

(2011) 08 KL CK 0029
In the High Court Of Kerala
Case No : LA. App. No. 262 of 2011

Padman, Parimalam, S. Bindhu and Latha Pani	APPELLANT
Vs	
State of Kerala	RESPONDENT

Date of Decision : 02-08-2011

Acts Referred:

Citation : (2011) 08 KL CK 0029

Hon'ble Judges : Pius C. Kuriakose, J;C.K. Abdul Rahim, J

Bench : Division Bench

Advocate : Vinoy Varghese Kallumootill, for the Appellant; No Appearance, for the Respondent

Final Decision : Allowed

Judgement

Pius C. Kuriakose, J.—The claimants are in appeal. Their land with building situated in Allapad Village of Karunagapally Taluk was acquired for the construction of an approach road. The acquisition was pursuant to Section 4(1) notification published on 30/10/2006. The Land Acquisition Officer awarded land value at the rate of Rs. 25,409/- per Are. For the building which existed on the property, he awarded total value of Rs. 4,57,500/-. Even though documents were produced, the learned Reference Court on evaluating the evidence refixed the land value at Rs. 41,925/- per Are. The Court however, did not grant any enhancement towards building value. The Appellants had claimed compensation for injurious affection in respect of the remainder property on the reason that by virtue of the acquisition, the entire remainder property came under the newly constructed bridge. Finding some merit in the above claim, the learned Subordinate Judge ordered 20% of the total land value for the acquired property as compensation for injurious affection.

2. In this appeal various grounds are raised assailing the award of the Reference Court. It is urged that the court below was not justified in not awarding any enhancement towards the building. It is also urged that the compensation for injurious affection should have been awarded in respect of the unacquired

property and not in respect of the acquired property.

3. The submissions of Sri.Vinoy Varghese Kallummoottil learned counsel for the Appellants were opposed by Smt. T.T.Josephina, learned Government Pleader. According to her, what is awarded by the Reference Court is the maximum and there is No. scope for enhancement.

4. Having anxiously considered the rival submissions addressed at the Bar, and having taken into account the judgment of this Court in L.A.A. No. 1320/2010, we are of the view that there is No. scope for enhancing the land value awarded to the Appellants by the Reference Court. We confirm the land value awarded under the impugned judgment. At the same time, we find that the learned Subordinate Judge could have awarded enhancement on building value keeping in mind the principle that construction of buildings strictly in accordance with the PWD's published schedule of rate is not a pragmatic proposition. Keeping in mind that principle, we award to the Appellants a further amount of Rs. 1,33,250/- towards the building value.

5. The submission of the learned Counsel for the Appellants that compensation for injurious affection is a compensation to be given in respect of the unacquired property and not the acquired property is certainly sound. On going through the impugned judgment, we find that what the learned Subordinate Judge has done is to award lump sum compensation which will be equal to 20% of the total value awarded for the acquired land.

6. Having reappraised the evidence, we are of the view that the compensation to be awarded to the Appellants towards injurious affection can be refixed at Rs. 25,000/-. This means that inclusive of the compensation awarded by the Reference Court towards injurious affection, the Appellants will get a sum of Rs. 25,000/- towards that count.

The appeal is allowed to the above extent. The Appellants will be entitled for all statutory benefits on the refixed compensation. But, we clarify that as far as the compensation awarded on account of injurious affection is concerned, the same will carry only interest u/s 28. The parties are directed to suffer their respective costs. While preparing the decree, the Registry will have due regard to the conditions imposed by this Court in its order dated 7/6/2011 in C.M.Appln. No. 595/2011. It will also be ensured that the conditions in that order have been complied with. Decree copy will be issued only after ensuring that the full court fee payable on the appeal memorandum is remitted.