
(2012) 02 KL CK 0138

In the High Court Of Kerala

Case No : LA App. No. 39 of 2012 (D) and LAR 96 of 2006

Prabhakaran Plavila Veedu, Kottukkal Muri, Kottukkal

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 16-02-2012

Acts Referred:

Land Acquisition Act, 1894 — Section 28, 4(1)

Citation : (2012) 02 KL CK 0138

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

Bench : Division Bench

Advocate : S. Ramesh, Sri. Naveen T and Smt. Pooja Surendran, for the Appellant; Aloysious Thomas, Sr. Govt. Pleader, for the Respondent

Judgement

Pius C. Kuriakose, J

1. The claimant is the appellant. His land situated in Edamulackal village near to Ayoor junction on the main central road together with the building situated thereon was acquired for the development of the M.C. Road under the KSTP. The acquisition was pursuant to Section 4(1) notification published on 24/10/02. The Land Acquisition Officer awarded land value at the rate of Rs. 88,235/- per Are. For the building the Land Acquisition Officer awarded value at Rs. 4,24,029/-. In support of the claim for enhanced land value, the appellant produced Ext.A1 which was a post notification document. Ext.A1 was discarded by the learned Subordinate Judge for the reason that neither the vendor nor the vendee of Ext.A1 was examined. Court ultimately L. A. A. No. 39 of 2012 -2-noticed the importance of the locality and doing guess work fixed the land value at Rs. 1,76,470/- thereby giving cent percent increase on the land value. Exts.A2 and A3 were the documents produced by the appellant to prove his claim for enhanced value for the building. Noticing that better evidence in the form of a Commission Report with the assistance of Engineer was not brought on record the court below discarded Exts.A2 and A3 and confirmed the building value awarded by the Land Acquisition Officer.

2. Having considered the grounds raised in the memorandum of appeal and the submissions of Sri.T.Naveen, the learned counsel for the appellant and also those of Sri.Aloysious Thomas, the learned Senior Government Pleader for the Government and having carefully gone through the award we feel that even in the absence of any evidence from the part of the appellant there is justification for awarding enhancement to the appellant towards the building value. The building was got valued by the Land Acquisition Officer through the Engineers of the L. A. A. No. 39 of 2012 -3-Public Works Department. The PWD valued the building for the purposes of the original award applying the schedule of rates published by the PWD. It is a matter of common knowledge that construction of buildings in accordance with PWD's published schedule of rates is not a pragmatic proposition. Even the PWD is tendering out its civil works at 30-32% rates higher than their own published schedule of rates. Keeping that principle in mind, we are inclined to award to the appellant a sum of Rs. 1,27,500/- as additional value for the building.

3. We shall now deal with the correct land value to be awarded. Ext.A1 was discarded by the learned Subordinate Judge for the reason that neither the vendor nor the vendee was examined. According to us, there was a better reason for the learned Subordinate Judge to discard Ext.A1. Ext.A1 is a post notification document. We therefore approve the action of the learned Subordinate Judge in having discarded Ext.A1. At the same time, we feel that the rate of Rs. 1,76,470/- presently fixed is slightly below the correct market value of the land at the relevant time.

4. Sri.Naveen submitted that the appellant did not get sufficient opportunity for producing all relevant documents. He fervently requested that an opportunity be given so that the appellant can produce pre-notification documents in the area reflecting higher value than Rs. 1,76,470/- per Are presently fixed.

5. Sri.Aloysious Thomas, the learned Senior Government Pleader submitted that in case this Court is inclined to afford opportunity the interest of the state should be protected.

6. Having considered the submissions addressed, we are of the view that opportunity can be given to the appellant for adducing further evidence for substantiating his case regarding the correct market value of the land under acquisition. Accordingly, the result of the appeal is as follows:

- 1) The judgment and decree under appeal are set aside.
- 2) The appellant is awarded a further amount of Rs. 1,27,500/- towards building value.
- 3) The issue of the correct value to be awarded for the land is remanded to the Subordinate Judge's Court, Kottarakkara. The learned Subordinate Judge will afford opportunity to the appellant to produce pre-notification documents relating to properties situated in the same village and prove them in accordance with law.

The learned Subordinate Judge will pass revised award and fix the land value after appreciating the oral evidence already on record and the further evidence which comes to be on record pursuant to this order of remand. However, this order of remand will be subject to the following conditions:

- a) The appellant will forfeit the court fee presently remitted (1/3) to the Government.
- b) In case the appellant becomes eligible for more land value under the revised award, such enhanced land value will not carry interest u/s 28 of the Land Acquisition Act during the period from 18/03/11 till the date L. A. A. No. 39 of 2012 -6-of the revised award.
- c) The appellant will pay a sum of Rs. 3,000/- as cost to the Kerala High Court Advocates Welfare Fund Trust within 10 days and produce receipt before the Reference Court.

Once the Reference Court notices that this remand order has become operative then the case will be posted in the earliest available special list for trial.

Parties will enter appearance before the learned Subordinate Judge on 09/03/12.