(2011) 03 KL CK 0308

In the High Court Of Kerala

Case No : L.A. App. No. 958 of 2010 (D)

A.T. George '' Georgekutty	APPELLANT
Vs	
The State of Kerala and The Executive Engineer	RESPONDENT

Date of Decision : 09-03-2011

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

Citation : (2011) 03 KL CK 0308

Hon'ble Judges : Pius C. Kuriakose, J;N.K. Balakrishnan, J

Bench : Division Bench

Advocate : Jacob P. Alex, for the Appellant; Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Pius C. Kuriakose, J.—The claimant is the Appellant. His property in Konni village was acquired for the purpose of up-gradation of Punalur-Moovattupuzha Road. The acquisition was pursuant to Section 4(1) notification published on 11.8.2005. The Land Acquisition Officer included a portion of the properties in category B and awarded land value at the rate of Rs. 1,02,057/- per Are. The remaining portion was included in category ''C'' and awarded a land value of Rs. 84,040/-. Before the Reference Court the Appellant placed reliance on Exts. A3 and A4 documents. Ext. A3 was a pre-notification document executed on 8.11.2001 (3 years and 9 months prior to the notification u/s 4(1)). Ext. A3 reflected a land value of Rs. 65,761/- per cent. Ext. A4 was a post notification document executed on 19.10.05 (about 2 months subsequent to the notification u/s 4(1)]. Ext. A4 reflected a land value of Rs. 1,79,104/- per cent.

2. One of the contentions which was raised by the Appellant before the Reference Court was that there was no justification for including a portion of his properties in category B and balance portion in category C, and that the entire property should have been included in category B itself.

3. The learned Reference Court did not place reliance on Ext. A4. It did not place reliance on Ext. A3 either. Ultimately by doing guess work and also taking into account Ext. C1 series of Commissioner''s report and the oral evidence of the parties the learned Subordinate Judge would refix the market value of the land (treated to be the entire land in category B at Rs. 1,50,000/- per Are).

4. In this appeal several grounds are raised assailing what is described as the inadequacy in the compensation redetermined by the Reference Court. Sri. Joseph P. Alex, learned Counsel for the Appellant addressed strenuous and persuasive arguments before us on the basis of the various grounds raised. He submitted that the Court below was not justified in discarding Exts. A3 and A4.

5. As regards Ext. A4 he submitted that though the document is a post-notification one, nothing was brought out in the evidence to show that higher value shown in Ext. A4 is on account of the widening of the road pursuant to the present acquisition. He argued that Exts. A3 and A4 read jointly will show that the percentage of escalation per area in the year was at least 21% per year. According to him the observation of the learned Subordinate Judge that the Commissioner has not reported that the property covered by Ext. A3 and the property under acquisition are not adjacent and that the Commissioner''s report will not enable the Court to locate the relevant position of the acquired property and the property under Ext. A3 is incorrect. He drew our attention to page 8 of the Commissioner''s report where the Commissioner has clearly reported that the distance between Ext. A3 property and the acquired property is just 27 meters.

6. All the submissions of the learned Counsel, Joseph P. Alex were resisted very strongly by Smt. Josephina, the learned Government Pleader. According to her Ext. A4 cannot be taken into account at all. Even Ext. A3 cannot be taken into account as the advocate Commissioner''s report does not enable the Court to locate the same with reference to the acquired property. In the absence of any document justifying enhancement of the value, what the Court below could have done is to do guess work and refix the value based on other evidence available and the other evidence available is only the oral evidence and the Commissioner''s report. Though the Commissioner has reiterated that the property is situated in a commercially important area significantly the Commissioner does not recommend any particular rate for the property.

7. We have very anxiously considered the rival submissions addressed before us. We have also applied our mind to the judgment of the Courts below, Exts. A3 and A4 documents and the Commissioner''s report. We are of the view that the learned Subordinate Judge was not justified in discarding Ext. A3 on the reason that there was nothing to show that Exts. A3 property and the acquired property were adjacent. First of all, insistence of the property covered by Ext. A3 to be situated adjacent to the acquired property is not justifiable. Ext. A3 document will become relevant if the property covered by the same is comparable in nature to the acquired property and is situated within a reasonable distance. The learned Subordinate Judge has observed that even Ext. C1 series of

Commissioner''s reports does not enable her to locate Ext. A3 with reference to the acquired property. But we find from the Commissioner''s report that Ext. A3 property is situated at a distance of 27 meters from the acquired property. We are sure that as properties covered by Ext. A3 are comparable to the acquired property situated within a distance of hardly 27 meters, the acquired property and the property covered by Ext. A3 had the same value. Ext. A3 was executed three years and nine months prior to Section 4(1) notification. Though it was argued before Court below and before us also, that the escalation in land value in Konni village during the relevant period was about 15% per year, we do not find any material justifying the same. Of course Exts. A3 and A4 read together may indicate that escalation in the area during the period between Exts. A3 and A4 document is more than 15%. But we are not inclined to look into Ext.A4 as the same is a post notification document especially in this case where the basis document and Ext. A3, both pre-notification documents are available before us. For deciding as to what should be the proper percentage to be taken to provide for passage of time, we notice judgment of the Hon''ble Supreme Court reported in 2008 SAR 894 (General Manager, Oil and Natural Gas Corporation Ltd. v. R. Jivan Bhai Patel and Anr.). Though Mr. Joseph Alex argued that Konni is an urban area, we are of the view that the area of the acquired property was only semi-urban and the maximum addition that can be granted due to passage of time is 10% per year. Making additions on the value reflected in Ext. A3 that way, the value of the property at the relevant time will be found to be Rs. 2,23,437/- per Are. We refix the value of the acquired property also at Rs. 2,23,437/- per Are.

8. The appeal is allowed as above and the compensation will be refixed at the rate of Rs. 2,23,437/- per Are. The Appellant will be entitled to enhanced compensation on the basis of the above refixation. He will be entitled to all statutory benefits which are provided Under Sections 23(2), 23(1A) and Section 28 of Land Acquisition Act. Parties will suffer their respective costs.