
(2009) 07 KL CK 0075
In the High Court Of Kerala
Case No : LA. App. No. 533 of 2008

Radhakrishnan Nair A.N.

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 10-07-2009

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 23, 4(1), 47, 48(2)

Citation : (2009) 3 ILR (Ker) 748 : (2009) 3 KLJ 4 : (2009) 3 KLT 547

Hon'ble Judges : Pius C. Kuriakose, J

Bench : Single Bench

Advocate : Santhamma Issac, N.C. Thomas, Cherian Thomas and Anu Thankam Mathew, for the Appellant; P.R. Ramachandra Menon, SC, GCDA, Millu Dandapani and Latha T. Thankappan, G.P., for the Respondent

Final Decision : Dismissed

Judgement

Pius C. Kuriakose, J.—The claimant, who is not satisfied with the award of compensation by the land acquisition reference court, has preferred this appeal. The acquisition was for the purpose of construction of Kaloore - Kadavanthra Road. Relevant Section 4(1) notification was published on 25/7/1978. The land acquisition officer awarded land value at the rate of Rs. 4750/- per Are, which was enhanced under the impugned judgment by the reference court to Rs. 9500/- per Are. The evidence before the reference court regarding the market value of the property under acquisition was Exts. A2 and A3 only. ExtA2 was a copy of the sale document executed on 18-10-2001 which is some 13 years after Section 4(1) notification. Ext. A3 was executed in 2005 some 17 years after Section 4(1) notification. Exts. A2 reflected land value of Rs. 5 Lakhs and 9 Lakhs respectively. Exts. A2 and A3 were, in our opinion, rightly rejected by the learned Subordinate Judge. Ultimately what the learned Subordinate Judge did was to rely on the basis documents itself and take into account the passage of time between the basis document and the date of publication of Section 4(1) notification, give addition and arrive at the value fixed by him. The claimant

urges that the court below went wrong in determining the market value of the acquired property as on the date of publication of Section 4(1) notification. It is contended that on account of the inordinate delay, which has been occasioned in the matter of taking over of possession, considerable damages have been sustained by the claimant and taking those damages into account, the land acquisition authority as well as the reference court should have fixed the market value of the acquired property at the time of taking over of possession and not at the time of publication of Section 4(1) notification.

3. We have heard the submissions of Smt. Santhamma Issac, learned Counsel for the appellant and those of Smt. Sumathi Dandapani, learned senior counsel for the requisitioning authority GCDA. We have also heard Smt. Latha T/Thankappan, learned senior Government Pleader also,

4. Smt. Santhamma Issac would draw our attention to the judgment of the Supreme Court in D.D.A. v. Joginder S. Monga AIR 2004 Sc 3291 and also the judgment in Balwant Narayan Bhagde Vs. M.D. Bhagwat and Others, . She would argue that even though possession of the property under acquisition was taken over only in 2006, as a matter of fact, way back in 1983 itself, the appellant had been physically dispossessed of the property. The appellant was Unable to deal with the property in manners of her choice after that date. The appellant was also not able to take any income from the property on account of actual dispossession of the property by the land acquisition authorities. The learned Counsel referred to clause fourthly of Section 23 of the Land acquisition Act and submitted that taking into account the loss of earning resulting from the delay caused in the matter of taking over of possession, either amounts be awarded towards damages or the market value be determined as on the date of formal taking over of possession.

5. The submissions of Smt. Santhamma were very forcefully resisted by the learned senior counsel Smt. Sumathi Dandapani. She drew our attention to the judgment of this Court dated 17/8/2005 in O.P. No. 16304/1997 filed by the appellant himself and submitted that it has been conclusively found by this Court that it is the appellant himself who is to blame for the delay in the matter of taking over of possession of the property under acquisition. The learned senior counsel further submitted that the appellant was standing in the matter of taking over of possession contending that the survey number of the property covered by the award is different. She submitted that except the appellant all the other land owners, whose properties were acquired for the same purpose i.e. construction of Kaloor Kadavanthra Road, actually surrendered possession in response to the request for possession given by the land acquisition authority. In the appellant's case also award was passed in 1983. The amount was not paid to the appellant, who was not willing to receive the amount on the reason that there is a genuine dispute regarding the identity of the acquired property. This is why the award amount was deposited as per the rules in Treasury Deposit. No damages has been occasioned at all to the appellant due to the delay in formal

taking over of possession of the acquired property. The learned senior counsel further submitted that the evidence produced by the claimant before the reference court in respect of his claim for higher land value was Exts. A2 and A3. They were documents executed several years after the crucial date of publication of Section 4(1) notification. The court below rightly rejected those documents. Cent percent increase has been given relying on the basis documents itself. Smt. Sumathj Dandapani pointed out that in the case of other land owners, whose lands were treated as of equal value by the land acquisition officer, such enhancement has been finally approved by this Court also. Granting any further enhancement to the appellant will be unjust, so submitted by the learned Counsel.

6. We have anxiously considered the rival submissions addressed at the Bar. We are unable to accept the argument of Smt. Santhamma Issac that damages sustained by the owner of land under acquisition on account of the delay caused by the Government in the matter of taking over of possession can be awarded by the land acquisition reference court under clause fourthly of Section 23 of the Land Acquisition Act. Clause fourthly of Section 23 of the Land Acquisition Act is quoted as follows;

23. Matters to be considered in determining compensation; 1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration:

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fourthly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings,

7. Clause fourthly of Section 23 deals with damages sustained by persons interested in the land under acquisition at the time of the Collector's taking possession of the land (underlining supplied), by reason of the acquisition injuriously affecting his other properties belonging to the person or the earnings of the persons. Under the above clause the damages affecting the earnings of the land owner can certainly be taken into account to the extent they have been occasioned at the time of taking over of possession by the Collector.

8. Sub-section (2) of Section 48 of the Act perhaps is the only provision in the Land Acquisition Act which provides for payment of compensation to the land owner for damages sustained by him during periods earlier to actual taking over of possession. Section 48(2) cannot have any application in this case where land acquisition proceedings have been completed, award passed and possession taken over. It is, therefore, clear to our mind that awarding damages to the land owner for inordinate delay, if any, caused by the Government in the matter of taking over of possession, is not within the domain of the reference court u/s 18 of the Land Acquisition Act.

9. In deference to the submissions, which were addressed before us by Smt Santhamma Issac that there was deliberate and inordinate delay on the side of the Government in the matter of taking over of possession and that the damages have been occasioned to the land owner on account of such delay, we proceed to consider that aspect of the matter. According to us, the judgment of this Court in O.P. No. 16304/1997 (Ext.A4) should settle this controversy against the appellant ExtA4 contains clear findings to the effect that it was the appellant himself, who was delaying taking over of possession of the property under acquisition by the land acquisition authority by raising unsustainable contention regarding the identity of the property covered by the award. It is not disputed that Ext. A4 has attained finality. In view of the finality attained by Ext. A4 the contention of the GCDA that it was neither the Government nor the GCDA who were responsible for the delay in the matter of taking over of possession of the property under acquisition but the appellant himself was the person responsible for the delay has necessarily to be accepted. The records will reveal that the appellant was objecting to the taking over of possession of the property under acquisition raising disputes regarding the identity of the acquired property with reference to survey and subdivision number. In O.P. 16304 of 1997 a challenge was made on ExtA1 notice issued by the L.A. authority demanding possession of the acquired property and threatening magisterial action u/s 47 for forcible taking over of possession. Having resisted the above possession notice, it is idle for the appellant to contend that it is the Government and the GCDA who are responsible for the delay and that the appellant should be paid compensation for the damages occasioned to the appellant for not being able to enjoy the property during the interregnum the commencement of the L.A. proceedings and the time of taking over of possession. Apart from going on contending that damages was caused to the appellant on account of the delay, no acceptable evidence is seen adduced regarding sustainment of any damage by the appellant in respect of property during the relevant period. There is no evidence as to what if any was the income from the property which could not be taken by the appellant on account of the delay. We are sure that the appellant himself was taking whatever income derived from the property during the relevant time since he only was in possession and enjoyment of the property. The only loss is the loss resulting from the determination of market value as on the date of Section 4(1) notification without taking into account the increase in the value of the property during the period till actual taking over of possession. As already indicated, if at all this is loss of earnings, the appellant has to blame himself for such loss. One of the main prayers in O.P. No. 16304/97 was that the appellant be paid the then market value of the property as compensation. That prayer was not allowed by this Court under Ext.A4. The appellant cannot be allowed to re-agitate that prayer which was finally declined under Ext. A4.

10. We will now examine the correctness of the market value fixation done under the impugned judgment. As already stated, Exts. A2 and A3 were the only items of evidence barring the oral evidence which was pertained to the claim for

enhanced land value. Exts.A2 and A3 being documents executed 13 to 17 years after the relevant Section 4(1) notification could not have been relied on. The basis documents were the only document available before the reference court and what the reference court has done is to give additions for passage of time and take into account the oral evidence regarding importance of the locality and prevailing market value and to grant enhancement by cent percent over the value granted by the LA. Officer. The approach of the learned Sub Judge was quite reasonable. What is granted is the maximum that could have been granted on the evidence available on record.

Result is that the appeal will stand dismissed, but in the circumstances no order as to costs.