(1986) 10 KL CK 0034

In the High Court Of Kerala

Case No : L.A.A. No''s. 208 and 209 of 1986

K.R. Kandunny and Another — APPELLANT

Vs

Special Tahsildar, Land Acquisition — RESPONDENT

Date of Decision : 17-10-1986

Acts Referred:

Kerala Land Acquisition Act, 1961 — Section 20, 23(1A), 3(1), 54
Land Acquisition (Amendment) Act, 1984 — Section 20, 28, 30(2), 30(3), 31

Citation : (1986) KLJ 973

Hon'ble Judges : K.S. Paripoornan, J;G. Viswanatha Iyer, J

Bench : Division Bench

Advocate : N.K. Sreedharan and M.A.T. Pai, for the Appellant; Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Viswanatha Iyer, J.—These are appeals u/s 54 of the Kerala Land Acquisition Act, 1962 against the awards passed by the Subordinate Judge of Palghat in L.A.R. Nos. 86 and 87 of 1982. The claimants are the Appellants. An extent of 0.2605 hectares from S. Nos. 413/16 and 414/8 part was acquired from the claimant in L.A.R. No 86 of 1982 and an extent of 0-0960 hectares in Sy. No. 416/33 from the claimant in L.A.R. No. 87 of 1982 for the purpose of formation of the field booth i.e. from Chain 809 M. of Koduvayur branch canal. The notification u/s 3(1) of the Act had been published in the Kerala Gazette, dated 2nd February 1982 and the award was passed on 30th September 1982. However, possession of the land had been taken in advance as early as on 24th September 1978. The acquired properties are admittedly dry lands (house sites). The Land Acquisition Officer awarded compensation at the rate of Rs. 15,000 per acre or Rs. 37,050 per hectare. The respective claimants were therefore, awarded Rs. 9,651.53 and Rs. 3,556.80 as land value as also solatium at 15 percent and interest at 4 percent from 24th September 1978.

2. On reference u/s 20 of the Act claiming land value at Rs. 1,000 percent, the

Court enhanced the compensation awarded to Rs. 450 percent. In these appeals the claimants pray for award of land value at Rs. 750 percent.

3. In support of their claim, the claimants had examined themselves as A.Ws. 1 and 3 as also A.W. 2 the vendor of the document produced by them and marked as Ext. A-1. The said document was a deed of sale of a property on 24th May 1979 having an extent of eleven cents for a price of Rs. 12,000 working out to an average of about Rs. 1,100 percent. The claimants also took out a commission to report about the market value of the properties acquired. The Commissioner, an advocate, inspected the acquired properties as also Ext. A-1 property and reported under Ext. C-1 that acquired properties will have a market value of Rs. 750 percent at the time of the acquisition. The Commissioner was also examined as C.W. 1.

4. The lower Court declined to act on Ext. A-1 document on the ground that the property dealt with thereunder was on the Koduvayur-Alathur Road, which was more important than the Koduvayur-Palghat Road where the acquired properties lay. The acquired properties were therefore, held to be not similar to Ext. A-1 property. The lower Court also declined to act on Ext. C-1 report of the Commissioner recommending payment of value at Rs. 750 percent on the ground that the Commissioner has not given sufficient data as to how he arrived at that conclusion.

5. We feel that the lower Court was in error in limiting the compensation to Rs. 450 percent and that there were no grounds to discard either Ext. A-1 or Ext. C-1. The acquired properties are admittedly situate in Koduvayur town on the Koduvayur-Nochur Agraharam Road, about 200 feet away from the Koduvayur-Palghat Road. The locality is an important locality with considerable potentialities. This is what the Commissioner states in Ext. C-1 about the locality:

The acquired properties are situated on the western side of the ''Koduvayur-Nochur Agraharam Road'' and are lying about 250 feet away from the Palghat-Koduvayur Main Road. And to the-immediate west of the property acquired in L.A.R. 86/82 is Marian College and its compound. The Mini Industrial Estate is situated at about 1,000 feet away from the acquired properties. And the Government Hospital is situated about two furlongs towards south from the acquired properties. There is one Rice Mill with No. 7 Huller and a huge yard within 100 feet from the acquired properties. Another Rice Mill is situated within 1? furlongs on the southern side of the acquired property. And there are residential buildings also near the acquired properties. So, the locality and situation of the acquired properties have got importance and potentialities to develop. The properties subject to acquisition also possess facilities of conveyance, electricity etc. as averred to in the affidavit.

6. Ext. A-1 property is also in Koduvayur about 1 km. away on the Koduvayur-Alathur Road, which according to the Respondent is more important than the Koduvayur-Palghat Road. Whatever that be the lower Court was not justified in

discarding Ext. C-1. The Commissioner has given data and details why he recommends award of land value at Rs. 750 percent. He finds that Ext. A-1 property is also a house site without improvements. That property has been sold three years prior to the instant acquisition for about Rs. 1,100 percent. The Commissioner makes allowance for the fact that the acquired properties, though in the Agraharam, are little away from the main road, and therefore recommends award of Rs. 750 percent.

7. We feel that having regard to the importance of the locality, where the properties are situate, the potentialities and the land value as disclosed by Ext. A-1, the claim for Rs. 750 percent made in the appeal is eminently reasonable. Ext. A-1 related to a property in Koduvayur itself. That sale was three years prior to the acquisition and fetched a price of about Rs. 1,100 percent. The properties are similar. Even making allowance for the different locations, we are not prepared to hold that the assessment of value made in Ext. C-1 is erroneous, particularly when we take into account the fact that the acquisition was three years after Ext. A-1. The lower Court should therefore have awarded land value at the rate of Rs. 750 percent.

8. The Appellants have also claimed the benefit of the amendments under the (Central) Land Acquisition (Amendment) Act 68 of 1984. They are entitled to these benefits in as much as the proceedings were pending as on 30th April, 1984. The Appellants are thus entitled to solatium on the value of the land awarded, namely Rs. 48,257.65 and Rs. 17,784 respectively at 30 percent. The lower Court has committed an error in limiting the solatium to 30 percent of the enhancement made by it. The Appellants are also entitled to interest at 9 percent per annum u/s 28 on the amount of Rs. 38,606.12 and Rs. 14,227.20 respectively awarded as excess compensation, for the period from 24th September 1978 to 23rd September 1979 and thereafter at 15 percent per annum on the amount of such excess or part thereof which has not been paid into Court.

9. By his award dated 30th September 1982, the Land Acquisition Officer has awarded interest at 4 percent on the amount awarded by him for the period 24th September 1978 to 29th September 1982 (both days inclusive). This is obviously u/s 34. Section 23(1A) does not apply on its terms as possession had been taken prior to the notification u/s 3(1) of the Kerala Land Acquisition Act. The appropriate section to apply is therefore Section 34 of the (Central) Land Acquisition Act, which after its amendment by Section 20 of the Land Acquisition (Amendment) Act 68 of 1984, provides for payment of interest at 9 percent on the amount awarded by the Land Acquisition Officer from the date of taking possession of the land till date of payment or deposit of the amount awarded. The proviso to the section further lays down that if the amount awarded is not paid within a period of one year from the date on which possession was taken, the amount shall carry interest at the rate of 15 percent from the date of expiry of the said period of one year. If this section had applied in full force, the

Appellants would have been entitled to interest on the amounts awarded by the Land Acquisition Officer, namely, Rs. 9,651.53 and Rs. 3,556.80 respectively at 9 percent per annum from 24th September 1978 to 23rd September 1979 and thereafter at 15 percent per annum till 1st October 1982, when the Appellants received the amounts as seen from the reference letters in the two cases. The award of such interest u/s 34 accords that the provisions of Section 28, which provides for similar rates of interest in regard to the excess amount of compensation awarded by the Court of reference.

10. However, the provisions of Section 34 as amended stand curtailed in their operation to cases where possession had been taken prior to 30th April 1982, by Section 30(3) of the Amendment Act 68 of 1984. This transitional provisions reads:

30(3). The provisions of Section 34 of the principal Act, as amended by Section 20 of this Act, shall apply, and shall be deemed to have applied, also to and in relation to,-

(a) every case in which possession of any land acquired under the principal Act had been taken before the 30th day of April, 1982 the date of introduction of the Land Acquisition (Amendment) Bill, 1982, in the House of the People], and the amount of compensation for such acquisition had not been paid or deposited u/s 31 of the principal Act until such date, with effect on and from that date; and

(b) every case in which such possession has been taken on or after that date but before the commencement of this Act without the amount of compensation having been paid or deposited under the said Section 31, with effect on and from the date of taking such possession.

The amendments to Section 34, have thus been made retrospective and applicable in relation to cases where land had been taken possession of prior to 30th April, 1982, but their operation is effective only for the period on and from that date. What is "that date"? Is it the date of taking possession or 30th April 1982? Sub-clause (b) of Sub-section (3) of Section 30 provides the answer to this question. It speaks of possession being taken on or after "that date", which could only be 30th April, 1982. Sub-clause (a) must also bear the same interpretation, so that Section 34 operates in relation to cases covered by Sub-clause (a) only on and from 30th April 1982. While the benefits of Section 34 by way of enhanced interest are thus available even to cases where possession had been taken prior to 30th April 1982, the enhanced rates of interest will be payable only on and from 30th April, 1982. This section is analogous to Section 28. Section 30(2) makes the provisions of Section 28 applicable with effect from the date of taking possession itself. For some reason, however, Section 30(3) of the Amendment Act has purported to make a distinction in the case of Section 34 and limits its application for the period on and from 30th April 1982. It does not really accord to reason why such a distinction should be made between the amount awarded by the Land Acquisition Officer and the excess amount awarded by the Court, as both constitute but parts of the market value payable for the land. The Court is, however bound to apply the law as it stands and to limit the benefits of Section 34 as amended to the period on and from 30th April 1982, when possession had been taken earlier.

11. Possession in these cases had been taken on 24th September 1978, so that for the period from 30th April, 1982 to 1st October 1982 the Appellants will be entitled to interest at 15 percent per annum on the amounts awarded by the Land Acquisition Officer.

The appeals are thus allowed. The Appellants will get:

(a) Land value at the rate of Rs. 750 percent, that is, the Appellant in L.A.A. No. 208/82 the claimant in L.A.R. No. 86 of 1982 will get a total land value of Rs. 48,257.65 and the Appellant in L.A.A. No. 209 of 1986 the claimant in L.A.R. No. 87 of 1982 will get a total land value of Rs. 17,784.

(b) The Appellants will be entitled to solatium on the amounts of Rs. 48,257.56 and Rs. 17,784 respectively at 30 percent.

(c) The Appellants will get interest on the respective enhanced amounts awarded to them by the Court, namely, Rs. 38,606.12 and Rs. 14,227.20 at 9 percent per annum from 24th September 1978 to 23rd September 1979 and therafter at 15 percent per annum on the amount of such excess or part thereof which has not been paid into Court.

(d) The Appellants are also entitled to interest on Rs. 9,651.53 and Rs. 3,556.80 respectively awarded to them by the Land Acquisition Officer at 4 percent per annum from 24 September 1978 to 29th April 1982 and at 15 percent per annum from 30th April 1982 to 1st October 1982.

There will be no order as to costs in these appeals.