

(2010) 06 KL CK 0119
In the High Court Of Kerala
Case No : L.A. App. No. 840 of 2009

Sebastian, M.

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 18-06-2010

Acts Referred:

Kerala Land Acquisition Act, 1961 — Section 3(1)
Land Acquisition Act, 1894 — Section 12(2), 18, 28, 30, 31(2)

Citation : (2010) 06 KL CK 0119

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

Bench : Division Bench

Advocate : M. Gopikrishnan Nambiar and P. Suresh, for the Appellant; M. Dinesh, S.C. for K.W.A. and Latha T. Thankappan, Sr. Government Pleader, for the Respondent

Judgement

Pius C. Kuriakose, J.—The claimants are in appeal. Their wet lands situated in Poonithura Village were acquired by the Government at the instance of the Kerala Water Authority for setting up of a sewage treatment plant for that authority. The relevant notification u/s 3(1) of the Kerala Land Acquisition Act was promulgated by the L.A. Officer on 5-9-1978. Pursuant to that notice, after conducting award enquiry, the L.A. Officer passed award on 23-9-1986. Under this award land value was fixed at the rate of Rs. 403 per cent. Interestingly the award which was passed by the LAO was a common award in favour of several land owners without specifying the separate extents taken over from their possession. On the basis that it was not possible to determine the amounts due to each of the land owners what the Land Acquisition Officer did was to deposit an amount of Rs. 1,26,112.59 as the total compensation and send up a reference u/s 31(2) to the Court. The claimants were issued with award notice u/s 12(2) on 23-11-1987. On realising that it is at the rate of Rs. 403 per cent that the Land Acquisition Officer had determined the compensation, the awardees sought for references u/s 18. Considering the request of the awardees, the Land Acquisition Officer sent a reference u/s 18 to the Land Acquisition Court. The reference u/s 18 was

registered by the L.A. Court as LAR. No. 127 of 1990 while the reference u/s 31(2) was registered as LAR. No. 60 of 1990. It is pertinent to note in this context that there was considerable delay not only in the matter of passing of the award, but also in the matter of sending the references u/s 31(2) and Section 18. The references were enquired into by the court below. The enquiry, we gather from the proceedings paper maintained by the court continued for a fairly long period of about 9 years. The claimants entered appearance on 23-10-1990 and the references were closed by the learned Sub Judge on 4-12-1999 by passing the following order:

Heard both sides. This reference was made owing to the inability of the acquisition authority to ascertain the actual extent of the land owned and possessed by the respective parties. The court has issued a commission to effect measurement and ascertain the extent of the land as per the title deeds of the parties. The commissioner could not measure the land for various reasons, mainly due to the non-co-operation of the concerned Taluk Surveyor. Section 30 of the L.A. Act does not envisage a reference to court to do the work of the acquisition authority to ascertain the extent of land acquired from respective parties. Hence the reference is hereby closed. Return the reference file to the Awarding Officer to ascertain the extent of land of respective parties and to pass an appropriate award.

Pursuant to the above order, the Land Acquisition Officer, it appears, conducted measurements and would pass revised awards on 22-2-2003. Under the revised award the extents of the property acquired from the various claimants are shown separately and the compensation payable to the various claimants are also shown separately. On passage of the revised awards the reference case, LAR. No. 127 of 1990 was reopened by the learned Subordinate Judge who conducted further enquiries and has passed the impugned award re-fixing the market value of the lands under acquisition at Rs. 645 per cent. The evidence adduced in the reference case consisted of Exts. A-1 to A-4 sale deeds, R-1 to R-4, oral evidence of A.W. 1 the claimant and Ext. C-1 commissioner's report, apart from the oral evidence of A.W. 1. It was on Ext. A-1 that the claimants placed reliance in support of their claim for enhancement in land value. A-2 to A-4 were the respective title deeds of the claimants and were not relied on for claiming higher land value. Ext. A-1 was a post-notification document dated 28-7-1999. A-1 was in respect of pukka dry land in contrast to the lands under acquisition which were wet lands at the relevant time. A-1 reflected a land value of Rs. 80,000 per Are corresponding to Rs. 32,375 per cent. The learned Subordinate Judge under the impugned judgment did not become inclined to rely on Ext. A-1 at all. According to the learned Sub Judge, the acquired property and A-1 property were different in nature. The Advocate Commissioner in Ext. C-1 report has not able to compare A-1 property with the lands under acquisition and most importantly A-1 is a document executed "21 years after the issuance of notification u/s 3(1)". Ultimately, relying on the oral evidence, Ext. C-1 report which was to the effect that the property under acquisition was situated by the side of Subhash

Chandrabose Road, a main thoroughfare in the city and not far away from places such as Kadavanthra Junction, Elamkulam Junction, Rajiv Gandhi Indore Stadium and various schools, what the court below did was to enhance the land value by 60% and re-fix the same at Rs. 645 per cent.

2. In these appeals, various grounds have been raised assailing the decision of the court below. It is urged that the court below was not justified in discarding Ext. A-1. It is urged that though the notification u/s 3(1) was published on 5-9-1978, the crucial date while determining market value of the land in these cases was 23-2-2003, when only a proper award was passed by the L.A. Officer. Sri P. Suresh, learned Counsel for the Appellant addressed extensively on the various grounds raised in the memoranda of appeals. All the submissions of Mr. Suresh were resisted by Mr. M. Dinesh, standing counsel for Water Authority and Smt. Latha T. Thankappan, Senior Govt. Pleader for the Government. Sri Suresh drew our attention to the order of the learned Subordinate Judge dated 4-12-1999 which we have quoted hereinbefore. According to him, the claimants were all willing to surrender their lands if a proper award had been passed by the L.A. Officer within a reasonable period of 5-9-1978, the date of Section 3(1) notification. In this particular case, there was inordinate delay even in the matter of passing the original award. Original award passed on 23-9-1986 was not at all an improper award. This was why the Appellants were hesitant to part with possession of their properties. Proper award was passed only on 23-2-2003. The Appellants are not to blame for the delay which had been caused in the matter. According to Mr. Suresh, though it is true that the Appellants were not dispossessed of their properties till 15-4-1993, since Democlis' sword of land acquisition was hanging over them and their properties the Appellants were obliged to retain possession of their properties even against their wishes, as a result of which the Appellants had to spent considerably towards developing the properties. Had it not been for the acquisition proceedings which were hanging fire for several years without reaching proper culmination the Appellants would have been able to utilise their properties very profitably. Had a proper compensation been awarded in 1978 after completing the proceedings on time it would have been possible for the Appellants to invest the compensation amount in real estate or business in which case they would have been able to make considerable gains. Strong reliance was placed by Mr. Suresh on the judgment of Chandrasekhara Menon, J. in *George v. Special Tahsildar (LA)*, GCDA 1984 KLT 471 and also on the judgment of a Division Bench of Madras High Court in *Mahalakshmi Ammal and others Vs. State of Tamil Nadu and another*, . Even stronger reliance was placed by Mr. Suresh on the judgment of a learned Single Judge of Karnataka High Court in *Patel Byrappa and Ors. v. State of Karnataka and Ors.* AIR 1989 Kar 283. Mr. Suresh pointed out that in the Karnataka case, the Court after noticing the inordinate delay which was occasioned in the matter of passage of award, had directed the market value to be determined as on the date when the award is communicated to the awardees. Mr. Suresh concluded his submissions by stating that at any rate, in these cases, the market value of the

lands should be ordered to be fixed as on 2-9-1991 when only the reference u/s 18 was sent to the Court considering reference applications which were submitted four years earlier.

3. All the submissions of Mr. Suresh were countered by Sri M. Dinesh, learned Counsel for the requisitioning authority and Smt. Latha T. Thankappan, Senior Govt. Pleader. Smt. Latha T. Thankappan in particular would submit that the Land Acquisition Officer is not to blame for passing the award without specifying the extent acquired from each of the awardees. The claimants did not co-operate with the Land Acquisition Officer by producing relevant documents. If the claimants had produced the relevant documents in the award enquiry, the officer could have perused those documents and passed award on the basis of those documents. Before the Reference Court also the claimants contributed to the delay more than the Government. She highlighted that at any rate, the claimants have not sustained any loss on account of the delay in completing the land acquisition proceedings as all along they were possessing and enjoying the properties under acquisition. They were actually dispossessed only on 15-4-1993. The Reference Court has actually conferred unmerited gains for the claimants by awarding to them statutory interest u/s 28 with effect from 23-9-1986, the day on which they were dispossessed as per the records of the awarding officer. According to Smt. Latha T. Thankappan and Sri Dinesh, the cases covered by 1984 KLT 471 and the Madras Division Bench decision and the Karnataka decision cannot have any application in these cases where the claimants were dispossessed only in 1993.

4. We have very anxiously considered the rival submissions addressed at the Bar. We have meticulously perused the entire records of the case. It is clear from the records that there was inordinate delay on the part of the Land Acquisition Officer in finalising the acquisition proceedings by passing the award. The proceedings were initiated by the Land Acquisition Officer under the Kerala Land Acquisition Act by promulgating the initial notification u/s 3(1) of that Act which corresponds to Section 4(1) of the Central Land Acquisition Act on 5-1-1978. It took more than eight years and eight months for the Land Acquisition Officer to pass his award on 23-9-1996. That award was found to be not a proper award by the Reference Court to which the case was referred by the Land Acquisition Officer considering reference application submitted by the Appellants and other claimants and other co-awardees. It was noticed by the learned Subordinate Judge that under that award the Land Acquisition Officer had not determined the amounts payable to the various awardees due to his inability in ascertaining the actual extent of land owned and possessed by the respective parties at the time of the acquisition. The court observed that it was the obligation of the Land Acquisition Officer, if he was having difficulty in ascertaining the actual extent of land possessed by the various awardees to have measurement of the extents conducted with the assistance of Government surveyors and determine the extent respectively held by the various claimants so that the compensation due for the various holdings could be determined. The learned Subordinate Judge

closed the earlier reference on 4-12-1999 by passing the order which we have quoted towards the end of the first paragraph of this judgment. It was pursuant to that Order that the Land Acquisition Officer conducted measurements and passed the revised award on 22-1-2003. The revised award was a proper award in the sense that extent of property acquired from various claimants are shown separately and compensation payable to them also shown separately. Pursuant to that revised award dated 22-1-2003 the learned Subordinate Judge reopened the reference and continued with the enquiry and passed the award which is impugned in this appeal. Even though Smt. Latha T. Thankappan, the Senior Government Pleader would place the blame for not passing appropriate award on each of the awardees and submitted that it was due to their non-co-operation that appropriate award could not be passed by the Land Acquisition Officer in the first instance, we are not inclined to accept her submissions. The order of the learned Subordinate Judge on 4-12-1999 closing the reference initially and returning the references to the Land Acquisition Officer for passing proper award was accepted by the Government and it was thereafter only that appropriate revised award was passed on 22-1-2003. We find from the proceedings paper maintained by the Sub Court that there was a delay of about nine years after the claimants entered appearance on 23-10-1999 till the learned Subordinate Judge closed the reference by passing the Order dated 4-12-1999. What we gather from the proceedings paper is that the claimants as well as the Government were equally responsible for this delay of about nine years from 23-10-1990 till 4-12-1999. It appears to us that if the learned Subordinate Judge was more keen in expediting matters perhaps a part of the delay could have been avoided. At any rate, we are not inclined to confer any advantage on the claimants for the delay which has been occasioned in the matter from 23-10-1990 onwards till 15-4-1993, the date when the Appellants were actually dispossessed of their properties.

5. Even though it was argued by the Government and the Requisitioning Authority that the Appellants were dispossessed much earlier the records in this case will show that the date of actual dispossession was 15-4-1993. When the date of dispossession is 15-4-1993 ordinarily this Court will not be inclined to accept a plea of determination of the market value of the acquired property on a date posterior to the date of Section 4(1) notification which is the date on which the market value of the acquired property forming an essential component of the compensation is to be fixed statutorily. The question, therefore, is whether in this case there is any justification for directing determination of market value on a date posterior to 5-9-1978. The judgment of this Court in *George v. Special Tahsildar* (cited supra) and the judgment of the Madras High Court in *Mahalakshmi Ammal and Ors. v. State of Tamil Nadu and Anr.* (cited supra) deal with different fact situations. To support an argument that when there is exceptional delay on the part of the Land Acquisition Authority in the matter of finalising the proceedings resulting in loss to the land owner, the court can direct determination of market value on a date subsequent to the date of Section 4(1)

notification, the judgment of the Karnataka High Court in Patel Byrappa and Ors. v. State of Karnataka and Ors. (cited supra) is more comparable on facts with the present case. We are of the view that the Land Acquisition Officer is to blame for not passing appropriate award till the court alerted him to do so by its order dated 4-12-1999. But the question is whether on account of this delay any loss has been occasioned to the Appellants who were in possession of their properties till 15-4-1993. The argument of Sri Suresh was that the hesitation on the part of the Appellants to part with possession of their properties was only because no proper award had been passed by the Land Acquisition Officer. According to him, the Appellants would have readily surrendered possession if a proper award showing the amount correctly due to the Appellants was passed in their favour so that the compensation amount could be utilised by them for investing properly on real estate or other channels of investment advantageous to the Appellants. The argument was that the Appellants were being compelled to retain possession of the properties under acquisition even against their wishes necessitating incurring of expenditure for developing the properties which were originally paddy fields through reclamation. According to the learned Counsel may be it was unwise on the part of the Appellant to have expended money on reclamation but still the fact remains that they expended heavily for reclaiming these properties which were found to be partly reclaimed at the time when the Advocate Commissioner visited the properties in 1996-1997. The submissions of Sri Suresh have some appeal to us. Therefore and also in view of our clear finding that the Land Acquisition Officer himself is to blame for the delay occasioned in the matter from 5-9-1978 till 23-10-1990 the day scheduled for the first appearance of the claimants before the Reference Court we adopt the reasonings of the Karnataka High Court and hold that in view of the facts obtaining in this case there is justification for directing determination of market value of the lands under acquisition as on 23-11-1987 the date on which the notices u/s 12(2) regarding the first award dated 23-9-1986 were served on the parties.

6. The result of the above discussion therefore is as follows:

The judgments and decrees under appeal are set aside. The appeals are allowed by way of remand. L.A.R. 127/1990 is remanded to the Third Additional Sub Court, Ernakulam. The learned Subordinate Judge is directed to re-fix market value of the land under acquisition as on 23-11-1987, the date on which award notices were issued to the parties. The court shall treat the properties as wet lands only. Market value should be re-determined mainly on the basis of land value reflected in sale documents pertaining to wet land. All parties are permitted to adduce fresh evidence and the court below is directed to pass a revised judgment on the basis of the entirety of the evidence which comes on record at the earliest and at any rate within five months of receiving copy of this judgment. Refund the full court fee remitted on the appeal memoranda to the counsel for the Appellant.