

**(2011) 03 KL CK 0108**

**In the High Court Of Kerala**

**Case No :** C.M. Appl.No.2129 of 2010 in L.A. App. No. 1297 of 2010

Divakaran

APPELLANT

Vs

State of Kerala

RESPONDENT

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**Date of Decision :** 08-03-2011

**Acts Referred:**

Land Acquisition Act, 1894 — Section 23(1A), 23(2), 28

**Citation :** (2011) 03 KL CK 0108

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

**Bench :** Division Bench

**Advocate :** Vinoy Varghese Kallumoottil, for the Appellant; Government Pleader, for the Respondent

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## **Judgement**

Pius C. Kuriakose, J.—Under challenge in this appeal filed by the claimant is what he describes as an inadequacy of the total compensation redetermined by the Reference Court for his properties acquired for the purpose of construction of Kallummoottilkadavu bridge and approach road. In this appeal we are not concerned with the correctness of the land value fixed as we notice that the land value at the rates given to the Appellant have been approved by this Court in other cases including L.A.A. No. 1320/2010 decided by ourselves.

2. The question to be considered first in this appeal is as to whether the court below was justified in not awarding any enhancement towards the value of the building which existed on the acquired property. The Land Acquisition Officer awarded a total amount of Rs. 4,91,000/- towards the building value. The court below did not award any enhancement towards the building value. Obviously there was no acceptable legal evidence before the court below on the basis of which enhancement could have been granted. But, the learned Counsel for the Appellant submits that the possession of the acquired property including the building was taken over immediately and the claimant did not have time to facilitate filing of a commission report. We find some merit in the above submission. Obviously it is on the basis of the valuation made by the PWD that

the Land Acquisition Authority fixed the building value at Rs. 4,91,000/-. It is a matter of common knowledge that the construction of buildings in accordance with the PWD's scheduled rates is not a pragmatic proposition. Even the PWD is tendering out its civil works at 30 to 35% more than its published rates. Taking all these aspects into account, the Appellant can be awarded a further amount of Rs. 1,47,300/- towards the building value. We accordingly award to the Appellant Rs. 1,47,300/- as additional compensation towards the building value.

3. The Appellant has another grievance. We find some genuinenesses in the above grievance. It is found by the Reference Court that on account of the acquisition the Appellants' unacquired property has been injuriously affected to the extent of 20%. Under the impugned judgment, the Appellant has been given compensation for injurious affection only for 1.25 Ares which is the extent actually acquired. The compensation for injurious affection is a compensation to be awarded for the unacquired properties. The extent of unacquired property is 12.5 cents. When that is taken into account, it will be seen that the Appellant is entitled for a total amount of Rs.46,272/- towards injurious affection of the unacquired property. It is seen that Appellant was paid a sum of Rs. 11,434/- towards this count. After deducting this amount, balance amount payable to the Appellant towards injurious affection comes to Rs. 34,838/-. We award to the Appellant Rs. 34,838/- towards additional compensation for injurious affection of the unacquired property.

The appeal is allowed to the above extent. The Appellant will be entitled for statutory benefits admissible u/s 23(2), 23(1A) and Section 28 of the Act on the additional compensation awarded by us towards the building value. But, on the total compensation, to which the Appellant becomes eligible by virtue of this judgment towards injurious affection, he will be eligible only for statutory interest u/s 28 of the Act. While the decree is drafted and provision is made for interest u/s 28, the Registry will have due regard to the conditions imposed by us in our order dated 1/3/2011 in C.M. Appln. No. 2129/2010. No costs.

#### ORDER

4. Delay is condoned on condition that in the event of the appeal being allowed and the Appellant becoming eligible for enhanced compensation, such enhanced compensation will not carry interest otherwise admissible u/s 28 of the L.A. Act during the period of 88 days condoned by this order.

Annex a copy of this order to the judgment to be passed in the appeal. Send up the appeal for admission on 7/3/2011.