

(1999) 07 KL CK 0085
In the High Court Of Kerala
Case No : L.A.A. No. 933 of 1996

State of Kerala

APPELLANT

Vs

Karthikathirunal Lakshmi Bai and Others

RESPONDENT

Date of Decision : 30-07-1999

Acts Referred:

Kerala Stamp Act, 1959 — Section 28A
Land Acquisition Act, 1894 — Section 11A, 20, 3(1)

Citation : (1999) 2 KLJ 823

Hon'ble Judges : C.S. Rajan, J;A.S. Venkatachala Moorthy, J

Bench : Division Bench

Advocate : P.M. Paulose Govt. Pleader, for the Appellant; K.L. Narasimhan and K. Ramakumar (Sr. CGSC), for the Respondent

Final Decision : Dismissed

Judgement

A.S. Venkatachala Moorthy, J.—The State of Kerala is the appellant herein. For the purpose of location of the Fort Post Office the State of Kerala acquired an extent of 52 Ares of land comprised in Sy. No. 560/137/6 of Vanchiyoor Village. Notification u/s 3(1) of the Act was issued on 5-11-1974 and the Land Acquisition Officer, after complying with the formalities, passed an award on 23-9-1986. The land was taken possession of 15-10-1986. The Land Acquisition Officer fixed the land value at Rs. 7410/- per Are as against the claim of the claimants/land owners at Rs. one lakh per cent. Aggrieved by this, respondents 1 to 4, namely, the land owners sought reference u/s 20 of the Land Acquisition Act. The learned Sub Judge, Trivandrum took the reference on file and the same was numbered as L.A.R. No. 267 of 1988. The Reference Court, after considering the materials available on record, came to the conclusion that the land value has to be fixed at Rs. 20,000/- per Are. But, however, the Reference Court rejected the claim of the claimants with regard to the compensation for improvements and value of buildings, on the ground that no evidence has been adduced. Aggrieved by the judgment and decree of the Reference Court in L.A.R. No. 267 of 1988, the State of Kerala has preferred the above appeal before this Court.

Heard the learned Government as also the learned counsel for the claimants/respondents.

2. The point for consideration is whether the Reference Court has erred in enhancing the value of land and in fixing it at Rs. 20,000/- per Are. As mentioned already, the notification u/s 3(1) of the Land Acquisition Act was issued on 5-11-1974. It could be seen that nothing happened for over a decade virtually. The State of Kerala woke up and passed the Award only on 23-9-1986. This obviously because the amended Act introduced a new provision, namely section 11-A, in the Land Acquisition Act of 1984. According to the said provision, which came into force on 24th September, 1984, in case's where awards were not passed on the date when the amended Act came into force, further period of two years was granted and that period expired on 23-9-1986. As already noted, in this case the award was passed on 23-9-1986. At this juncture, it may be pointed out that the property in question was in effect freezed for over a period of 12 years.

3. The point that is taken by the appellant is that respondents 1 to 4 the lands owners, did not adduce any evidence whatsoever before the Reference Court which would justify that Court to enhance the land value. As far as the location of the property is concerned, there is no dispute between the parties that the same is located on the side of famous Padmanabha Swamy Temple, which is located in the most important place, as far as the Trivandrum city is concerned. There are several other institutions near to the acquired property, namely, High School, hospitals, nationalised banks, commercial centre etc. In this context, it may be pointed out that the State Government has not taken a ground in this appeal, that the acquired property is not situated in a most important locality.

4. The next question is what is the value to be fixed. Before the Lower Court, the counsel for the land owners/claimants produced a copy of the Kerala Gazette, Extra Ordinary, Vol.XXXIV dated 15th March, 1989 and the court, after referring to the same, fixed the land value at Rs. 20,000/- per Are. But, however, the Gazette though produced by the land owners/claimants was not taken on file by the Reference Court and marked as an exhibit. In fact, the records received from the lower court do not contain the said copy of the Gazette. Probably, counsel for the land owners produced the same before court and without making a request to the court below to take it on the file of the case got it back. Taking advantage of this the learned Government would contend that inasmuch as the said Gazette is not available from the records received from the Reference Court, this Court has to proceed to consider on the materials available now before this court. At this juncture, it may be pointed out that it is not as if no such Gazette was produced before the Reference Court or the genuineness of the Gazette when produced before the Reference court was questioned by the State. In fact, in the memorandum of grounds of appeal no grounds are taken by the State disputing the production of the said Gazette or its genuineness. In a situation like this, it is not necessary that this Court has to remit the matter back to the Reference

Court. This Court has ample powers to direct the State to produce a copy of the Gazette and take judicial notice of the publication of the same. In this context, reference can be made to the ruling of the Apex Court in the case reported in Union of India (UOI) Vs. Nihar Kanta Sen and Others, . In that case, the High Court refused to consider the question on the ground that copies of the relevant notifications issued u/s 4 of the West Bengal Estates Acquisition Act duly gazetted were not on record. The Apex Court ruled that the High Court should have taken judicial notice of the notification issued or published in the Gazette. In this Case we directed the learned Government Pleader to get a copy of the said Gazette from the concerned Department. Accordingly, the learned Government Pleader produced a copy of the Gazette on the adjourned date. The relevant text of the Gazette reads thus:

NOTIFICATION

Under Rule 5(1) of the Kerala Stamp (Fixtion of Minimum Value of Land) Rules, 1988.

No. C3-76601/88. 4th March, 1989

Whereas it is expedient to publish the minimum value of land in the State as required u/s 28A of the Kerala Stamp Act, 1959 and rule 5(1) of the rules the minimum value of land in the undermentioned villages of Trivandrum District, is hereby fixed as shown in the schedule.

On a perusal of the schedule given in the Gazette (Vol.XXXIV dated 15-3-1989), we find that in respect of Sy. No. 560, which is the subject matter of this appeal, the Government of Kerala fixed the minimum value of land as required u/s 28A of the Kerala Stamp Act, 1959 and rule 5(1) of the rules, at Rs. 1,00,000/- per Are. The notification was issued under the Kerala Stamp Act, 1959 and the rules thereunder dated 4-3-1989. Here, in this case, the notification u/s 3(1) of the Land Acquisition Act was issued in the year 1974. When the Government itself fixed the minimum value in 1989 at Rs. 1,00,000/- for the property in question, we are in agreement with the Reference Court in fixing the land value in this case at Rs. 20,000/- per Are in the year 1974. Or in other words, the Reference Court has fixed only 1/5th of the value as on 1989 for the purpose of deciding the value of the land in the year 1974. In coming to the above such conclusion, we have also taken note of the fact that the State of Kerala in effect froze the property of respondents 1 to 4 for over a period of one decade. Or, in other words, by so doing (i.e.) by issuing notification under Sec. 3(1) of the Act the State of Kerala effectively prevented the respondents/land owners from dealing with the property in any manner and also from making any improvements.

5. We are rather surprised to note that this being the real state of affairs, the State of Kerala has chosen to file this appeal and has spent over a sum of Rs. 50,000/- towards legal expenses. In cases of this nature, the authorities before filing appeals should apply their mind and also take proper legal advice.

6. Before parting with the case it has to be pointed out that whenever certain documents are produced before the Reference Court and if the Reference Court desires to rely on them, those documents must be taken on file and duly marked as per the provisions of law. In this view of the matter, we are of the opinion that the appeal filed by the State is totally frivolous and devoid of any merit. We are constrained to pass an order to the effect that respondents 1 to 4 shall be entitled for the costs from the appellants, namely, the State of Kerala. The appeal is dismissed with costs.