
(2012) 07 KL CK 0330
In the High Court Of Kerala
Case No : LA. App. No. 288 of 2012

Divakaran

APPELLANT

Vs

The State of Kerala and The Southern Railway

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 0330

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

Bench : Division Bench

Advocate : M.V. Thamban, Sri. R. Reji, Smt. Thara Thamban and Sri. B. Bipin, for the Appellant; M.C. Cherian, Sr. SC., Railways for R2, Sri. C.S. Dias, SC, Railways and Government Pleader Sri. S. Jamal for R1, for the Respondent

Judgement

Pius C. Kuriakose, J.—The claimant is the appellant. His property in Pathiyoor village together with portion of certain structures situated thereon was acquired at the instance of the Railway for the double lining of Kayamkulam - Mavelikara Railway. This acquisition was pursuant to Section 4 (1) notification published on 27/12/2004. The Land Acquisition Officer awarded land value at the rate of Rs. 19,395/- per Are. For the structures, he awarded total compensation of Rs. 1,22,000/-. Before the Reference Court the appellant had claimed for more compensation for the land acquired as well as compensation for injurious affection of the unacquired portion of the land extending to 1.95 Ares. The appellant took out a commission and the commissioner filed Ext. C1 report and Ext. C1A sketch. In Ext. C1 report, the commissioner reported that value of the unacquired property was reduced to the extent of 75% because of the acquisition in the present fashion. The learned Subordinate Judge, however, was not impressed by the commissioner's recommendations. Hence, no compensation was awarded towards injurious affection of the unacquired property of the appellant. Relying, to a certain extent, on Ext A1 document the learned Sub Judge refixed the value of the acquired property at Rs. 27,000/- per Are. The learned Subordinate Judge did not award any enhanced compensation towards

structure. In this appeal, the claim is confined to total land value to the extent of Rs. 50,000/- for the entire land acquired and sum of Rs. 50,000/- as compensation for injurious affection of the unacquired portion of the appellant.

2. We have heard the submissions of the Learned Counsel for the appellant and those of the learned Standing Counsel for the Railways.

3. Drawing our attention to Ext.A1 sale deed, the Learned Counsel for the appellant submitted that Ext.A1 reflected land value of Rs. 1 Lakh per cent. Ext.A1 was in the same village and was pre notification document. According to the Learned Counsel, there is every justification for awarding the enhanced land value claimed in this appeal. As regards the compensation for injurious affection, the submission was based on Ext.C1. According to the Learned Counsel, if at least 25% is found to be the percentage of diminution suffered by the unacquired property of the appellant on account of the acquisition, there will be justification for awarding the appellant's claim in full.

4. The learned standing counsel for the Railways would oppose all the submissions of the counsel for the appellant. It was submitted that there is no comparison between Ext.A1 property and the property under acquisition. Ext.A1 was property enjoying direct frontage of the National Highway and situated far away from the acquired property. As regards the appellant's claim for injurious affection, the submission was that it is not correct to say that the appellant's unacquired property was reduced to the shape of triangle because of the acquisition. Even earlier, it was a slightly bigger triangle, so submitted the learned standing counsel. Our attention was drawn by the learned standing counsel to our own judgment in L.A.A. No. 692/2011. She submitted that under that judgment value of identical land was refixed by this Court at Rs. 45,000/- per Are.

5. Having given our anxious consideration to the rival submissions addressed at the Bar we are of the view that the market value of the land under acquisition would be fixed on the basis of Ext.A1. The comparability between the property under acquisition and Ext.A1 property has not been brought out through the commission report. Ext.A1 was obviously much superior to the property under acquisition. According to us, the judgment of this Court LAA. No. 692/2011 has considerable probative value. Under that judgment, value of identical land acquired for the same purpose pursuant to the same notification was refixed by this Court at Rs. 45,000/- per Are. We follow that judgment and refix the value of land under acquisition in this appeal at Rs. 45,000/- per Are.

6. We shall now come to the question of compensation, if any, payable for the injurious affection of the unacquired property of the appellant. Having carefully scanned Ext.C1 and C1(a), we are of the view that the unacquired property of the appellant extending to 1.95 has not been affected much on account of the acquisition in the present fashion. At best it could be said that the size of the appellant's property has been reduced by.88 Ares. At the same time, we feel

that there is justification for awarding to the appellant compensation for injurious affection at the rate of 5% of the value of unacquired land. This means that the appellant will be eligible for a total amount of Rs. 4,400/- (rounded off) towards compensation for injurious affection and we award that amount to the appellant towards compensation for injurious affection. The additional amount awarded by us will carry all the statutory benefits u/s 23 (2), 23(1A) and Section 28 of the Act. But, the compensation awarded towards injurious affection will carry interest only u/s 28 of the Act.

Parties are directed to suffer their respective costs. While decree is drafted, the section will have due regard to the conditions imposed by this Court in its order in C.M. Appln. No. 433/2012. Decree copy will be issued only after ensuring that the full court fee payable on the appeal memorandum is remitted by the appellant.