
(1997) 08 KL CK 0045
In the High Court Of Kerala
Case No : L.A.A. No. 740 of 1994

Jacob

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 12-08-1997

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 23(1A), 23(2), 28, 3(1)

Citation : (1997) 2 KLJ 298

Hon'ble Judges : T.V. Ramakrishnan, J;K. Narayana Kurup, J

Bench : Division Bench

Advocate : M.P. Abraham, for the Appellant; P.M. Poulose, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

T.V. Ramakrishnan, J.—The claimant in L.A.R. No. 50 of 1987 on the file of the Court of the Additional Subordinate Judge, Irinjalakuda is the Appellant. The appeal is directed against the judgment and Decree in L.A.R. No. 50 of 1989 to the extent it is against the Appellant. Appellant is the owner of 19.5 cents of land with a building, out-house and other structures comprised in Survey Nos. 620/4-6 and 621/1 of Vadama Village in Mukundapuram Taluk, which was acquired for the purpose of running a post office at Mala Junction. The post office is functioning in the said building located in the acquired property since 1964. Section 3(1) notification for acquisition of the property for running the Post Office was issued on 31st August 1979 and published in the Gazette dated 13th October 1979. The Appellant claimant claimed the land value at the rate of Rs. 30,000.00 per cent before the Awarding Officer as well as before the Reference Court. He claimed Rs. 2,00,000.00 for the building, Rs. 25,000 for compound wall, Rs. 5,000 for the well, Rs. 25,000 for the out-house and Rs. 14,000 for coconut trees. However, the Land Acquisition Officer passed an award dated 15th April 1986 granting a sum of Rs. 43,192.14 towards land value at the rate of Rs. 2310.00 percent i.e., at the rate of Rs. 5,775 per Are. He has given Rs. 300

towards value of trees and Rs. 51,761.00 towards value of structures. Appellant received the amount under protest and the matter was eventually referred to the Reference Court u/s 18 of the Land Acquisition Act, 1894 (for short "the Act") for determination of the enhanced compensation. The Reference Court has enhanced the land value from Rs. 2,310 to 3,000 percent and rejected the claim for enhanced value of structures and improvements. Aggrieved by the judgment and Decree, the Appellant-claimant has filed the present appeal. In this appeal, the Appellant-claimant has limited the land value at the rate of Rs. 10,000 percent, claiming a total amount of Rs. 1,30,886.00. He has limited the claim of compensation for structures and improvements to Rs. 50,339. The total compensation claimed in the appeal is Rs. 1,87,125.

2. Heard counsel on both sides. The question to be considered is whether the Appellant is entitled to get enhanced compensation and whether the compensation already granted is fair and reasonable.

3. The Land Acquisition Officer fixed land value based on a sale deed No. 758/77 of S.R.O., Mala. The said sale deed is of the year 1977 namely; two years before the issuance of Section 3(1) notification. The extent of property covered by the said sale deed No. 758/77 of S.R.O., Mala is only 3 cents. According to the claimant it was a vacant quarry used for cutting laterite stones, not capable of being used for any other purpose. It is situated on the slanting side of a paddy field having no potential value. The said property is not comparable with the property acquired which is having road frontage of two main roads on the southern side and eastern side. Mala-Always road is on the southern side. It is a main tarred road with heavy vehicular traffic. Several buses are plying through the said road. East Bazar road is situated on the eastern side of the property acquired. It is also a main road. The property is located very near to Mala Junction. The location of the property is ideal and suitable for building construction or for commercial exploitation. It has got great potential value. It is acquired for the purpose of housing a post office which was running there for a period of 15 years. Even after the acquisition, the post office continued in the very same building without modification. For the above reasons, we are convinced that it is not safe to rely on the basic document to fix the value of the property acquired as there is absolutely no comparison at all between the two properties. That apart, as already noted, the sale deed No. 758/77 was executed two years prior to the issuance of Section 3(1) notification in the present case. The basic document was not even marked nor proved before the Reference Court. The awarding Officer was not examined nor even the buyer or seller of the said document. No witnesses were also examined. The Appellant had no notice regarding the production of the basic document in court. The Appellant who was examined as P.W.1 deposed that the property covered by the basic document is a quarry used for cutting laterite stones and that it has no potential value though situated opposite to the property acquired on the other side of the road. He has also stated that the acquired property will fetch ten times the value of the property covered by the basic document. P.W. 4 has also deposed on similar

lines. In spite of the evidence of P.W. 1 and P.W. 4 regarding the lie and nature of the basic land no attempt was made by the State to cross-examine the witnesses and summon the witnesses who have knowledge about the nature of the land. In the aforesaid view, the basic document relied on by the State will not reflect true market value of the land acquired in this case.

4. Now, we shall examine the evidence of the Appellant-claimant to see whether he has made out a case for enhancement of compensation as prayed for. The Appellant has produced Ext. A-1 to A-6 sale deeds and has examined five witnesses. Ext. A-1, is a document of the year 1984, under which an extent of 2 1/2 cents of land was sold for Rs. 40,000. P.W. 3 was examined to prove Ext. A-1. Under Ext. A-2 1 3/8 cents of land with fully built up structures were conveyed for a sum of Rs. 25,000 and under Ext. A-3 2 1/2 cents of land with a building therein was sold for a sum of Rs. 40,000. Since the extent of land covered by Exts. A-1 to A-3 is small when compared with the property acquired, we do not think that it will be safe to place total reliance on them in fixing the market value of property acquired. Similarly, property covered by Ext. A-4 viz; 4 3/8 cents which was sold for a sum of Rs. 40,000 also cannot be taken as a safe guide in fixing the value of the property acquired as the extent there again is small and the land is barren having no similarity with the land acquired. In addition, the transactions covered by Exts. A-1 to A-4 documents took place long prior to Section 3(1) notification.

5. On the other hand a perusal of Ext. A-5, we are satisfied that it can be accepted as a safe criterion in fixing the value of the property acquired. Under Ext. A-5 dated 17th June 1983 an extent of 4 cents of land with a building thereon was conveyed for a sum of Rs. 45,000. Ext. A-5 property was again sold in 1991 as per Ext. A-6 document for a sum of Rs. 40,000 without the building. P.W. 5 who was examined to prove Exts. A-5 and A-6 has deposed that the acquired property is located in a more important locality than the property conveyed by Exts. A-5 and A-6 as it has road frontage on both sides whereas Ext. A-5 property has road frontage only on one side. Nothing has been brought out in cross-examination to discredit this witness. No doubt, learned Government Pleader argued that no reliance can be placed on Exts. A-5 and A-6 as they are post notification documents. We do not agree. There is no inflexible Rule that invariably in all cases post notification documents cannot be looked into to ascertain the market value of the property acquired. The test to be applied in such a case is to find out whether after the publication of the notification, the price of the lands in the locality has increased which has to be determined on the facts proved in the case and the onus to prove such facts is on the party who objects to the consideration of such sale transactions and where there is no such proof, they can be taken into consideration. The Apex Court in Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another, ruled that even post notification documents can be taken into account if the acquisition itself has not motivated the purchaser to pay a higher price on account of the resultant improvement in development prospects. In the decision reported in

Mehta Ravindraraai Ajitrai (Deceased) by Lrs and Others Vs. State of Gujarat, the Supreme Court reiterated the principle that where the sale of land adjacent to acquired land was cited as instance for determination of market value, the same could not be altogether ignored merely because it was a post-acquisition sale when there was no evidence indicating that there was sharp or speculative rise of the land after acquisition. If the post-notification document as aforesaid viz; Ext. A-5 is accepted, the Appellant-claimant is entitled to enhanced compensation. The claim of the Appellant is also fortified by Ext. C-1 commission report which shows that the property acquired is situated in a very important locality. It has not come out in evidence that as a result of the acquisition of the property, there was spurt in the value of the land in the locality. In the absence of such evidence relating to hike in the price of the land, we do not find any reason to ignore Ext. A-5 altogether in fixing the market value of the land. Of course, some deductions from the price indicated in Ext. A-5 sale deed has to be made taking into account factors such as rise in the price of land after acquisition. Accordingly, taking note of the principles laid down by the Supreme Court and having regard to the totality of the facts and circumstances of the case brought to our notice, we fix the land value of the property acquired at Rs. 7,500 per cent instead of Rs. 3,000 per cent fixed by the Reference Court. On the question of claim of the Appellant for enhanced compensation to the building, the compound wall, well, out-house and coconut trees we are of the view that the amount awarded is fair and reasonable and the same does not call for any enhancement.

In the result, we allow the appeal and set aside the judgment and decree of the court below in so far as it is against the Appellant by enhancing the land value from Rs. 3,000 to Rs. 7,500 per cent. The Appellant will also be entitled to get all the statutory benefits under Sections 23(1A), 23(2) and 28 of the Land Acquisition Act, 1894, as amended by Act 68 of 1984 on the amount of compensation enhanced by us, as per this judgment. However, we would make it clear that interest u/s 28 of the Act cannot be claimed on the amount of solatium. Additional compensation for structures stands rejected. Appeal is allowed in part to the extent indicated above with costs.