(2012) 08 KL CK 0235

In the High Court Of Kerala

Case No : LA. App. No. 431 of 2012

Ouseph Antony Vathappallylaya, Chempramkattu, Pallippuram Cherthala	APPELLANT
Vs	
State of Kerala and The Managing Director, K.S.I.D.C., Thiruvananthapuram	RESPONDENT

Date of Decision : 02-08-2012

Acts Referred:
Land Acquisition Act, 1894 — Section 28

Citation : (2012) 08 KL CK 0235

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

Bench : Division Bench

Advocate : Johnson P. John, for the Appellant; Joby Cyriac (S.C, K.S.I.D.C.) (R2) and Sri. Aloysius Thomas Govt. Pleader (R1), for the Respondent

Judgement

Pius C. Kuriakose, J.—This appeal by the claimant pertains to acquisition of 3.49 Ares of dry land and 10.32 Ares of wet land in Pallippuram village for the establishment of the Industrial Growth Centre at Pallippuram. The Land Acquisition Officer awarded land value at the rate of Rs. 14586/- per Are for dry land and at the rate of Rs. 3687/- per Are for wet land. The Reference Court under the impugned judgment refixed the value of the dry land at Rs. 18,232/- per Are. Value of wet land was refixed by the Reference Court at Rs. 4609/- per Are. The appellant urges that the value fixed by the Reference Court for wet land as well as dry land is inadequate. We have heard the submissions of Sri. Johnson P. John learned counsel for the appellant and those of Sri. Joby Cyriac learned standing counsel for the requisitioning authority. Sri. Joby Cyriac was supported in his submissions by Sri. Aloysius Thomas learned senior Government Pleader.

2. Mr. Johnson P. John agreed that the issue regarding the correct value to be given for dry land is already decided by this court in many cases including the case arising from LAR No. 28/2003. It was agreed that the value of the dry land involved in this appeal can be refixed at Rs. 29,982/- per Are. Hence, we refix

the value of dry land at Rs. 29,982/- per Are.

3. There was serious controversy at the Bar as to the correct market value to be fixed for wet land under acquisition. Mr. Joby Cyriac submitted that in many cases pertaining to wet lands, this court has approved the rate presently fixed by the Reference Court indirectly refusing to interfere with similar rates in appeal preferred by the other claimants. But the submission of Mr. Johnson P. John was that those cases cannot be a precedent for the present appeal. The present appeal is a case where Ext.A2 document was relied on by the claimant. Ext.A2 was properly proved also by examining the vendee. Even the learned Subordinate Judge has found that Ext.A2 is a wet land. The advocate commissioner, on the basis of a local inspection of Ext.A2 as well as the acquired property, has reported that it is the acquired property (wet lands) which has more locational advantages than Ext.A2 property. Ext.A2 reflects value of Rs. 7,500/- per cent. Ext.A2 is discarded by the learned Subordinate Judge for the reason that Ext.A2 document has been produced in two three other cases also and AW2, the vendee in Ext.A2 was examined as witness in two other cases also. According to the learned counsel, the learned Subordinate Judge has, without any basis, accepted the argument of the requisitioning authority that Ext.A2 is a document brought into existence with the objective of staking higher claim in prospective land acquisition cases. According to Mr. Johnson, it was not even suggested to AW2 that he had properties which were acquired for the same purpose or that his close relatives'' properties were acquired for the same purpose. There was only a bald suggestion in cross examination that it is to help the claimant that the value higher than the market value was shown in Ext. A2.

4. Sri. Joby Cyriac submitted that if this court interferes with the value of wet lands, the same is likely to open up blood gate of litigations including review petition.

5. We have given our anxious consideration to the submissions addressed at the Bar. We have carefully read through Ext.A2 document as well as the commission report. We were taken through the oral evidence adduced by AW2. We are unable to approve the action of the learned Sub Judge in having discarded Ext.A2 from the consideration completely for the reason that Ext.A2 document had been produced in two three other cases also and that AW2 has cited as witness in two or three other cases. Ext.A2 is evidently the document pertaining to the wet land which reflects the maximum land value. It is only natural that the claimants, who are always desirous of getting highest value for the property under acquisition, places reliance on a document reflecting higher value. The question is whether Ext.A2 is an artificial document or whether the value shown in Ext. A2 is artificial. It is not even suggested to AW2 that Ext.A2 is an artificial document. The only suggestion was that higher value than the market value of Ext.A2 in the locality has been shown in Ext.A2 so that the highest claim can be staked in prospective land acquisition cases. But, there is nothing in evidence to suggest that the vendee, who purchased the Ext.A2 property, had special interest either

directly or indirectly in the lands under acquisition in this case or any other cases covered by the very same acquisition. True the rate of Rs. 7,500/- per cent reflected in Ext.A2 is very high when compared to the value of wet lands seen in other documents including Ext.R2. We think that the property covered by Ext.A2 was superior in quality to the wet lands like the present one. Significantly the advocate commissioner has not reported on the comparability of the quality of the lands under acquisition and Ext.A2 property. The advocate commissioner reported only in terms of the locational importance of the properties and according to the commissioner the acquired property is more importance. On reading through the schedule portion of the document, we feel that though described as nilam, the property was in the process of reclamation. In fact the original holding of the vendee of Ext.A2 was described as partly nilam and partly puriyadam. We hold that Ext.A2 property, though described as nilam, was in the process of being reclaimed. According to us, the value reflected in Ext.A2 does not reflect the correct market value of the similar wet lands in the locality. At the same time, Ext.A2 itself gives indication that the correct value of the wet land involved in the present acquisition is more than the rate awarded by the Reference Court. Taking into account Ext.A2 as well as other documents pertaining to the wet lands including Ext.R2 basis document, we refix the value of the wet lands involved in this case at Rs. 3,000/- per cent. The appeal is allowed to the above extent. The appellant will be entitled for all statutory benefits admissible u/s 23(2), 23(1A) and Section 28 of the Act. Parties will suffer their respective costs.

We make it clear that this judgment fixing the market value of the wet land under acquisition shall not quoted as a precedent in any other cases pertaining to the present acquisition relating to acquisition of wet land. It is clarified that refixation of land value at Rs. 3,000/- per cent for the wet lands involved in this appeal has been made on the basis of the evidence which is available on record in this case.

