARAMARA ROAD, KOCHI-18
REP. BY ITS DIRECTOR,
(NOW OFFICE AT HOUSE NO.1/631/A, KANADIKADU, AREA,
MARADU PO., KOCHI-682304.

BY ADV. SRI.V.SANTHARAM

RESPONDENT(S)/CLAIMANT AND FIRST RESPONDENT:

1. RATNAMMA, VAZHAPPALLIL HOUSE,
PATHIYOOR, ALAPPUZHA.

2. STATE OF KERALA, REPRESENTED BY
THE SPECIAL TAHSILDAR(LA),
NATIONAL WATERWAY, NO.III, ALAPPUZHA.

BY SENIOR GOVT. PLEADER SRI. L. ALOYSIUS THOMAS

THIS LAND ACQUISITION APPEAL HAVING COME UP FOR
ADMISSION ON 08-09-2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

**P.R. RAMACHANDRA MENON &
K. HARILAL, JJ.**

L.A.A. No. 1612 of 2008

Dated this the 8th day of September, 2015

JUDGMENT

Harilal, J.

The appellant/additional 2nd respondent is the Requisitioning Authority for whose purpose the land was acquired for fixing up waterways terminal for widening of narrow stretches of National Waterway No.III. An extent of 9.60 Ares of land comprised in Sy. No.699/13-2 of Thrikkunnappuzha Village, owned by the claimant, was acquired for the said purpose. Sec.4(1) notification was published on 3/5/1999 and the land was taken possession on 22/1/2001. As per the award No.76/2000 compensation to the tune of ₹1,33,866/-, including the statutory benefits, were granted, valuing

the land at the rate of ₹10,053/- per Are. The claimant received the amount under protest and the claim for enhanced compensation was referred to the Reference Court.

2. The 1st respondent/claimant, filed a claim statement seeking enhancement in the quantum of compensation fixed by the Land Acquisition Officer. According to the claimant, the acquired land is situated 300 Mtrs. south-east of Thrikkunnappuzha Junction by the western side of the road which is proceeding from the western side of the bridge situated in the Karthikappally - Thrikkunnappuzha P.W.D. road towards south. The western side of the acquired land is covered by a river having water transport facility. So also, many public institutions such as Village Office, Panchayat Office, Library, School, shops, other commercial establishments etc., are situating near to the acquired land. Considering the importance and potentialities of the acquired land,

the same could have fetched value of ₹25,000/- per cent at the time of acquisition.

3. The 2nd respondent/State resisted the claim contending that the Land Acquisition Officer has considered all the relevant inputs for fixing the compensation correctly and justly. So, the claimant is not entitled to get any enhanced compensation. The appellant/additional 2nd respondent had also filed a separate statement resisting the claim for enhancement. According to the appellant also, the claimant was not entitled to get any enhanced compensation as the Land Acquisition Officer has meticulously compared the acquired land with the property in Ext.A1 sale deed and rightly rejected the claim of similarity.

4. The Reference Court, after considering the evidence on record which consists of Exts.A1 and the oral evidence of A.W.1, re-fixed the land value at ₹24,390/- per Are and allowed enhanced land value at

the rate of ₹14,337/- per Are, by the impugned judgment on a finding that 50% of the land value of the property in Ext.A1 sale deed can be taken as just and reasonable land value in the instant case. Dissatisfied with the enhanced land value, this appeal is filed on various grounds.

5. The learned counsel for the appellant advanced arguments contending that the Reference Court has enhanced the land value after arriving at a finding that the land involved in Ext.A1 sale deed is not similar or similarly situated. The sum and substance of the argument is that in view of the above observation, the Reference Court ought to have discarded Ext.A1 document for fixing the compensation. The learned counsel for the appellant further cited a judgment of this Court in L.A.A.No.794/2007. According to the learned counsel, the property involved in the above case is also similarly situated and acquired under the same

notification and this Court fixed the land value at ₹22,619/- per Are. Therefore, the same land value is liable to be adopted in this appeal also.

6. In view of the contentions raised in this appeal, the short question that arises for consideration is whether the Reference Court is justified in enhancing the land value at 50% of the land value in Ext.A1 document.

7. Even though in this appeal, notice had been duly served on the 1st respondent/claimant, she has not chosen to enter appearance to contest this appeal on merits.

8. Going by the impugned judgment, it is seen that the Reference Court has arrived at a finding that the acquired land is not situated on the western side of the public road as claimed by the claimant; but it was found that as the claimant contended, the acquired land is situating on the eastern side of a river and the property in Ext.A1 sale deed is situating on the

western side of the same river. For fixing the same land value as that of the land value in Ext.A1 sale deed, the land must be situated in the same vicinity or locality and similarly situated in all respects. When comparing with Ext.A1 document, the main difference is that Ext.A1 property is situating adjacent to a public road and it is in the middle of a small town having residential and commercial importance and the same is near to different public offices. In our view, even though, there is no road access as claimed by the claimant, it has come out in evidence that Ext.A1 property is also situating very near to the acquired land on the eastern side of the river and the land involved in Ext.A1 sale deed is situating on the western side of the very same river. Now-a-days access through water channel or river is as good as road access and such properties are also having high market value, in the eyes of tourism developers. Therefore, in our view, access through water channel

or river cannot be totally discarded as valueless and properties situating on the river side are as valuable as that of other properties having road frontage. Thus, on a comparison of both properties in view of the close proximity and equal access from the river, the Reference Court is justified in taking Ext.A1 sale deed for compensation.

9. But, going by the judgment in L.A.A. No.794/2007 as rightly pointed by the learned counsel for the appellant, the property involved in that case is also acquired under the same notification and the said property is also similar and similarly situated. After considering the similar contentions raised in the above appeal, this Court re-fixed the market value of the acquired property at ₹22,619/- per Are. In such circumstance, we are inclined to adopt the same market value in the instant case also.

10. Therefore, having regard to the similarity of the acquired land with the property involved in

L.A.A.No.794/2007, we re-fix the market value of the land under acquisition in this case also at ₹22,619/- per Are. Needless to say, the claimant will be entitled to all statutory benefits admissible under Secs.23(2), 23(IA) and 28 of the Land Acquisition Act.

This appeal is disposed of as above.

Sd/-

(P.R. RAMACHANDRA MENON, JUDGE)

Sd/-
(K. HARILAL, JUDGE)

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P.S. to Judge