(2012) 07 KL CK 0072

In the High Court Of Kerala

Case No : L.A.A. No''s. 271 and 272 of 2012

A. Yamina Pasha	APPELLANT
Vs	
The Special Tahsildar LA, Kasaragod, Pin 670121, The Executive Engineer PWD Roads Division, Kasaragod Pin 670121 and The District Collector, Kasaragod Pin 670121	RESPONDENT

Date of Decision : 26-07-2012

Acts Referred:
Land Acquisition Act, 1894 — Section 23(1A), 23(2), 28, 4(1)

Citation : (2012) 07 KL CK 0072

Hon'ble Judges : Pius C. Kuriakose, J;A.V. Ramakrishna Pillai, J

Bench : Division Bench

Advocate : K.V. Sohan, Smt. Sreeja Sohan.K., Sri George Joseph Pulimoottil, Sri N.N. Arun Bechu and Sri Rovin Rodrigues, for the Appellant; S. Jamal, for the Respondent

Final Decision : Allowed

Judgement

Pius C. Kuriakose, J.—These appeals are preferred by sisters whose properties lying adjacent to each other were acquired by the Government for widening of a PWD road leading to Bakel Tourism Project. The properties were in Udma Village and the acquisition was pursuant to Section 4 (1) notification published on 28/2/2008. The Land Acquisition Officer relying on the basis document awarded land value at the rate of Rs. 94,645/- per Are. Before the Reference Court, the evidence consisted of Exts. A1 to A3, Exts. R1 to R9, Exts. X1 report submitted by the commissioner and Ext. X2 plan submitted by the commissioner, apart from the oral evidence of AW1- Power of attorney holder of one of the claimants. Though Exts. A1 to A3 were produced, reliance was place by the appellants on Exts. A1 and A2. Ext. A1 was a sale deed pertaining to 8 cents of land in the same village executed on 31/1/2003 reflecting land value of Rs. 1 Lakh per cent. Ext. A2 is in fact executed between the same parties to Ext. A1. Ext. A2 is dated 6/3/2006 and pertains to 4.26 cents of land lying adjacent to the property covered by Ext. A1. Ext. A2 reflected land value of Rs. 1,99,531/- per cent. The advocate commissioner reported that the properties under acquisition were situated at a distance of just 75 meters from Pallam junction which is said to be a very important junction on Kanhagad - Kasaragod State Highway. It was reported that the property under acquisition was commercial property and had potentialities of being developed as building sites. The learned Subordinate Judge found, on the basis of the evidence adduced, that Exts.A1 and A2 documents were very relevant in fixing the market value of the land under acquisition. It was found by the learned Sub Judge that the area was commercial and hence the market value of the land covered by Exts. A1 and A2 were arrived as on the date of Section 4 (1) notification in these cases by giving additions at the rate of 15% per year. This was done by following the principles laid down by the Supreme Court in G.M. Oil & Natural Gas Corporation Ltd. v. Rameshbhai Jivanbhai Patel & Anr. (2008 SAR 894. The learned Subordinate Judge took the average of the values so arrived at and fixed the value of the lands under acquisition at Rs. 2 Lakhs per cents. In the appeals it is urged that the rate fixed by the Reference Court is too low. We have heard the submissions of Sri K.V. Sohan Learned Counsel for the appellants in both these appeals and senior Government Pleaders Sri.Aloysius Thomas and Sri S. Jamal.

2. Drawing our attention to Exts. A1 and A2, Mr. Sohan submitted that properties covered by Exts. A1 and A2 were lying adjacently and identically in all respects. It will be seen that just after a period of three years, the value of the properties has doubled. According to the Learned Counsel, additions will have to be given to the values reflected in Exts. A2 at rates much higher than 15% in view of the escalation revealed from Exts. A1 and A2 sale deeds. Mr. Sohan requested that the market value of the land under acquisition be refixed at Rs. 3,50,000/- per cent as claimed in the present appeals.

3. All the submissions of the Learned Counsel for the appellants were opposed by the learned senior Government Pleaders. According to them, the area cannot be treated as an urban area and hence the learned Sub Judge was not justified in giving additions at the rate of 15% per year. The maximum additions that could have been given was at the rate of 10% per year. If additions are given at the rate of 10% per year, then even the present rate of Rs. 2 Lakhs per cent will be found to be excessive, so submitted the learned Government Pleaders. We have given our anxious considerations to the rival submissions addressed at the Bar. We notice the recent judgment of the Supreme Court in Mehrawal Khewaji Trust v. State of Punjab (2012 (23) KLT 542, wherein their Lordships of the Supreme Court have held as follows;

When there are several exemplars with reference to similar lands, highest of the exemplars, if it is satisfied, that it is a bona fide transaction, has to be considered and accepted.

It has been found by the learned Subordinate Judge that Exts. A1 and A2 are two apposite exemplars. Ext. A1 reflects value of Rs. 1 Lakh per cent as on 31/1/2003 and Ext. A2 reflects value of Rs. 1,99,531/- as on 6/3/2006. Ext. A2 reflects evidently a higher value. According to us, in view of the finding of the learned Sub Judge that Ext. A2 is a relevant document, it was sufficient that Ext. A2 alone was relied on. We are inclined to rely on Ext. A2 alone. We find that Ext. A2 pertains to a relatively small extent. Therefore we are of the view, considering the smallness of the extent involved in Ext. A2, that some deductions has to be made even after adding at the rate of 15% per year for passage of time. If 15% per year is added for two years passage of time, it will come to Rs. 2,59,389/-. We deduct only Rs. 9389/- towards smallness of the extent involved.

Allowing this appeal, we refix the market value of the land under acquisition in these appeals at Rs. 2,50,000/- per cent. The appellants will be entitled for all statutory benefits on the enhanced compensation u/s 23 (2), 23 (1A) and Section 28 of the Act. The appellants are awarded proportionate costs also. Decree copy will be issued to the appellants only after ensuring that they have remitted full court fee payable on the appeal memoranda.