

(2011) 03 KL CK 0328

In the High Court Of Kerala

Case No : RP. No. 1046 of 2010 in LAA. No. 841 of 2009 and LAA. No. 84 of 2009

Paulose Chacko (deceased)

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 29-03-2011

Acts Referred:

Land Acquisition Act, 1894 — Section 25, 28, 28A

Citation : (2011) 03 KL CK 0328

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

Bench : Division Bench

Advocate : N.N. Sugunapalan, for the Appellant; No Appearance, for the Respondent

Judgement

Pius C. Kuriakose, J.—The prominent ground on which the Petitioners Appellants seek review of our judgment dated 9th July 2010 is that the same was passed without noticing earlier judgment of this Court in LAA. No. 1355 of 2010. According to Mr. N.N. Sugunapalan, senior Counsel, the property involved in that LAA was identical in all respects to the property involved in the present case and it is necessary in the interests of justice that the same value is awarded to the review Petitioners also. There is very stiff opposition from the learned senior Govt. Pleader Smt. Latha T. Thankappan to the request for review. She submitted that the Appellants review Petitioners had limited their claim in the appeal to what is presently granted under our judgment. Such Appellants cannot now aspire for more on the basis of earlier judgment which was not brought to the notice of this Court when the appeal was heard. Mr. Sugunapalan's response to the above submission was that the Appellants original claim before the land acquisition officer as well as before the reference Court was much more than what is claimed in the RP. The Appellants limited their claims in the appeal before this Court only due to their financial constraints at the time of preferring the appeal. Appellants have by now got over the final constraints and have remitted the full Court fee payable on the enhanced claim.

2. We have very anxiously considered the rival submissions addressed at the Bar. Having regard to the principles underlying the provisions of the Land Acquisition Act such as Sections 25 and 28A we find merit in the submission of Mr. Sugunapalan that there is necessity to maintain a parity between the compensations awarded to persons whose identical properties were acquired for the same purpose pursuant to the same notification. At the same time, we notice force in the submission of Smt. Latha T. Thankappan that the jurisdiction of this Court under Order 47 Rule 1 is not to be invoked to advance the interest of fence sitters. We feel that taking into account the relative merits of the rival submissions relief can be given to the review Petitioners to a certain extent. Under the judgment relied on in the review petition the value of the land under acquisition was re-fixed at Rs. 50,000/- per cent. We notice that the property involved in this case is a large extent involving more than 1 acre. If the RP is allowed, the financial commitment for the Government will be considerable unlike other case where the extent was small. We are therefore of the view that considering the largeness of the extent involved in the present RP market value can be fixed at Rs. 45000/- per cent corresponding to Rs. 1,11,195/- per Are. Even the above limited relief we are inclined to grant to the review Petitioners only on imposing proper terms. The result of the above discussion therefore is as follows:

Our judgment dated 9-10-2010 will stand recalled and LAA No. 841 of 2009 will stand disposed of re-fixing the market value of the land under acquisition at Rs. 45,000/- per cent corresponding to Rs. 1,11,195/- per Are. This judgment re-fixing the land value at Rs. 45,000/- per cent will become operative only subject to the following conditions:

- 1) The review Petitioners shall pay a sum of Rs. 50,000/- to the Government through the Office of the Advocate General within one month from today and produce receipt.
- 2) The review Petitioners will pay a sum of Rs. 25,000/- to the High Court Legal Services Committee within the same time limit and produce receipt.
- 3) For the enhancement to which the Appellant becomes eligible by virtue of the present revised judgment (over and above the rate re-fixed under the judgment dated 9-07-2010 the review Petitioners will not be eligible for statutory interest u/s 28 during the period from 9-7-2010 till 29-03-2011.

The parties will suffer their respective costs.