(2012) 08 KL CK 0008

In the High Court Of Kerala

Case No : L.A.A. No. 501 of 2012

Geethabai and Janaki Amma Kakkathodu	APPELLANT
Vs	
State of Kerala	RESPONDENT

Date of Decision : 07-08-2012

Acts Referred:

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

Citation : (2012) 08 KL CK 0008

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

Bench : Division Bench

Advocate : K. Sasikumar and Sri. S. Kannan, for the Appellant; Aloysius Thomas, Government Pleader, for the Respondent

Judgement

Pius C. Kuriakose, J.—The claimants are the appellants. Their properties in Kalayapuram Village was acquired pursuant to Section 4(1) notification published on 7/2/2003 for the purpose of widening of Main Central Road. The Land Acquisition Officer awarded land value at the rate of Rs. 40,842/- per Are. The Reference Court in the first instant would evaluate the evidence adduced by the parties and refix the land value at Rs. 75,000/- per Are. The appellants preferred an appeal to this court. The main ground raised was that the three sale documents put in evidence by the appellants are not even considered by the learned Subordinate Judge. This court set aside the award and remanded the LAR back to the Reference Court. The impugned award is passed pursuant to the order of remand.

2. Under the impugned award, the learned Subordinate Judge has once again fixed the value of lands under acquisition at Rs. 75,000/- per Are itself. Documents Exts.A4 to A6 were the documents specifically directed to be considered by this court in the remand order. The learned Subordinate Judge has discarded all those documents for the reason that the comparability between the lands under acquisition and the lands covered by those documents was not properly brought out by the claimants by taking commission.

3. In this appeal various grounds are raised by the appellants contending that the market value refixed by the Reference Court is grossly inadequate. The appellants have limited their claim for land value to Rs. 1,75,000/- per Are i.e. One Lakh per Are more than the rate awarded by the Reference Court.

4. We have heard the submissions of K.Sasikumar learned counsel for the appellants and those of Sri.Aloysius Thomas learned senior Government Pleader for the respondent.

5. Mr.Sasikumar submitted that though the appellants did not take out a commission for proving the comparability of the properties covered by Exts.A1 to A4 and the properties under acquisition, there was intrinsic evidence in the document themselves to show that documents properties and the property under acquisition were comparable. The schedule description of all the above three documents will show that those properties were enjoying the frontage of the very same M.C.Road. Survey numbers of the properties covered by those documents will also indicate that the properties are not situated far away from the properties under acquisition.

6. Sri.Aloysius Thomas, learned senior Government Pleader submitted that this was a case where this court had remanded the LAR to the Reference Court giving specific opportunity to the appellant, to prove the comparability between the properties of Exts.A4 to A6 and the lands under acquisition. Notwithstanding the opportunity given, the appellants did not take out a commission. There is justification for drawing adverse inferences against the appellants, so submitted the learned Government Pleader. We have given our anxious consideration to the rival submission addressed at the Bar. We have made a quick reappraisal of the evidence especially documents Exts.A4 to A6. We are of the view that the learned Subordinate Judge was not justified in completely discarding Ext.A4 to A6. Exts.A4 and A6 documents reflected an average land value of Rs. 1,82,000/- per Are. But, we notice that all these documents pertain to tiny bids of land. We also notice that we have reason to think that unlike the properties under acquisition, the properties covered by Exts.A4 to A6 were situated nearer to the town area. For the minus factors of the properties under acquisition in comparison to the properties covered by Ext.A4 to A6 and also for the smallness of the extent covered by Exts.A4 to A6, proper deductions have to be made. Making deductions, we are of the view that based on Exts.A4 to A6 the market value of the lands under acquisition can be refixed at Rs. 1,15,000/- per Are.

Allowing this appeal, we refix the value of lands under acquisition at Rs. 1,15,000/- per Are. This means that the appellants will get Rs. 40,000/- per Are over and above the rate fixed by the Reference Court. The appellants will be entitled for all statutory benefits admissible u/s 23 (2), 23(1A) and Section 28 of the Act on the re-fixed compensation. Parties are directed to suffer their respective costs.