

(1952) 08 KL CK 0010
In the High Court Of Kerala
Case No : A.S. No. 464 of 1950

State	Vs	APPELLANT
A.M. Muthunayagam Pillai and Others		RESPONDENT

Date of Decision : 29-08-1952

Acts Referred:

Citation : (1952) 08 KL CK 0010

Hon'ble Judges : Koshi, C.J;Gangadhara Menon, J

Bench : Division Bench

Advocate : T.N Subramonia Iyer, General, for the Appellant; E.P. Vurghese, for the Respondent

Judgement

1. This is an appeal by the State from the judgment of the learned District Judge of Trivandrum in L.A.R. No. 10/24 of his Court. 7 acres and 40 cents of land comprised in S. No. 1485/2 of Madathuvilakam Pakuthy, Trivandrum Taluk that belonged to the Plaintiff with all the trees and buildings thereon were compulsorily acquired by the State by declaration dated 21-12-1121. The property was actually taken possession of on 9-7-1122. Towards compensation for the land with which alone we are concerned in this appeal, the Land Acquisition Officer awarded Rs. 24 per cent, for 50 cents of land adjoining the Main Central Road and Rs. 15/- per cent, for the remaining portion with usual sura and interest. Not being satisfied with the award of the land acquisition officer in respect of the value of the land the Plaintiff moved for a reference to the District Court which was made in due course. The learned District Judge on a consideration of the evidence adduced in the case enhanced the land value to Rs. 100 per cent, for the 50 cents of land adjacent to the Main Central Road and Rs. 35 per cent, for the remaining 6 acres and 90 cents in the rear. The State taking objection, to this valuation as excessive has preferred this appeal. The Appellant contends that the evidence in the case does not warrant anything more than Rs. 65 per cent, for the 50 cents, of the land adjacent to the Main Central Road and Rs. 25 per cent for the remaining portion towards land value.

2. The property in question is a portion of a hill situated in the City of Trivandrum on the eastern side of the Main Central Road about a furlong and a half from the Kattachakkonam junction. It has on the Main Central Road a frontage of 104 links and juts to the interior to the north-eastern side of the road. Another road that branches from the Main Central Road passes along the entire southern boundary of the property. The property has, therefore, the advantage of good roads along its two sides. It is also admitted by the parties that though property was originally lying outside the city limits, the locality where it is situated is brought within the city limits in the year 1118. Further it is in evidence that the value of property in the locality has increased steadily after the extension of the city limits. The main documents relied on by the learned Judge for arriving at the value fixed by him for the 50 cents of land adjacent to the Main Central Road are Exs. C, E and F. Ex. C is a sale deed dated 28-10-1921 for 8 cents of land comprised in S. No. 1443. This property touches the Main Central Road and is about a furlong and a half to the south of the property in this case. After excluding the value of trees the price per cent of Ex. C property comes to Rs. 94 per cent. Ex. F is a sale deed dated 8-3-1120 for 27 cents of land comprised in S. No. 1443. This property is about 100 links to the south of Ex. C property. The price on the date of the sale deed after excluding the value of the trees and buildings works out at the rate of Rs. 87 per cent. Ex. E is a sale deed dated 3-12-1120 for a property 46 1/2 cents in extent comprised in S. No. 1443 with a building thereon. The price per cent on the date of Ex. E after excluding, the value of the building and the trees comes to Rs. 101 per cent. This property is about 13 chains to the south of the Plaintiff's property. It is contended that the properties comprised in Exs. C, E and F lie nearer to Kattachakonam junction than the Plaintiff's property, and that the value of land near the junction is more than that in the place where the Plaintiff's property lies. After all the distance from the Kattachakonam junction to the Plaintiff's property, is not much, as is borne out by the evidence in the case, and in view of the fact, that all the properties are lying adjacent to the Main Central Road, and within the town limits, we do not think that such a short distance is likely to create any material difference in the price. As stated already the price of land in the locality was steadily increasing. The price as stated in Exs. E and F which are of 1120 must have, therefore, increased at the time of the acquisition which was on 21-12-1121.

The learned Advocate General relied on Ex. 11 sale deed dated 5-7-1117 for 1 acre and 20 cents comprised in S. No. 1443. The learned Judge gives very good reasons for not relying on this document for the purpose of fixing compensation for the land in question. It is unnecessary for us to repeat those reasons here. Suffice it to say that we are in entire agreement with the learned Judge, that the price fixed under Ex. 11 cannot be taken as a proper basis for fixing compensation in this case. For the portion of the property lying to the south of the 50 cents adjoining the Main Central Road 6 acres and 90 cents in extent, the learned Judge awarded Rs. 35 per cent. The property to the south of this land

appears to have been purchased by D.W. 1. He opened out a new road through the interior of that property from the side road passing along the southern boundary, and having plotted it out into small house sites he sold some plots in the years 1115 and 1116. Exts. 1 to 6 are some of those sale deeds. The price per cent as per those documents comes to Rs. 12/-. We do not think that these documents can be taken as a reasonable basis for fixing the land value for the property acquired in this case in Karkadagom 1121. There can be no doubt that the price of the land has increased considerably after 1116. Further, Plaintiff's land has great advantage of having a road branching from the Main Central Road passing along its entire southern boundary with a length of about a furlong and a half. As already stated the land is part of a hill and with its elevation and road convenience it could easily be plotted out into several house-sites for which there is considerable demand in a town like Trivandrum. In fact, that was exactly what D.W. 1 planned in respect of his property, with appreciable success. With the extension of the city limits and the facilities that were naturally opened out in consequence, there can be no doubt that the Plaintiff's land had great possibilities of being converted into a number of good and valuable house sites. It is a well-recognised principle that

the value to be ascertained is the value to the seller of the property in its actual condition at the time of expropriation with all its existing advantages and with all its possibilities, excluding any advantage due to the carrying out of the scheme for which the property is compulsorily acquired.

Vide - "Fraser v. City of Fraserville" (1917) AC 187 at p. 194 (A) and also the Privy Council decision reported in - AIR 1925 91 (Privy Council)

3. Viewed in this light, considering all the facts and circumstances disclosed by the evidence in the case, we are unable to agree with the learned Advocate General in thinking that the value of Rs. 100 per cent for 50 cents of the property adjoining the Main Central Road, and a flat rate of Rs. 35/- per cent for the remaining portion of the property fixed by the learned Judge is unfair or excessive. We think that the valuation adopted by the learned Judge is just and proper. We do not, therefore, find our way to interfere with the land value fixed by him. The appeal, therefore, fails and is dismissed with costs.