(1966) 08 KL CK 0031

In the High Court Of Kerala

Case No : A.S. No''s. 398 and 415 to 419 of 1962

Sreedharan and Others APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 11-08-1966

Acts Referred:
Land Acquisition Act, 1894 — Section 6

Citation : (1966) KLJ 1033

Hon'ble Judges : T.S. Krishnamoorthy Iyer, J

Bench : Single Bench

Advocate : P. Vasu, for the Appellant; A.B. Periera), for the Respondent

Final Decision : Allowed

Judgement

T.S. Krishnamoorthy Iyer, J.—These appeals arise out of the decisions of the additional Subordinate Judge, Trivandrum, on references u/s 18 of the Travancore Land Acquisition Act (Act XI of 1089) at the instance of the appellants for enhanced compensation for the lands belonging to them compulsorily acquired by the State. The appellants are the same in all the appeals and they are the plaintiffs in the several land acquisition references. The evidence for all the cases was adduced by consent in L.A.R. 162 of 1959 and the main judgment is in that case. A.S. 418 of 1962 is against the judgment in L.A.R. 162 of 1959. The properties acquired by the State formed part of the properties comprised in Survey No. 2646/1 measuring 40 cents, in Survey No. 1656/1 measuring 35 cents, in Survey No. 2657/1 measuring 19 cents, in Survey No. 2658/1 measuring 25 cents, in Survey No. 2659/1 measuring 25 cents and in Survey No. 2674 measuring 59 cents Chanazhassery pakuthy, Trivandrum Taluk. The properties comprised in all these survey numbers were lying in one block before the acquisition. 5 cents from Survey No. 2646/1, 5.450 cents from Survey No. 2656/1, 0.275 cents from Survey No. 2657/1, 2.650 cents from survey No. 2658/1, 5.750 cents from survey No. 2659/1 and 5.725 cents from Survey No. 2674 were compulsorily acquired by the State. The declaration u/s 6 of the

Travancore Land Acquisition Act was on 25-2-1958. The Land Acquisition Officer awarded land value at a uniform rate of Rs. 175/- per cent besides the value for the structures and trees in the properties though the claim of the appellants was at the rate of Rs. 500/- per cent. The appellants claimed before the Subordinate Judge land value at the rate of Rs. 500/- per cent. The Subordinate Judge fixed the market value for all the properties at the rate of Rs. 225/- per cent.

2. In the appeals also the claim of the appellants is to get compensation at the rate of Rs. 500/- per cent. Ex. D.5 is the group sketch showing the location of the properties involved in the land acquisition proceedings and the adjacent properties. It is seen from Ex. D.5 and it is also admitted by the State that the acquired properties are situated in a very busy part of the Trivandrum City. They are located centrally to the Trivandrum Central Railway Station to the Thampanoor Bus Station to the Model School and intermediate College junction and to the Sreekumar Theatre junction. It is seen that as a result of the acquisition the compact block of these survey numbers was divided into two portions.

3. Ex. P.1 is a sale deed dated 31-11-1123 for Rs. 3750/- in respect of 5 cents of land comprised in Survey No. 2697A and B. The land value is Rs. 750/- per cent. Ex. D.5 shows that this property is very close to the Sreekumar junction, and touches the road from the Sreekumar junction to the Subramoniaswami temple junction. Pw.1 is the husband of one of the vendors in Ex. P.1 He deposed that Ex. P.1 property was purchased for providing a road frontage for the other properties of the vendees. The learned Judge was therefore of the view that Ex. P.1 cannot be used as a safe guide for fixing the market value of the acquired properties. Ex. P.2 is the sale deed dated 8-1-1959 in respect of 4.220 cents of land in survey No. 26253 for a consideration of Rs. 2750/-. Though the sale deed is dated 8-1-1959 it is stated therein that the agreement of sale forming the basis of Ex. P.2 was concluded between the parties on 1-11-1958. Pw.2 is the vendee under Ex. P.2. Ex. D.5 shows that the property comprised in Ex. P.2 touches the road leading from the Women & Children Hospital junction to the Model School and Intermediate College junction. The land value under Ex. P.2 works out at the rate of Rs. 680/- per cent. The learned Judge was not prepared to accept Ex. P.2 as a guide because even the agreement of sale which gave rise to Ex. P. was subsequent to the declaration u/s 6 of the Land Acquisition Act and because Ex. P.2 property touches the road going from the Model School junction to Thampanoor Women''s and Children Hospital junction. Ex. P.3 is a copy of judgment of the Trivandrum sub Court in L.A.R. 229 of 1959 which related to the acquisition of a portion of the property form survey Nos. 2632/1 and 2633/1. The land value was awarded at the rate of Rs. 350/- per cent by Ex. P.3. The learned Judge is not quite correct in saying that Survey Nos. 2632/1 and 2634/2 touch the road from the Subramaniaswami temple junction to the Model School junction. It is seen from Ex. D.5 that out of the properties Survey No. 2634 alone touches the road while Survey No. 2632 is away from the road lying immediately to the south of Survey No. 2634. The above are the documents produced by the

plaintiffs.

4. I shall now come to the documents produced by the State to prove the land value prevalent on the date of the declaration u/s 6 of the Land Acquisition Act. Ex. D.1 is the copy of the sale deed dated 19-10-1955 in respect of the property comprised in Survey Nos. 2608/B and 3679 along with the compound wall constructed therein for Rs. 20000/-. It is seen from Ex. D.5 that a small portion of this property touches the road going from the Sreekumar Theatre junction to the Subramaniaswami Temple junction. The land value under Ex. D.1 works out at the rate of Rs. 280/- per cent. Ex. D.2 is a copy of the sale deed dated 19-10-1955 in respect of the properties comprised in Survey Nos. 2604, 2607, 2608 and 2679 along with the building standing thereon for a consideration of Rs. 16000/-. No evidence was adduced to show the value of the buildings on the property. It is therefore not possible to find out the land value from Ex. D.2. Ex. D.3 is a copy of the sale deed dated 1-3-1957 in respect of 8? cents comprised in Survey No. 2697/A for consideration of Rs. 30000/-. The land value under Ex. D.3 works out at the rate of Rs. 350/- per cent. Ex. D.4 is the sale deed dated 22-4-1957 regarding 13 cents of property and buildings therein comprised in Survey No. 2686 for a consideration of Rs. 5200/-. No evidence is available to show the value of the buildings included in Ex. D.4. It can therefore be seen that Exx. D.2 and D4 are of no assistance to fix the land value for the acquired properties. Exx. D.1 and D.3 show that the land value in 1955 and 1957 was at the rate of Rs. 280/- per cent and Rs. 350/- per cent out of the properties in Ex. D.1 only a small portion of the property included in Survey No. 2679 touches the road.

5. Pw.1 deposed that the acquired properties are about half a furlong away from the properties comprised in Ex. P.1 and both these properties are situated to the east of the road leading from the Subramaniaswami temple junction to the Sreekumar Theatre junction. According to him the area was not well developed at the time of the execution of Ex. P.1. Pw.2 is the vendee under Ex. P.2. The property comprised in Ex. P.2 forms the eastern boundary of the acquired properties. Pw.2 deposed that the properties in Ex. P.2 and the acquired properties are on the same level. He would swear that the acquired properties formed part of 4 acres of land belonging to the plaintiffs which touch the road leading from the Subramaniaswami temple junction to the Sreekumar Theatre. The learned Judge is not therefore correct in saying that the acquired property had no road frontage. The acquired properties had road frontage through other properties owned by the plaintiffs. The land value on the basis of Exx. P.1, P.2 and P.3 works out at the rate of Rs. 750/- in 1123, Rs. 680/- in 1958 and Rs. 350/- in 1959. The properties involved in Ex. P.3 are only 150 feet away from the acquired properties. The properties in Ex. P.3 were acquired for the same purpose for which the properties involved in the appeals before me were acquired. The value on the basis of Exx. D. 1 and D. 3 works out at the rate of Rs. 280/- and Rs. 350/- per cent in the year 1955 and in the year 1957. It is not correct to say that the level of the acquired properties is very much lower in level

than the properties in Exx. P.1 to P.3 and D.1 and D.3. The acquired properties are not in any way less important than the properties comprised in Exx. D.1, D.3 or D.4. The value on the basis of Ex. P.2 though subsequent to the date of the acquisition, cannot be completely discarded. Ex. P.1 though of the year 1123 shows the price which was prevalent in the locality as early as 1123. It has therefore to be stated that Ex. P.1 cannot be characterised as absolutely irrelevant. The learned Government Pleader brought to my notice judgments of this Court in A.S. Nos. 574, 575 and 579 of 1961. A.S. Nos. 574 and 575 of 1961 related to the acquisition of portions of properties comprised in Survey Nos. 2557, and 2559 and A.S. 579 of 1961 related to the acquisition of a portion of the property comprised in Survey No. 2577. The properties involved in these appeals were acquired for the same purpose for which the lands in the appeals before me were acquired. Survey Nos. 2557 and 2559 are also shown in Ex. D.5 and lie in the same locality as the acquired properties. Vaidialingam, J. awarded land value at the rate of Rs. 300/- per cent as against the award of Rs. 200/- passed by the learned trial Judge. As was stated in The Trustees for the Improvement of the City of Bombay v. Karsandas (1909) ILR 33 Bom. 28 in the method of arriving at valuation of land by reference to prices realised by sales of neighbouring lands, it is plain that no evidence of former sales can be obtained which shall be precisely parallel in all its circumstances to the sale of the particular land in question. Difference small or great, exist in various condition and what precise allowance should be made for these differences is not a matter which can be reduced to any hard and fast rules. Assuming that the property comprised in Ex. P.1 has better advantages than the acquired property it cannot be said that the acquired properties are far less inferior to the properties comprised in Ex. P.1. It is seen that the acquired properties are situated in a very busy part of Trivandrum City accessible easily to four important junctions where Colleges, Women and Children Hospital, Bus Stand and Railway Station are located. The potential value of the lands has also to be taken into consideration. It is no doubt true that enhancement of value of the land because of the very purpose for which the acquisition is made cannot be taken into account in fixing the market value for awarding compensation under the Act. Their Lordships of the Judicial Committee of the Privy Council observed in AIR 1939 98 (Privy Council) .

For it has been established by numerous authorities that the land is not to be valued merely by reference to the use to which it is being put at the time at which its value has to be determined (that time under the Indian Act being the date of the notification under S.4 (1) but also by reference to the uses to which it is reasonably capable of being put in the future. No authority indeed is required for this proposition. It is a self-evident one. No one can suppose in the case of land which is certain, or even likely, to be used in the immediate or reasonably near future for building purposes but which at the valuation date is waste land or is being used for agricultural purposes, that the owner, however willing a vendor, will be content to sell the land for its value as waste or agricultural land as the case may be. It is plain that in ascertaining its value, the possibility of its being used for building purposes would have to be taken into account. It is equally plain however that the land must not be valued as though it had already been built upon, a proposition that is embodied in S.24(5) of the Act and is sometimes expressed by saying that it is the possibilities of the land and not its realised possibilities that must be taken into consideration.

I do not find from the judgments of the courts below that this aspect was kept in view by the learned Judge in fixing the market value of the properties acquired. If the potential value of the acquired properties as house sites inside the busy part of Trivandrum City is taken into consideration there cannot be much of difference in the condition of the properties comprised in Exx. P.1 and P.2 and D.1 and D.3. Exx. D.1 and D.3 are of the years 1955 and 1957. In the judgments of this Court land value was awarded at the rate of Rs. 300/- while in Ex. P.3 the land value was awarded at the rate of Rs. 350/-. On a perusal of the judgments of this Court, I do not find the potential value of those lands capable of being used as house sites was taken into consideration. I am therefore of the view that the land value awarded by the learned Judge is very low and the appellants are entitled to get an enhancement in the value. Considering the oral and documentary evidence adduced in the case I feel that the appellants are entitled to get land value at the rate of Rs. 400/- per cent. I therefore modify the judgments and decrees of the learned Subordinate Judge and allow the appellants land value for all the lands involved in all the appeals at the rate of Rs. 400/- per cent. For the excess amount awarded by me the appellants will be entitled to get usual solatium and also will be entitled to get interest at 4 per cent per annum from the date of dispossession. In all other respects the judgments and decrees of the court below are confirmed. The parties will pay and receive proportionate costs to the extent of their success and failure.

