
(2012) 02 KL CK 0131

In the High Court Of Kerala

Case No : L.A. App. No. 67 of 2012 (B)

Sivarama Pillai Unnikrishna Pillai, Poothanazhikathu Veedu,
Perumon

APPELLANT

Vs

The State of Kerala

RESPONDENT

Date of Decision : 10-02-2012

Acts Referred:

Land Acquisition Act, 1894 — Section 23(1A), 23(2), 28, 4(1)

Citation : (2012) 02 KL CK 0131

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

Bench : Division Bench

Advocate : B. Krishna Mani, for the Appellant; C.R. Syamkumar, Sr. Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

Pius C. Kuriakose, J.—The claimant is in appeal. As directed by us, Sri. C.R. Syamkumar, the learned Senior Government Pleader has taken notice on behalf of the respondent/State. We have heard the learned counsel for the appellant as well as Sri. C.R. Syamkumar, the learned Senior Government Pleader.

2. The appeal pertains to acquisition of land in Panayam village for the purpose of Perumon Special Refractoriness Factory. The acquisition was on the basis of Section 4(1) notification published on 26/10/86. The Land Acquisition Officer awarded land value at the rate of Rs. 5276/- per Are. The Reference Court in the first instance enhanced the land value to Rs. 5,500/- per Are. The claimant brought up the matter in appeal to this Court and this Court by judgment in L.A.A.1475/09 remanded the reference case to the Reference Court. The impugned award has been passed pursuant to the above remand. Before the Reference Court, the evidence consisted of Exts.A1 to A10. Exts. A4 and A6 were judgments of the same court pertaining to acquisition of land in the same village. Under Exts. A4 and A6 for properties which appear to be identical, the Reference Court had awarded value at the rate of Rs. 18,525/-. The learned Subordinate

Judge has under the impugned award re-fixed the land value at Rs. 18,525/- per Are.

3. The argument which was advanced by the learned counsel for the appellant was that the Reference Court did not notice the superiority of the properties covered by the acquisition to the properties covered by Exts. A4 and A6. According to the learned counsel while Exts. A4 and A6 properties were enjoying the frontage of one public road the properties under acquisition was enjoying frontage of two public roads. It was also submitted that the court below did not notice the passage of time between Section 4(1) notification pertaining to Exts. A4 and A6 and the present notification.

4. Sri. C.R. Syamkumar, the learned Senior Government Pleader submitted that the appellant having produced Exts. A4 and A6 is not entitled to appeal as the learned Subordinate Judge has relied on Exts. A4 and A6 and has awarded the appellant the maximum compensation.

5. Having given our anxious consideration to the submissions addressed at the Bar, we are of the view that in the absence of any convincing evidence it cannot be held that the property covered by the present acquisition was superior to the properties covered by Exts. A4 and A6. But at the same time, there is some merit in the submission of the learned counsel for the appellant that additions should have been made for passage of time. We find that the notification pertaining to the present case was promulgated some seven months after the notification pertaining to Exts. A4 and A6. We feel that 10% increase can be given taking into account all relevant circumstances. Making additions that way, we re-fix the market value of the land under acquisition at Rs. 20,400/-.

6. Accordingly, the appeal is allowed re-fixing the market value of the land under acquisition at Rs. 20,400/- per Are. The appellant will be entitled for all statutory benefits admissible under Sections 23(2), 23(1A) and u/s 28 of the Land Acquisition Act. Parties are directed to suffer their respective costs. Decree copy will be issued to the appellant only after ensuring that the full court fee payable on the appeal memorandum is remitted.