(2012) 02 KL CK 0137

In the High Court Of Kerala

Case No : LA. App. No. 373 of 2011 and LAR 49 of 2009

P.N. Gopinathan, Radhamma, Dr. Jayakumar and Dr. Sreedevi APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 16-02-2012

Acts Referred:
Land Acquisition Act, 1894 — Section 23(1A), 23(2), 28, 4(1)

Citation : (2012) 02 KL CK 0137

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

Bench : Division Bench

Advocate : K. Shaj and Sri. Sajju S, for the Appellant; Aloysious Thomas, Sr. Govt. Pleader for R1, for the Respondent

Final Decision : Allowed

Judgement

Pius C. Kuriakose, J

1. The claimants are the appellants. Their land extending to 0.24 Ares situated in Chengannur village within the limits of Chengannur municipal town together with a building situated thereon was acquired for the purpose of development of the Adoor-Chengannur link of MC Road. The issue involved in this appeal is only to the correct market value to be awarded to the land in question. The Land Acquisition Officer awarded land value at the rate of Rs. 98,634/- per Are. Before the Reference Court the appellants placed reliance on Ext.A1. Ext.A1 was a pre-notification document executed six years prior to the notification u/s 4(1) in this case which was on 03/06/05. Ext.A1 reflected the land value at the rate of Rs. 4,30,379.75/- per L. A. A. No. 373 of 2011 -2-Are. The Commissioner in Ext.C1 reported that the distance between Ext.A1 property and the property under acquisition was only 25 metres and that they were situated on either sides of the MC Road. The learned Subordinate Judge did not place reliance on Ext.A1 taking the view that Ext.A1 reflected a fancy price. It appears that the learned Subordinate Judge was not happy with Ext.C1 also. Ultimately what the learned Subordinate Judge did was to fix the market value at Rs. 3 lakhs per Are

accepting the oral evidence adduced by the parties.

2. In this appeal ground prominently raised is Ext.A1 should have been relied on and market value should have been fixed giving additions on the value reflected in Ext.A1 for passage of six years'' time.

3. Sri.Saju S., the learned counsel for the appellants addressed us in detail. He submitted that relying on Ext.A1 the correct market value of the property will come to Rs. 6 lakhs. He even pointed out that in subsequent cases, the very same learned Subordinate Judge has re-fixed the land value of identical land at Rs. 5 lakhs per Are. He requested that the appeal be allowed in full.

4. Sri.Aloysious Thomas, the learned Senior Government Pleader, however, would support the impugned award. According to him, what has been awarded is reasonable.

5. Having given our anxious consideration to the rival submissions addressed at the Bar and having carefully gone through the award passed by the learned Subordinate Judge and having re-appraised Ext.A1 document, we are of the view that the learned Subordinate Judge was not justified in discarding Ext.A1. It was reported in Ext.C1 that the distance between Ext.A1 property and the properties under acquisition is only 25 metres and that it was Ext.A1 property and the properties under acquisition were situated by the side of M.C. Road. On going through Ext.A1 we have reason to think that Ext.A1 was a document executed in the due course of business. We also notice that there was absolutely no counter oral evidence adduced on the side of the Government to the oral evidence adduced by AW1, the claimant. However, since Chengannur is one of the very important municipal towns in Alappuzha District and the value of land has been (as in every other municipal town in the State) steadily on the increase in Chengannur during the period from 2000-2010, if additions are given taking into account the principle laid down by the Supreme Court in G.M., Oil & Natural Gas Cor. Ltd. v. R. Jivanbhai Patel & Anr. (2008 SAR (Civil) 894) the land value will have to be increased at least by 10% every year. If additions are given that way, the value will come to about Rs. 6 lakhs. But we are not inclined to re-fix the value of the land under acquisition at Rs. 6 lakhs. We feel having re-appraised the evidence, that there is every justification for re-fixing the value of the land under acquisition at Rs. 4,60,000/- per Are relying on Ext.A1 and giving reasonable additions for passage of time. The appeal is allowed. The value is re-fixed at Rs. 4,60,000/-. But however, as the appellants have limited their claim for enhancement to Rs. 1,10,000/- we allow the appeal only to the L. A. A. No. 373 of 2011 -5-extent of awarding to the appellants Rs. 1,10,000/- more than what is awarded by the learned Subordinate Judge. The appellants will be entitled for all statutory benefits admissible under Sections 23(2), 23(1A) and u/s 28 of the Land Acquisition Act. Parties are directed to suffer their respective costs. Decree copy will be issued to the appellants only after ensuring that the full court fee payable on the appeal memorandum is remitted.