(2014) 11 KL CK 0099

In the High Court Of Kerala

Case No : L.A.A. Nos. 662, 663 and 664 of 2012-E

Joseph APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 07-11-2014

Acts Referred:
Land Acquisition Act, 1894 — Section 4(1)

Citation : (2014) 11 KL CK 0099

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

Bench : Division Bench

Advocate : C.P. Wilson and V.N. Subash, Advocate for the Appellant; R. Padmaraj, Government Pleader, Advocate for the Respondent

Judgement

P.V. Asha, J.—These appeals relate to enhancement of compensation towards of acquisition made for widening of National Highway link road Angamaly under Section 4(1) of the Land Acquisition Act dated 23.12.2009 from the properties owned by the respective appellants. The Land Acquisition Officer passed awards in these cases on 04.01.2011. The properties were taken possession on 14.10.2010.

2. In L.A.A. No. 662 of 2012, an extent of 0.14 acres of land comprised in Sy. No. 354/21 of Angamaly Village was acquired. The Land Acquisition Officer fixed the land value @ Rs. 5,38,924/- per acre. The appellants claimed land value @ Rs. 12 lakhs per cent. The Reference Court in L.A.R. No. 47 of 2011 re-fixed the land value @ Rs. 15,57,691/- per acre.

3. In L.A.A. No. 663 of 2012 the land acquired is having an extent of 0.21 acres in Re.Sy. No. 351/15-9 of Angamaly village. The Land Acquisition Officer fixed the land value at Rs. 4,89,931/- per acre. The appellant claimed land value @ Rs. 10 lakhs per cent. In L.A.R. No. 41 of 2011, the court below re-fixed the land value @ Rs. 14,01,922/- per acre.

4. In L.A.A. No. 664 of 2012, the land acquired is having an extent of 0.63

acres . The Land Acquisition Officer passed the award fixing the land value @ Rs. 4,89,931/- per are. The claimant claimed land value @ Rs. 6 lakhs per cent. The court below in L.A.A. No. 40 of 2011 re-fixed the land value @ Rs. 14,01,578/- per acre.

5. The appellants have approached this Court complaining inadequacy in the enhancement. The appellants had sought enhancement on the basis of the market value of the land prevailing in the area relying on Ext. A1 sale deed dated 04.12.2007 as per document No. 513/2007 of S.R.O, Angamaly wherein 18.2 acres of land was purchased @ Rs. 25,96,153/- per are in respect of a property situated within 2 kilometres of the acquired land. The court below, though relied on the document Ext. A1, fixed the land value only after deducting 25% from it alleging that it is a fancy price and another 25% saying that the property covered by the sale deed is situated near the Airport at Nedumbassery, whereas the acquired properties are in Angamaly town. The complaint of the appellants is that the acquired properties are having more potentiality in view of the proximity to Angamaly town and in view of the fact that the properties are situated near several prominent institutions. They have also got a grievance on the deduction made from the land value in respect of Ext. A1 on the ground that it was a fancy price.

6. The learned Government Pleader on the other hand opposed the prayers submitting that the land value fixed by the court below is reasonable and the appellants cannot claim the land value as given in Ext. A1 since the same is in respect of a transaction by a private limited company which purchased the property for development of its business.

7. We have considered the rival contentions on either side and the pleadings and materials on record. The appellant in L.A.A. No. 663 of 2012 was examined himself before the court below and deposed as to the importance of the property acquired from him. Moreover a commission was also taken out for reporting the nature and lie of the properties covered by the acquisition as well as Ext. A1 sale deed. The property acquired from the appellant is abutting National Highway on one side and PWD road on the other side. According to the report submitted by the Advocate Commissioner, the acquired properties situate in the bank junction and is just 100 metres away from Angamaly junction. Several institutions like South Indian Bank, Syndicate Bank, H.D.F.C Bank and schools are situated very near to the property. Police Station, K.S.R.T.C bus stand, L.F Hospital, Angamaly market etc. are just 250 metres towards the north of the property acquired. The Telephone Exchange, St.Mary''s School, K.S.E.B, etc. are just 200 metres towards south of the property. At the same time the property covered by Ext. A1 sale deed is about 2 kilometres away from Angamaly junction and the property is having an extent of 18.2 acres in Nedumbassery village. According to the Advocate Commissioner, the properties acquired from the appellants are having more importance compared to the property covered by Ext. A1 document. The properties covered by L.A.A. Nos. 663 and 664 of 2012, situate just 30 metres

away from that in LAA 662/14, abutting PWD road alone.

8. The court below fixed the land value in the locality only after deducting 25% on the ground that the transaction involved in Ext. A1 was a purchase made by a Private Company -M/s. Shell India Marketing Private Ltd. Co. for developmental purpose and therefore it will not reflect the exact market value. In Ext. A1 the market value shown was @ Rs. 25,96,153/- per acre. In order to arrive at the purchase price by an ordinary purchaser, the court below felt that a 25% deduction was necessary from the value shown in Ext. A1. In addition to that, another 25% was deducted saying that Ext. A1 property which is situated within the proximity of International Airport abutting N.H 47, is more superior to a small extent of property situated on the edge of National Highway as well as on the edge of P.W.D road. It was found that a deduction of 25% has to be made further to arrive at the actual price of the land. Therefore after deduction @ 50%, the actual price in the locality was arrived at @ Rs. 12,98,076/-. per acre. As the notification under Section 4(1) for acquisition of the property was on 23.12.2009 and the sale deed Ext. A1 was on 04.12.2007, the court below, relying on the principles laid down in State of Kerala Vs. Jose Simon, , reckoning 10% increase for each year towards the increasing tendency of land value in urban areas, fixed the land value as on the date of notification at Rs. 15,57,691/- (i.e. adding 20% of Rs. 12,98,076/-) per are for the property involved in L.A.R. No. 47 of 2011. In respect of the properties involved in L.A.R. Nos. 40 of 2011 and 41 of 2011, the land value was fixed at Rs. 14,01,922/- per are, after a further deduction of 10%, as those properties were included in category 2.

9. On the basis of the materials on record, we find that there was no reason for reducing the land value by further 25% on the basis of the proximity to the Airport. It is an undisputed fact that the properties acquired are proximate to Angamaly town, whereas the property covered by Ext. A1 is near to the Airport at Nedumbassery. The evidence of RW1 also will show that the acquired property is nearer to Angamali town and the Bank juction. Hence there is considerable importance and potential for these properties. Therefore we are of the considered view that the properties near the Angamaly town can in no way be said to be inferior to the property near the Airport, Nedumbassery, which is far away from the town. However as the property covered by Ext A1 having an extent of 18.26 acres is having National Highway frontage, we find it appropriate to re-fix the land value giving only 35% deduction to the land value shown in Ext. A1 document, instead of 50% deduction effected by the court below and at the same time granting the 20% hike in accordance with the judgment reported in State of Kerala Vs. Jose Simon, .

10. Accordingly, after effecting 35% deduction to Rs. 25,96,153/-, the value of the land in the locality will come to Rs. 16,87,499.45 per are and on granting 20% hike in accordance with the judgment in State of Kerala v. Jose Simon (supra), the land value in respect of LAA No. 662 will be Rs. 2024999.34 per are, which is rounded of as Rs. 2025000/- and the land value in the case of L.A.A.

Nos. 663 and 664 of 2012, on a further deduction by 10% will be Rs. 1822499.40 per are, rounded off as Rs. 1822500/-. The appellants in these cases will be entitled to get the compensation based on the enhanced land value at the rate as re-fixed above along with all statutory benefits. The appeals are allowed accordingly.