(2007) 09 KL CK 0094

In the High Court Of Kerala

Case No : LA App. No. 826 of 2006

Spl. Dy. Collector (L.A.) KSEB and Another	APPELLANT
Vs	
Channadiyil Abdul Gafoor and Another	RESPONDENT

Date of Decision : 12-09-2007

Acts Referred:
Land Acquisition Act, 1894 — Section 12, 18, 2, 23, 24

Citation : (2008) 1 ILR (Ker) 59 : (2008) 1 KLJ 50 : (2008) 1 KLT 115

Hon'ble Judges : Kurian Joseph, J;Harun-Ul-Rashid, J

Bench : Division Bench

Advocate : Pulikool Abubacker and C.K. Karunakaran SCs, for the Appellant;

Final Decision : Dismissed

Judgement

Kurian Joseph, J.—Whether a sale deed executed three years prior to the publication of Section 4(1) notification under the Land Acquisition Act can be taken into consideration for the purpose of fixation of market value by the reference court is one of the main questions to be considered in this case. Market value is the price, which the owner of a property willing and not obliged to sell it might reasonably accept for it from one of a number of willing purchasers who are not obliged to buy it and with whom he has been bargaining openly for its value and purchase. Unconscionable bargains, in view of the requirement of the owner either to sell his property or for the buyer to buy a land at any cost are to be excluded. The Kerala Land Acquisition Manual, in the prescribed guidelines for the Land Acquisition Officers has provided that in fixing the market value of the acquired land all the sale deeds executed within a period of 3 years prior to the publication of the Section 3(1) notification (Under the Kerala Land Acquisition Act, 1961 - in the same line of Section 4(1) notification of the Land Acquisition Act, 1894, the Central Act) relating to lands within a radius of 3 miles should be examined for preparing the basis for valuation and all documents relating to similar and similarly situated lands are to be discussed in the award to substantiate the acceptance of a particular document and rejecting the rest.

There are several other guidelines as well. But for the purpose of the instant case, we need only consider the application of only the guidelines as indicated above. u/s 12 of the Land Acquisition Act, 1894, the Collector has to pass an award after conducting the required enquiries as to the compensation payable to a claimant. In determining the amount of compensation, the Collector is bound by the provisions of Sections 23 and 24 of the Act regarding the matters to be considered in determining the compensation and matters to be neglected in the process. u/s 18 of the Act, any person who has not accepted the award is entitled to request the matter to be referred by the Collector for the determination of the Court and u/s 26, it is the court which is to pass an award determining the market value and the total compensation payable to a claimant. To the extent relevant, the provisions (Sections 23, 24 and 26) read 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

first, the market value of the land at the date of the publication of the notification u/s 4, sub-section (1);

secondly, the damage sustained by the person interested, by reason of the taking of any sanding crops or trees which may be on the land at the time of the Collector''s taking possession thereof;

thirdly, the damage (if any), sustained by the person interested, at the time of the Collector''s taking possession of the land, by reason of severing such land from his other land;

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;

fifthly, if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and

sixthly, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration u/s 6 and the time of the Collector''s taking possession of the land.

(1A) In addition to the market value of the land, as above provided, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market-value for the period commencing on and from the date of the publication of the notification u/s 4, sub-section (1), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.

(2) In addition to the market-value of the land, as above provided, the Court

shall in every case award a sum of (thirty per centum) on such market-value, in consideration of the compulsory nature of the acquisition.

24. Matters to be neglected in determining compensation.- But the court shall not take into consideration-

first, the degree of urgency which has led to the acquisition;

secondly, any disinclination of the person interested to part with the land acquired:

thirdly, any damage sustained by him which, if caused by a private person, would not render such person liable to a suit;

fourthly, any damage which is likely to be caused to the land acquired, after the date of the publication of the declaration u/s 6, by or inconsequence of the use to which it will be put;

fifthly any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired;

sixthly, and increase to the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put;

seventhly, any outlay or improvements on, or disposal of, the land acquired, commenced, made or effected without the sanction of the Collector after the date of the publication of the notification u/s 4, sub-section (1); or

eighthly, and increase to the value of the land on account of its being part to any use which is forbidden by land or opposed to public policy.

26. Form of awards.- (1) Every award under this Part shall be in writing signed by the Judge, and shall specify the amount awarded under clause first of subsection (1) of section 23, and also the amounts (if any) respectively awarded under each of the other clauses of the same sub-section, together with the grounds of awarding each of the said amounts.

(2) Every such award shall be deemed to be a decree and the statement of the grounds of every such award a judgment within the meaning of section 2, clause (2) and section 2, clause (9), respectively, of the Code of Civil Procedure, 1908 (5 of 1908).

A reading of the provisions would show that as far as the reference court is concerned, matters to be taken note of in fixing the market value of the land and other compensation payable to the claimant are provided u/s 23 and matters to be neglected are provided u/s 24. There are no other guidelines for the court either in fixing the market value or in determining the total compensation. The Land Acquisition Officer may be guided by any administrative instruction in the matter. But such guidelines are not binding on the reference court. The reference court is not sitting in appeal over the award passed by the Collector u/s 12 of the Act. The court is actually determining the market value of the property and other compensation payable, u/s 23 of the Act. Examination of documents executed within three years of the preliminary notification and within a radius of 3 Kms. etc. only are administrative guidelines intended to aid the Land Acquisition Officer. They are not at all binding on the reference court. The court shall not be guided by such administrative instruction issued to the Land Acquisition Officers. The court is bound to look into the evidence available on record and fix the market value of the property and determine the compensation. That is an original exercise to be done by the court. If a document executed several years prior to the preliminary notification is produced before the reference court and if the same reflects the market value of the property prevailing in the area at the relevant time, there is no justification in discarding it for the only reason that the same was executed more than three years prior to the preliminary notification. Keeping in mind the above legal position, we shall now examine the facts of this case.

2. The appeal is directed against the judgment in L.A.R. No. 2/2001 on the fine of the Sub Court, Vadakara. Appellant is the requisitioning authority, viz., the Kerala State Electricity Board. The acquisition is for the purpose of setting up 33/11 KV Sub Station at Orkkattery. The claimants made a claim for Rs. 60,000/- per cent whereas the Land Acquisition Officer fixed the land value only at Rs. 98,700/- per Hectare. The reference court found that the basic document is not similar to the acquired land since the Land Acquisition Officer himself has awarded 5% more value to the acquired land. On the part of the claimants, Ext. A1 document was marked, a Commission was taken and AW1 was examined. On the part of the acquisitioning/requisitioning authority, no evidence was tendered. Not even the basis document was produced. The Advocate Commissioner reported that the land value would be Rs. 25,000/- per cent. The claimants relied on Ext. A1 document. However, the reference court discarded it stating that the said document was executed more than three years preceding the Section 4(1) notification. For the only reason that the document was executed on 17-1-1991, there is no justification in rejecting the said evidence in case the transaction would otherwise reflect the actual market value prevailing in the area at the relevant time. In the instant case there is no such case for the State or the requisitioning authority. Section 4(1) notification was issued on 25-10-1999. Ext. A1 document is executed 8 years prior to that and even then the claimants relied on that document and prayed only for market value based on the document of 1991 in respect of the acquisition for which Section 4(1) notification is published in 1999. The reference court should not have rejected Ext. A1 for the only reason that the same is executed three years prior to Section 4(1) notification since there is no case for the State or the requisitioning authority that the documented value does not reflect the market value prevailing in the area at the relevant time. Be that as it may, the Advocate Commissioner reported that the land value at the relevant time is Rs. 25,000/- per cent. Since there was no contra evidence on the part of the acquisitioning/requisitioning authority and since fixation of market value of Rs. 15,000/- per cent is taking note of the importance of the

locality, we are of the view that the market value thus fixed by the court is just, proper and reasonable. There is no merit in the appeal. It is dismissed.