

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

THURSDAY, THE 12TH DAY OF FEBRUARY 2015/23RD MAGHA, 1936

LA.App..No. 1928 of 2008 ()

AGAINST THE JUDGMENT IN LAR 100/1999 of ADDL.SUB COURT,KOLLAM
DATED 25-01-2007

APPELLANT/CLAIMANT

GOPALAN, SON OF PADMANABHAN,
THEKKINAZHIKATH VEEDU, KUREEPUZHA CHERRY
THRIKKADAVOOR VILLAGE. (DIED)

ADDITIONAL APPELLANTS

2. GOMATHY, W/O LATE GOPALAN
AGED 80 YEARS
RESIDING AT
THEKKINAZHIKATH VEEDU, KUREEPUZHA CHERRY
THRIKKADAVOOR VILLAGE
3. REGHUNATHAN, S/O LATE GOPALAN
AGED 52 YEARS
RESIDING AT
THEKKINAZHIKATH VEEDU, KUREEPUZHA CHERRY
THRIKKADAVOOR VILLAGE
4. REMADEVI, D/O LATE GOPALAN AND
WIFE OF SUDARASANAN, RESIDING AT KOTTAVILA
PERINADU, THRIKKADAVOOR VILLAGE, KOLLAM

* THE LEGAL REPRESENTATIVES OF DECEASED SOLE APPELLANT
ARE IMPEADED AS ADDITIONAL APPELLANTS 2 TO 4 VIDE ORDER DATED
4.12.2014 IN I.A.NO.211/2014.

BY ADVS.SRI.P.B.SURESH KUMAR
SRI.LEO GEORGE

RESPONDENT/RESPONDENT

STATE OF KERALA, REPRESENTED BY
THE DISTRICT COLLECTOR, KOLLAM.

BY GOVERNMENT PLEADER SRI.L.ALOYSIOUS THOMAS

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD
ON 12-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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

L.A.A.No.1928 OF 2008

Dated this the 12th day of February, 2015

JUDGMENT

Ramachandran Nair, J.

This appeal is confined only to the claim of enhancement of the value of building in the acquired property. The reference court in the operative portion of the judgment found that even though there is report Ext.C1 showing the valuation of the building at ₹1,79,097/- as against the valuation of the same by the Assistant Executive Engineer at ₹85,446/- declined enhancement on the ground that in the reference application, amount has not been claimed. There was no challenge in the reference application against the valuation by the Assistant Executive Engineer.

2. Heard the learned counsel on both sides.

3. The learned counsel for the appellant submits that in the light of the decision of the Apex Court in **Hans Raj Sharma (Dead) by LRs. v. Collector, Land Acquisition, Tehsil & District Doda**

(2005) 1 SCC 553), the view taken by the reference court cannot be justified. Therein the Apex Court held that as regards the scope of reference for determining compensation for land, it impliedly includes the question of compensation for benefits arising out of land or things attached to it. It is submitted that the buildings are things attached to the earth and hence the dictum laid down therein will apply. The Apex in paragraph 13 of the judgment held as follows :

“13. Turning into the other question as to the valuation of trees, it appears that there has been an omission on the part of the Reference Court in rejecting the claim on the ground that there was no specific reference made. It must be remembered that the reference made under Section 18 was for determination of the amount of compensation payable to the appellant for the “land” acquired. The expression “land” as defined in Section 3(a) of the Act is inclusive of benefits to arise out of the land and things attached to the earth or permanently fastened to anything attached to the earth. As a matter of fact, the Land Acquisition Officer had worked out the compensation for 261 trees in Khasra No.804 determined as ₹17,315 and the cost of 96 trees in Khasra No.805 determined as ₹6207.”

4. In view of the above declaration of law, we will consider the matter on merits. It is seen that Ext.C1 report has been marked in evidence and no objection has been filed by the respondents for accepting the valuation. The details of the valuation of the building shows that the year of commencement of construction is 1971, the area is 72 Sq.Metres, the type of foundation and basement is laterite, the type of superstructure is brick masonry with cement mortar, type of roof is reinforced cement roof, type of plastering of walls is cement plastering, type of flooring is cement plastering and the doors and windows were constructed by country wood. It is a single storied building. It is an electrified building also. The age of the building is shown as 28 years. There is a detailed estimate of the valuation of the building, a latrine as well as a well and the final amount shown as regards the building is ₹169,169/-, the value of the open well is ₹5252/- and the value of the bath room is ₹4676/-. Thus a total amount of ₹179,097/- is shown as the value. Out of the above the balance after adjusting the amount awarded by the Land Acquisition Officer will be ₹93651/- which we round off to ₹93,650/-.

We therefore allow the appeal. The claimant will be entitled for an additional amount of ₹93,650/- which will carry the statutory benefits as already allowed by the trial court. We also make it clear that in the light of the order passed in C.M.Appl.No.1975/2008 dated 27/09/2013 for condoning delay of 476 days, the claimant will not be entitled for statutory interest under Section 28 on the enhanced value for the said period. Subject to the above, the claimant will be entitled for all other statutory benefits. The parties will suffer their costs in the appeal.

T.R.RAMACHANDRAN NAIR, JUDGE

P.V.ASHA, JUDGE

SV.

