

(1957) 11 KL CK 0006

In the High Court Of Kerala

Case No : A.S. No"s. 111 and 140 of 1954 E

N.C. John"s Trust, Alleppey

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 18-11-1957

Acts Referred:

Land Acquisition Act, 1894 — Section 23

Citation : AIR 1958 Ker 166

Hon'ble Judges : G. Kumara Pillai, J;C.A. Vaidialingam, J

Bench : Division Bench

Advocate : Mathew Muricken, Mani J. Meenattoor and V.S. Moothathu, in A.S. 111/54 and Government Pleader in A.S. 140/54, for the Appellant; 1st Respondent (in A.S. 111/54), P. Govindan Nair, G.B. Pai and K.V.R. Shenoi, (in A.S. 140/54), for the Respondent

Final Decision : Dismissed

Judgement

C.A. Vaidialingam, J.—These appeals arise out of the acquisition by the Government of 96 cents of land in Survey No. 515/3A-11 of Alleppey Pakuthy, Am-balapuzha Taluk for the construction of quarters of the Resident Medical Officer, District Hospital, Alleppey.

2. The relevant date for purpose of computing the market value is 30-6-1947, being the date of notification u/s 6 of the Travancore Act XI of 1089.

3. The claim before the Land Acquisition. Officer was at Rs. 350/- per cent and the Award was at Rs. 80/- per cent. Being dissatisfied with the Award, the claimants made a reference to court and in the court they restricted their claim to Rs. 250/- per cent. The learned Judge increased the valuation and awarded at the rate of Rs. 120/- per cent.

4. A. S. No. 111 of 1954 has been filed by the claimants desiring the value to be fixed at Rs. 250/- per cent. A. S. No. 140 of 1954 has been filed by the State against the increase awarded by the court. The State also takes a point that the

reference itself is barred by limitation u/s 18 of Act XI of 1089.

5. There is a sketch filed in this case Ext. 4 which gives us a fair idea of the situation of the plot acquired as also the plots covered by the sale-deeds relied upon by the claimants and the State.

6. Mr. Mani J. Meenattoor, learned counsel for the claimants contended that his client is entitled to get at least the amount of Rs. 25,000/- for which he has purchased the properties from the owners, The Tata Oil Co., Ltd., Tatapuram. According to the claimants, there were negotiations between him and the owners and that he has paid the substantial consideration of about Rs. 24,000/- and the balance of Rs. 1,000/- is to be paid by him.

7. It is no doubt, seen from Exts. A to E and H to N that the claimant has purchased the property from the Tata Oil Mills Co., Ltd., and that he has been put in possession of the property.

8. But the learned District Judge has come to the conclusion that there is a lot of suspicion about this transaction. He has held that either the transaction has been entered into with the knowledge of the acquisition proceedings or that the claimant paid a fancy price for the property and that this price is quite unrelated to the prevailing market conditions.

9. Ordinarily, a party will be generally entitled to get at least the amount that he actually paid for a particular property provided he is able to satisfy the court that the transaction is a genuine one and was entered into having due regard to the market conditions prevailing at about that time. In this case, we feel that the criticism of the learned Judge is perfectly well founded. The letter Ext. N dated 3rd July, 1947 from the Tata Oil Mills Co., Ltd., to the claimant clearly shows that the claimant has made a point in his letter dated 6th June, 1947 that the acquisition proceedings were taken up some two years back.

10. Even Ext. M a letter written by Tata Oil Mills Co., Ltd., to the claimant on 5th June, 1947 refers to a letter of the party dated 29th May, 1947. In Ext. M it is seen that the Tata Oil Mills Co., Ltd., are advising the claimant to file any objections before the Government for acquisition. It will be seen that on the date of Ext. M the Section 6 Notification has not been issued. It was issued only on 30-6-1947. Both Exts, M and N indicate to our mind that the owners and purchaser of the properties were aware of the steps taken by the State for acquisition of the property.

It is not certainly reasonable to expect a party to be anxious to purchase a property when he knows that Government have already decided to acquire the property. Further, the evidence of D. W. 1, the Proverthicar, is clear that before declaration is published, notice will be given to the owner of the land proposed to be acquired and the Tahsildar will make an inspection of the land. Though the Head Office of the Tata Oil Mills Co., Ltd., may not have been informed by their local branch, it is very clear that the officers in charge of the local branch must

have known about the contemplated acquisition.

In fact, no officer of the Company has come to give evidence before the court to the contrary. Exts. M and N, taken along with the evidence of D.W. 1, clearly show that the parties have entered into this transaction with full knowledge of the acquisition proceedings. In fact, the learned Judge even doubts the genuineness about the payment of the consideration amount.

11. It is clear to our mind that the Transaction of sale between the claimant and the Tata Oil Mills Co., Ltd., cannot as such, give us an idea of the market value of the properties, as we are not satisfied that it was a very honest transaction entered into by the parties after taking the market conditions into account.

12. Then we will have to see whether there is any other independent evidence to support the claim of the claimant. The claimant relies upon the sales covered by Exts. O and P. Exts. O and P relate to 9 cents of land comprised in Survey No. 518/2 situated more or less to the suit property lying to the East of the same. Ext. P is a purchase of 1109 and Ext. O is a sale of the same property in 1119. (Sic) Ext. P can be left out as it relates to a period long anterior to the date of the S. G notification. Ext. O indicates that the sale was of 9 cents with residential buildings, shops, other appurtenances, well and a boundary wall for Rs. 6,000/-. We do not have any independent evidence about the value of the buildings. P. W. 2, no doubt, says that the buildings there will be worth at the most Rs. 1,500/-. We are not able to accept the same. From the description given in the document, the superstructures must be worth much more. Further, the plot itself is a very small plot of only about 9 cents having roads on the west and on the north Apart from the advantageous position in which the plot is situate, it is a principle of land acquisition that the value fetched for a small plot cannot be applied to lands covering a very large extent. Therefore, it is not possible for us to apply the value fetched under Ext. O even if P. W. 2's valuation of the buildings is accepted.

13. On behalf of the State, 3 sale-deeds Exts. 1 to 3 have been marked. Exts. 1 and 3 have not been accepted by the learned Judge and, in our view, quite rightly. Ext. 1 relates to a sale of 1116 in respect of 1 acre 33 cents, of land comprised in Survey No. 518/3. It is in evidence that though this plot is very near the suit plot, still at about the time of the sale, there was very severe economic depression. We agree with the learned Judge that Ext. 1 cannot be taken into account.

14. Ext. 3 is a sale of 1120 of about 35 cents of land in Survey No. 512/3. A perusal of the plan clearly shows that it is more or less in a bottled up area and having no direct access to the road. Further, it is in evidence that the said plot is situated very near the Isolation ward of the Hospital. Therefore, Ext. 3 also cannot be taken into account. The only other document which, in our opinion, will give a fair indication of the price in that area is that furnished by Ext. 2. Ext. 2 relates to a sale in 1118 of 44 cents in Survey No. 518/6. The purchaser under the said document was the father of the present claimant and the founder of the

claimant trust. The rate under Ext. 2 works out at about Rs. 68/- per cent. It is a fairly big plot and it abuts the road on the north and east. But the claimant criticised the sale on the ground that the price fetched therein was low, in view of the fact that there was a latrine adjoining the said plot for the Armed Reserved Police. But P. W. 2 himself admits that at the time of the transaction covered by Ext. 2 there was no latrine and therefore, in our opinion, the price represented by Ext. 2 can form a reasonable basis for fixing the price of the properties at about that time. But as nearly 5 years have elapsed after the rate of Ext 2 when we come to the present acquisition, it may not be appropriate to award the same rate in 1123. There is evidence to show that the prices of the properties have gone up between 1118 and 1122 by about 10 to 15 per cent. The learned Judge has quite correctly taken note of this rise in price and has fixed the rate of Rs. 120/- per cent for the properties under acquisition in addition to the usual statutory solatium.

15. Though it was very vehemently contended by the learned Government Pleader in his appeal that no further increase should have been granted by the learned Judge, we are not satisfied that the learned Judge has in any way acted wrongly in granting a higher rate. In fact, such a higher rate is really warranted and justified by Ext. 2, the document filed on behalf of the State. Therefore, in our view, there is no substance either in the appeal filed by the party for enhancement, or in the appeal filed by the State for confirming the valuation of the Land Acquisition Officer.

16. We may state that the learned Government Pleader has also raised a point in his appeal that the reference itself is barred by limitation and that the learned Judge erred in following the decision of the Allahabad High Court in Secy. of State Vs. Bhagwan Prasad and Another. It is unnecessary for us to go into the correctness or otherwise of the reasoning of the learned Judge on the Question of limitation, because we are satisfied from a perusal of the records that there has been a lot of delay in the Government passing final orders on the representations of the plaintiffs. In view of a conflict in the various High Courts on this question of limitation, the matter is pending decision of a Full Bench in this Court in A. S. Nos. 209 and 210 of 1955 (T). Therefore, at this stage we do not propose to express any opinion on this point.

17. In the result, both the appeals fail and are dismissed. In A. S. No. 111 of 1954, the appellant will pay the costs of the State. In A, S. No. 140 of 1954, the State will pay the costs of the 1st respondent alone. The 2nd respondent therein will bear his own costs.

18. The Tata Oil Mills Co., Ltd., the original owners of the land have filed a memorandum of objections regarding their right to receive a sum of Rs. 1,000/- from and out of the value to be paid by the Government. This is not a matter to be gone into in these appeals and that question is left open by us. But all parties are agreed before us that the Tata Oil Mills Co., Ltd., have not drawn the sum of Rs. 1,000/- from court. We record this statement and dismiss the memorandum

of objections with costs.