

(2016) 06 KL CK 0066

In the High Court Of Kerala

Case No : L.A.A.No.707/2012, C.O.No.67/2015 in L.A.A.No.707/2012,
L.A.A.No.727/12, C.O.No.58/15 in L.A.A.No.727/12,
L.A.A.No.820/2012, C.O. No.84/13 in L.A.A.No.820/2012,
L.A.A.No.550/13, L.A.A.No.652/13, L.A.A.No.58/14, C.O.No.61/15 in
L.A.A.No.58/14, L.A.A.No.428

Ali Akbar

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 17-06-2016

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 4(1)

Citation : (2016) 3 KLT 93

Hon'ble Judges : Mr. P.R. Ramachandra Menon And Mr. Anil K. Narendran, JJ.

Bench : Division Bench

Advocate : Sri. C.P. Wilson and Sri. V.N. Subash, Advocates, for the Appellant;
Sri. R. Padmaraj, Sr. Government Pleader, for the Respondent No. 1; Sri. N.
Nagaresh, Assistant Solicitor General, for the Respondent No. 2 and Addl. R3

Final Decision : Disposed Off

Judgement

Mr. Anil K. Narendran, J.—L.A.A.No.707/2012 filed by the claimant and Cross Objection No.67/2015 filed by the State arising out of the judgment and decree of the Addl. Sub Court North Paravur (hereinafter referred to as "the reference court") dated 17.7.2012 in L.A.R.No.4/2011; L.A.A.No.727/2012 filed by the claimant and Cross Objection No.58/2015 filed by the State arising out of the judgment and decree of that court dated 19.7.2012 in L.A.R.No.6/2011; L.A.A.No.550/2013 filed by the claimant and L.A.A.No.652/2013 by the State arising out of the judgment and decree of that court dated 30.1.2013 in L.A.R.No.5/2011; L.A.A.No.820/2012 filed by the State and Cross Objection No.84/2013 filed by the claimant, arising out of the judgment and decree of that court dated 28.2.2012 in L.A.R.No.59/2010; and L.A.A.No.428/2014 filed by the State arising out of the judgment and decree of that court dated 7.2.2012 in L.A.R.No.73/2010, are in respect of the land acquisition proceedings initiated

pursuant to a notification dated 31.8.2009 issued under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") for the construction Air Enclave for Indian Coast Guard.

2. L.A.A.No.58/2014 filed by the claimant and Cross Objection No.61/2015 filed by the State arising out of the judgment and decree of the reference court dated 26.7.2013 in L.A.R.No.12/2012 is in respect of the land acquisition proceedings initiated pursuant to a notification dated 2.8.2011 issued under Section 4(1) of the Act, for the construction of road by the Kerala Public Works Department, in the periphery of the land acquired for the construction of Air Enclave for Indian Coast Guard.

3. Since the basis for enhancement of land value by the reference court in L.A.R.Nos.4/2011, 6/2011, 5/2011 and 73/2010 is either the judgment of a Division Bench of this Court dated 4.4.2012 in L.A.A.No.762/2011, arising out of the judgment and decree of the reference court in L.A.R.No.60/2010 or Document No.3860/07 of SRO Sreemoolanagaram, dated 5.9.2007 relied on in that judgment for re-fixation of land value, we propose to deal with all these appeals and cross objections by a common judgment.

4. The brief facts of the appeals and cross objections are as follows;

4.1. L.A.A.No.707/2012:- This appeal filed by the claimant arises out of the judgment and decree of the reference court in L.A.R.No.4/2011. A total extent of 53.31 Ares of property, comprising of 15.97 Ares in Re.Sy.No.121/4p and 14 of Chowara Village in Aluva Taluk (classified as Category No.I - "dry land facing PWD road" by the Land Acquisition Officer) and 37.34 Ares in Re-Sy.Nos.121/5, 11 and 17 (classified as Category No.II - "wet now dry land facing PWD road" by the LAO), was acquired for the construction of Air Enclave for Indian Coast Guard based on Section 4(1) notification dated 31.8.2009. The Land Acquisition Officer passed Award No.6/10 dated 13.7.2010 fixing land value for 15.97 Ares classified as Category No.I at the rate of Rs. 2,59,746/- per Are and that for 37.34 Ares classified as Category No.II at the rate of 1,13,966/- per Are. On a reference made under Section 18 of the Act, the reference court by judgment and decree dated 17.7.2012 in L.A.R.No.4/2011 re-fixed the land value for 15.97 Ares classified as Category No.I at Rs. 8,30,000/- per Are (219.54% of the land value of Rs. 2,59,746/- per Are fixed by the LAO), relying on Ext.A1 judgment of this Court in L.A.A.No.762/2011 arising out of L.A.R.No.60/2010. For the remaining 37.34 Ares classified as Category No.II, the reference court re-fixed the land value at Rs. 2,27,932/- per Are (100% of the land value of Rs. 1,13,966/- per Are fixed by the LAO). The reference court has also granted interest, statutory benefits, etc. for the enhanced land value so fixed. In the absence of any reliable materials, the reference court rejected the claim for compensation for structures/improvements. The claimant, not being satisfied with the enhancement ordered by the reference court, is before this Court in L.A.A.No.707/2012, claiming refixation of the land value for 37.34 Ares classified as Category No.II at Rs. 8,30,000/-, by treating the said land as dry land falling under Category No.I.

4.2. C.O.No.67/2015 in L.A.A.No.707/2012:- On receipt of the notice in the L.A.A., the State filed this Cross Objection contending that Ext.A1 judgment of this Court in L.A.A.No.762/2011 is under challenge in a Review Petition filed by the State. The document relied on by this Court in Ext.A1 judgment is a sham document. The actual land value 2 years prior to Section 4(1) notification is reflected in Document Nos.2940/07 and 2914/07 of SRO Sreemoolanagaram, which is the subject matter in L.A.A.No.820/2012, arising out of L.A.R.No.59/2010, which is pending before this Court. It was also contended that re-fixation of land value by the reference court is without any legal basis.

4.3. L.A.A.No.727/2012:- This appeal filed by the claimant arises out of the judgment and decree of the reference court in L.A.R.No.6/2011. A total extent of 49.10 Ares of property, comprising of 30 Ares in Re.Sy.No.120/2 of Chowara Village in Aluva Taluk and 11.32 Ares in Re.Sy.No.120/8 (classified as Category No.III - "dry land facing private road" by the LAO), 4.01 Ares in Re.Sy.No.121/4pt (classified as Category No.I by the LAO) and 3.77 Ares in Re-Sy.Nos.121/17pt (classified as Category No.II by the LAO), was acquired for the construction of Air Enclave for Indian Coast Guard based on Section 4(1) notification dated 31.8.2009. The Land Acquisition Officer passed award No.4/10 dated 13.7.2010 fixing land value for 30 Ares and 11.32 Ares classified as Category No.III at the rate of Rs. 1,97,902/- per Are, that for 4.01 Ares classified as Category No.I at the rate of Rs. 2,59,746/- and that for the remaining 3.77 Ares classified as Category No.II at the rate of Rs. 1,13,966/- per Are. On a reference made under Section 18 of the Act, the reference court by judgment and decree dated 19.7.2012 in L.A.R.No.6/2011 re-fixed the land value for 4.01 Ares classified as Category No.I at Rs. 8,30,000/- per Are (219.54% of the land value of Rs. 2,59,746/- per Are fixed by the LAO), relying on Ext.A1 judgment of this Court in L.A.A.No.762/2011 arising out of L.A.R.No.60/2010. For 30 Ares and 11.32 Ares classified as Category No.III the reference court re-fixed the land value at Rs. 3,95,804/- per Are (100% of the land value of Rs. 1,97,902/- per Are fixed by the LAO) and for the remaining 3.77 Ares classified as Category No.II the reference court re-fixed the land value at Rs. 2,27,932/- per Are (100% of the land value of Rs. 1,13,966/- per Are fixed by the LAO). The reference court has also granted interest, statutory benefits, etc. for the enhanced land value so fixed. In the absence of any reliable materials, the reference court rejected the claim for compensation for structures/improvements. The claimant, not being satisfied with the enhancement ordered by the reference court, is before this Court in L.A.A.No.727/2012, claiming re-fixation of the land value for 30 Ares and 11.32 Ares classified as Category No.III at 8,30,000/-, treating the said land as dry land falling under Category No.I.

4.4. C.O.No.58/2015 in L.A.A.No.727/2012:- On receipt of the notice in the L.A.A., the State filed this Cross Objection contending that Ext.A1 judgment of this Court in L.A.A.No.762/2011 is under challenge in a Review Petition filed by the State. The actual land value 2 years prior to Section 4(1) notification is reflected in Document Nos.2940/07 and 2914/07 of SRO Sreemoolanagaram,

which is the subject matter in another L.A.A., which is pending before this Court. It was also contended that re-fixation of land value by the reference court is without any legal basis.

4.5. L.A.A.No.820/2012:- This appeal filed by the State arises out of the judgment and decree of the reference court in L.A.R.No.59/2010. A total extent of 2.84 Ares of property, comprising of 0.81 Ares in Re.Sy.No.120/5, 6 and 7 of Chowara Village in Aluva Taluk (classified as Category No.III by the LAO) and the balance extent of 2.03 Ares (classified as Category No.IV ? "wet now dry land facing private road" by the LAO), was acquired for the construction of Air Enclave for Indian Coast Guard based on Section 4(1) notification dated 31.8.2009. The Land Acquisition Officer passed Award No.1/10 dated 16.4.2010 fixing land value for 0.81 Ares classified as Category No.III at the rate of Rs. 1,97,902/- per Are, that for 2.03 Ares classified as Category No.IV at the rate of Rs. 1,04,469/- per Are. On a reference made under Section 18 of the Act, the reference court by the judgment and decree dated 28.2.2012 in L.A.R.No.59/2010 recategorised the entire extent of 2.84 Ares as land falling under Category No.III, stating that, in Document No.811/09 dated 29.4.2009 and Document No.3860/07 dated 5.9.2007 (marked as Exts.A1 and A2) the entire property is purchased for a total consideration and the consideration for "dry land" and "wet now dry land" are not separately shown and that, it is nowhere stated in Exts.A1 and A2 documents that out of the entire extent some extent is "dry land" and the remaining "wet now dry land". The reference court held further that, since the claimant (AW1) purchased the property by Ext.A1, giving Rs. 10,000/- in excess of the consideration shown in Ext.A2, the vender as well as the purchaser in Ext.A1 are the real purchaser and vendor and that, the value shown in Ext.A1 is the real market value of the property and that, it has no bearing on the Section 4(1) notification published after 4 months from the date of execution of Ext.A1. Accordingly, the reference court re-fixed the total land value for 7 Cents of land at Rs. 17,60,000/- (at the rate of Rs. 6,19,718/- per Are), which is the total sale consideration shown in Ext.A1; as against Rs. 3,72,373/- awarded by the Land Acquisition Officer. The reference court has also granted interest, statutory benefits, etc. for the enhanced land value so fixed. Challenging the re-categorisation of 2.03 Ares of land from Category No.IV to Category No.III and also the re-fixation of the land value by the reference court relying on Ext.A1 document, the State has filed L.A.A.No.820/2012, contending that, the recategorisation of land as well as re-fixation of land value by the reference court are absolutely without any legal basis.

4.6. C.O.No.84/2013 in L.A.A.No.820/2012:- This Cross Objection is filed by the claimant in L.A.R.No.59 of 2010. The State filed L.A.A.No.820/2012 before this Court on 18.12.2012, with a delay of 87 days. In C.M.Appl.No.1128/2012 filed for condonation of delay, notice to the respondent/claimant was ordered on 2.1.2013. Pursuant to the said order notice was sent on 9.1.2013 with a hearing date of 30.1.2013. On receipt of notice, the claimant entered appearance through lawyer, who filed vakalath on 1.2.1013. On 18.6.2013 the claimant has

also filed a counter affidavit in C.M.Appl.No.1128/2012. On 18.6.2013, after hearing both the sides, this court condoned the delay in filing the appeal. On 19.8.2013, this Court, after hearing both the sides, admitted the appeal on file and granted an interim order in I.A.No.1746/2012 staying execution of the impugned judgment of the reference court on condition that the appellant State shall deposit 50% of the amount awarded by the reference court within two months, which can be withdrawn by the claimant. Thereafter, the claimant filed the present Cross Objection on 23.9.2013, contending that, the observation made by the reference court that, Ext.A2 document does not reflect any escalation in price and that the claimant limits his prayer on Ext.A1 alone is incorrect. Such a concession was never made, even if made it cannot be acted upon. Along with the Cross Objection, the claimant has produced as Annexure A1, a copy of the judgment of this Court dated 4.4.2012 in L.A.A.No.762/2011, arising out of L.A.R.No.60/2010. In the affidavit filed in support of I.A.No.1558/2013 in C.O.No.84/2013 the claimant has also stated that his property and the property in L.A.A.No.762/2011 are similarly situated and both the properties have been acquired under the same notification. Hence, Annexure A1 judgment of this Court is squarely applicable in the case of his property also. Therefore, relying on Annexure A1 judgment in L.A.A.No. 762/2011, the claimant contends that he is entitled for enhanced compensation at the rate of Rs. 8,00,000/- per Are.

4.7. L.A.A.No.550/2013:- This appeal filed by the claimant arises out of the judgment and decree of the reference court in L.A.R.No.5/2011. A total extent of 152.86 Ares of property, comprising of 27.29 Ares in Re.Sy.No.120/1, 4 and 6 of Chowara Village in Aluva Taluk (classified as Category No.I by the LAO) and the balance extent of 125.77 Ares (classified as Category No.II by the LAO), was acquired for the construction of Air Enclave for Indian Coast Guard based on Section 4(1) notification dated 31.8.2009. The Land Acquisition Officer passed Award No.7/10 dated 13.7.2010 fixing land value for 27.29 Ares classified as Category No.I at the rate of Rs. 2,59,746/- per Are, that for 125.77 Ares classified as Category No.II at the rate of Rs. 1,13,966/- per Are. On a reference made under Section 18 of the Act, the reference court by judgment and decree dated 31.1.2013 in L.A.R.No.5/2011 re-fixed the land value for 27.29 Ares classified as Category No.I at Rs. 8,30,000/- per Are (219.54% of the land value of Rs. 2,59,746/- per Are fixed by the LAO), relying on Ext.A1 judgment of this Court in L.A.A.No.762/2011 arising out of L.A.R.No.60/2010. For the remaining 125.77 Ares classified as Category No.II the reference court enhanced the land value by Rs. 2,27,932/- per Are (100% of the land value of Rs. 1,13,966/- per Are fixed by the LAO). The reference court has also granted interest, statutory benefits, etc. for the enhanced land value so fixed. The claimant, not being satisfied with the enhancement ordered by the reference court, is before this Court in L.A.A.No.550/2013, claiming re-fixation of the land value for 125.77 Ares classified as Category No.II at Rs. 8,30,000/-, treating the said land as dry land falling under Category No.I.

4.8. L.A.A.No.652/2013:- This appeal filed by the State arises out of the judgment and decree of the reference court in L.A.R.No.5/2011, which is already under challenge in L.A.A.No.550/2013 filed by the claimant. In L.A.A.No.652/2013 the challenge made by the State is as against the re-fixation of land value at Rs. 2,27,932/- per Are by the reference court in respect of 125.77 Ares classified as Category No.II, contending that re-fixation of land value by the reference court is without any legal basis. In the Para.2 of the memorandum of appeal it has been stated that the appellant State is not challenging the enhancement of land value by the reference court at Rs. 8,30,000/-, in respect of 27.29 Ares classified as Category No.I.

4.9. L.A.A.No.428/2014:- This appeal filed by the State arises out of the judgment and decree of the reference court in L.A.R.No.73/2010. An extent of 30.55 Ares of property, in Re.Sy.No.121/2 of Chowara Village in Aluva Taluk (classified as Category No.II by the LAO) was acquired for the construction of Air Enclave for Indian Coast Guard based on Section 4(1) notification dated 31.8.2009. The Land Acquisition Officer passed Award No.3/10 dated 16.4.2010 fixing land value for 30.55 Ares classified as Category No.II at the rate of Rs. 1,13,966/- per Are. Since the claimant could not prove title over 0.29 Ares of land, the Land Acquisition Officer deposited compensation with respect of that extent before the reference court. On a reference made under Section 18 of the Act, the reference court by judgment and decree dated 7.6.2012 in L.A.R.No.73/2010 re-categorised the entire extent of 30.55 Ares as dry land falling under Category No.I, mainly relying on the categorisation of the acquired land in Ext.A2 judgment of this Court in L.A.A.No.762/2011, arising out of L.A.R.No.60/2010. Thereafter, the reference court re-fixed the land value of 30.55 Ares of land in L.A.R.No.73/2010 at Rs. 8,30,000/- per Are (728.28% of the land value of Rs. 1,13,966/- per Are fixed by the LAO), relying on Ext.A2 judgment of this Court in L.A.A.No.762/2011. The reference court has also granted interest, statutory benefits, etc. for the enhanced land value so fixed. Since the claimant failed to prove title over 0.29 Ares of land, the enhanced land value of Rs. 2,07,650/- in respect the said extent of land along with interest and other statutory benefits was ordered to be deposited in court, which will be disbursed only after the claimant proving his title over the said extent. In the absence of any reliable materials, the reference court rejected the claim for compensation for structures/improvements. The State has filed L.A.A.No.428/2014, contending that, the recategorisation of land as well as re-fixation of land value by the reference court are absolutely without any legal basis.

4.10. L.A.A.No.58/2014:- This appeal filed by the claimant arises out of the judgment and decree of the reference court dated 26.7.2013 in L.A.R.No.12/2012. An extent of 19.62 Ares of property, in Re.Sy.No.121/1 of Chowara Village in Aluva Taluk was acquired for the construction of a road by the Kerala PWD, in the periphery of the land acquired for the construction of Air Enclave for Indian Coast Guard, based on Section 4(1) notification dated

2.8.2011. The Land Acquisition Officer passed Award No.1/12 dated 16.2.2012 fixing land value for 19.62 Ares at the rate of Rs. 3,37,105/- per Are. On a reference made under Section 18 of the Act, the reference court by judgment and decree dated 26.7.2013 in L.A.R.No.12/2012 re-fixed the land value at Rs. 8,71,500/- per Are, relying on Ext.A1 judgment of the reference court in L.A.R.No.3/2011, in which judgment, relying on the judgment of this Court in L.A.A.No.762/2011 arising out of L.A.R.No.60/2010, the reference court re-fixed land value at the rate of Rs. 8,30,000/- per Are in respect of a land acquired under Section 4(1) notification dated 31.8.2009 for the construction Air Enclave for Indian Coast Guard. Since the notification in the instant case was dated 2.8.2011, the reference court granted 5% appreciation in land value. Accordingly by adding Rs. 45,000/- towards 5% appreciation for the time lag, the reference court re-fixed the land value at the rate of Rs. 8,71,500/- per Are for 19.62 Ares of acquired land, along with interest and other statutory benefits. In the absence of any reliable materials, the reference court rejected the claim for compensation for improvements. The claimant has filed L.A.A.No.58/2014 contending that, since the Land Acquisition Officer has given 26% appreciation considering the time lag of 2 years between Section 4(1) notifications dated 31.8.2009 and 2.8.2011, the reference court should have re-fixed the land value at the rate of Rs. 10,37,000/- per Are.

4.11. C.O.No.61/2015 in L.A.A.No.58/2014:- On receipt of the notice in the L.A.A., the State filed this Cross Objection contending that the judgment of this Court in L.A.A.No.762/2011, which has been relied on by the reference court in Ext.A1 judgment, is under challenge in a Review Petition filed by the State and that, the State is filing an appeal against Ext.A1 judgment of the reference court. The actual land value prior to Section 4(1) notification is reflected in Document Nos.2940/07 and 2914/07 of SRO Sreemoolanagaram, and the land value happened to be re-fixed by this Court in L.A.A.No.762/2011, without noticing the said fact. Therefore, it was also contended that re-fixation of land value by the reference court is without any legal basis.

5. We heard the arguments of Sri. C.P. Wilson, the learned counsel for the claimant in L.A.A.Nos.707/2012, C.O.No.67/2015 in L.A.A.No.707/2012, L.A.A.No.727/2012, C.O.No.58/2015 in L.A.A.No.707/2012, L.A.A.No.550/2013. L.A.A.No.652/2013, L.A.A.No.428/2014, L.A.A.No.58/2014 and C.O.No.61/2015 in L.A.A.No.58/2014; Sri.K.Narayanan (Parur), the learned counsel for the claimant in L.A.A. No.820/2012 and C.O.No.84/2013 in L.A.A.No.820/2012, Sri. R. Padmaraj, the learned Sr. Government Pleader representing the State and also Sri.N.Nagareesh, the Assistant Solicitor General of India, representing Indian Coast Guard, the requisitioning authority.

6. The learned Assistant Solicitor General of India, representing Indian Coast Guard, the requisitioning authority, adopted the arguments advanced by the learned Sr. Government Pleader, representing the State. The learned ASGI would also point out that, the State is prosecuting the matter in order to protect the

interest of the requisitioning authority.

7. The basis for enhancement of land value by the reference court is as follows;

7.1. The basis for enhancement of land value by the reference court in L.A.R.Nos.4/2011, 6/2011, 5/2011 and 73/2010 is the judgment of a Division Bench of this Court dated 4.4.2012 in L.A.A.No.762/2011, arising out of the judgment and decree of the reference court in L.A.R.No.60/2010, in respect of another property acquired pursuant to Section 4(1) notification dated 31.8.2009 for the construction Air Enclave for Indian Coast Guard. In L.A.A.No.762/2011, relying on Document No.3860/07 of SRO Sreemoolanagaram, dated 5.9.2007 executed by M/s.Shwas Homes Pvt. Ltd. in favour of one Satheesh Menon (marked as Ext.A5 L.A.R.No.60/2010), the Division Bench re-fixed land value of the acquired land in L.A.R.No.60/2010 at Rs. 8,30,000/- per Are.

7.2. In L.A.R.No.59/2010 the basis for enhancement of land value by the reference court is Document No.811/09 of SRO Sreemoolanagaram, dated 24.9.2009 executed by the Sathish Menon in favour of M.G. Parameswaran Nair and Document No.3860/07 of SRO Sreemoolanagaram, dated 5.9.2007 executed by M/s. Shwas Homes Pvt. Ltd. in favour of Sathish Menon (marked as Exts.A1 and A2 in L.A.R.No.59/2010).

7.3. In L.A.R.No.12/2012 arising out of Section 4(1) notification dated 2.8.2011 (for the construction of road in the periphery of the land acquired for the construction of Air Enclave) the basis for enhancement of land value by the reference court is its own judgment in L.A.R.No.3/2011 (marked as Ext.A1 in L.A.R.No.12/2012), in which the reference court re-fixed land value in respect of another property acquired pursuant to Section 4(1) notification dated 31.8.2009 for the construction Air Enclave for Indian Coast Guard, relying on the judgment of a Division Bench judgment of this Court in L.A.A.No.762/2011.

8. In Document No.3860/07 of SRO Sreemoolanagaram, dated 5.9.2007 (marked as Ext.A2 in L.A.R.No.59/2010) executed by M/s. Shwas Homes Pvt. Ltd., represented by its Director Shaji Ayyappan, in favour of Sathish Menon the land value is shown as Rs. 6,16,197/- per Are. As per the recitals of Document No.3860/07, M/s. Shwas Homes Pvt. Ltd. is having absolute title over a total extent of 154.66 Ares (equivalent to 382.160 Cents) comprised in Re.Sy.Nos.120/1, 4, 5, 6, 7 and 121/13 in Edanadu Kara in Chowara Village in Aluva Taluk, vide Document No.2940/07 of SRO Sreemoolanagaram, dated 7.7.2007 and that, the Board of Directors of the vendor Company has passed a resolution in its Board Meeting held on 20.7.2007 for sale of demarcated plots in the above said property for persons interested in purchasing the same for constructing villas and accordingly, as authorised by the Board, the plot earmarked 1, having an extent of 2.84 Ares (7 Cents) comprised in Re.Sy.Nos.120/5, 6 and 7 in Edanadu Kara in Chowara Village in Aluva Taluk was sold to the vendee for a total sale consideration of Rs. 17,50,000/-, i.e., Rs. 6,16,197/- per Are.

9. A photo copy of Document No.2940/07 of SRO Sreemoolanagaram, dated 7.7.2007 is produced before this Court on 6.1.2015, along with an interlocutory application filed under Order XXLI Rule 27 of the Code of Civil Procedure, 1908, in L.A.A.No.652/2013 filed by the State, arising out of L.A.R.No.5/2011. As per the said document (marked as Annexure I in that I.A.), M/s.Shwas Homes Pvt. Ltd., represented by its Director Sreeni Parameswaran, S/o. M.G. Parameswaran Nair, purchased a total extent of 154.66 Ares (equivalent to 382.160 Cents) comprised in Re.Sy.Nos.120/1, 4, 5, 6, 7 and 121/13 in Edanadu Kara in Chowara Village in Aluva Taluk, from the vendors in that document, for a total consideration of Rs. 1,00,00,000/-, i.e., Rs. 64,658/- per Are. The said document would also show that, at the time of registration the vendors were identified before the SRO Sreemoolanagaram, by Sathish Menon, S/o. Sankarankutty Menon, residing at Chaithanya, Edappally, who is none other than the vendee in Document No.3860/07 of SRO Sreemoolanagaram, dated 5.9.2007, executed by M/s.Shwas Homes Pvt. Ltd., in which the sale consideration for a plot having an extent of 7 Cents (equivalent to 2.84 Ares), out of the total extent of 154.66 Ares in Document No.2940/07 of SRO Sreemoolanagaram, dated 7.7.2007, is shown as Rs. 6,16,197/- per Are.

10. Similarly, a photo copy of Document No.2941/07 of SRO Sreemoolanagaram, dated 7.7.2007 is also produced by the State, along with the aforesaid interlocutory application filed in L.A.A.No.652/2013. As per the said document (marked as Annexure II in that I.A.), M/s.Shwas Homes Pvt. Ltd., represented by its Director Sreeni Parameswaran, purchased an extent of 1.829 Cents (equivalent to 74 Sq.mtr.) comprised in Re.Sy.No.126/12 in Edanadu Kara in Chowara Village in Aluva Taluk from the vendor in that document, for a total consideration of Rs. 50,000/-, i.e., Rs. 67,558/- per Are. The said document would also show that, at the time of registration the vendors were identified before the SRO Sreemoolanagaram, by the aforesaid Sathish Menon, S/o. Sankarankutty Menon, the vendee in Document No.3860/07.

11. In Document No.811/09 of SRO Sreemoolanagaram, dated 24.9.2009 (marked as Ext.A1 in L.A.R.No.59/2010) executed by the said Sathish Menon in favour of M.G. Parameswaran Nair (who is none other than the father of Sreeni Parameswaran, one of the Directors of M/s.Shwas Homes Pvt. Ltd.) the land value is shown as Rs. 17,60,000/-, i.e., Rs. 6,19,718/- per Are, for the plot having an extent of 2.84 Ares (7 Cents) comprised in Re.Sy.Nos.120/5, 6 and 7 in Edanadu Kara in Chowara Village in Aluva Taluk, thereby showing a negligible hike of Rs. 10,000/- in the total sale consideration shown in the prior document, i.e., Document No.3860/07.

12. On 6.1.2015 the appellant/State has filed an interlocutory application under Order XXLI Rule 27 of the Code of Civil Procedure, 1908, in L.A.A.No.652/2013 arising out of L.A.R.No.5/2011, producing therewith photocopies of various documents including copy of Document Nos.2940/07 and 2941/07 of SRO Sreemoolanagaram, dated 7.7.2007, out of which Document No.2940/07 is the

prior document in respect of Document No.3860/07, which is the document relied on by the Division Bench of this Court (referred to as Ext.A5 in that judgment) while re-fixing the land value in L.A.A.No.762/2011 arising out of L.A.R.No.60/2010 at Rs. 8,30,000/- per Are. Since the documents produced along with the interlocutory application as Annexures I to V are only photocopies, the Registry noted defect on 6.1.2015 itself. However, the State has not taken necessary steps to cure the defect noted by the Registry, as such the said interlocutory application still remains unnumbered and tagged along with the Judge's paper in L.A.A.No.652/2013.

13. Sri. C.P. Wilson, the learned counsel for the claimant in L.A.A.Nos.550/2013 and 652/2013 (both arising out of L.A.R.No.5/2011) would contend that, photocopies of the documents cannot be accepted in an application filed under Order XXLI Rule 27 of the CPC. Further, in the affidavit filed in support of the interlocutory application, the State has not made out a case for this Court to permit production of additional evidence in appellate court.

14. Sri. C.P. Wilson, who is also the learned counsel for the claimants in L.A.A.Nos.707/2012, 727/2012, and 428/2014 and the connected Cross Objection, and Sri.K.Narayanan (Parur), the learned counsel for the claimant in L.A.A.No.820/2012 and the connected Cross Objection, would point out that the State did not file similar interlocutory applications in those appeals.

15. A reading of the judgment in L.A.A.No.762/2011 (marked as Ext.A1/Ext.A2 before the reference court) would indicate that, relying on Document No.3860/07 of SRO Sreemoolanagaram, executed by M/s. Shwas Homes Pvt. Ltd. in favour of one Satheesh Menon (marked as Ext.A5 in L.A.R.No.60/2010), it was argued before the Division Bench of this Court that, the acquired property in L.A.R.No.60/2010 would fetch more value than the land value of Rs. 6,16,197/- per Are shown in Document No.3860/07. It was also pointed out that, the acquired property having PWD road frontage is lying only 75 meters away from the property covered by Document No.3860/07 and that the property covered by the said document is having only the frontage of a 6 meter wide private road on its northern side. From the recitals of Document No.3860/07, this Court found that the property covered by that document was a plot in a villa project promoted by the vendor in that document. It was also pointed out before the Division Bench of this Court that, the property covered by Document No.3860/07 was also acquired under the very same Section 4(1) notification and the reference court fixed land value in L.A.R.No.59/2010 at Rs. 6,16,197/- per Are. The Division Bench has also noticed that, the land value fixed by the reference court in L.A.R.No.60/2010 is only the land value reflected in Document No.3860/07, i.e., the acquired property in L.A.R.No.59/2010. Therefore, considering the fact that the acquired property in L.A.R.No.60/2010 was having PWD road frontage on two sides and other aspects, the Division Bench re-fixed the land value of that property at Rs. 8,30,000/- per Are. Accordingly, by judgment dated 4.4.2012, the Division Bench allowed L.A.A.No.762/2011.

16. Seeking review of the judgment in L.A.A.No.762/2011 the State filed R.P.No.422/2015, contending that Ext.A5 document was in fact a transaction between two persons whose properties would be affected by the acquisition and therefore, it ought not to be taken as one that reflects the true land value but an inflated land value. The learned Sr. Government Pleader has also pointed out that, there is a bunch of cases in which Ext.A5 document may be put to use. The Division Bench by order dated 23.9.2015 dismissed R.P.No.422/2015 holding that there is no error apparent on the face of record, warranting interference with the judgment in exercise of review jurisdiction. In order dated 23.9.2015, the Division Bench has also observed as follows;

"We are unable to see any case of fraud having been practised in obtaining the judgment sought to be reviewed."

17. The judgment and decree of the reference court in L.A.R.No.3/2011 was under challenge in L.A.A.No.180/2015 filed by the State. In L.A.R.No.3/2011, the reference court, relying on the judgment of this Court in L.A.A.No.762/2011 arising out of L.A.R.No.60/2010, re-fixed land value at the rate of Rs. 8,30,000/- per Are. The State filed L.A.A.No.180/2015, contending that, the land value reflected in Ext.A2 judgment in L.A.A.No.762/2011 is not in consonance with the land value prevailing in that locality at the time of Section 4(1) notification. It was contended further that, Ext.A2 judgment of this Court in L.A.A.No.762/2011 is under challenge in a review petition filed by the State.

18. On 30.10.2015, when L.A.A.No.180/2015 came up for final hearing, this Court noticed that the appeal has been moulded by the State with reference to the filing of the review petition against the judgment in L.A.A.No.762/2011. During the course of hearing, it was brought to the notice of this Court that the review petition filed by the State has already been dismissed. It was however stated that, further steps are being taken to pursue the matter further. Since no other ground was raised in the appeal, but for reference to the pendency of the review petition against the verdict in L.A.A.No.762/2011, which stands dismissed, this Court held that L.A.A.No.180/2015 cannot have any more independent existence. Accordingly, the said appeal was dismissed in terms of the judgment in L.A.A.No.762/2011.

19. Sri. K. Narayanan (Parur), the learned counsel for the claimant in L.A.A.No.820/2012 and the connected Cross Objection, and Sri. C.P. Wilson, the learned counsel for the claimants in L.A.A.Nos.707/2012, 727/2012, 550/2013, 652/2013 and 428/2014 and the connected Cross Objections, would contend that, since R.P.No.422/2015 filed by the State seeking review of the judgment in L.A.A.No.762/2011 ended in dismissal vide order dated 23.9.2015, the judgment of this Court in L.A.A.No.762/2011 has attained finality. The learned counsel would contend further that, L.A.A.No.180/2015 filed by the State, arising out of the judgment and decree of the reference court in L.A.R.No.3/2011 has also ended in dismissal by the judgment dated 23.9.2015, taking note of the fact that the judgment in L.A.A.No.762/2011 has attained finality, in view of the dismissal

of R.P.No.422/2015. As such this Court has no option other than to follow the land value re-fixed in L.A.A.No.762/2011.

20. As we have already noticed, in L.A.A.No.762/2011, this Court enhanced the land value of the acquired land in L.A.R.No.60/2010, relying on the land value in respect of 2.84 Ares of land covered by Document No.3860/07 (marked as Ext.A5 in L.A.R.No.60/2010). The said 2.84 Ares of land was also acquired for the construction of Air Enclave for Indian Coast Guard based on the very same Section 4(1) notification. In the said case, the Land Acquisition Officer passed Award No.1/10 dated 16.4.2010, which was under challenge before the reference court in L.A.R.No.59/2010. In that reference, the claim for enhanced land value made by the claimant was based on Document No.811/09 dated 24.9.2009 executed by one Sathish Menon in favour of M.G. Parameswaran Nair (marked as Ext.A1) and its prior document, i.e., Document No.3860/07 dated 5.9.2007 executed by M/s.Shwas Homes Pvt. Ltd. in favour of Sathish Menon (marked as Ext.A2). The reference court in L.A.R.No.59/2010 recategorised the entire extent of 2.84 Ares of land under Category No.III and refixed the total land value at Rs. 17,60,000/- (at the rate of Rs. 6,19,718/- per Are), which is the total sale consideration shown in Document No.811/09, as against Rs. 3,72,373/- awarded by the Land Acquisition Officer.

21. The reference court awarded enhanced land value in L.A.R.No.60/2010, relying on Document No.3860/07, without noticing the pendency of L.A.R.No.59/2010 relating to the acquisition of 2.84 Ares of land covered by the said document, in which the claim for enhanced land value was based on Document No.811/09 and its prior document, i.e., Document No.3860/07. The judgment of the reference court in L.A.R.No.60/2010 is dated 15.10.2011. Nearly 4 months thereafter, the reference court delivered judgment in L.A.R.No.59/2010, on 28.2.2012.

22. The certified copy of the judgment and decree of the reference court in L.A.R.No.59/2010, produced before this Court along with L.A.R.No.820/2012 filed by the State, would show that, based on Application No.523/12 dated 3.3.2012 made by the learned Assistant Government Pleader, certified copy of the judgment and decree was issued on 27.6.2012. On a query made by us, the Registry of this Court has been informed by the reference court that, the learned counsel for the claimant was also issued with certified copy of the judgment and decree in L.A.R.No.59/2010 only on 27.6.2012, based on Application No.506/12 dated 1.3.2012.

23. A reading of Para.6 of the judgment of this Court dated 4.4.2012 in L.A.A.No.762/2011 would show that, the Division Bench of this Court allowed that appeal after taking note of the persuasive submission made by Sri.C.P.Wilson, the learned counsel for the claimant in that appeal, that the reference court has answered Section 18 reference pertaining to the property in L.A.R.No.59/2010 by re-fixing land value at Rs. 6,16,197/- per Are, as against Rs. 1,31,116/- awarded by the Land Acquisition Officer, thereby granting

enhancement of land value by about five times. However, the fact that certified copy of the judgment and decree in L.A.R.No.59/2010 is yet to be issued to the State and also to the claimant in that reference was never brought to the notice of this Court at the time of disposal of L.A.A.No.762/2011.

24. After obtaining certified copy of the judgment and decree in L.A.R.No.59/2010, which was delivered on 27.6.2012, the State filed L.A.A.No.820/2012 before this Court, along with a petition to condone the delay of 87 days in filing the appeal. On receipt of notice in C.M.Appl.No.1128/2012 for condonation of delay the claimant entered appearance through lawyer, who filed vakalath on 1.2.1013. On 18.6.2013, after hearing both sides, this court condoned the delay in filing the appeal and thereafter, the appeal was admitted on 19.8.2013, and this Court has also granted an interim order staying execution of the impugned judgment of the reference court on condition that the appellant State shall deposit 50% of the amount awarded by the reference court within two months, which can be withdrawn by the claimant. Thereafter, on 23.9.2013 the claimant filed C.O.No.84/2013, claiming enhanced land value at the rate of Rs. 8,00,000/- per Are, relying on the judgment of this Court in L.A.A.No.762/2011, a copy of which was produced as Ext.A1 along with the cross objection.

25. A reading of the judgment of this Court dated 23.9.2015 in R.P.No.422/2015 in L.A.A.No.762/2011 would show that, the pendency of L.A.A.No.820/2012 filed by the State before this Court challenging the judgment and decree of the reference court in L.A.R.No.59/2010 and the conditional order of stay granted in that appeal on 19.8.2013 was never brought to the notice of this Court at the time of dismissal of R.P.No.422/2015. This Court, without noticing the fact that, the land value of the property covered by Ext.A5 document is under challenge in L.A.A.No.820/2012 filed by the State, dismissed R.P.No.422/2015, observing that since the Division Bench of this Court in L.A.A.No.762/2011 had specifically adverted to and considered the contents of Ext.A5 document to adjudicate the land acquisition appeal, there is no error apparent on the record of the judgment, warranting interference in exercise of review jurisdiction.

26. Similarly, L.A.A.No.180/2015 filed by the State challenging the judgment and decree of the reference court in L.A.R.No.3/2011, in which the reference court re-fixed land value of the acquired property, relying on the judgment of this Court in L.A.A.No.762/2011, ended in dismissal by judgment dated 30.10.2015, taking note of the dismissal of R.P.No.422/2015, since no other ground was raised in L.A.A.No.180/2015, but for reference to the pendency of the review petition against the judgment in L.A.A.No.762/2011. During the course of arguments, the pendency of L.A.A.No.820/2012 filed by the State challenging the judgment and decree of the reference court in L.A.R.No.59/2010 and the conditional order of stay granted in that appeal on 19.8.2013 was never brought to the notice of this Court.

27. In *Lazarus Estate Ltd. v. Beasley* (1956 (1) QB 702), Lord Denning observed

at pages 712 & 713, "No judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud. Fraud unravels everything". In the same judgment Lord Parker LJ observed that, "fraud vitiates all transactions known to the law of however high a degree of solemnity".

28. The Apex Court on more than one occasion held that, fraud vitiates everything including judicial acts. In *S.P. Chengal Varaya Naidu v. Jagannath* (1994 (1) SCC 1), the Apex Court observed at Para.1 that, "Fraud avoids all judicial acts, ecclesiastical or temporal" observed Chief Justice Edward Coke of England about three centuries ago. The Apex Court held in categorical terms that, a judgment or decree obtained by playing fraud on the court is a nullity and non-est in the eyes of law. Such a judgment/decreed - by the first court or by the highest court - has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings.

29. Again in *A.V. Papayya Sastry v. Government of A.P.* (2007 (4) SCC 186), the Apex Court reviewed the law on this position and reiterated the principle. In Para.39 it was held that, once it is established that the order was obtained by a successful party by practising or playing fraud, it is vitiated. Such order cannot be held legal, valid or in consonance with law. It is non-existent and non-est and cannot be allowed to stand. This is the fundamental principle of law and needs no further elaboration.

30. In the instant case, the pendency of L.A.R.No.59/2010 relating to the acquisition of 2.84 Ares of land covered by Document No.3860/07 was never brought to the notice of the reference court while awarding enhanced land value in L.A.R.No.60/2010, relying on Document No.3860/07. Similarly, the fact that certified copy of the judgment and decree in L.A.R.No.59/2010 is yet to be issued to the State and also to the claimant in that reference was never brought to the notice of this Court, at the time of disposal of L.A.A.No.762/2011, and the learned counsel for the claimant made persuasive submissions before the Division Bench of this Court, as if the land value fixed by the reference court in L.A.R.No.59/2010 has attained finality. Though, L.A.A.No.820/2012 filed by the State challenging the judgment of the reference court in L.A.R.No.59/2010, was admitted as early as on 19.8.2013, the pendency of that appeal and the conditional order of stay was never brought to the notice of this Court at the time of dismissal of R.P.No.422/2015, and this Court without noticing the fact that the land value of the property covered by Ext.A5 document is under challenge in L.A.A.No.820/2012, dismissed R.P.No.422/2015. Similarly, the pendency of L.A.A.No.820/2012 was never brought to the notice of this Court on 30.10.2015, during the course of arguments in L.A.A.No.180/2015. The facts and circumstances referred to above indicate that, the aforesaid judgments/order are obtained by suppression of material facts and also by practising fraud upon this Court. As such, the land value re-fixed/affirmed in those judgments/order, which are vitiated by fraud cannot have any persuasive value while determining the land value of the acquired properties in the present appeals. In that view of the

matter, we repel the contention raised by the learned counsel for the claimants that, in view of the dismissal of R.P.No.422/2015 in L.A.A.762/2011 and L.A.A.No.180/2015, this Court has no option other than to follow in these appeals/cross objections, the land value re-fixed in L.A.A.No.762/2011.

31. Now we shall deal with L.A.A.No.820/2012 and C.O.No.84/2013 in L.A.A.No.820/2012.

32. L.A.A.No.820/2012 is an appeal filed by the State arises out of the judgment and decree of the reference court in L.A.R.No.59/2010. A total extent of 2.84 Ares of property, comprising of 0.81 Ares in Re.Sy.No.120/5, 6 and 7 of Chowara Village in Aluva Taluk (classified as Category No.III by the LAO) and the balance extent of 2.03 Ares (classified as Category No.IV ? "wet now dry land facing private road" by the LAO), was acquired for the construction of Air Enclave for Indian Coast Guard based on Section 4(1) notification dated 31.8.2009. The Land Acquisition Officer passed Award No.1/10 dated 16.4.2010 fixing land value for 0.81 Ares classified as Category No.III at the rate of Rs. 1,97,902/- per Are, that for 2.03 Ares classified as Category No.IV at the rate of Rs. 1,04,469/- per Are.

33. On a reference made under Section 18 of the Act, the reference court by the judgment and decree dated 28.2.2012 in L.A.R.No.59/2010 re-categorised the entire extent of 2.84 Ares as land falling under Category No.III, stating that, in Document No.811/09 dated 29.4.2009 and Document No.3860/07 dated 5.9.2007 (marked as Exts.A1 and A2) the entire property is purchased for a total consideration and the consideration for "dry land" and "wet now dry land" are not separately shown and that, it is nowhere stated in Exts.A1 and A2 documents that out of the entire extent, some extent is "dry land" and the remaining "wet now dry land". The reference court held further that, since the claimant (AW1) purchased the property by Ext.A1, giving Rs. 10,000/- in excess of the consideration shown in Ext.A2, the vender as well as the purchaser in Ext.A1 are the real purchaser and vendor and that, the value shown in Ext.A1 is the real market value of the property and that, it has no bearing on the Section 4(1) notification published after 4 months from the date of execution of Ext.A1. Accordingly, the reference court re-fixed the total land value for 7 Cents of land at Rs. 17,60,000/- (at the rate of Rs. 6,19,718/- per Are), which is the total sale consideration shown in Ext.A1; as against Rs. 3,72,373/- awarded by the Land Acquisition Officer.

34. Challenging the re-categorisation of 2.03 Ares of land from Category No.IV to Category No.III and also the re-fixation of the land value by the reference court relying on Ext.A1 document, the State has filed L.A.A.No.820/2012, contending that, the re-categorisation of land as well as re-fixation of land value by the reference court are absolutely without any legal basis.

35. The State filed L.A.A.No.820/2012 before this Court 18.12.2012, with a delay of 87 days. In C.M.Appl.No.1128/2012 filed for condonation of delay, notice to

the respondent/claimant was ordered on 2.1.2013. Pursuant to the said order notice was sent on 9.1.2013 with a hearing date of 30.1.2013. On receipt of notice, the claimant entered appearance through lawyer, who filed vakalath on 1.2.2013. On 18.6.2013 the claimant has also filed a counter affidavit in C.M.Appl.No.1128/2012. On 18.6.2013, after hearing both the sides, this court condoned the delay in filing the appeal. On 19.8.2013, this Court, after hearing both the sides, admitted the appeal on file and granted an interim order in I.A.No.1746/2012 staying execution of the impugned judgment of the reference court on condition that the appellant State shall deposit 50% of the amount awarded by the reference court within two months, which can be withdrawn by the claimant.

36. Thereafter, the claimant filed C.O.No.84/2013 in L.A.A.No.820/2012 on 23.9.2013, contending that, the observation made by the reference court that, Ext.A2 document does not reflect any escalation in price and that the claimant limits his prayer on Ext.A1 alone is incorrect. Such a concession was never made, even if made it cannot be acted upon. Along with the Cross Objection, the claimant has produced as Annexure A1, a copy of the judgment of this Court dated 4.4.2012 L.A.A.No.762/11, arising out of L.A.R.No.60/2010. In the affidavit filed in support of I.A.No.1558/2013 in C.O.No.84/2013 the claimant has also stated that, his property and the property in L.A.A.No.762/2011 are similarly situated and both the properties have been acquired under the same notification. Hence, Annexure A1 judgment of this Court is squarely applicable in the case of his property also. Therefore, relying on Annexure A1 judgment in L.A.A.No.762/2011, the claimant contends that he is entitled for enhanced compensation at the rate of Rs. 8,00,000/- per Are.

37. As we have already noticed, the reference court in L.A.R.No.59/2010 re-categorised the entire extent of 2.84 Ares as land falling under Category No.III, stating that, in Document No.811/09 dated 29.4.2009 and Document No.3860/07 dated 5.9.2007 (marked as Exts.A1 and A2) the entire property is purchased for a total consideration and the consideration for "dry land" and "wet now dry land" are not separately shown and that, it is nowhere stated in Exts.A1 and A2 documents that out of the entire extent some extent is "dry land" and the remaining "wet now dry land".

38. The claimant who was examined as AW1 deposed that he purchased 2.84 Ares of land by Ext.A1 document for the purpose of constructing a residential building. According to AW1, the property is a pucca "dry land". A reading of the impugned judgment of the reference court would indicate that, in order to substantiate the contention that the entire extent of 2.84 Ares is described as "dry land", the claimant relied on the description of the property in Exts.A1 and A2 documents. However, the recitals of Exts.A1 and A2 documents will not in any manner support or substantiate the contention raised by the claimant in this regard. On the other hand, in Ext.R5 mahazar prepared by the Land Acquisition Officer it has been stated that, out of 2.84 Ares of land, an extent of 2.03 Ares in

Re.Sy.Nos.120/5 and 120/7 is wet land.

39. The mere fact that, as per the reference sketch and mahazar the entire 2.84 Ares of land lie as a single plot without any separating boundary is not a pointer and does not indicate as to the nature of the land. Since an extent of 2.03 Ares is described as "wet land" in the reference records, the burden is upon the claimant to prove otherwise with reliable materials. The claimant could have produced the basic tax receipt or relied on the Basic Tax Register or Thandaper Account Register to show the real nature of the land. The claimant could also have produced the title deed of the vendor in Ext.A2 Document No.3860/07 dated 5.9.2007, i.e., Document No.2940/07 dated 7.7.2007. In the absence of any reliable materials as to the nature of the land, the reference court ought not to have recategorised the acquired land under Category III, i.e., "dry land facing private road" instead of Category IV, i.e., "wet now dry land facing private road", for the reason that, it is nowhere stated in Exts.A1 and A2 documents that out of the total extent of 2.84 Ares some extent is "dry land" and the remaining "wet now dry land". The reasoning of the reference court that, since the entire property covered by Ext.A1 document was purchased for a total consideration and the consideration for "dry land" and "wet now dry land" are not separately shown, the entire property of the claimant should be categorised as Category III, i.e., "dry land facing private road" is per se arbitrary and patently illegal.

40. In that view of the matter, we set aside the finding of the reference court in re-categorising 2.84 Ares of the acquired land as Category III, i.e., "dry land facing private road". It is for the reference court to reconsider this issue, after affording both the sides an opportunity to adduce additional evidence, both oral and documentary.

41. The reference court re-fixed the land value for the acquired land having an extent of 2.84 Ares at Rs. 6,19,718/- per Are relying on Ext.A1 Document No.811/09. Ext.A2 Document No.3860/07 is the prior document of Ext.A1. As per the recitals of Ext.A2 Document No.3860/07 M/s.Shwas Homes Pvt. Ltd. purchased a total extent of 154.66 Ares in Re.Sy.Nos.120/1, 4, 5, 6, 7 and 121/13 in Edanadu Kara in Chowara Village in Aluva Taluk, vide Document No.2940/07 of SRO Sreemoolanagaram, dated 7.7.2007. Thereafter, the Board of Directors of the Company has passed a resolution in its Board Meeting held on 20.7.2007 for sale of demarcated plots in the above said property for persons interested in purchasing the same for constructing villas and accordingly, as authorised by the Board, the plot earmarked 1, having an extent of 2.84 Ares (7 Cents) comprised in Re.Sy.Nos.120/5, 6 and 7 in Edanadu Kara in Chowara Village in Aluva Taluk was sold to Sathish Menon, the vendee in Ext.A2 document for a total sale consideration of Rs. 17,50,000/-, i.e., Rs. 6,16,197/- per Are.

42. As per the recitals of Ext.A1 Document No.811/09 of dated 24.9.2009 executed by the said Sathish Menon in favour of M.G. Parameswaran Nair, 2.84 Ares of land covered by Ext.A2 document was sold for a total consideration of Rs. 17,60,000/-, i.e., Rs. 6,19,718/- per Are, thereby showing a negligible hike of

Rs. 10,000/- in the total sale consideration shown in Document No.3860/07.

43. Other than the recitals in Exts.A1 and A2 documents, there was absolutely no material before the reference court to prove that 2.84 Ares of land referred to in those documents forms part of a villa project promoted by the vendor in Ext.A2 document, i.e., M/s. Shwas Homes Pvt. Ltd.

44. As per the recitals of Ext.A2 Document No.3860/07, the land having an extent of 2.84 Ares forms part of a larger extent of 154.66 Ares, over which the vendor Company acquired title vide Document No.2940/07 and that, the sale reflected in Ext.A2 is pursuant to the resolution of the Board of Directors of the vendor Company for sale of demarcated plots in the said 154.66 Ares to persons interested in purchasing the same for constructing villas. There was absolutely no materials before the reference court to prove the alleged demarcation of the entire extent of 154.66 Ares as recited in Ext.A2 document or sale of any plot other than the 2.84 Ares covered by Exts.A1 and A2 documents to others for constructing villas in that project. We also notice that, the recitals of Ext.A1 document do not even indicate that the 2.84 Ares of land covered by that document forms part of a villa project of M/s. Shwas Homes Pvt. Ltd., having a total extent of 154.66 Ares; except the description in the schedule of that document as to the boundaries of 2.84 Ares of land, as per which it is surrounded by the property of M/s. Shwas Homes Pvt. Ltd. on the eastern, southern and western boundaries, and a 6.00 meter wide private road on the northern boundary.

45. The mere recital in Exts.A1 document as to the existence of a private road on the northern boundary of 2.84 Ares of land covered by that document is not at all sufficient to categorise the said property as one having private road frontage, since the fact that the said extent of 2.84 Ares, which forms part of a larger extent of 154.66 Ares, was lying away from the PWD road is evident from the Group Sketch prepared by the Superintendent of Survey and Land Records, Ernakulam, made available during the course of arguments, by the learned Sr. Government Pleader, for the perusal of this Court. If that be so, unless and until the claimant is able to prove that, at the time of acquisition the larger extent of 154.66 Ares owned by M/s. Shwas Homes Pvt. Ltd. has already been developed into a project for constructing villas, after demarcation of the plots and laying of internal roads, the acquired property having an extent of 2. 8 4 Ares cannot even be treated as one having a private road frontage.

46. Regarding the claim for enhancement in land value, the reference court noticed that no materials are on record to prove the importance of the locality, as stated in the claim statement and the proof affidavit of the claimant, who was examined as AW1. No commission was taken out to assess the importance of the locality. As discernible from Para.9 of the judgment of the reference court, at the time of argument the learned counsel for the claimant submitted that, he did not take any steps to prove the importance of the locality as the claim for enhancement is based on Ext.A1 document alone.

47. Ext.A1 Document No.811/09 dated 24.9.2009 is one executed by the Sathish Menon in favour of M.G. Parameswaran Nair (the claimant in L.A.R.59/2010), in respect of the acquired land in L.A.R.59/2010 having an extent of 2.84 Ares, for a total consideration of Rs. 17,60,000/-. Ext.A2 is the prior document of Ext.A1. Ext.A2 Document No.3860/07 dated 5.9.2007 is one executed by M/s.Shwas Homes Pvt. Ltd. in favour of Sathish Menon, as per which plot earmarked 1, having an extent of 2.84 Ares was sold for a total consideration of Rs. 17,50,000/-.

48. As per the recitals of Ext.A2 document, M/s. Shwas Homes Pvt. Ltd. purchased a total extent of 154.66 Ares vide Document No.2940/07 dated 7.7.2007. When the claim for enhancement in land value made by the claimant was solely based on Exts.A1 and A2 documents, the reference court ought to have insisted the claimant to produce Document No.2940/07, which is the prior document of Ext.A2, especially when the execution of Ext.A2 is within a short span of two months. Though the claimant as AW1 deposed that the acquired land is situated in an important locality, the escalation in the total sale consideration of 2.84 Ares reflected in Exts.A1 and A2 documents, which are executed with a time lag of nearly two years, is only Rs. 10,000/-.

49. The reference court, taking note of the fact that the consideration shown in Ext.A1 document is Rs. 10,000/- in excess of that shown in Ext.A2 document, concluded that the vendor and vendee in Ext.A1 document are real and the land value shown in Ext.A1 is the real market value of that property. The reference court concluded further that, since Section 4(1) notification has been issued 4 months after the execution of Ext.A1 document, the land value reflected therein has no bearing on that notification. Accordingly, the reference court re-fixed the total land value for 2.84 Ares of land at Rs. 17,60,000/- (at the rate of Rs. 6,19,718/- per Are), which is the total sale consideration shown in Ext.A1; as against Rs. 3,72,373/- awarded by the Land Acquisition Officer.

50. Sri. K. Narayanan, the learned counsel for the appellant would contend that, the fact that the claimant in L.A.R.No.59/2010 is the father of one of the Directors of the vendor company in Document No.3860/07 and that, in Document No.811/09 executed after a lapse of about 2 years, there is only a negligible hike of Rs. 10,000/- in the total sale consideration, are not at all sufficient to doubt the genuineness of those document or the land value reflected therein. We are unable to accept the aforesaid contention of the learned counsel, considering the facts and circumstances of the instant case referred to hereinbefore.

51. It is pertinent to note that, one of the grounds raised by the claimant in C.O.No.84/2013 filed before this Court claiming further enhancement in land value is that the price in the locality is on increase day-by-day and even the Land Acquisition Officer has taken note of an increase 20% per year. The above contention raised in the cross objection cuts the root of the claimant's case that the land value shown in Ext.A1 is the real market value of that property. In such

circumstances, the re-fixation of land value of the acquired land by the reference court at Rs. 6,19,718/-, per Are, merely based on Exts.A1 and A2 as against Rs. 3,72,373/- awarded by the Land Acquisition Officer, cannot be sustained.

52. In that view of the matter, we set aside the re-fixation of land value as above made by the reference court. It is for the reference court to reconsider that issue, after affording both the sides an opportunity to adduce additional evidence, both oral and documentary.

53. In the result, the judgment and decree of the reference court dated 28.2.2012 in L.A.R.No.59/2010 is set aside and the matter is remanded to the reference court for fresh consideration. The reference court shall dispose of the matter afresh, after affording both the sides an opportunity to adduce additional evidence, both oral and documentary, and taking note of the observations contained in this judgment. L.A.A.No. 820/2012 and C.O.No. 84/2013 in L.A.A.No. 820/2012 stand disposed of as indicated above.

54. In view of the order of remand, the claimant/Cross Objector in C.O.No.84/2013 in L.A.A.No.820/2012 will be entitled for refund of an appropriate extent of the court fee paid along with the memorandum of Cross Objection, in accordance with the provisions under the Kerala Court Fees and Suit Valuation Act, 1959 and it is ordered accordingly.

55. Now we shall deal with L.A.A.Nos.550/2013 and 652/2013.

56. L.A.A.No.550/2013 filed by the claimant and L.A.A.No.652/2013 filed by the State arise out of the judgment and decree of the reference court in L.A.R.No.5/2011. A total extent of 152.86 Ares of property, comprising of 27.29 Ares in Re.Sy.No.120/1, 4 and 6 of Chowara Village in Aluva Taluk and the balance extent of 125.77 Ares was acquired based on Section 4(1) notification dated 31.8.2009. The Land Acquisition Officer passed Award No.7/10 dated 13.7.2010 fixing land value for 27.29 Ares classified as Category No.I at the rate of Rs. 2,59,746/- per Are and that for 125.77 Ares classified as Category No.II at the rate of Rs. 1,13,966/- per Are. On a reference made under Section 18 of the Act, the reference court by judgment and decree dated 31.1.2013 in L.A.R.No.5/2011 re-fixed the land value for 27.29 Ares classified as Category No.I at Rs. 8,30,000/- per Are, relying on Ext.A1 judgment of this Court in L.A.A.No.762/2011 arising out of L.A.R.No.60/2010. For the remaining 125.77 Ares classified as Category No.II the reference court enhanced the land value by Rs. 2,27,932/- per Are. The claimant, not being satisfied with the enhancement ordered by the reference court, is before this Court in L.A.A.No.550/2013, claiming re-fixation of the land value for 125.77 Ares classified as Category No.II at Rs. 8,30,000/-, treating the said land as "dry land" falling under Category No.I. On the other hand, in L.A.A.No.652/2013 the challenge made by the State is against the re-fixation of land value at Rs. 2,27,932/- by the reference court in respect of 125.77 Ares classified as Category No.II, contending that re-fixation of land value by the reference court is without any legal basis.

57. As we have already noticed, the basis for enhancement of land value by the reference court in L.A.R.No.5/2011 is Ext.A1 judgment of a Division Bench of this Court in L.A.A.No.762/2011, arising out of the judgment and decree of the reference court in L.A.R.No.60/2010 in which, relying on Document No.3860/07 dated 5.9.2007 executed by M/s.Shwas Homes Pvt. Ltd. in favour of one Satheesh Menon, the Division Bench re-fixed land value of the acquired property in L.A.R.No.60/2010 at Rs. 8,30,000/- per Are.

58. For the reasons stated hereinbefore, in Paras.32 to 52 we have set aside the re-fixation of land value made by the reference court in L.A.R.No.59/2010, at the rate of Rs. 6,19,718/- per Are (based on the total consideration of Rs. 17,60,000/- shown in Document No.811/09 for 2.84 Ares of land) as against the total land value of Rs. 3,72,373/- awarded by the Land Acquisition Officer and directed the reference court to reconsider that issue, after affording both the sides an opportunity to adduce additional evidence, both oral and documentary. Document No.3860/07 relied on by the reference court in L.A.R.No.60/2010 is the prior document of the very same property having an extent of 2.84 Ares in which the total sale consideration is shown as Rs. 17,50,000/-. Moreover, for the reasons stated hereinbefore in Paras 20 to 30, we have also repelled the contention raised by the claimants that, in view of the dismissal of R.P.No.422/2015 in L.A.A.762/2011, this Court has no option other than to follow the land value re-fixed in L.A.A.No.762/2011. In that view of the matter, the re-fixation of land value made by the reference court in L.A.R.No.5/2011 cannot be sustained.

59. As we have already noticed, on 6.1.2015 the appellant/State has filed an interlocutory application under Order XXLI Rule 27 of the Code of Civil Procedure, 1908, in L.A.A.No.652/2013, producing therewith photocopies of various documents including copy of Document Nos.2940/07 and 2941/07 dated 7.7.2007, out of which Document No.2940/07 is the prior document in respect of Document No.3860/07; the document relied on by the Division Bench of this Court while refixing the land value at Rs. 8,30,000/- per Are in Ext.A1 judgment in L.A.A.No.762/2011. The documents produced along with the interlocutory application as Annexures I to V are only photocopies. Though the Registry noted defect on 6.1.2015 itself, the State has not taken necessary steps to cure the defect noted by the Registry and as such the said interlocutory application still remains unnumbered and tagged along with the Judge's paper in L.A.A.No.652/2013.

60. As per Document No.2940/07 dated 7.7.2007, produced along with the said interlocutory application (marked as Annexure I in that I.A.), M/s.Shwas Homes Pvt. Ltd., represented by its Director Sreeni Parameswaran, S/o. M.G.Parameswaran Nair, purchased a total extent of 154.66 Ares comprised in Re.Sy.Nos.120/1, 4, 5, 6, 7 and 121/13 in Edanadu Kara in Chowara Village in Aluva Taluk, from the vendors in that document, for a total consideration of Rs. 1,00,00,000/-, i.e., Rs. 64,658/- per Are. The said document would also show

that, at the time of registration the vendors were identified before the SRO Sreemoolanagaram, by Sathish Menon, S/o.Sankarankutty Menon, residing at Chaithanya, Edappally, who is none other than the vendee in Document No.3860/07 dated 5.9.2007, executed by M/s.Shwas Homes Pvt. Ltd. (marked as Annexure III in that I.A.), in which the sale consideration for a plot having an extent of 7 Cents, out of the total extent of 154.66 Ares in Document No.2940/07 of SRO Sreemoolanagaram, dated 7.7.2007, is shown as Rs. 6,16,197/- per Are. Thereafter, vide Document No.811/09 dated 24.9.2009 (marked as Annexure V in that I.A.) the said Sathish Menon sold the very same extent of 2.84 Ares in favour of M.G. Parameswaran Nair (who is none other than the father of Sreeni Parameswaran, one of the directors of M/s.Shwas Homes Pvt. Ltd.) for a total consideration of Rs. 17,60,000/-, i.e., Rs. 6,19,718/- per Are.

61. Sri. C.P. Wilson, the learned counsel for the claimant would contend that, photocopies of the documents cannot be accepted in an application filed under Order XXLI Rule 27 of the CPC. Further, in the affidavit filed in support of the interlocutory application, the State has not made out a case for this Court to permit production of additional evidence in appellate court. In order to buttress the said contention, the learned counsel would rely on the judgments of the Apex Court in *Vasanth Viswanathan v. V.K. Elayalwar* (2001 (8) SCC 133), *State of Gujarat v. Mahendrakumar Parshottambhai Desai* (2006 (9) SCC 772) and *Haryana State Industrial Development Corporation v. Cork Manufacturing Co.* (2007 (8) SCC 120).

62. Sri. C.P. Wilson, the learned counsel would contend further that, since Document Nos.2940/07 and 2941/07 of SRO Sreemoolanagaram, dated 7.7.2007 are not made part of the records of the Land Acquisition Officer nor anyone was examined in proof of the circumstances in which those documents happened to be executed with the sale considerations mentioned therein, neither the reference court nor this court is bound to accept those documents. In order to buttress the said contention, the learned counsel would rely on the judgment of a Division Bench of this Court in *State of Kerala v. Malankara Rubber and Produce Co. Ltd.* (1999 (2) KLT 613).

63. As held by the Apex Court in the decisions referred to supra, relied on by the learned counsel for the claimant, an additional document can be accepted only if due diligence is established despite which the party could not produce the same before the trial court. But in the instant case, Document Nos.2940/07 and 2941/07 are the basic documents of the acquired land having an extent of 154.66 Ares. The said documents form part of the records of the Land Acquisition Officer, in the absence of which the claimant could not have proved his title over the acquired land. Therefore, there is no necessity to accept on record the basic documents of the acquired land as additional documents in this appeal. Moreover, for reasons best known to the claimant, the basic documents of the acquired land were not relied on before the reference court. In such a factual matrix, the law laid down by this Court in *Malankara Rubber and Produce Co.*'s case, which is on

an entirely different factual matrix, has no application in the instant case. It is pertinent to note that the judgment in *Malankara Rubber and Produce Co.'s case* (supra) was held per incurium in *State of Kerala v. Padmanabha Iyer* (2000 (3) KLT 661).

64. The fact that M/s. Shwas Homes Pvt. Ltd., represented by its Director Sreeni Parameswaran, is the vendee in Document Nos.2940/07 is not disputed by the learned counsel for the claimant. Document No.2940/2007, which is the title deed in respect of the acquired land in L.A.R.No.5/2011 and the land value mentioned therein are not even referred to in the impugned judgment of the reference court. Instead, the reference court re-fixed the land value relying on Ext.A1 judgment of this court in L.A.A.No.762/2011. In that view of the matter, the re-fixation of land value by the reference court even without considering the land value of the acquired land as reflected in the title deed executed just two years prior to the Section 4(1) notification is per se arbitrary and patently illegal, which cannot be sustained for this reason as well.

65. We also notice that, the reference court has also not considered the very entitlement of the claimant Sreeni Parameswaran, who is only a Director of M/s. Shwas Homes Pvt. Ltd., a Company incorporated under the provisions of the Companies Act, 1956, to make such a reference under Section 18 of the Act claiming enhancement in the compensation awarded by the Land Acquisition Officer, in respect of the 125.77 Ares owned by the said company, on the strength of Document No.2940/07.

66. In *Santhosh Babu P.T. v. Jayabharatham Nursing Home (Pvt) Limited* (2014 (4) KLT 45) a Division Bench of this Court in which one among us [AKN(J)] was a member, held that, a Company incorporated under the provisions of the Companies Act, 1956 is a separate legal entity distinct from its individual shareholders or Directors. A Company is a juristic person and has an existence independent from that of the shareholders and it is the Company which owns its assets and not the shareholders. There is nothing in the Companies Act to warrant the assumption that a shareholder who buys shares buys any interest in the property of the Company, which is a juristic person entirely distinct from the shareholders. On buying shares a shareholder becomes entitled to participate in the profits of the Company in which he holds the shares, if and when the Company declares that profits or any portion thereof should be distributed by way of dividend among the shareholders. The shareholders have a further right to participate in the surplus assets of the Company which would be left over after distribution among creditors, on winding up of the said Company.

67. In the result, the judgment and decree of the reference court dated 30.1.2013 in L.A.R.No.5/2011 is set aside and the matter is remanded to the reference court for fresh consideration. The reference court shall dispose of the matter afresh, after affording both the sides an opportunity to adduce additional evidence, both oral and documentary, and taking note of the observations contained in this judgment. L.A.A.Nos.550/2013 and 652/2013 shall stand

disposed of as indicated above.

68. In view of the order of remand, the claimant/appellant in L.A.A.Nos.550/2013 will be entitled for refund of the appropriate extent of the court fee paid along with the memorandum of Cross Objection, in accordance with the provisions under the Kerala Court Fees and Suit Valuation Act, 1959 and it is ordered accordingly.

69. Now we shall deal with the remaining appeals, i.e., L.A.A.Nos.707/2012 and C.O.No.67/2015 in L.A.A.No.707/2012, L.A.A.No.727/12 and C.O.No.58/2015 in L.A.A.No.727/2012, L.A.A.No.428/2014, L.A.A.No.58/2014 and C.O.No.61/2015 in L.A.A.No.58/2014, the facts of which have already been dealt with hereinbefore at Paras.4.3, 4.4, 4.9, 4.10 and 4.11.

70. As we have already noticed, the basis for enhancement of land value by the reference court in L.A.R.Nos.4/2011, 6/2011, and 73/2010 is Ext.A1/A2 judgment of the Division Bench of this Court in L.A.A.No.762/2011, arising out of the judgment and decree of the reference court in L.A.R.No.60/2010, relying on Document No.3860/07 dated 5.9.2007 executed by M/s. Shwas Homes Pvt. Ltd. in favour of Satheesh Menon (which property is the subject matter in L.A.A.No.820/2012, arising out of L.A.R.No.59/2010). In L.A.R.No.12/2012 arising out of Section 4(1) notification dated 2.8.2011, the basis for enhancement of land value by the reference court is its own judgment in L.A.R.No.3/2011 (marked as Ext.A1), in which the reference court re-fixed land value in respect of another property acquired pursuant to Section 4(1) notification dated 31.8.2009, relying on the judgment of the Division Bench judgment of this Court in L.A.A.No.762/2011.

71. For the reasons stated hereinbefore, in Paras.32 to 52 of this judgment we have set aside the re-fixation of land value made by the reference court in L.A.R.No.59/2010, at the rate of Rs. 6,19,718/- per Are (based on the total consideration of Rs. 17,60,000/- shown in Document No.811/09 for 2.84 Ares of land) and the reference court is directed to reconsider that issue, after affording both the sides an opportunity to adduce additional evidence, both oral and documentary. Document No.3860/07 relied on by the reference court in L.A.R.No.60/2010 is the prior document of the very same property having an extent of 2.84 Ares in which the total sale consideration is shown as Rs. 17,50,000/-. Moreover, for the reasons stated hereinbefore in Paras.20 to 30 we have repelled the contention raised by the claimants that, in view of the dismissal of R.P.No.422/2015 in L.A.A.762/2011 and L.A.A.No.180/2015 (arising out of L.A.R.No.3/2011), this Court has no option other than to follow the land value re-fixed in L.A.A.No.762/2011. In that view of the matter, the re-fixation of land value made by the reference court in L.A.R.Nos.4/2011, 6/2011, 73/2010 and 12/2012 cannot be sustained.

72. In the result, the judgment and decree of the reference court dated 17.7.2012 in L.A.R.No.4/2011, that dated 19.7.2012 in L.A.R.No.6/2011, that

dated 7.2.2012 in L.A.R.No.73/2010 and that dated 26.7.2013 in L.A.R.No.12/2012 are set aside and the matter is remanded to the reference court for fresh consideration. The reference court shall dispose of the matter afresh, after affording both the sides an opportunity to adduce additional evidence, both oral and documentary, and taking note of the observations contained in this judgment. L.A.A.Nos.707/2012, 727/2012, 428/2014 and 58/2014 and C.O.Nos.67/2015, 58/2014 and 61/2015 shall stand disposed of as indicated above.

73. In view of the order of remand, the claimant/appellant in L.A.A.Nos.707/2012, 727/2012, 550/2013 and 58/2014 and C.O. Nos. 84/2013 and 61/2015 will be entitled for refund of appropriate extent of the court fee paid along with the memorandum of appeal/Cross Objection, in accordance with the provisions under the Kerala Court Fees and Suit Valuation Act, 1959 and it is ordered accordingly.

74. In support of the claim made for further enhancement of land value, by treating the respective properties as "dry land", instead of "wet now dry land, the learned counsel for the claimants in this batch of cases advanced arguments relying on various judgments. Since the judgment and decree of the reference court is set aside and the matter is remanded to the reference court for fresh consideration, all such contentions raised by the respective claimants are left open and it is for them to raise all such contentions before the reference court.

75. Both parties shall appear before the reference court on 11.7.2016 and the reference court shall finally dispose of the matter as expeditiously as possible, at any rate within an outer limit of four months from that date.