IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE EASWARAN S.

TUESDAY, THE 25TH DAY OF MARCH 2025 / 4TH CHAITHRA, 1947

LA.APP. NO. 267 OF 2018

AGAINST THE JUDGMENT AND DECREE DATED 28.06.2018 IN LAR NO.48 OF 2014 OF III ADDITIONAL SUB COURT, ERNAKULAM

APPELLANTS/CLAIMANTS 3 & 4 IN LAR:

1 DR. MEREENA VARGHESE
D/O VARGHESE CHERIAN, A5 KENT NALUKETTU,
CHAKKARAPARAMBU, VENNALA, KOCHI - 682 028

2 VARGHESE, S/O.M.V.KURIAN, MADAPARAMBIL HOUSE
KADAVOOR.P.O, PIN-686671, KOTHAMANGALAM TALUK.

BY ADVS.
C.P.WILSON
ROSE MICHAEL

RESPONDENTS/RESPONDENTS AND 1ST CLAIMANT:

1 STATE OF KERALA
REPRESENTED BY SPECIAL TAHSILDAR(L.A.), KOCHI
CORPORATION, VYTTILA- 682 019

2 THE DISTRICT COLLECTOR

ERNAKULAM-682021.

3 THE MANAGING DIRECTOR
KOCHI METRO RAIL PROJECT LTD, ERNAKULAM-683104.

ADDL.R4 SHEEJA VARGHESE,
AGED 44 YEARS,W/O.M.M.VARGHESE,HOUSEWIFE,
MADAPARAMBIL HOUSE,SASTHAMANGALAM ROAD,
PERUMBAVOOR P.O.

ADDL.R4 IS IMPLEADED VIDE ORDER DATED 12.02.2019
IN I.A.NO.1/2019.

BY ADVS.
MANU VYASAN PETER FOR R3
SRI.BASIL MATHEW FOR R4
P.B.KRISHNAN(K/1193/1994) FOR R3
P.B.SUBRAMANYAN(K/1145/2009) FOR R3
P.A.AUGUSTINE FOR R3
SABU GEORGE(K/000711/1998) FOR R3
SRI.T.K.SHAJAHAN, SR.GOVERNMENT PLEADER
FOR R1 & R2

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON 25.03.2025, ALONG WITH LA.App..6/2019 & 341/2018, 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.

TUESDAY, THE 25TH DAY OF MARCH 2025 / 4TH CHAITHRA, 1947

LA.APP. NO. 6 OF 2019

AGAINST THE JUDGMENT AND DECREE DATED 28.06.2018 IN LAR NO.48 OF 2014 OF III ADDITIONAL SUB COURT, ERNAKULAM

APPELLANTS/1ST CLAIMANT:

SHEEJA VARGHESE,
AGED 44 YEARS
W/O M.M.VARGHESE, HOUSE WIFE, MADAPARAMBIL HOUSE,
SASTHAMANGALAM ROAD, PERUMBAVOOR P.O.

BY ADVS.
P. Thomas Geeverghese
TONY THOMAS (INCHIPARAMBIL)(K/810/2010)
E.S.FIROS(K/555/2014)
SRADHA MOHAN(K/001041/2022)

RESPONDENTS/RESPONDENTS & CLAIMANTS 2 TO 6:

1 **STATE OF KERALA,**
REPRESENTED BY SPECIAL TAHSILDAR (LA), KOCHI CORPORATION, VYTTILA.

2 THE DISTRICT COLLECTOR,
COLLECTORATE, KAKKANAD POST, ERNAKULAM

3 THE MANAGING DIRECTOR,
KOCHI METRO RAIL PROJECT LTD., 8TH FLOOR REVENUE TOWER, PARK AVENUE, KOCHI-11

4 ADV. VARGHESE VARGHESE,
S/O VARGHESE, MADAPARAMBIL, SOUTH MAZHUVANNOOR, MAZHUVANNOOR P.O., PIN 686 669.

5 DR. MEREENA VARGHESE,
D/O VARGHESE CHERIAN AND LATE ALICE VARGHESE,
A5,KENT NALUKETTU, CHAKKARAPARAMBU, VENNALA, KOCHI-682 028.

6 VARGHESE,
AGED 48 YEARS
S/O M.V.KURIAN ALIAS KURIACHAN, MADAPARAMBIL HOUSE, KADAVOOR P.O., PIN 686 671, KOTHAMANGALAM TALUK.

7 M.M.VARGHESE,
SON OF M.K.MANI, MADAPPARAMBIL HOUSE, IV-331/A SASTHAMANAGLAM ROAD, KADUVAL, PIN 683 562.

8 DR. VARGHESE CHERIAN,
A5 KENT NALUKETTU,CHAKKARAPARAMBU, VENNALA, KOCHI 683562

BY ADVS.
MANU VYASAN PETER
SRI.M.P.RAMNATH FOR R4
SRI.P.RAJESH (KOTTAKKAL)FOR R4
SRI.SEBASTIAN K.JOSE FOR R4
SMT.S.SANDHYA FOR R4
SRI.BEPIN PAUL FOR R4
SRI.SHALU VARGHESE FOR R4
SRI.ANTONY THARIAN FOR R4
P.B.KRISHNAN(K/1193/1994)FOR R3

P.B.SUBRAMANYAN(K/1145/2009) FOR R3
SABU GEORGE(K/000711/1998) FOR R3
SRI.T.K.SHAJAHAN, SR.GOVERNMENT PLEADER FOR R1 & R2

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON 25.03.2025, ALONG WITH LA.App..267/2018 AND 341/2018, 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.

TUESDAY, THE 25TH DAY OF MARCH 2025 / 4TH CHAITHRA, 1947

LA.APP. NO. 341 OF 2018

AGAINST THE JUDGMENT AND DECREE DATED 28.06.2018 IN LAR NO.48 OF 2014 OF III ADDITIONAL SUB COURT, ERNAKULAM

APPELLANT/2ND CLAIMANT:

VARGHESE VARGHESE M
AGED 40 YEARS
S/O.LATE M.V.VARGHESE,MADAPARAMBIL HOUSE, SOUTH MAZHUVANOOR.P.O, ERNAKULAM, PIN-686669.

BY ADVS.
M.P.RAMNATH
SRI.P.RAJESH (KOTTAKKAL)
SRI.MAHADEVAN.K
SRI.ANVARSHA SHAMSU
SRI.AMAL THOPPIL
SRI.BEPIN PAUL
SRI.S.DEEPAK

RESPONDENTS/RESPONDENTS 1 TO 3 AND CLAIMANTS 1, 3 TO 6 IN LAR:

1 STATE OF KERALA
REPRESENTED BY SPECIAL TAHSILDAR(LA),KOCHI CORPORATION,VYTTILA,KOCHI-682019.

2 THE DISTRICT COLLECTOR
ERNAKULAM, COLLECTORATE, KAKKANAD,COCHIN-682031.

3 MANAGING DIRECTOR,
KOCHI METRO RAIL PROJECT LTD,ERNAKULAM-682011.

4 SHEEJA VARGHESE
W/O.M.M.VARGHESE,MADAPARAMBIL HOUSE, KADAVOOR VILLAGE, KADAVOOR.P.O,KOTHAMANGALAM TALUK,NOW RESIDING AT MADAPARAMBIL HOUSE, IV/331A,SASTHAMANGALAM ROAD,KADUVAL, PERUMBAVOOR-683542.

5 DR.MEREENA VARGHESE,
(LEGAL HEIR OF THE DECEASED DR.ALICE)
D/O.VARGHESE CHERIAN AND LATE DR.ALICE VARGHESE, MEDICAL PRACTITIONER,RESIDING AT A-5,KENT NALUKETTU, CHAKARAPARAMBU, VENNALA, ERNAKULAM, KOCHI-682028.

6 VARGHESE
S/O M.V.KURIAN @ KURIACHAN,MADAPARAMBIL HOUSE, KADAVOOR VILLAGE,KADAVOOR.P.O,KOTHAMANGALAM TALUK,PIN-686671.

7 M.M.VARGHESE
S/O.M.K.MANI,MADAPARAMBIL HOUSE,IV/331A,SASTHAMANGALAM ROAD,KADUVAL, PERUMBAVOOR-683542.

8 DR.VARGHESE CHERIAN
RESIDING AT A-5,KENT NALUKETTU,CHAKARAPARAMBU,

VENNALA,ERNAKULAM,KOCHI-682028.

BY ADVS.
MANU VYASAN PETER FOR R3
SMT.SANJANA SARA VARGHESE ANNIE FOR R4
SRI.BASIL MATHEW FOR R4
P.B.KRISHNAN(K/1193/1994) FOR R3
P.B.SUBRAMANYAN(K/1145/2009) FOR R3
SABU GEORGE(K/000711/1998) FOR R3
SRI.T.K.SHAJAHAN, SR. GOVT. PLEADER FOR R1 & R2

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON 25.03.2025, ALONG WITH LA.App..267/2018 AND 6/2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J U D G M E N T

[LA.App. Nos.267/2018, 6/2019, 341/2018]

Easwaran S., J.

The claimants in LAR No.48/2014 before the III Additional Sub Court, Ernakulam have come up with these three different appeals. Pertinently, the claimants were jointly contesting the matter before the reference court, but, presumably, due to the difference of opinion among themselves, chose to prefer separate appeals.

2. The brief facts, necessary for the disposal of the appeals are as follows:

An extent of 0.47 Ares of land in survey Nos.595/2-19 and 575/2-8 of Ernakulam Village was acquired under Section 4(1) notification dated 31.7.2011 for widening of South Railway Station Road, which is a proprietary work of Kochi Metro Rail Project Ltd.. The possession was taken over on 13.12.2013 and the land acquisition officer awarded an amount of Rs.60,92,506/- per Are for the acquired 0.47 Ares, besides granting the structural value of Rs.3,10,496/- with statutory benefits. While granting the benefit, the land acquisition officer included the aforesaid property in Category No.2 having frontage to South Railway Station Road. For category No.1, an amount of Rs.62,42,934/- per Are was fixed, for which the land acquisition officer relied on the basic

document, i.e. Sale Deed No.209/2009 and granted 20% escalation to the land value for two years and 18% decrease, considering the importance of the document and for category No.2, the land value was fixed by deducting 3% from the value of the land fixed for category No.1.

3. Dissatisfied with the award, the claimants sought reference under Section 18 of the erstwhile Land Acquisition Act, 1894. In support of their claim, Exts.A1 to A6 documents were marked and AW1 was examined. The claimants also took out Advocate Commissioner for local inspection and Exts.C1 and C1(a) are the report and sketch submitted by the Advocate Commissioner, who was examined as CW1. On behalf of the State, Exts.B1 to B7 documents were marked and RW1 was examined.

4. The reference court placing reliance on Ext.B7 judgment and decree in LAR No.33/2014 dated 12.4.2017 fixed the land value for the land acquired at Rs.90,00,000/- per Are and granted statutory benefits also to the appellants/claimants. Dissatisfied with the extent of the compensation granted by the reference court, the claimants are before this Court in these three appeals.

5. Heard Sri.C.P.Wilson, Sri.M.P.Ramnath and Sri.P.Thomas Geeverghese, the learned counsel appearing for the appellants/claimants in L.A.App.Nos.267/2018, 341/2018 and 6/2019,

respectively, and Sri.T.K.Shajahan, the learned Senior Government Pleader appearing for the State, and Sri.P.B.Subramanyan, assisted by Sri.P.A.Augustin, the learned Counsel appearing on behalf of the Kochi Metro Rail Project Ltd., the requisitioning authority.

6. The learned counsel appearing for the appellants/claimants are in unison in their submissions before us that the reference court erred egregiously in discarding the exemplars produced on the side of the appellants/claimants. Therefore, it becomes imperative for us to discuss in detail the evidence adduced by the appellants/claimants and the extent of consideration bestowed by the reference court on the evidence produced before it.

7. Ext.A1 is a sale deed dated 15.11.2017. At the first blush itself, on a bare perusal, it is evident that the said document cannot be relied on as an exemplar, since the same is executed post 4(1) notification, that too after six years. Ext.A2 is a certified copy of Sale Deed No.297/11 dated 19.01.2011 of SRO, Ernakulam, executed just six months before the 4(1) notification. The total sale consideration as reflected in Ext.A2 is Rs.5.50 Crores, out of which Rs.4 Crores is seen fixed for the land and Rs.1.5 Crores for the building. An extent of 2.22 Ares of land comprised in survey No.858/3 of Ernakulam Village is the property involved in Ext.A2. The question before us is whether Ext.A2

can be considered as an exemplar. The parties are at serious variance as regards the applicability of Ext.A2. While the appellants/claimants contended that the reference court could not have rejected Ext.A2 as an exemplar, the requisitioning authority contended that Ext.A2 has no relevance insofar as determination of the market value of the land acquired in this case is concerned.

8. In view of the serious dispute, the only way to resolve the same is the reference of the report of the Advocate Commissioner dated 8.3.2018. The commercial importance of the acquired property is in no terms successfully proved by the claimants. The acquired property lies just near to the South Railway Station. The Advocate Commissioner, who visited the property, was required to identify the distance between the properties covered by Ext.A2 and the land acquired. The Commissioner unequivocally stated that the property lies within ½ k.m. from Ext.A2. It is further reported by the Commissioner that, at the time of inspection, the Ophthalmology Block of Medical Trust Hospital is functioning in the property covered by Ext.A2. Therefore, the distance between the properties being clearly established, the claimants successfully proved that Ext.A2 can certainly be taken as an exemplar for the purpose of arriving at the market value of the land acquired.

9. Before we proceed further, we must take note of the objection raised by Sri.P.B.Subramanyan, the learned counsel appearing for the requisitioning authority. The learned counsel would point out that in respect of a property, which was the subject matter of L.A.R No.8/2017, lying 250 metres away from the land acquired in the present case and covered under the same notification, the reference court granted an amount of Rs.1,56,03,715/- per Are relying on the judgment in LAR No.15/2017 dated 5.4.2017. On appeal against the said judgment before this Court, this Court remanded the matter back to the reference court for a fresh consideration and the order of remand is questioned by the requisitioning authority before the Supreme Court in a Special Leave Petition and the proceedings are under stay. He further pointed out that the court below had rightly appreciated the contents of Ext.B7, wherein only an amount of Rs.90,00,000/- per Are was granted. He would further submit that the property in question and also the property covered under Ext.B7 are lying in the same direction, though at a distance of 400-500 metres. Thus, it is the specific contention of Sri.P.B.Subramanyan, the learned counsel appearing for the requisitioning authority, that since the land acquired in this case and the land covered under Ext.B7 are covered under the same notification, the reference court fixed the land value correctly.

10. When we proceed to consider the objection raised on behalf of the requisitioning authority, we are sanguine of the fact that when Ext.B7 was rendered, the reference court did not have the advantage of considering an exemplar in the nature of Ext.A2. Therefore, we find considerable force in the submission of the learned counsel for the appellants that the inability of the claimants therein to adduce proper evidence cannot be viewed in detriment to the cause projected by the appellants/claimants herein. Therefore, we are of the view that Ext.B7 judgment of the reference court cannot be *per se* made applicable to the case of the appellants/claimants herein. This leads to an inevitable conclusion that the reference court ought to have considered other exemplar for a proper adjudication of the case on merits.

11. Coming to the findings of the reference court as regards the applicability of Ext.A2, we find that the reference court had in paragraph 16 of the impugned judgment considered the said question. The reference court had found that Ext.A2, which was executed on 19.11.2011 is situated ½ k.m. away from the acquired land and abutting to Sahodaran Ayyappan Road. Apart from stating that the opinion of the Advocate Commissioner, that the land acquired and the land covered under Ext.A2 are of equal importance and similar in nature, is not convincing, the reference court has not given any reason as to why

Ext.A2 is being discarded. Admittedly, the acquired land is located with a frontage to the Railway Station Road. The commercial importance or the prominence of the land acquired cannot be ignored by this Court. No doubt, as compared with Ext.A2, the property in question may be of less importance, but still, the commercial value of the property in question cannot be underrated under any circumstances. No doubt, the property covered under Ext.A2 is definitely of higher importance, but however, considering the proximity between Ext.A2 and the land acquired, we are of the view that the reference court could have applied suitable deduction to the value fixed under Ext.A2 in order to fix the market value of the land in question.

12. There is yet another reason as to why we are inclined to consider the contention of the appellants with reference to Ext.A2. It has come out in evidence that the land acquisition officer classified the land as category Nos.1 and 2 and had relied on a document of the year 2009 as the basic document, which is situated 2 k.m. away from the land acquired and applied 20% escalation to the land value for two years and 18% decrease, considering the importance of the document for fixing the land value for category No.1, and for category No.2, the land value was fixed by deducting 3% from the value of the land fixed for category No.1. We are clear in our mind that the land acquisition

officer failed to apply his mind in the proper perspective to arrive at the market value. Under no stretch of imagination, the land acquisition officer could have relied on a document of a property which is situated 2 k.m. away from the land acquired for the purpose of fixing the value. Therefore, when the requisitioning authority with vehemence contended that the land acquired is not similar to that of Ext.A2, we cannot remain oblivious of the fact that the land acquisition officer also equally contributed towards the cause by referring to a document in respect of land which is lying more than 2 k.m. away from the acquired property. Considering the facts in a wholesome perspective, we are of the view that the reference court erred egregiously in rejecting Ext.A2.

13. Having found that the reference court was not justified in rejecting Ext.A2, in what manner we should proceed for determination of the market value will be the pivotal question which will have to be addressed by us. In this context, we find that the formula adopted by the reference court in LAR No.8/2017 while fixing the land value in respect of a land which is situated in proximity to M.G. Road which is covered by the same notification. A reading of the judgment shows that the reference court while passing an award in LAR No.8/2017 had proceeded to fix the market value by applying the escalation of price and then deducting 25% considering the importance of the land therein.

We are surely guided by the principles laid down by the Supreme Court in **New Okhla Industrial Development Authority Vs Harnand Singh (deceased) Through L.R's [2024 SCC Online 1691]**, wherein the Supreme Court reiterated that the High Courts can resort to the principle of guesstimation while determining the market value of the land acquired. Applying the said principle, we find that there is no scope for any escalation of the price from Ext.A2, since there is only a difference of six months between execution of Ext.A2 document and 4(1) notification in the present case. However, considering the fact that the land covered under Ext.A2 has slightly better commercial importance than the land sought to be acquired, but, at the same time, not underrating the commercial importance of the land acquired, we feel that the interest of justice would be sub-served, if a 25% deduction from the value of the land fixed under Ext.A2 is made to arrive at the market value of the land acquired.

14. While applying the above formula, we find an extent of 2.22 Ares of land was sold as per Ext.A2 for an amount of Rs.4 Crores, which would come to Rs.1,80,00,000/- per Are. Applying 25% deduction, we arrive at the value as follows:

1,80,00,000 - (1,80,00,000x25/100) = 1,80,00,000-45,00,000 = 1,35,00,000

Thus, we fix an amount of Rs.1,35,00,000/- for the land acquired per Are in this case. Thus, the market value for the land acquired would come to **Rs.63,45,000/-** (1,35,00,000x0.47).

15. The appellants/claimants would also be entitled to interest and statutory benefits and proportionate costs in the appeals. Since the claimants have preferred separate appeals, they will not be entitled to separate proportionate costs, but the compensation and the proportionate costs would be equally divided among the claimants.

Ordered accordingly.

Sd/-

DR.A.K.JAYASANKARAN NAMBIAR
JUDGE

Sd/-
EASWARAN S.
JUDGE

jg