

(1994) 05 KL CK 0009
In the High Court Of Kerala
Case No : L.A.A. No. 242 of 1984

State of Kerala

APPELLANT

Vs

Kochittiamma and Others

RESPONDENT

Date of Decision : 27-05-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 33
Land Acquisition (Amendment) Act, 1984 — Section 30
Land Acquisition (Amendment) Act, 1994 — Section 30
Land Acquisition Act, 1894 — Section 23(1A), 23(2), 26, 28, 3(1)

Citation : (1994) 05 KL CK 0009

Hon'ble Judges : V.V. Kamat, J; K.T. Thomas, J

Bench : Division Bench

Advocate : A.V.M. Salaluddeen, Government Pleader, for the Appellant; Thomas Mathew Nellimoottil, for Respondents 1, 4, 5 and 6 and K. Sasikumar, for 2nd Respondent, for the Respondent

Judgement

V.V. Kamat, J.—This is an appeal filed by the State against the judgment and award dated June 25, 1983 of the learned Sub Judge, Mavelikkara in Land Acquisition Reference No. 12 of 1982.

2. The notification in question is dated March 6, 1979 notifying the purpose of acquisition of 39.41 ares of land in Noornad Village in Mavelikkara for the purpose of erection of 110 K.V. Sub Station at Edappone. Several claimants were considered with the land under notification. They contended that it is a commercial land situated near public roads-and there are important institutions and shops in the surrounding area. The claimants claimed at Rs. 1,500 per cent, against other claims such as structures and shifting charges including improvements. The acquiring authority by the award, awarded Rs. 886 per are. This was the subject of a reference u/s 8 of the Land Acquisition Act.

3. The reference Court has considered the aspects in paragraph 8 of the impugned judgment. As for the location is concerned, there is no dispute that,

that the acquired land is on the south of a village road that starts from Noornad-Edappone main road. The acquired land is 100 metres west from the main road. On that count by reason of distance, as the possession was acquired in August 1975, the reference Court fixed the value of the land at Rs. 400 per cent as on August 1975. This was on the basis of the publication of the notification which was covered by Ext. A-1. Accepting this as the basis, the learned Judge, as the notification in the present proceedings is of the year 1979 and their being steep increase in the value of properties in land, held that the proper adequate value of the land would be Rs. 600 per cent.

4. Along with the said reasoning, in paragraph 9 of the impugned judgment the learned Judge has considered the sale deed (Ext. A-2) dated May 11, 1981. The land covered by the sale deed is situated just by the side of the main road. The sale deed is proved by witness No. 3 who is one of the executants, This document shows the sale at the rate of Rs. 1,500 per cent. The learned judge has rejected this evidence for good and satisfactory reasons. He had observed that the said document cannot be accepted as the basis because it is executed long, after Section 3(1) notification.

5. The learned Judge has also considered Anr. sale deed (Ext. A-3) dated October 16, 1978. The document is proved by witness No. 1 who is the executant. It shows that the price was Rs. 1,000 per cent. The learned Judge has rejected this document and evidence relating thereto on the ground that there is nothing in the document to show as to what is the actual area, of the property sold. Ultimately the learned Judge has placed reliance on the document Ext. A-1 and fixed the value of the land at Rs. 600 per cent, equivalent to Rs. 1,500 per are.

6. We have considered the document in question and we do not find anything for interference. In fact on hearing the learned Government Pleader for the Appellant, we express a surprise as to the reason and propriety of filing, an appeal against this well considered and satisfactory award. We also put to the learned Government Pleader that this must have been only to postpone the payment which are the ultimate dues of the claimants.

7. At this stage Sri K. Sasikumar, the learned Counsel for the claimants urged upon us to exercise the powers under Order 41, Rule 33 CPC in view of the accepted position that the benefits of Section 23(2) and Section 28 of the Land Acquisition Act to which the claimants are entitled have not been granted. The learned Counsel placed reliance on the provisions of Section 30 of the Amending Act No. 68 of 1984 specifically pointing out that the award of the reference Court being dated. June 25, 1983 the provisions of Section 30 of the Amending Act No. 68 of 1994 would confer a legal right in favour of the claimants who have the benefits of provisions of Section 23(2) as well as Section 28 of the Land Acquisition Act. A base reading of the provisions of Section 30 of the said Amending Act would make it clear that the award means award of the reference Court also. Even if the provisions of the text of the Land Acquisition Act are referred to Section 26 and Section 54 of the said Act leave no doubt that the

judgment of the reference Court is nothing but an award. In this context the position is more than settled. In the case of Union of India (UOI) and Another Vs. Raghubir Singh (Dead) by Lrs. Etc., it is laid down that the benefits of Section 30(2) of the said Amending Act would be made available by an award by the Collector or the Court made between the two dates viz. April 30, 1982 and September 24, 1984. It will have to be specified that this position with regard to the availability of the benefits of Section 23(2) and Section 28 of the Act is not found to have been disturbed by the subsequent dictum of the Supreme Court. In the case of K.S. Pariapoornan and Others Vs. State of Kerala and Others, although the Court has found a good amount of conflict of opinion with regard to certain provisions of Amending Act 68 of 1984 and had chosen to make a reference to a larger Bench. Even in the said dictum which relates to the provisions of Section 23(1A) of the Act, although there are observations with regard to the jurisprudential aspects of retrospectivity of amending provisions to the substantive law, as far as application of provisions of Section 23(2) and Section 28 of the Act there is no disturbances to the earlier decisions of the constitutional Bench in the case of Union of India (UOI) and Another Vs. Raghubir Singh (Dead) by Lrs. Etc., (cited supra).

8. In this view of the abundantly clear position, the question is whether in exercise of our powers under Rule 33 of Order 41 CPC we should grant these reliefs to the Respondents/claimants. The aforesaid provisions have come up for consideration again before the Supreme Court in the case of Mahant Dhangir and Another Vs. Madan Mohan and Others, and it has observed that a sweep of power under Rule 33 is wide enough to determine any question, not only between the Appellant and Respondent; but also between the Respondents and co-Respondents. The appellate Court could pass any decree or order which should have been passed in the circumstance of the case, in view of the words "as the case may require". It is further observed that the only constraint is if the parties are not before the Court and" the question does not arise out of the judgment on their appeal.

9. It is crystally clear that the law as discussed above confer a legal right in favour of the claimants for the entitlement to the benefits of the provisions of Section 23(2) as well as Section 28 of the Land Acquisition Act.

For the above reasons, although we hold that the appeal is without any merit, in exercise of powers under Order 41, Rule 33 CPC we modify the impugned judgment and award, by altering 15 per cent solatium to 30 per cent as per the provisions of Section 23(2) and also substitute the rate of interest at 9 per cent per annum instead of 4 per cent per annum as awarded", under the provisions of Section 28 of the Act. Further under proviso to Section 28 of the Act as the amount as per the award under appeal was not deposited within the specified period of one year from the date of possession (22-7-1980) we further order interest at the rate of 15 per cent per annum from 22nd July 1981 upto the date of deposit. There shall be no order as to costs.