(2008) 02 KL CK 0019

In the High Court Of Kerala

Case No : L.A.A. No. 465 of 2006 and Cross Objection No. 19 of 2007

State of Kerala APPELLANT

Vs

Bhasi Nair and Another RESPONDENT

Date of Decision : 06-02-2008

Acts Referred:

Land Acquisition Act, 1894 — Section 23, 24, 4, 4(1), 51A

Citation : (2008) 1 ILR (Ker) 574 : (2008) 1 KLJ 543 : (2008) 1 KLT 817

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

Bench : Division Bench

Advocate : K.R. Deepa, GP, for the Appellant; S.V. Balakrishna Iyer, K. Jayakumar, P.B. Krishnan, Harish R. Menon and R. Suraj Kumar, for the Respondent

Judgement

Harun-Ul-Rashid, J.—The State of Kerala is the appellant. This appeal is directed against the judgment and decree passed by the Sub Court, Mavelikkara in LAR No. 155 of 1999. The acquisition is for the construction of Women''s Poly Technic, Kayamkulam. Section 4(1) notification was published on 17-9-1998. The extent of land acquired is 2.03.67 hectares comprised in different survey numbers in Kayamkulam Village in Karthigappally Taluk.

2. Before the reference court, the first claimant and another witness were examined as Aws. 1 and 2 respectively and Exts. A1 and A2 were marked. RW. 1 was examined on the side of the respondent and Ext. B1 was marked. Mahazar and report filed by the Commissioner was marked as Ext. C1. The Land Acquisition Officer fixed land value at the rate of Rs. 86,485/- per Are as against a claim of Rs. 2,00,000/- per cent. The claimant gave evidence stating that the acquired land is situated in the heart of Kayamkulam town in Kayalamkulam Municipality, adjacent to NH 47 and opposite to KSRTC bus station, that the distance between the acquired land and the KSRTC bus station is 50 metres and that many public institutions such as schools, colleges, L.I.C. Office, Head Post Office, Fire Station, Court Complex, hospitals and other commercial and

industrial establishments are situated within a radius of 250 metres of the acquired land. The respondent contended before the court below that the Land Acquisition Officer considered the importance and potentiality of the acquired land and that the fixation of land value by him is reasonable and adequate and, therefore, the claimants are not entitled to get any additional land value.

3. The reference court after approaching the evidence of Aws. 1 and 2 and Ext.A2 location sketch found that the acquired land is situated about 250 metres north of K.S.R.T.C. bus station, Kayamkulam and on the immediate western side of NH 47 at a lower level of 5 metres and, therefore, held that the property is having commercial importance and that the land value fixed by the Land Acquisition Officer is inadequate. The court below hence refixed the land value at the rate of Rs. 1,48,070/- per Are. Rs. 61,585/- per Are was awarded as additional land value.

4. The claimants claimed enhanced compensation on the basis of the land value shown in Ext.A 1 sale deed. Ext.A 1 sale deed is of the year 1997. The Advocate Commissioner filed Ext.C 1 mahazar and report showing the location of the property; covered by Ext.A 1 and the acquired land. The Village Officer also prepared a group sketch of the acquired land and also the adjacent land which is marked as Ext.A2. In Ext.C 1 report and mahazar and Ext.A2 group sketch, the lie and location of the acquired land as well as the land covered by Ext.A 1, public offices and other commercial institutions are shown. From Ext.A2 group sketch and Ext.C1 report it is clear that the property involved in Ext.A1 sale deed is situated more than 800 metres south-west of the acquired land by the side of a narrow municipal road. The reference court also noticed the fact that the existence of Karipuzha canal is a nuisance and it will not add more value to the acquired land. It was also noticed by the reference court that all the major shops and commercial establishments in Kayamkulam town are situated by the side of the old National Highway which is situated far away from the acquired land and that the new NH 47 which passes through the western side of the acquired land came into existence after the recent straightening and widening of NH-47. The reference court also has taken note of the fact that the acquired land as well as the basic and are situated near K.S.R.T.C. bus station, Kayamkulam by the side of NH 47 and have the same importance and potentialities. The reference court observed that it is obvious and crystal clear from Ext.A2 group sketch that the acquired land and the basic land are situated on the immediate western side of NH 47 very near to the K.S.R.T.C. bus station, Kayamkulam and that the distance from the K.S.R.T.C. bus station, Kayamkulam to the acquired land and the basis land is more or less the same. Further, the reference court noticed the fact that the acquired land is situated on the western side of NH 47 at a lower level of 5 metres, but the basis land is situated on the same level as that of NH 47. The value of the basis land, an extent of 12.80 Ares, is Rs. 98,713/- per Are. It is clear from Ext.A2 group sketch and Ext.C 1 report and mahazar that the property; covered by Ext.A 1 is situated in an isolated area, more than 800 metres away from the acquired land by the side of a narrow municipal lane. The

land leading to the property involved in Ext.A 1 sale deed extents only upto that property, the northern boundary of that property is a water logged area and the western and southern side of the said property is kayal. The reference court also noticed that the basis land which is situated on the immediate western side of the National Highway and located 300 metres south-west of the K.S.R.T.C. bus station, Kayamkulam was valued at Rs. 173/- per Are in 1997 whereas the property involved in Ext.A 1 sale deed which is situated is an isolated area by the side of a municipal lane is seen sold at the rate of Rs. 3,08,750/- per Are in 1997. The reference court further noticed the fact that no public offices, shops or commercial establishments were situated near the property covered by Ext.A1. For the reasons stated in paragraph 17 of the judgment, the court below concluded that the genuineness of Ext.A1 transaction is doubtful. From the copy of the order G.O.(MS) No. 140/99/H.Edn. dated 27-10-1999 of the Higher Education Department of the State of Kerala appended to the reference file, the reference court noticed that even though Section 4(1) notification was published on 17-9-1998, the Government had sanctioned the acquisition as per G.O.(MS) No. 102/99/H.Edn. dated 5-8-1997. On the basis of these two Government orders, the reference court concluded that the proposal for acquisition of the land came in 1996 or even earlier to that. Ext.A1 sale deed is dated 24-12-1997. Sanction was accorded by the Government for purchase of 6 acres of land for Womens'' Polytechnic, Kayamkulam as early as on 5-8-1997 vide G.O.(MS) No. 102/97/H.Edn.

5. From the materials discussed in paragraph 17 of the judgment, it is clear that Ext.A 1 sale deed was executed after the Government had accorded sanction for acquisition of the acquired land for the construction of Womens'' Polytechnic, Kayamkulam. It is observed that the nature, lie, location, price shown in the document and the present state of affairs of the property involved in Ext.A1 sale deed probablise the contention that Ext.A1 sale deed was executed at the instance or for the interest of the claimants for the purpose of inflating the market value of the property in anticipation of the acquisition proceedings in this case. After a lengthy discussion about the comparable nature of the land covered by Ext.A 1 with the acquired land, the court below concluded that Ext.A1 was not a genuine transaction and that the same was executed for the purpose of getting inflated the market value of the property and, therefore, the value shown in Ext.A1 cannot be taken as the basis for fixing the land value of the acquired land. The reference court also noticed the fact that considering the vast extent of the property involved in the present acquisition, the property covered by Ext. A1 being a small plot, cannot be compared for the purpose of valuation.

6. The reference court, in paragraph 18 of the judgment, noticed the fact that the acquired land is a vast extent of 2.03.67 hectares and that the claimants had purchased the property as per different sale deeds. The reference court found that only one plot having an extent of 47 Ares had NH frontage and that the remaining area and no NH frontage. Therefore, the reference court concluded that the claimants cannot claim same value for the entire extent of property and

that considering the nature and lie of the acquired land, belting method of valuation is justifiable.

7. The reference court placed reliance on the valuation of the basis property having an extent of 12.80 Ares. The land value shown in the basis document is Rs. 98,713/- per Are. The reference court added 50% enhancement over and above Rs. 98,713/- finding that there was a time lag of about 1 1/2 years between the date of execution of the sale deed of the basis land and Section 4(1) notification. Accordingly, the reference court fixed land value at the rate of Rs. 1,48,070/- per Are for the entire extent. Grant of same value for the entire extent is made contrary to the conclusion that the claimants cannot claim same value for the entire extent.

8. Section 23 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") enumerates the matters to be considered in determining compensation. The market value of the acquired land has to be fixed as on the date of publication of notification u/s 4(1). Section 24 of the Act enumerates the matters which the court shall not take into consideration in determining the compensation. The compensation has to be determined on such materials as are available and without indulging in any kind of speculation ignoring the available materials. Some amount of guess work is involved while determining the potentiality of the land acquired. When a vast extent of land is the subject matter of acquisition, rate at which small plots are sold cannot normally be a safe criteria. In the decision reported in Shaji Kuriakose and Another Vs. Indian Oil Corpn. Ltd. and Others, , the Supreme Court held that the following are the relevant factors in fixing the market value on the basis of comparable sales method of valuation:

1. the sale must be a genuine transaction.

2. that the sale deed must have been executed at the time proximate to the date of issue of notification u/s 4 of the Act,

3. that the land covered by the sale must be in the vicinity of the acquired land.

4. that the land covered by the sales must be similar to the acquired land, and

5. that the size of the plot of the land covered by the sales be comparable to the land acquired.

These aspects have subsequently been highlighted in the decisions reported in Ravinder Narain and Another Vs. Union of India (UOI), and Lucknow Development Authority v. Krishna Gopal Lahoti 2007(4) KLT 1046. Comparable sales method of valuation is preferred to other methods of valuation of land such as capitalisation of net income method or expert opinion method. The said method is preferred because it furnishes the evidence for determination of the market value of the acquired land at which a willing purchaser would pay for the acquired land if it had been sold in the open market at the time of issuance of notification u/s 4 of the Act. There are certain factors which are to be satisfied and on such satisfaction, compensation can be awarded, according to the value of the land reflected in the sales. If the factors mentioned above are satisfied, then there is no reason why the sale value of the land covered by the sales be not given for the acquired land. If there is dissimilarity in regard to locality, shape or nature of land between land covered by the sales and the land acquired, it is open to the court to proportionately reduce the compensation for the acquired land than what is reflected in the sales depending upon the disadvantages attached to the acquired land.

9. u/s 51A of the Act, certified copies of sale deed have been permitted to be brought on record as evidence of sale transaction recorded therein. Examination of the witnesses are done to find out whether the sale transactions are bona fide and genuine. This provision is enacted to enable the parties to the land acquisition cases to produce certified copies of the documents to get over the difficulty of the parties since persons in possession of the original documents may not be ready and willing for scrutiny before courts. The mere fact that a certified copy of the document is accepted as evidence of the transaction recorded in such document does not dispense with the need for a party relying upon the certified copies of such documents produced in court in taking steps to establish the similarity and comparability of the acquired land as well as the transactional circumstances in case the court is not convinced of the evidence already adduced. Therefore, the certified copies of registered documents, though accepted as evidence of transactions recorded in such documents, the court is not bound to automatically and mechanically act upon the contents of those documents. Production of certified copies of the sale deeds and their acceptance u/s 51A of the Act is only to enable the claimants to dispense with the obligation to produce the original sale deed from the owners who are disinclined to part with their valuable title deeds involving also long pendency of the proceedings. The Supreme Court in the decision Cement Corporation of India Ltd. Purya, reported in 2004(3) KLT 737(SC) held that Section 51A of the Act enables the party producing the certified copy of a sale transaction to rely on the contents of the document without having to examine the vendee or vendor of that document. The Supreme Court further held that this would not mean that contents of the transaction as evidenced by the registered sale deed would automatically be accepted. The Legislature advisedly has used the word ''may''. A discretion, therefore, has been conferred upon a court to be exercised judicially, i.e., upon taking into consideration the relevant factors. The Supreme Court also held that acceptance of an evidence is not a term of art. It has an etymological meaning. It envisages exercise of judicial mind to the materials on record. Acceptance of evidence by a Court would depend on facts and circumstances of each case and other relevant factors. The Court has to judicially consider all the relevant facts and circumstances in each case. Referring to Section 51A of the Act, the Supreme Court in the decision Land Acquisition Officer and Mandal Revenue Officer Vs. V. Narasaiah, held in paragraph of the Judgment as follows:

The words "may be accepted as evidence" in the section indicate that there is no compulsion on the Court to accept such transaction as evidence, but it is open to the Court to treat them as evidence. Merely accepting them as evidence does not mean that the Court is bound to treat them as reliable evidence. What is sought to be achieved is that the transactions recorded in the documents may be treated as evidence, just like any other evidence, and it is for the Court to weigh all the pros and cons to decide whether such transaction can be relied on for understanding the real price of the land concerned.

Following the Constitution Bench decision in Cement Corporation of India Ltd. Purya reported in 2004(3) KLT 737 (SC), again the Supreme Court in the decision Ranvir Singh and Another Vs. Union of India (UOI), reiterating the principles laid down by the Constitutional Bench held that the term ''acceptance of evidence'' relating to transaction evidenced by a sale deed, its admissibility in evidence would be beyond any question. Even the vendor or vendee is not required to be examined for proving the contents thereof. This, however, would not mean that contents of the transaction as evidenced by the registered sale deed would automatically be accepted.

10. The reference court has considered the reliability of Ext. A1 sale deed as a basis for fixing the land value on the basis of the legal principles enunciated in the judgments referred to above, the background and the factual situation of the case. From Ext.A2 group sketch and Ext.C1 report and mahazar, it is clear that the property covered by Ext. A1 sale deed is situated in an isolated area by side of a narrow municipal lane. The reference court also notified the fact that the basis property having an extent of 12.80 Ares comprised in Sy. No. 225 of Kayamkulam Village situated on the immediate western side of the National Highway and 300 metres south-west of K.S.R.T.C. bus station was valued at Rs. 98,173/- per Are in 1997 whereas the property involved in Ext. A1 sale deed which is situated in an isolated area by the side of a narrow municipal lane was seen sold at the rate of Rs. 3,08,750/- per Are in 1997 itself. The reference court also noticed the fact that the basis land is situated near to many public and commercial institutions whereas the land covered by Ext. A1 is situated for away from such institutions. After discussing in detail the disadvantages of the property covered by Ext.Al, the reference court came to the conclusion that no sensible man would purchase a property situated in an isolated area for a fancy price of Rs. 2,08,750/- per Are in 1997 and then keep the same idle even for six years. The reference court also noticed relying on the Government orders of 1997, 1998 and 1999 that necessary proposal for acquisition of the land was mooted in 1996 or even earlier to that. The court also held that nature, lie, location and the present state of affairs of the property involved in Ext.A1 sale deed probablise the contention that Ext. A1 sale deed was executed at the instance or for the interest of the claimants for the purpose of placing reliance on an inflated market value of the property in anticipation of the acquisition proceedings in this case. In the said circumstances, the reference court doubted the genuineness of the transaction in Ext. A1. For all these reasons, the court below found that the land value shown in Ext.A1 sale deed cannot from the basis

for the valuation of the acquired property. The further fact that the property covered by Ext.A 1 is small in size also is a factor taken into consideration by the court below for not relying on Ext.A 1.

11. As already stated, the extent of property acquired is vast. The claimants purchased the property by different sale deeds. Only one sale deed covering an extent of 47 Ares is having National Highway frontage and the remaining properties covered by the other sale deeds are properties having no National Highway frontage and they are lying-backgrounds in a rectangular shape. It is in that fact situation the contention that vast extent of property cannot be awarded same land value assumes significance. Only a reasonable extent of the acquired land can be taken as property having National Highway frontage and valued accordingly. For the rest of the land, value shall be assessed as properties having no National Highway frontage. The court below in paragraph 18 of the judgment has referred to the impropriety in valuing the entire property as one plot. Considering the nature and lie of the acquired land, there is no doubt that belting method of valuation has to be adopted.

12. The basis land is situated near the acquired land and the K.S.R.T.C. bus station, Kayamkulam and is facing NH 47. The basis land is having an extent of 12.80 Ares whereas the acquired land is more than 16 times the same. The uniform land value awarded by the reference court for the entire acquired land relying on the basis sale deed is not fair and proper. The land value for the basis land is Rs. 98,713/- per Are. The fact that the acquired land is lying at a depth of 5 metres from the National Highway whereas the basis land is situated in level with the National Highway was also not properly taken note of by the reference court. 50% enhancement for the time lag of 1 1/2 years is also not correctly assessed. At the same time, the locational importance of the acquired land, its nearness to many public institutions, the K.S.R.T.C. bus station and other commercial and industrial establishments have also to be taken into consideration of the entire facts and evidence and refixation of the market value is necessary, with opportunity to both sides to adduce evidence.

13. In the result, the judgment and decree under appeal are set aside. The case is remanded to the court below for denovo consideration. The court below shall give an opportunity to both sides to adduce additional evidence, if any. The case shall be decided as expeditiously as possible, at any rate within a period of six months from the date of appearance of the parties. The parties shall appear before the court below on 25-2-2008. The cross objectors are entitled to refund of court fee. There will be no order as to costs.