

(2014) 12 KL CK 0080
In the High Court Of Kerala
Case No : L.A.A. No. 464 of 2014

D.K. Sanker (Died)

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 03-12-2014

Acts Referred:

Land Acquisition Act, 1894 — Section 4(1)

Citation : (2014) 12 KL CK 0080

Hon'ble Judges : T.R. Ramachandran Nair, J;P.V. Asha, J

Bench : Division Bench

Advocate : Basant Balaji, Advocate for the Appellant; K.A. Jaleel, S.C. and R. Padmaraj, Government Pleader, Advocate for the Respondent

Judgement

T.R. Ramachandran Nair and P.V. Asha, JJ.—This appeal is filed by the appellant aggrieved by the judgment in L.A.R No. 604 of 2009 on the file of the II Additional Sub Court, Thiruvananthapuram. Herein the property was acquired for widening of G.G Hospital-Kumarapuram-Poonthi-Anamugham-NH Bye pass. The Notification under Section 4(1) of the Land Acquisition Act was published on 26.06.2006 and the Land Acquisition Officer has fixed the land value at Rs. 2,23,313 per Are. The claimant claimed Rs. 30 lakhs per cent and the land value awarded by the Reference Court is at Rs. 11,11,500/- per Are.

2. The learned counsel for the appellant submitted that the appellant has claimed land value at Rs. 12,35,000/- per Are in this appeal. He is also seeking enhancement of structure value by Rs. 1,50,000/- in this appeal whereas the Land Acquisition Officer has granted Rs. 1,00,286/- for the same.

3. The main argument raised by the learned Sr. Government Pleader Sri. Padmaraj is that, the Land Acquisition Officer has divided the entire stretch of the road portion into three Reaches in the following manner: Reach I-G.G. Hospital junction to Kumarapuram Junction (Pattom Village), Reach II-Kumarapauram Junction to Sree Chitra Quarters Road (Cheruvaikal Village), Reach III- Sree Chitra Quarters Road to N.H. Bye Pass (Kadakampally Village).

4. It is submitted that the same amounts to a categorisation of the areas acquired, in the light of the importance of the different items of properties and their less importance etc. It is submitted that for Reach -I, the land value has been fixed at the rate of Rs. 2,48,125/-, for Reach-II, it is Rs. 2,23,313/-, and for Reach III-A, it is Rs. 1,97,775/-. It is therefore, submitted that, the view taken by the reference court by relying upon the judgment in L.A.A. 151/2011 is not correct. According to the learned Sr. Government Pleader, there should have been a proper deduction, for the less importance of the acquired property in Reach-II and Reach III-A, from the land value fixed in L.A.A. No. 151/2011. Therefore, he vehemently submitted that, this Court will be justified, in reducing a percentage of amount in these two Reaches.

5. The above argument is countered by the learned counsel appearing for the claimants, pointing out that, by dividing the entire stretch into three different portions as Reach I, Reach II & Reach III, no scientific method has been adopted by the Land Acquisition Officer. It is submitted that, it can be easily demonstrated by reference to the facts of the cases that Reach-I is in respect of properties in Pattom Village, Reach II in the stretch of properties in Cheruvaikal Village, and Reach III that of the Kadakampally Village. But the properties are on either side of the existing road which will not show that, any of the properties can be differentiated on Village basis or on any other basis. It is further submitted that, even in respect of the division now given, the properties in Kumarapuram junction belonging to Pattom Village and that belonging to Cheruvaikal village are given value differently and to support the same, no evidence was adduced before the reference court. It is therefore, submitted that, unless and until, the State is able to establish by positive evidence that, the division of the entire stretch of the route in to three Reaches is based on some relevant data either with regard to the potential value of the properties and other relevant factors, the claimants are entitled to the same amount as granted in L.A.A.151/2011, since the distinguishing features are not evident either from the Note to Award or from the written statement filed before the reference court.

6. We have gone through the Notes to Award in respect of these three Reaches. What is mentioned in the face page is that, for convenience and urgency of the land acquisition, the area under acquisition is divided into three Reaches. Apart from stating so, no other reasons have been pointed out. The learned counsel for the claimants pointed out that, even in respect of fixing the land value in Reach-I, going by the Notes to Award, a transaction in Reach II has been adopted. This is clear from page 12 of the Notes to Award whereby it is seen that for fixing the land value in respect of Reach I, serial No. 10 sale deed dated 12.7.2004 in respect of No. 2952/04 has been relied on. Therein, the properties are in Cheruvaikal village. But the properties situated in Kumarapuram-Poonthi route is only 200 meters next of Kumarapuram junction, it is submitted.

7. Apart from the above, we are constrained to observe that even in respect of properties in Kumarapuram junction which is the end of the Ist Reach and start

of the II Reach, it can be seen that two different types of valuation has been adopted. This will really cut end the root of the argument that, categorisation is based on the less importance of the properties in respect of the Reach II & Reach III and as far as the garden lands are concerned.

8. In the light of the above, we find that there is no justification for reducing 10% of the land value fixed from that of the value fixed in Reach No. I. Therefore in the light of our judgment in the batch of cases the land value allowable, as far as the appellant is concerned, will be Rs. 12,35,000/- per Are.

9. With regard to the enhancement claimed for the structures it is seen that the reference Court has not framed any issue on this aspect. We notice that the claimant has examined Aws 2 and 3 and has produced Exts.C1 and C1(a) in support of the claim. Since the said claim has not been considered by the Reference Court, only to consider the said aspect, we remand the matter back to the trial court.

Therefore the appeal is allowed partly namely as regards the market value of the land which we fix at Rs. 12,35,000/- per Are. Since the matter is remanded back to consider only one aspect, half of the court fee paid on the Memorandum of Appeal will be refunded to the appellant. No costs.