(1992) 01 KL CK 0004

In the High Court Of Kerala

Case No : L.A.A. No 132 of 1990

State of Kerala APPELLANT

Vs

Chakrapam Govindan and Others RESPONDENT

Date of Decision : 21-01-1992

Acts Referred:

Kerala Land Acquisition Act, 1961 — Section 20, 23(1), 23(1A), 23(2), 3

Citation : (1992) 1 KLJ 326

Hon'ble Judges : P.K. Shamsuddin, J

Bench : Single Bench

Advocate : A.V.M. Salahudeen Govt. Pleader for State, for the Appellant; C.V. Antony, for the Respondent

Final Decision : Allowed

Judgement

P.K. Shamsuddin, J.—An extent of 6.82 ares of land in Survey No.

was acquired for the purpose of Pumpa Irrigation Project. Section 3 (1) notification was issued on 1-6-1980. Award was passed on 20-7-1980. The Land Acquisition Officer fixed the land value at the rate of Rs. 600/- per are The land owner claimed compensation at the rate of Rs. 2, 500/- per cent. He also claimed an amount of Rs. 7, 000/- for severance. Dissatisfied with the award passed by the Land Acquisition Officer, the claimant sought a reference u/s 20 of the Kerala Land Acquisition Act and accordingly the matter was referred to the lower court. The lower court after considering the evidence, fixed the land value at the rate of Rs 5,000/- per are The lower court also held that the claimant is entitled to 20% of the market value for the acquired property as reasonable quantum of compensation for severance.

2. In this appeal filed by the State, Learned Government Pleader raised the following points: 1) There is no basis for fixation of Rs. 5,000/-per are as land value; 2) The claimant is not entitled to solatium on the compensation awarded for severance: 3) There is no basis for compensation awarded for severance; 4)

The award of benefit of Section 23 (1-A) is not sustainable.

3. The court below has observed that the acquired property is similar to the property involved in Ext A1 sale deed dated 16-8-1979. The consideration shown therein is Rs. 12,000/- for an extent of 28 cents of land. That would work out only to Rs. 1,062/- per are However, the lower court awarded land value at the rate of Rs. 5,000/- per are I am not able to make out from the judgment as to how he arrived at this figure. In the circumstances, I set aside the finding that the claimant is entitled to land value at the rate of Rs. 5,000/- per are.

4. Learned Government Pleader is also well founded in his contention that no solatium is payable on compensation awarded for injury caused as a result of severance. Section 23(2) says:-

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.

5. In Union of India v. Shri. Ram Mehar & another (1972 II S.C W. R. 878) the Supreme Court observed that the term ''market value has acquired a definite connotation by judicial decisions. Any addition to the value of the land to the owner whose land is compulsorily acquired which addition is the result of such factors as are unrelated to the open market cannot be regarded as a part of the market value. It was further observed that the key to the meaning of the word ''compensation'' is to be found in Section 23 (1) and that consists (a) of the market value of the land and (d) the sum of 15 per cent on such market value which is stated to be the consideration for compulsory nature of the acquisition. In other words, the solatium is payable on the market value of the land and not on the amount of compensation. The Supreme Court followed its own decision in Chaturbhuj Fanda & others v. The Collector, Raigarh (1969 (1) S. C. R. 412) in coming to this conclusion. In The Collector, Varanasi v. Harballahbh Narain Singh (1979 All L. J. 507) a similar question arose. A Single Judge of the Allahabad High Court held that for the purpose of determining the solatium u/s 23 (2) only the market value of the land has to be taken into account and not any other item covered by the clauses "secondly" to "sixthly" to section 23 (1) of the Act. In other words the additional sum by way of solatium is admissible only on the items covered by clause "first". However, in view of definition of "land" in Section 3 (a) , the market value of land will include the value of trees and constructions standing on the land. It is therefore clear that no solatium is payable on the compensation awarded in respect of the injury caused to the claimants by reason of severance.

Learned Government Pleader also is fully justified in his contention that the method adopted by the lower court for fixation of compensation for injury caused for severance is not sustainable. The court has not considered what is amount of injury caused to the claimant by reason of severance of the property under acquisition. What is relevant is the reduction of the value of the unaquired portion of the land as a result of severance. What the court below has done is to fix 20% of market value of the acquired property as compensation for injury as a result of severance. This is clearly wrong. I, therefore, set aside the compensation fixed for severance.

7. Learned Government Header Submitted that the court below has awarded the benefit of Section 23 (1-A) to the claimant, but he is not entitled to such benefit in view of the fact that possession was taken on 1-6-1979 much prior to Section 3 (1) notification. This contention is also correct.

8. In the above circumstances, I set aside the award passed by the lower court and remand the matter to the lower court for fresh consideration and disposal in accordance with law and in the light of observations contained in this judgment. The appeal) is allowed to the above extent. State will be entitled to refund of court fee paid on Memorandum of Appeal. No cost.

Parties will appear before the lower court on 26th March, 1992.