

**(1999) 06 KL CK 0013**

**In the High Court Of Kerala**

**Case No : L.A.A. No's. 966/96 and 627/98 C**

Malankara Rubber and Produce Co. Ltd.

APPELLANT

Vs

State of Kerala

RESPONDENT

**Date of Decision :** 17-06-1999

**Acts Referred:**

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

**Citation :** (1999) 06 KL CK 0013

**Hon'ble Judges :** C.S. Rajan, J;A.S. Venkitachala Moorthy, J

**Bench :** Division Bench

**Advocate :** Joseph Markos, Joseph Kodianthara and Siri Jagan, in L.A.A. No. 965/1996, for the Appellant; N. Santha, Government Pleader, for the Respondent

## **Judgement**

C.S. Rajan, J.—An extent of 6.83.44 hectares of land was acquired for M.V.I. Project. Section 3(1) notification was issued on 10th October 1978. The Award was passed on 23rd July 1980. The property was taken possession on 30th July 1980. The Land Acquisition Court fixed land value at the rate of Rs. 432 per Are. Originally the Land Acquisition Court calculated enhanced compensation on capitalised value which was set aside by this Court.

2. The evidence consists of Exts. A-1, A-2 and A-3 documents and the oral testimony of A.Ws. 1 to 5. Ext. A-1 is a document dated 17th May 1978. By the above document 40 cents of property was sold for Rs. 40,000 (Rs. 1,000 per cent). Ext. A-2 document is dated 26th September 1978. In the above document the consideration was Rs. 30,000 for 22 cents. The value of the property is Rs. 1,363 per cent. Ext. A-3 is a document dated 15th July 1968 by which 4 1/2 cents was sold for Rs. 45,000 (Rs. 1,000 per cent). Ext. A-1 property is situated in Muttam Junction. Exts. A-2 and A-3 properties are situated before Muttam Junction viz., Muttam-Karimkunnath road. The acquired property is near to the Thodupuzha-Moolamattom road. It is situated 23 metres away from the main road. There is a P.W.D. road connecting across the acquired property. The properties covered by Exts. A-1 to A-3 are situated about 3 to 4 kms. away from

the acquired property. The Land Acquisition Court did not accept the market value shown in Exts. A-1 to A-3 sale deeds as the basis for calculating the value of the acquired property.

3. A.W. 5 who is a retired Executive Engineer inspected the acquired property and made a comparative study of the acquired property with those covered by Exts. A-1 to A-3. He filed Ext. C-2 report before the Court. According to Ext. C-2 report the acquired property is approachable from Thodupuzha town. The road to the left in Thodupuzha-Palai road just by the side of the bus stand junction leads to the property. At about 5 kms. from this junction in Thodupuzha-Moolamattom road, the vast rubber estate belonging to the Company starts. By the side of the main entry to this factory from the main road, "Plantation-Illicherry road starts and this road connects Thodupuzha-Moolamattom road and Thodupuzha-Palai-Kottayam road. This road crosses the left bank high level main canal of Malankara Dam attached to Moovattupuzha Valley Irrigation Project. According to the Commission report, the property covered by Exts. A-1 and A-2 are located on the right side of Muttam-Karimkunnam road just before Muttam Junction. This property is having road frontage to the main road. Ext. A-3 is located by the side of Muttam Junction. The road was not having any development as it is having today, at the time of the registration of the document in 1968. The Commissioner was further of opinion that considering the comparative importance, both commercial and residential, between the property acquired and the properties covered by Exts. A-1 to A-3, the acquired property has got equal importance with the properties mentioned above.

4. It must be remembered that the properties covered by Exts. A-1 to A-3 are small plots of land. The acquired property is having vast extent. The Supreme Court has evolved the principle to be considered in determining the value of the property in such circumstances. In the ruling reported in Kummari Veeraiah and Others Vs. State of A.P., , the Supreme Court considered the above question in the following words:

A willing buyer would not offer the same price when a large extent of land is offered for sale in an open market on a free bargain, either in one lot or different lots, in comparison with small piece of land. In case it is found that the sale deeds of small extent of the land are genuine and the acquired land possessed of the same or Similar special advantageous features, then reasonable price is required to be determined by giving suitable deduction depending upon the extent of land covered by the sale transaction and the acquired land. When a large extent of land is available for house sites and command market for sale in bits, then a prudent owner as a part of normal human conduct, would get a layout prepared and sanction obtained from the competent authority and would offer the plots for sale. Similarly, it must be shown that land is situated in a developing area etc. When such evidence is adduced, it is required to be considered on the touch-stone of potentiality of the land, human conduct and probabilities. If the Court finds that the land possessed those potentialities and

could be purchased as house site, then only suitable deduction need to be made considering the relative extent of the land covered by the sale/sales and the land under acquisition.

5. In the ruling reported in *Hasanali Khanbhai and Sons and Others Vs. State of Gujarat*, the Supreme Court upheld the view of the High Court that deduction of 60 per cent of the value is a safe criterion in deciding the compensation on the basis of the price given to a small extent of property.

6. In the ruling reported in *U.P. Jal Nigam, Lucknow through its Chairman and another Vs. M/s. Kalra Properties (P) Ltd. Lucknow and others*, , the Supreme Court held that at least one-third of the land required should be deducted towards development purposes, viz., providing roads, electricity, drainage facilities and other betterment developments.

7. In the ruling reported in *The Land Acquisition Officer, Revenue Divisional Officer, Chittoor Vs. Smt. L. Kamalamma (Dead) by Lrs. and Others K. Krishnamachari and Others*, , the Supreme Court held that transactions in respect of smaller extent of land could be taken note of by making appropriate deductions such as for development of the land by providing amenities.

8. Thus it is evident from these decisions that it is not possible to decide the exact value of the property in the absence of appropriate documents. Reliance can be placed on the price fetched by smaller extent of land. It is also to be remembered that a willing buyer may not be prepared to purchase large extent of land at the same price of a small extent of land. A person who wants to build a house in accordance with his own plan may offer a fancy price to a building plot of small area. He may not be interested to purchase a large plot for the same price. That is why the Supreme Court evolved certain principles for making appropriate deductions from the value of the small extent of land. The above deduction will represent the cost of development activities in the area and I think such a principle is appropriate and is to be applied in this case. Considering the price of the property covered by Ext. A-3, it could be safely concluded that the properties acquired will fetch at least Rs. 2,000 percent at the time of the acquisition, in 1978. The above property is also situated not in Muttam Junction but at another road called Muttam-Karimkunnam road. But Ext. A-3 property is only 4 1/2 cents. The acquired property is about 7 hectares. Therefore at least 40 per cent must be deducted for the development activities as envisaged in the rulings of the Supreme Court. Therefore deducting Rs. 8.00 from Rs. 2,000, the value of the property comes to Rs. 1,200 percent (Rs. 3,000 per Are). We are also fortified by the fact that the property acquired was a rubber plantation and that the estate contained a lot of rubber trees of 4 years age. These trees might have become ripe for tapping within a couple of years.

9. The learned Government Pleader, on the other hand, submitted that the valuation made by the Land Acquisition Officer must be accepted. For that purpose the learned Government Pleader submitted that the basic document

must be considered as a reliable piece of evidence. But the above document was not produced as evidence in this case. No witness was also examined on the side of the Land Acquisition Officer. The Supreme Court had occasion to consider the above aspect of the matter at least in two decisions. In *Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another*, the Supreme Court observed as follows:

(2) So also the Award of the Land Acquisition Officer is not to be treated as a judgment of the trial Court open or exposed to challenge before the Court hearing the Reference. It is merely an offer made by the Land Acquisition Officer and the material utilised by him for making his valuation cannot be utilised by the Court unless produced and proved before it. It is not the function of the Court to sit in appeal against the Award, approve or disapprove its reasoning or correct its error or affirm, modify or reverse the conclusion reached by the Land Acquisition Officer, as if it were an Appellate Court.

10. Again the above question came up before the Supreme Court in the ruling reported in *G. Narayan Rao Vs. Land Acquisition Officer*, . The Supreme Court held that a Court is not entitled to accept the evidence of the Land Acquisition Officer when the document was not made part of the record nor anyone was examined in proof of the circumstances in which the sale happened to be executed. The Land Acquisition Officer cannot claim any better treatment than that of the claimant. The claimant has a duty to prove, to claim just and reasonable compensation by adducing reliable evidence. In rebuttal of this evidence, if the Land Acquisition Officer requires to prove his side of the story, he must also adduce evidence either documentary or oral. The Land Acquisition Officer cannot shirk his responsibility by merely relying on the proceedings of the enquiry, It must be proved by producing documents and by proving the same by examining witnesses.

11. Therefore we reject the contention of the learned Government Pleader. L.A.A. No. 966/96 is partly allowed awarding compensation to the Appellant at the rate of Rs. 1,200 percent (Rs. 3,000 per Are). The Appellant is also entitled to get the appropriate solatium and the additional amount u/s 23(1A) of the Land Acquisition Act. It is made clear that no interest is payable on solatium and the additional amount. L.A.A. 627/98 is allowed to the above extent. The Appellant in L.A.A. No. 966/96 is entitled to get the above compensation after deducting whatever amounts which have already been paid to him.