IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE EASWARAN S.

THURSDAY, THE 3RD DAY OF APRIL 2025 / 13TH CHAITHRA, 1947

LA.APP. NO. 263 OF 2019

AGAINST THE JUDGMENT AND DECREE DATED 12.11.2018 IN LAR NO.174 OF 2012 OF ADDITIONAL SUB COURT, THALASSERY

APPELLANTS/CLAIMANTS 6 & 7 :

1 P.V.RAZAK,
AGED 69 YEARS
S/O.AHAMMED, RESIDNG AT 'SAHIL'
OPP. PHC KURUCHIYIL, NEW MAHE,
PIN-673311

2 THAHIRA BEEGUM RAZIYA BANU
AGED 61 YEARS
W/O.ABDUL RAZAK, RESIDING AT 'SAHIL',
OPP. PHC KURUCHIYIL, NEW MAHE,
PIN-673311

BY ADV SERGI JOSEPH THOMAS

RESPONDENTS/RESPONDENTS/CLAIMANTS 4 & 5 :

1 THE SPECIAL TAHASILDAR, L.A,
THALASSERY, PIN-670101

2 THE SECRETARY,
ZILLA PANCHAYATH, KANNUR, PIN-670002

3 THE GOVERNMENT OF KERALA
REPRESENTED BY THE DISTRICT COLLECTOR,
KANNUR-670002

4 CHAPPAVALAPPIL BEEVI,
THYKANDI HOUSE, PERINGADI,
NEW MAHE.P.O, KANNUR DISTRICT,
PIN-673311

5 K.CHANDRAN,
KANOTH KUNIYIL, AZHIYOOR.P.O,
NEW MAHE, PIN-673309

BY ADVS. SRI. TK SHAJAHAN, SR. GP, FOR R1 & R3
SMT.C.LEENA, FOR R2
SMT.G.CHITRA, FOR R4

THIS LAND ACQUISITION APPEAL HAVING COME UP FOR HEARING ON 03.04.2025, ALONG WITH LA.App.NO.286/2017 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE EASWARAN S.

THURSDAY, THE 3RD DAY OF APRIL 2025 / 13TH CHAITHRA, 1947

LA.APP. NO. 286 OF 2017

AGAINST THE JUDGMENT AND DECREE DATED 24.10.2016 IN LAR NO.147 OF 2012 OF ADDITIONAL SUB COURT, THALASSERY

APPELLANTS/CLAIMANTS :

1 C.P. SUHARA
AMEENA BAUGH, A.K.G. ROAD,
POOZHITHALA P.O., AZHIYOOR,
VATAKARA TALUK, KOZHIKODE DISTRICT - 673 309.

2 SHERBEENA
D/O. LATE T.P. NASEEHU, RESIDING AT AMEENA BAUGH,
A.K.G. ROAD, POOZHITHALA P.O., AZHIYOOR,
VATAKARA TALUK, KOZHIKODE DISTRICT - 673 309.

3 MUHAMMED NASEEHU
S/O. LATE T.P. NASEEHU,
RESIDING AT AMEENA BAUGH, A.K.G. ROAD,
POOZHITHALA P.O., AZHIYOOR, VATAKARA TALUK,
KOZHIKODE DISTRICT - 673 309.

4 RASHA NASEEHU
S/O. LATE T.P. NASEEHU, RESIDING AT AMEENA BAUGH,
A.K.G. ROAD, POOZHITHALA P.O., AZHIYOOR,
VATAKARA TALUK, KOZHIKODE DISTRICT - 673 309.

APPELLANTS 2 TO 4 REPRESENTED BY THEIR POWER OF ATTORNEY HOLDER C.P. SUHARA, AMEENA BAUGH, AKG ROAD, POOZHITHALA PO, AZHIYOOR, VATAKARA TALUK, KOZHIKODE DISTRICT 673309

BY ADV SRI.SERGI JOSEPH THOMAS

RESPONDENTS/RESPONDENTS :

1 THE SPECIAL TAHASILDAR (L.A)
THALASSERY - 670 101.

2 THE SECRETARY
ZILLA PANCHAYATH, KANNUR - 670 002.

3 THE GOVERNMENT OF KERALA
REPRESENTED BY DISTRICT COLLECTOR,
KANNUR - 670 002.

BY SRI. T.K.SHAJAHAN, SR.GP, FOR R1 AND R3

THIS LAND ACQUISITION APPEAL HAVING COME UP FOR HEARING ON 03.04.2025, ALONG WITH LA.App.NO.263/2019 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE EASWARAN S.

THURSDAY, THE 3RD DAY OF APRIL 2025 / 13TH CHAITHRA, 1947

LA.APP. NO. 226 OF 2019

AGAINST THE JUDGMENT AND DECREE DATED 12.11.2018 IN LAR NO.174 OF 2012 OF ADDITIONAL SUB COURT, THALASSERY

APPELLANT/CLAIMANT NO.1 :

KADAKKAYATH CHANDI BABU,
AGED 68 YEARS
S/O.K.G.CHANDI, RESIDING AT KALLUVILA HOUSE,
PUTHIYANGADI, WEST HILL P.O.,
KOZHIKODE DISTRICT, PIN - 673 005.

BY ADV SERGI JOSEPH THOMAS

RESPONDENTS/RESPONDENTS :

1 **THE SPECIAL TAHASILDAR L.A.,**
THALASSERY, PIN - 670 101.

2 **THE SECRETARY, ZILLA PANCHAYATH,**
KANNUR, PIN - 670 002.

3 **THE GOVERNMENT OF KERALA,**
REPRESENTED BY THE DISTRICT COLLECTOR,
KANNUR -670 002.

BY ADV SRI. T.K. SHAJAHAN, SR.GP. FOR R1 AND R3
SMT.C.LEENA, R2

THIS LAND ACQUISITION APPEAL HAVING COME UP FOR HEARING ON 03.04.2025, ALONG WITH LA.App.NO.263/2019 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE EASWARAN S.

THURSDAY, THE 3RD DAY OF APRIL 2025 / 13TH CHAITHRA, 1947

LA.APP. NO. 212 OF 2019

AGAINST THE JUDGMENT AND DECREE DATED 12.11.2018 IN LAR NO.174 OF 2012 OF ADDITIONAL SUB COURT, THALASSERY

APPELLANTS/CLAIAMNTS 2 & 3 :

1 THAYYIL KAKKAT ABDUL ASALI
AGED 33 YEARS
S/O. V. ABDULLA KOYA, RESIDING AT 'PRATHIBHA',
RAILWAY STATION ROAD, MAHE, PIN - 673310

2 THAYYIL KAKKAT ZAHIRA
AGED 65 YEARS
D/O. MUHAMMED, RESIDING AT 'PRATHIBHA',
RAILWAY STATION ROAD, MAHE, PIN - 673310

BY ADV SERGI JOSEPH THOMAS

RESPONDENTS/RESPONDNETS/CLAIMANTS 4 & 5 :

1 THE SPECIAL TAHASILDAR L.A
THALASSERY, PIN - 670101.

2 THE SECRETARY
ZILLA PANCHAYATH, KANNUR,
PIN - 670 002.

3 THE GOVERNMENT OF KERALA
REPRESENTED BY THE DISTRICT COLLECTOR,
KANNUR – 670002

4 CHAPPAVALAPPIL BEEVI
THYKANDI HOUSE, PERINGADI,
NEW MAHE P. O., KANNUR DISTRICT,
PIN - 673311.

5 K. CHANDRAN
KANOTH KUNIYIL, AZHIYOOL P. O.,
NEW MAHE, PIN - 673309.

SRI.T.K. SHAJAHAN, SR.GP, FOR R1 AND R3
SRI.P.U. SHAILAJAN, FOR R2

THIS LAND ACQUISITION APPEAL HAVING COME UP FOR HEARING ON 03.04.2025, ALONG WITH LA.App.NO.263/2019 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE EASWARAN S.

THURSDAY, THE 3RD DAY OF APRIL 2025 / 13TH CHAITHRA, 1947

LA.APP. NO. 318 OF 2019

AGAINST THE JUDGMENT AND DECREE DATED 12.11.2018 IN LAR NO.145 OF 2012 OF ADDITIONAL SUB COURT, THALASSERY

APPELLANT/CLAIMANT NO.1 :

KADAKKAYATH CHANDI BABU,
AGED 68 YEARS
S/O.K.G.CHANDI, RESIDING AT KALLUVILA HOUSE,
PUTHIYANGADI, WEST HILL.P.O.,
KOZHIKODE DISTRICT, PIN-673005

BY ADV SERGI JOSEPH THOMAS

RESPONDENTS/RESPONDENTS/CLAIMANTS 4 & 5 :

1 **THE SPECIAL THAHASILDAR, L.A.**
THALASSERY, PIN-670101

2 **THE SECRETARY**
ZILLA PANCHAYATH, KANNUR, PIN-670002

3 **THE GOVERNMENT OF KERALA**
REPRESENTED BY THE DISTRICT COLLECTOR,
KANNUR-670002

BY ADV SRI. T.K. SHAJAHAN, SR.GP, FOR R1 AND R3
SMT.C.LEENA, FOR R2

THIS LAND ACQUISITION APPEAL HAVING COME UP FOR HEARING ON 03.04.2025, ALONG WITH LA.App.NO.263/2019 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

DR. A.K. JAYASANKARAN NAMBIAR &
EASWARAN S., JJ.

L.A.A. No.286 of 2017 and
LAA Nos. 212, 226, 263, 318 of 2019

Dated this the 3rd day of April, 2025

JUDGMENT

Easwaran S., J.

These appeals are preferred by the claimants aggrieved by the judgment and decree of the Additional Sub Court, Thalassery. LAA Nos.212, 226 and 263 of 2019 are preferred against in LAR No.174 of 2012, LAA No.286 of 2017 is preferred against LAR No.147 of 2012 and LAA No.318 of 2019 is preferred against LAR No.145 of 2012.

2. Since the facts in all these appeals are common, for the sake of brevity, we deem it appropriate to refer the facts in L.A.A. No.263 of 2019. An extent of 0.4308 hectares of land comprised in Re-survey No.24/4 (New 24/11) of Chokli Amsom of Peringadi Desom of Thalassery Taluk was acquired for the purpose of construction of a park for children and aged people at New Mahe. The notification under Section 4(1) of the Land Acquisition Act,

1894 was issued on 23.5.2008 and the award was passed on 21.5.2011. Pertinently all other properties involved in these cases are also in the same Taluk and lying contiguously together. The land acquisition officer relying upon document No.2154 of 2006 fixed the land value at Rs.17,930/- per cent. Dissatisfied with the award, the claimants sought reference under Section 18 of the Land Acquisition Act, 1894 . In support of their claim, Exts.A1 to A3 were produced and AW1 to AW3 were examined. The respondents/State produced the report of the Advocate Commissioner and also the basic documents, which were marked as Exts.R1 to R2. The Advocate Commissioner's report was marked as Ext.X1. The respondents/State examined the author of Ext.R1 report as RW1. The primary contention raised by the claimants before the reference court was based on Exts.A1 and A2 deeds. The reference court discarded Ext.A2 since it was a post-notification document and, proceeded to fix the land value relying on the judgment in L.A.R. No.147 of 2012 out of which LAA No.286 of 2017 arises. We referred to the facts in the present case since the best exemplar that is available is in L.A.R. No.174 of 2012. Thus, relying on the judgment in L.A.R. No.147 of 2012, the reference court fixed the land value at Rs.25,000/-. Being

aggrieved by that the present appeals are preferred.

3. Heard Sri. Serji Joseph Thomas, the learned counsel appearing for the appellants/claimants and Sri. T.K. Shajahan, the learned Senior Government Pleader.

4. The learned counsel appearing for the appellants submitted that the reference court discarded Exts.A1 and A2 produced in L.A.R. No.174 of 2012. According to the learned counsel, the property covered by Ext.A2 lies 800 metres away from the land acquired and, therefore, even if it is a post notification document, there is no impediment for the reference court to rely on the said document. Just because it is a post notification document, there is no disqualification for accepting the same as an exemplar. The learned counsel further took this Court to the report of the Advocate Commissioner and pointed out that the land acquisition officer misdirected himself by relying on to the basic document which has no similarity with that of the land acquired.

5. On the other hand, the learned Senior Government Pleader would submit that, in the absence of any exemplar, the reference court was justified in placing reliance on its own decision in L.A.R. No.147 of 2012. The reference court fixed the land value at Rs.25,000/- per cent in order to bring parity in compensation to all

the landowners and, therefore, the judgment of the reference court does not call for any interference.

6. We have considered the submissions raised across the bar and are of the view that the appellants are entitled to succeed. It is true that the reference court was guided by its own decision in L.A.R. No.147 of 2012, we hasten to note that the quality of evidence produced in all these reference cases substantially differs. Therefore, though prima facie, we feel that, to some extent, the reference court was justified in fixing the land value in terms of its own decision in LAR No.147 of 2012, we cannot remain oblivious to the fact that all the claimants are before us in appeals and therefore once we examine the quality of evidence produced in each case and come to a conclusion that the claimants are entitled for a higher value, then necessary consequences will have to follow.

7. In this backdrop, we proceed to consider the evidence produced in L.A.R. No.174 of 2012. The documents produced are Exts.A1 and A2. The commercial importance of the property is beyond any doubt in view of the specific findings recorded by the Advocate Commissioner in Ext.X1 report. However, the question to be considered is whether Ext.A1 document which was executed on

15.1.2007 for a sum of Rs.1 lakh per cent or Ext.A2 document executed in the year 2010 with an amount of Rs.65,000/- per cent has to be taken into consideration.

8. No doubt Ext.A2 is a post-notification document. However, there is no absolute rule that the post-notification document cannot be relied on as an exemplar. The only caution to be exercised in such cases is to apply a suitable deduction from the value in order to arrive at a just and fair compensation.

9. We find that the reference court has analysed the applicability of Exts.A1 and A2 documents qua the land acquired and found that Ext.A1 is three kilometers away from the acquired property, whereas, Ext.A2 is just 500 meters away from the acquired land. The only disqualification attributed by the reference court towards Ext.A2 is that it is a post-notification document. As a matter of fact, if this is the only disqualification attributed towards Ext.A2 and once the aforesaid disqualification can be got over by applying the suitable deduction, then we are of the view that Ext.A2 is the best exemplar that was available before the reference court.

10. When we further read the judgment of the reference court we find that perhaps it is because of the lack of suitable evidence

that the reference court proceeded to consider LAR No.147 of 2012 and fixed the land value at Rs.25,000/- per cent. Having fixed the land value at Rs.25,000/- per cent, the reference court though was satisfied with regard to the proximity of the land acquired and also the land covered by Ext.A2 document, it found itself difficult to get over its own judgment in LAR No.147 of 2012 and accordingly followed the same principle and fixed the land value at Rs.25,000/-. As aforesaid, when all the claimants are before us, we need not confine ourselves to the evidence produced by the parties before the reference court in LAR No.147 of 2012.

11. On a consideration of the entire facts and circumstances, we are of the considered view that the claimants in LAR No.174 of 2012 were successful in establishing the proximity of the land with that of the land acquired. However, we are of the view that merely because Ext.A2 document was a post-notification document, the evidentiary value of the same does not get eroded. Therefore, the appellants are entitled to succeed.

12. In the facts and circumstances of the case, we are of the view that the interest of justice would be served if we apply a 10% deduction for each year and arrive at a market value. We find that the notification under Section 4(1) was issued in the year 2008

whereas Ext.A2 was executed in the year 2010. Therefore, when we apply 10% deduction, we arrive at the following figure:

65000x10%=6500

6500x2years =13000

65000-13000=52,000/-

13. Accordingly, these appeals are allowed modifying the judgment and decree of the reference court in LAR Nos.174 of 2012, 145 of 2012 & 147 of 2012 by refixing the land value at Rs.52,000/- (Rupees Fifty Two Thousand only) per cent. The appellants are entitled to all statutory benefits flowing out of the aforesaid refixation together with proportionate costs.

Sd/-
DR. A.K.JAYASANKARAN NAMBIAR
JUDGE

Sd/-
EASWARAN S.
JUDGE

NS