
(1951) 05 KL CK 0001

In the High Court Of Kerala

Case No : A.S. No's. 57, 58 and 59 of 1124

Sirkar

APPELLANT

Vs

Hajee Ismail Hajee Abdurehuman and Others

RESPONDENT

Date of Decision : 28-05-1951

Acts Referred:

Citation : AIR 1951 Ker 235

Hon'ble Judges : K.T. Koshi, J;G. Kumara Pillai, J

Bench : Division Bench

Advocate : Govt. Pleader and M.N. Parameswaran Pillai, for the Appellant; P. Narayana Pillai, for the Respondent

Judgement

1. These appeals by the State are against the decision of the District Court, Parur, in Land Acquisition reference 80, 81 and 82 of 1120 respectively. These three cases were tried together by the Court below and the evidence required for the same was recorded in L.A.R. No. 80 of 1120. The acquisitions relate to three plots of land belonging to the same party. These plots lie contiguous and the total area acquired by the State comes to 57.171 cents in all. We are concerned in these appeals only with the ground value of the three plots acquired. Before the Land Acquisition Officer the party claimed compensation at the rate of Rs. 250/- a cent. The statement in the judgment that the claim was at the rate of Rs. 150/- a cent is incorrect. The Land Acquisition Officer allowed compensation at the rate of Rs. 100 per cent. The party who had filed a joint written statement in all the three cases together before the Court below put in three reference applications requesting for a reference to the District Court, Parur for determination of the compensation to be paid to him. In those petitions he had claimed compensation at the rate claimed in his written statement. The State contended that the award of the Land Acquisition Officer was proper and that no enhancement was to be allowed. The learned District Judge allowed compensation at the rate of Rs. 125 a cent and the appeal relates to the enhancement thus allowed at the rate of Rs. 25 a cent.

2. The learned Government Pleader first contended that since the Respondent had not filed separate written statements claiming compensation in L.A.R. 81 and 82 of 1120, the lower Court was wrong in allowing enhanced compensation. He relied on Clause (2) of Section 24 of Act 11 of 1089 (Travancore) where it was laid down that when the applicant, that is the owner of the property who had applied for the reference to the District Court, had refused to make any claim to compensation before the Land Acquisition Officer or had omitted without sufficient reason (to be allowed by the Court) to make such claim, the amount awarded to him by the Court should in no case exceed the amount awarded by the Land Acquisition Officer. It was mentioned that the three plots in the three cases belonged to the same party and they lay contiguous. The party had filed his written statement making the claim, for compensation in L.A.R. 80 of 1120, i.e. A.S. 57 of 1124. In that written statement he had referred to the three plots which formed the subject-matter of the three land acquisition proceedings and claimed compensation for all the plot 3 at a flat rate of Rs. 250 a cent. He had, therefore, made a claim for compensation for the plots acquired in all the three cases. But such claim instead of being advanced separately in the three cases was made in one written statement filed in one of the cases. In the applications for reference in all the three cases he had referred to this written statement and claimed compensation at the rate claimed in that written statement. All the parties, till the case came up to this Court, proceeded on the assumption that the owner had made the claim before the Land Acquisition Officer in all the three cases. The trial before the District Judge had also proceeded on that assumption and we do not think that the party is to be defeated because he had not filed separate written statements in all the three cases but had only made a joint claim in the main case, L.A.R. 80 of 1120. We do not, therefore, think that the lower Court was wrong in allowing additional compensation in L.A.R. 81 and 82 of 1120. We do not, therefore, accept this contention of the State as sustainable.

3. The next question relates to the compensation to be paid to the party. The declaration for the acquisition of the three plots was in 1940. The three plots forming the subject-matter of the three appeals lie adjoining the Alwaye river. The acquisition itself was for the purpose of constructing a temple on the river side. About a furlong away from these plots Anr. plot had been acquired in 1937 for the construction of a Palace near the river. Ext. A is the judgment of the District Court relating to the acquisition in that case. The Land Acquisition Officer had awarded compensation for that plot at the rate of Rs. 150 a cent. Thus on reference was confirmed by the District Court as seen from Ext. A judgment and by the High Court as evidenced by Ext. B. That plot also was adjoining the Alwaye river and practically situate on an almost advantageous position. The learned Government Pleader stated that by the time the acquisition in the present cases was made the economic depression had set in and that the value of the properties went down considerably. Though the depression Get in, there was no evidence before us to show how and in what proportion the same had affected the price of the lands in this locality. The State had produced Exts. 13 to

17 in the Court below to show that the award by the Land Acquisition Officer was proper. Exts. 13 and 14 are awards in cases in which the Respondent's wife was a party. Those acquisitions were also in 1937 when compensation for these plots was allowed only at Rs. 100 a cent. Ext. 13 is for 3.96 cents and Ext. 14 for 44 square links. Ext. 15 copy of the land acquisition register would also show that when one cent of land in that locality was acquired about the time of Exts. 13 and 14, compensation was allowed at the rate of Rs. 100 a cent. It has to be mentioned that when small plots of land are acquired the parties may not care to get a case referred to the District Court and have the same tried there because the labour and expenses involved are bound to be disproportionate to the benefits that might be obtained. Hence the value awarded, and accepted by the parties in such cases is not to be taken as a criterion for determining the compensation when plots of larger area are acquired by Government. The mere fact that the parties in Exts. 13 to 15 had not applied for reference to the District Court for the determination of the proper value of the plots acquired in those cases would not be sufficient to induce us to accept the same. Ext. 17 is a sale deed of 1120 which was long after the acquisition in question. The value in that deed would work out at nearly Rs. 100 a cent. Ext. 16 is a sale deed of 3-10-1108 for 40 cents of land with buildings near Ext. A property. There is no evidence as to the value of the buildings there. Even if the buildings are of no value, the land value will work out at Rs. 100 and odd a cent. This plot is also a little far away from the acquired property. The learned Judge had stated that the property comprised in Ext. 16 being situated high up in the river and beyond the point at which the Alwaye river bifurcated, the river flowing at this part was deep and not very convenient for bathing purposes. He was therefore, not prepared to accept Ext. 16 as a sufficient guide in determining the value of the land in the present case. The learned Judge had considered all the evidence and thought it proper to fix the value at Rs. 125/- a cent. In matters like this it would not be possible to determine the market-value with any mathematical accuracy. A fair estimate with reference to the surrounding circumstances and the evidence in the case has to be made so that the party who loses the property on account of the compulsory acquisition gets a fair compensation. After carefully considering the evidence in the case we do not think that the estimate made by the learned Judge requires any modification. We confirm the same and dismiss the appeals with costs.

4. The learned Government Pleader had stated that some mistake had crept in in the preparation of the decree by the Court below relating to costs. The learned Judge had by some mistake assumed that the claim before him was only at the rate of Rs. 150/- a cent. The Petitioner in the three cases had claimed compensation at the rate mentioned in the written statement. Taking the written statement filed in L.A.R. 80 of 1120 as common for all the three cases, it could be seen that the claim for the land had been made at the rate of Rs. 250 a cent. It had, therefore, to be taken that the Plaintiff's claim before the Court below in all the three cases was at the rate of Rs. 250 a cent, that is, Rs. 150 more than

that awarded by the Land Acquisition Officer. The costs have to be calculated on this basis in all the three cases. The decrees in the three cases will accordingly be modified. Subject therefore to the amount, relating to the costs of the Court below the three appeals are dismissed with costs in this Court.