(2024) 12 KL CK 0106

In the High Court Of Kerala

Case No : Land Acquisition Appeal Nos.8, 16, 17, 19 Of 2019 & 105, 168, 529 Of 2020

Dr. Kotanchery Ranjini	APPELLANT
Vs	
Government Of Kerala	RESPONDENT

Date of Decision : 18-12-2024

Acts Referred:
Constitution of India, 1950 — Article 300A
Land Acquisition Act, 1894 — Section 4(1), 18

Citation : (2024) 12 KL CK 0106

Hon'ble Judges : Dr. A.K.Jayasankaran Nambiar, J;Easwaran S., J

Bench : Division Bench

Advocate : Cibi Thomas, T.K.Shajahan

Final Decision : Division Bench

Judgement

Dr. A.K. Jayasankaran Nambiar, J.

1. These Land Acquisition Appeals preferred by the State and the claimants assail the judgment and decree of the Additional Sub Court, Thalassery in L.A.R.Nos.40/2012, 42/2012, 125/2012 and 166/2012. The acquisition in question was of lands in Pazhassi Village in Thalassery Taluk for the upgradation of the Thalassery-Valuvupara Road.

The acquisition proceedings:

2. The notification under Section 4(1) of the erstwhile Land Acquisition Act, 1894 [hereinafter referred to as the "Act"] was issued on 29.10.2005 and the award of the Land Acquisition Officer [LAO] was passed on 17.10.2008. Possession of the land and buildings thereon were taken on various dates between October, 2008 and April, 2009. The LAO awarded Rs.12,607/- per cent towards market value of the land in the area and various amounts towards value of the buildings situated thereon, by estimating the same using the PWD Schedule of Rates, 2004. Aggrieved by the said award, the claimants received the awarded amounts under

protest and sought reference of the issue of enhancement of compensation to the reference court under Section 18 of the Act.

Reference under Section 18 of the Act:

3. Before the reference court, the claimants produced two documents – Ext.A3 Sale Deed No.3050/2008 dated 22.09.2008 of SRO, Mattanur and Ext.A4 Sale Deed No.1684/2005 dated 25.06.2005 of SRO Mattanur as sale exemplars of similar properties in the area. They contended that the basic document relied upon by the LAO was not produced before the reference court and, in its absence, the finding of the LAO regarding market value of the acquired lands could not be sustained. They also relied on Ext.X1 report of the Advocate Commissioner. In support of their claim for enhancement of value of the buildings, however, no reliable evidence was adduced before the reference court save for the report of an Advocate Commissioner in an Original Suit [O.S.No.361/2010] filed in 2010 by one of the claimants, the details of which, and the relevance of which to the issue referred are not entirely clear.

4. The reference court, on a consideration of Exts.A3 and A4 sale exemplars found that Ext.A3 evidenced a post notification transaction whereas Ext.A4 evidenced a more proximate transaction prior to the notification. It, however, relied on both the sale exemplars and fixed the land value @ Rs.35,000/- per cent. As for the value of buildings, presumably because of non-availability of reliable evidence to sustain an enhancement, it did not grant any enhancement.

The appeals before us:

5. In the appeals before us, while the State impugns the finding of the reference court enhancing the market value of the land from Rs.12,607/- per cent to Rs.35,000/- per cent, the claimants seek a further enhancement of the value of the land and the buildings thereon.

6. We have heard Sri.Cibi Thomas, the learned counsel for the claimants and Sri.T.K.Shajahan, the learned senior Government Pleader on behalf of the State.

Discussion & Findings:

7. As far as the appeals preferred by the State are concerned, we find that a connected appeal preferred by the State [L.A.A.No.235/2020], against the common order of the reference court that is impugned in these appeals, was dismissed by another Bench of this Court vide judgment dated 14.10.2024. While dismissing the said appeal, the Bench had placed reliance on a judgment dated 09.01.2019 of another Division Bench of this Court in L.A.A.No.249/2014, pertaining to the same notification as in the present appeals, where the Bench had dismissed a State appeal by finding that it had not challenged the finding of the reference court fixing the land value @ Rs.50,000/- per cent but had chosen merely to contest the value fixed for the buildings thereon. Since the lands in all the above referred cases are covered by the same notification, and are in close proximity to each other within the same village, we are of the view that the

requirement of ensuring parity in the compensation granted to similar lands, would mandate that we dismiss the State appeals that seek to reduce the fixation of land value to a figure lower than Rs.35,000/- per cent. We therefore dismiss L.A.A.Nos. 105/2020, 168/2020 and 529/2022 following the judgment dated 14.10.2024 in L.A.A.No.235/2020.

8. As for the appeals preferred by the claimants, we find that the prayer therein is for enhancement of the value of the lands and the buildings thereon. Regarding the latter, we find that no enhancement was granted by the reference court in the value of buildings because there was no reliable evidence adduced by the claimants in support of their claim for enhancement. It is trite that the onus to prove entitlement to receive higher compensation is upon the claimants and they have to lead cogent and proper evidence in support of their claim. It is only once the claimant has discharged his initial burden of showing that the amount awarded by the LAO is inadequate that the burden shifts to the State to justify its award [Basant Kumar v. Union of India – [(1996) 11 SCC 542]; Gafar v. Moradabad Development Authority – [(2007) 7 SCC 614]; Loveleen Kumar v. State of Haryana & Ors. – [(2018) 7 SCC 492]]. Even before us, the claimants have not produced any material to substantiate their claim for higher compensation in respect of the buildings that stood on the acquired land. We therefore reject their claim for enhancement of the same.

9. Regarding their claim for enhancement of the market value of the land, we find that it is now well settled that the market value of the land connotes the price that a willing buyer would pay to a willing seller taking into account the land's current condition and its advantages and potentialities. This can be determined by considering sale exemplars of similar lands [Special Land Acquisition Officer v. Adinarayan Setty – [AIR 1959 SC 429]]. In the instant appeals, the reference court considered Exts.A3 and A4 sale deeds to determine the market value of the acquired lands. Ext.A3 is a sale deed of 2008 which is more than 3 years after the date of the Section 4 (1) notification. One of the fundamental principles of valuation is that transactions subsequent to the acquisition should ordinarily be ignored for determining the market value of acquired lands, as the very acquisition and the consequential development would accelerate the overall development of the surrounding areas resulting in a sudden or steep spurt in the prices [A.Natesam Pillai v. Tahsildar (LA) – [(2010) 9 SCC 118]]. We therefore choose not to rely on Ext.A3 sale deed for determining the market value of the acquired lands.

10. We note, however, that the reference court rightly relied on Ext.A4 sale deed that pertained to an extent of 35 cents of property in Pazhassy Amsom in Mattanur desom and was valued at Rs.34,825/- per cent in June, 2005. The acquired lands of the claimants are also in Pazhassi village and comprise of 0.0114 Ha = 2.817 cents [L.A.A. No.8/2019]; 0.0070 Ha =1.73 cents [L.A.A.No.19/2019]; 0.0210 Ha =5.19 cents [L.A.A.No.16/2019] and 0.0166 Ha = 4.10 cents [L.A.A. No.17/2019]. The adoption of the value of Rs.35,000/- per

cent for the above lands acquired under the notification dated 29.10.2005 was therefore reasonable. Further, in the absence of any other sale exemplar produced on behalf of the claimants before the reference court, the court below could not have granted any further enhancement in the market value of the land.

11. That said, as we have already noticed above, in L.A.R.No. 166/2012 from which L.A.A.No.17/2019 of one of the claimants arises, this Court, while dismissing L.A.A.No.235/2020 preferred by the State against the judgment and decree in that LAR, applied the market rate of Rs.50,000/- per cent adopted by an earlier Bench of this Court in the judgment dated 09.01.2019 in L.A.A.No.249/2014, for similar lands acquired under the same notification. Since an acquisition of land by the State is pursuant to the exercise of its power of eminent domain, and against the will of the individual property owner, a safeguard of the constitutional right of the claimants under Article 300A of our Constitution would mandate that we enhance the land value in respect of the acquired lands in these appeals also to Rs.50,000/- per cent. Accordingly, L.A.A.Nos.8/2019, 19/2019, 16/2019 and 17/2019 are allowed to the limited extent of enhancing the land value of the acquired properties in each of the said appeals to Rs.50,000/- per cent. The claimants shall also be entitled to the other statutory benefits flowing from the said enhancement of land value.

In the result;

1. L.A.A.Nos.105/2020, 168/2020 and 529/2022 preferred by the State are dismissed following the judgment dated 14.10.2024 in L.A.A.No.235/2020;

2. L.A.A.Nos.8/2019, 19/2019, 16/2019 and 17/2019 preferred by the claimants are allowed to the limited extent of enhancing the land value of the acquired properties in each of the said appeals to Rs.50,000/- per cent. The claimants shall also be entitled to the other statutory benefits flowing from the said enhancement of land value;

3. The Registry is directed to draw up a revised decree in the appeals preferred by the claimants, by re-computing the compensation payable to them in terms of this judgment.

