(2012) 03 KL CK 0134

In the High Court Of Kerala

Case No : LA. App. No. 543 of 2011 (A)

Ponnappan APPELLANT

Vs

State of Kerala and The Chief Executive Officer RESPONDENT

Date of Decision : 12-03-2012

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 13 Rule 10, 4(1)

Citation : (2012) 03 KL CK 0134

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

Bench : Division Bench

Advocate : Lal Georgeand Smt. M.J. Induja, for the Appellant; C.R. Syamkumar, Sr. Government Pleader for R1 and Sri. P.A. Ahamed, S.C for R2, Sri. Anil Thomas (T), S.C and Smt. K.V. Rashmi, S.C., for the Respondent

Final Decision : Allowed

Judgement

Pius C. Kuriakose

1. This appeal is filed by the claimant, whose properties in Attipra Village were included in categories v and viii and acquired pursuant to Section 4(1) notification published on 17.12.2003, for the purpose of establishment of Electrical Technology Park at Kazhakoottam. For the properties included in category-v, the Land Acquisition Officer awarded land value at the rate of Rs. 68,397/- per Are. For the properties included in category-viii, he awarded land value at the rate of Rs. 17,967/- per Are. The reference court, in the first instance, re-fixed the value of the properties included in category-v at Rs. 1,80,000/- per Are. For properties included in category-viii, the reference court in the first instance awarded land value at Rs. 1,25,280/- per Are. Considering the appeal preferred by the Government, those awards were set aside and the LAR No. 421 of 2005 was remanded to the lower court for taking a fresh decision. The impugned awards have been passed pursuant to the order of remand passed by this Court. Under the impugned award, value of the properties in category-v has been re-fixed at Rs. 55,000/- per cent corresponding to Rs. 1,35,905/- per Are.

The value of properties in category-viii has been re-fixed at Rs. 25,000/- per cent corresponding to Rs. 61,775/- per Are.

2. The ground raised in this appeal is that the market value awarded by the reference court is inadequate. It is also urged that the properties included by the Land Acquisition Officer in categories-v and viii were lying contiguously and were being enjoyed by the appellant as one single holding. The entire property should have been included in category-v itself. The land value claimed in this appeal is at the rate of Rs. 1 lakh per cent corresponding to Rs. 2,47,100/- per Are on the basis of Ext. A1 document.

3. We have heard the submissions of Mr.Lal George, the learned counsel for the appellant, Sri.C.R.Syam Kumar, the learned Senior Government Pleader and those of Smt. Reshmi K.V., the learned standing counsel for the requisitioning authority.

4. The argument of Sri.Lal George was that the rate fixed by the reference court is quite inadequate, while the argument of the learned Senior Government Pleader and Smt. Reshmy was that the rate presently fixed is quite sufficient.

5. We have given our anxious consideration to the rival submissions addressed at the Bar. We notice that the value of properties included by the Land Acquisition Officer in categories iii to x have been fixed in the Lok Adalath conducted under the aegis of the Thiruvananthapuram District Legal Services Authority and different rates were fixed for those properties by the Adalath. At the same time, we also notice that the impugned judgments have been decided on the basis of an application filed under Order XIII Rule 10 CPC by the Government.

6. There is considerable force in the argument of the learned Senior Government Pleader and Smt. Reshmi, the learned Standing counsel for the requisitioning authority that having agreed to receive what had been awarded to the parties under the judgments which were looked into under Order 13 Rule 10, it is not open to the appellant to claim more. But at the same time the obligation of the reference court and this Court in appeal is to fix the correct market value of the lands which have been acquired in exercise of powers of eminent domain by the Government, notwithstanding the unwillingness of the claimant to part with their properties.

7. We have today, by a common judgment in LAA Nos.468 of 2011 and 504 of 2011, fixed the correct market value of properties included by the Land Acquisition Officer in category-i, i.e. dry lands, enjoying the direct frontage of Kovalam-Kazhakoottam Byepass, acquired for the same purpose at Rs. 2,82,000/- per Are. We take into account those judgments also.

8. We notice that the properties, included by the Land Acquisition Officer in category-v and category-viii, in these appeals were lying contiguously and were enjoyed as one holding by the appellant concerned. According to us, as the properties were lying contiguously and were enjoyed by the appellant himself as

his own holding, the Land Acquisition Officer was not justified in not including the entire property involved in this appeal in category-v itself. For category-v, under the impugned judgment, the learned subordinate judge has re-fixed the value of the land at Rs. 55,000/- per cent.

9. We notice that in the Adalath, it was a lesser rate than Rs. 55,000/- per cent which was fixed for properties in category-v. At the same time, having made a review of the evidence which was available in this LAR case even prior to the remand, we feel that there is justification for re-fixing the value of the entire properties under acquisition at a slightly higher rate.

10. We allow this appeal and re-fix the value of the acquired properties uniformly at Rs. 56,000/- per cent corresponding to Rs. 1,38,376/- per Are, which we round off to Rs. 1,38,380/- per Are.

11. The appellant will be entitled for all statutory benefits subject to conditions, if any, imposed by this Court while condoning the delay. The appeal is allowed. No costs.