

(2012) 03 KL CK 0155
In the High Court Of Kerala
Case No : LA. App. No. 1293 of 2010 (C)

Mytheen	Vs	APPELLANT
State of Kerala and The Executive Engineer, K.S.T.P.		RESPONDENT

Date of Decision : 20-03-2012

Acts Referred:

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

Citation : (2012) 03 KL CK 0155

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

Bench : Division Bench

Advocate : R. Bindu Sasthamangalam, Sri. R. Jayakrishnan and Sri. Prasanth M.P, for the Appellant; C.R. Syamkumar, Sr. Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Pius C. Kuriakose, J.—The claimant/appellant whose land with a building extending to 47 Sq. M. in Mulavoor village of Muvattupuzha Taluk was acquired for the purpose of widening of the M.C. Road complains that the Reference Court has not awarded him adequate compensation for the building which existed on his property. An expert Engineer in Ext. C1 report recommended for the award of a further sum of Rs. 1,23,908/- over the original compensation of Rs. 1,32,047/- which the Land Acquisition Officer had awarded in respect of the building. The Engineer was examined as AW2. The learned Subordinate Judge was not very much impressed by the evidence given by AW2 and Ext. C1 report. Ultimately the learned Subordinate Judge took the view that the valuation taken by the Land Acquisition Officer on the basis of Public Works Department's schedule of rates is not realistic and awarded 30% increase over the value fixed by the Land Acquisition Officer. Thus the appellant was awarded Rs. 39,614/- as additional compensation for the building. In this appeal, the main ground raised is that Ext. C1 should have been relied on. We have heard the submissions of Sri. Bindu Sasthamangalam, the learned counsel for the appellant and those of Sri. C.R.

Syamkumar, the learned Senior Government Pleader.

2. According to Sri. Bindu Sasthamangalam, the reasons assigned by the learned Subordinate Judge for discarding Ext. C1 are not good reasons. Ext. C1 should have been accepted and additional compensation for the building should have been granted on that basis. 3. Sri. Syamkumar, the learned Senior Government Pleader however would support the impugned award. According to him, maximum compensation has been awarded by the learned Subordinate Judge.

4. Having given our anxious consideration to the rival submissions addressed at the Bar, and having made a quick re-appraisal of the evidence ourselves, we are of the view that the learned Subordinate Judge was justified in not placing reliance on Ext.C1. At the same time, we feel that the learned Subordinate Judge could have awarded some more compensation in respect of the building to the appellant. Based on the evidence available on record, we award to the appellant Rs. 25,000/- more towards value of the building than what is awarded by the Reference Court. The appeal is allowed to the above extent only. On the re-fixed compensation, the appellant will get all the statutory benefits admissible under Sections 23(2), 23(1A) and u/s 28 of the Land Acquisition Act subject to the conditions imposed by this Court in its order in C.M. Application No.2120/10. The appeal is allowed. The appellant is also awarded proportionate costs.