

(1988) 03 KL CK 0017

In the High Court Of Kerala

Case No : L.A.A. No's. 180, 181, 182, 183 and 259 of 1980

State of Kerala

APPELLANT

Vs

Varkey Mathai and Others

RESPONDENT

Date of Decision : 29-03-1988

Acts Referred:

Land Acquisition (Amendment) Act, 1984 — Section 28A

Land Acquisition Act, 1961 — Section 24, 24(2), 27(2), 9, 9(2)

Citation : (1988) 1 KLJ 723

Hon'ble Judges : U.L. Bhat, J;K.G. Balakrishnan, J

Bench : Division Bench

Advocate : Advocate General, for the Appellant; M.P. Abraham, for the Respondent

Judgement

K.G. Balakrishnan, J.—All these appeals arise from the judgment in L.A. Rs, 118/77, 120/77, 121/77, 135/77 and 235/77. Different bits of land were acquired from the Respondents for the purpose of Mangattoor minor distributory canal and also for the construction of Poothrikkara minor distributory canal. In L.A.R. No. 180 of 1980 Section 3(1) notification was published on 30th March 1976 and possession was taken on 20th December 1975. In L.A.A. Nos. 181, 182 and 183 of 1980 Section 3(1) notification was published on 24th February 1976 and possession was taken on 20th December 1975. In L.A.A. No. 259/80 the 3(1) notification was published on 29th June 1976 and possession was taken on 20th May 1976. The Respondents in all these appeals except in L.A.A. 259/80 claimed Rs. 600 per cent. The Land Acquisition Officer in L.A.A. Nos. 181, 182 and 183 of 1980 fixed the compensation at Rs. 275 per Are. In L.A.A. 180 of 1980 the Respondent was allowed to get compensation only Rs. 215 per Are and in L.A.A. 183/80 the compensation was fixed at the rate of Rs. 250 per Are. The Respondents had claimed enhanced rate of compensation and the matter was referred to the Land Acquisition Court. Except in L.A.A. 259/80 in all other cases Court fixed the land value at Rs. 925 per Are. This would work out to Rs 375 per cent.

2. The Respondents contended before the Land Acquisition Court that the acquired plots of land are situated in a Very important locality and there are schools, college, hospital, block office and other commercial establishments nearby and the land value awarded by the Land Acquisition Officer was inadequate. According to the Respondents the acquired land is situated in between two important junctions namely, Kolencherry and Kadayiruppu. The Respondents also contended that the entire property has road frontage and there are two other public pathways passing very near the acquired land. Exts. A-1 to A-3 documents were relied on by the Respondents and one of the Respondents was examined as A.W. 4. Three other witnesses were examined to prove that the market value fixed by the Land Acquisition Officer was incorrect. The Land Acquisition Court considered Exts. A-1 to A-3 documents and came to the conclusion that Rs. 925 per Are would be the proper and reasonable compensation for the land acquired in L.A. Rs. 118, 120, 121 and 235 of 1977. The Court however rejected the enhancement prayed for by the Respondent in L.A.A. 259 of 1980 for the reason that she had not filed any claim before the Land Acquisition Court in pursuance of the notice issued to her u/s 9(3) of the Land Acquisition Act.

3. Land Acquisition Officer placed reliance on Exts. R-17, R-18 and R-19 to base his conclusion regarding the compensation payable to the Respondents. These three documents have not been proved by examining the competent persons. The Court below rightly declined to act on the basis of the consideration recited in these documents. Ext. A-1 is a copy of sale deed, dated 16th August 1971. The vendor was examined as A.W. 1. The vendee therein is A.W. 3. But A.W. 3 has not spoken anything regarding Ext. A-1 document. The evidence of A.W. 1 is to the effect that he sold 10 cents of property to A.W. 3 as per Ext. A-1 sale deed and the total consideration received by him was Rs. 6,000. The evidence of A.W. 1 clearly shows that he is a highly interested witness. His attempt was to show that the acquired land was lying in an important place, whereas Ext. A-1 property was in a remote area having no road frontage. His statement regarding the proximity of the acquired land to the Alwaye-Perumbavoor road is also incorrect in view of the evidence of RW 1. According to RW 1 Kolencherry-Perumbavoor road is about 100ft. away from the property acquired in L.A.R. 118 of 1977, whereas A.W. 1 would say that the Kolencherry-Perumbavoor road is just- on the southern side of the acquired land. The evidence of A.W.-1 also would go to show that Ext. A-1 property is near the Kolencherry junction., This also was specifically suggested to the witness and he admitted that the distance from Ext. A-1 property to the Kolencherry junction is only half of the distance between the Kolencherry junction and the acquired land. This would clearly indicate that A-1 valuation cannot be taken as the basis for the compensation payable to the Respondents.

4. Ext. A-2 is the copy of an award passed on 11th January 1974. A.W. 2 is alleged to be the-owner of the land acquired as per Ext. A-2 award. However, Ext. A-2 award shows that the same was in the name of one Ulahannan

Kuriakose whereas A.W. 2 is Chacko Kuriakose. Evidently the property acquired is 1190 Ares in Sy.No. 398/6. A.W. 2 has not explained the difference in names in Ext. A-2 document. The evidence of A.W. 2 also is not helpful in understanding the real nature of the land acquired. He only deposed that he was the claimant in Ext. A-2 award and that he was given Rs. 600 per cent as compensation. He would say that Ext. A-2 property was about 3 furlongs away from the acquired land. Respondents have not taken steps to produce the award notes prepared by the Land Acquisition Officer in that case or other evidence which would have definitely thrown some light on the importance of the locality and the reasons for giving land value at the rate of Rs. 600 per cent. Therefore, it is not safe to place any reliance on the compensation given to Ulahannan Kuriakose under Ext. A-2 award.

5. Ext. A-3 is a copy of sale deed executed in favour of A.W. 3. This document is in respect of 6 Ares and 88 sq.m. The total consideration paid is Rs. 13,000. This works out to Rs. 765 per cent. A.W. 3 deposed that he purchased the property for the purpose of constructing a house. In the chief examination he stated that Ext. A-3 property has no road frontage and there is no facility for water. From the evidence of A.W. 3 it is clear that he tried to impress upon the Court that Ext. A-3 property is in a remote area, whereas the acquired land is near the commercial centre. Further in the cross-examination he had admitted that on southern side of Ext. A-3 property there is an important public road namely Perumbavoor-Kolencherry road and that the Kolencherry junction is three furlongs away from the Ext. A-3 property. It is also important to note that Ext. A-3 document was executed on the eve of the publication of 3(1) notification. The earliest publication in this case was on 24th February 1976. Ext. A-3 document was executed on the same date on which the 3(1) notification was published in L.A.R. 118 of 1977. A.W. 3 also admitted that there was no bargaining regarding the price and he gave the price which was asked for by the vendor.

6. A.W. 4 is the claimant in L.A.R. 118 of 1977. According to him the acquired land is three furlongs away from the Kolencherry junction and therefore it situates in an important locality. It is true that Kolencherry town is an important place and there are several institutions like college, hospital, banks and other commercial establishments. But the fact that acquired plots are three furlongs away from the Kolencherry junction would indicate that these plots could not have been put to any commercial use. All the witnesses on the Respondents' side gave evidence to the effect that several roads pass near the acquired land. But there is only one road touching two of the acquired plots and for the rest of the items there is no road frontage.

7. Ext. R-20 is the group sketch prepared in this case. From this group sketch it is not possible to find out whether there is any road passing through this property. However, we notice that in L.A.Rs. 118 and 235 of 1977 a portion of the acquired land was lying as a Panchayat road. The group sketch further shows

that Exts. A-1 and A-3 properties are situated on the southern side of the acquired land. The evidence of RW 1 also would go to show that the acquired land was away from the Kolencherry town and there was only one road near this property. RW 1 also deposed that Ext. A-1 and A-3 documents were executed at the instance of one Ulahaiman Kuriakose and A.W. 3 Poulouse is only a name lender. It is also important to note that Ulahannaa Kuriakose is the claimant in Ext. A-2 award produced by the Respondents. In Ext. A-2 award case, the 3(1) notification was on 31st October 1976. From these circumstances it can be easily inferred that Exts. A-1 and A-3 documents might have been executed with an ulterior motive and the consideration shown therein may not reflect the then market value of the land prevalent in that locality. In Ext. A-3 the consideration paid therein is Rs. 765 per cent and in Ext. A-1 the consideration paid is Rs. 600 per cent. We think that Respondents are entitled to less than half of the Ext. A-1 consideration and fix Rs. 625 per Acre as adequate and reasonable compensation for the land acquired.

8. In L.A.R. 135 of 1977 (L.A.A. 259 of 1980) the Respondent was not given any enhanced compensation since she has not claimed any specified amount in the statement filed before the Land Acquisition Officer. The Respondent was served with a notice u/s 9(3) of the Land Acquisition Act. The notice is seen, dated on 8th December 1976. The last date for submitting the statement was 22nd December 1976. It is not known on which date the notice was served on the Respondent Sosamma. She filed the statement on 22nd June 1976. Three persons were shown as the claimants in the land acquisition proceedings. All these persons have filed a joint statement to the effect that in respect of the property comprised in Sy. No. 388/2-6 Respondent Sosamma alone will be entitled to recover the amount. It is true that in the statement she has not specifically prayed for any amount in respect of her property. This Respondent also was the claimant in L.A.R. 120 of 1977 (L.A.A. 181 of 1980). In L.A.R. 120 of 1977 an extent of 11-53 Ares in 388/1-3 was acquired and in L.A.R. 135 of 1977 6 55 Ares in 388/2-6 was acquired. In the statement given in L.A.R. 120 of 1977 she has prayed for value of land at the rate of Rs. 600 per cent. But no such averments are seen to have been made in the statements submitted by her in L.A.R. 135 of 1977. The learned Counsel for the Respondent contended that this is only an omission and she had taken all possible steps to get enhanced compensation.

9. Section 9(2) of the Act says that the parties who received notice should put forward their claim and the person who has not preferred any claim u/s 9(2) is precluded u/s 24(2) of the Act from claiming any enhanced compensation. In *State v. Ramakrishna Pillai* 155 KLT 497 this Court held that the provisions of Section 24 of Travancore Land Acquisition Act, 1089 are mandatory. It was held that u/s 9(2) the owner of the property, about to be acquired should appear and state his claim in the manner provided by the clause so as to enable the acquisition officer to make a fair, proper and reasonable award based upon a proper inquiry after the proper means have been placed before him for holding

such inquiry. Section 24 clause(2) makes the refusal or omission to comply with the provisions of Section 9 Clause (2) without sufficient cause an absolute bar to the applicant in the reference obtaining a greater sum than that was awarded by the Collector. However, the Court held that it was open to the High Court to consider whether there was "sufficient cause" for the landowner for not putting forward his claim in answer to the notice u/s 9(2) of the Act. In *Kochummen Easo v. State of Kerala* ILR 1964 Ker 380 the Court held that the Court should not summarily dismiss the claim for enhancement on the ground that the claimant did not put forward a claim in answer to the notice u/s 9. His Lordship Justice K.K. Mathew, as he then was, took the view that the Court below was not right in taking up the question *sue motu* and disposing of the case without giving an opportunity to the claimant to have his say about the question, and an opportunity must be given to the claimant to explain why he did not prefer the claim u/s 9 within the time specified. In an earlier decision, viz., *State of Travancore-Cochin v. Mathai* 1957 K.L.J. 893 Full Bench of this Court took the view that Section 9(3) notice did not show the value offered to the claimant and that there was nothing to show that even the rough valuation statement was ready or available for his perusal on the hearing date and under that circumstance the claimant had sufficient reason for his failure to make a proper claim as required by law. The correctness of this decision was doubted and the matter was considered by a Bench of five Judges. In *State of Kerala v. George* 1981 KLT 310 (F.B.) the Full Bench considered the whole question and His Lordship Poti, C.J., as he then was speaking for the Bench held:

At the time notice is issued u/s 9(3) of the Act the Land Acquisition Officer is not obliged by any statutory provision to be possessed of materials as to the value proposed to be offered. More significant is the fact that the statute which clearly indicates the scope of notice under Sections 9(1) and 9(3) does not expressly or by implication require furnishing of any information to the claimant as to the value of the Land. There is no scope in the scheme of the Act for any provisional determination of the value of the land. Final determination can only be at the time the award is passed. Therefore there is no information as to value to be conveyed to the claimant when notice is issued u/s 9(3). The failure to convey any such information cannot therefore be said to be failure to perform a duty cast upon the Land Acquisition Officer. If this be the approach to the question it cannot be urged that the claimant failed to make specific claim as to compensation because the information as to value of the land acquired was not conveyed to him in the notice u/s 9(3). The consequence of the provision in Section 27 is that the compensation is limited to the amount claimed in the statement made pursuant to notice u/s 9 if such a statement had been filed. When the claimant fails to make such claim the reference Court cannot award any enhancement. The exception to this is the case where the omission to make a claim is explained and the explanation is acceptable to the Judges.

The Court also was of the view that Section 9(3) of the Act is to be liberally construed. The Court further held:

Of course, the provision in Section 27(2) is not to be understood as a provision to be used to defeat a claimant who would otherwise be entitled to obtain just value for his property. The provision calls for a liberal construction in favour of the claimant to the extent possible. Though the provisions of the Act oblige the claimant to make a specific claim in his claim statement if he is later to seek enhancement and the penalty for failing to make such claim is the forfeiture of his right to claim enhancement, to a great extent the adverse consequence of this provision has been softened by the provision empowering the judge to condone the default on the part of the claimant. The discretion conferred on the Judge is a very wide discretion, but sufficient reason has to be found by him to condone the default. In considering whether the reason urged is sufficient he should necessarily be led by considerations of good faith in the conduct of the party. If a party is shown to be vigilant all along and not negligent and there is no absence of good faith on his part that may be good reason.

A Single Judge of this Court in *Kocheevan George Alias K.T. George v. K.S.E.B.* 1986 K.L.N. 598 held that Section 27 of the Land Acquisition Act 21 of 1962 (Kerala) is to be liberally construed and it should not be applied strictly. The Court held:

If at all it should be applied strictly it should be only in cases where there is clear and convincing proof of deliberate refusal or conscious and intentional omission without justifiable reason and suggesting some sinister purpose. It should be noted that the provision has the colour and character of a penal provision. So it should be administered as a penal provision giving all benefits of doubts to the aggrieved party. It is not the design of the act to use this provision as a trap for depriving the claimant a fair and proper compensation for their property acquired by the Government. If there is good faith a benign construction favourable to the party should be the safe test. I do not think that in this case, there is lack of good faith or absence of diligence.

The learned Government Pleader contended that the observations of the learned Single Judge regarding liberal construction of Section 27 are not warranted by the provisions of law, and that the view taken by the learned Single Judge that Section 27 should be complied strictly only in cases where there is clear and convincing proof of deliberate refusal or conscious and intentional omission without justifying reason suggesting some sinister purpose may not be the correct exposition of law in view of the observation of the Full Bench in *State of Kerala v. George* 1981 KLT 310. In that case the Full Bench of Five Judges held that in considering whether the reason urged is sufficient the Court should necessarily be led by consideration of good faith in the conduct of the party and if the party is shown to be vigilant all along and not negligent and there is no absence of good faith on his part that may be "good reason". In view of the Full Bench decision on this matter, we need not re-state the law on this aspect.

10. In the instant case two bits of land were acquired from the Respondents. The matter was referred to the Land Acquisition Court as L.A.R. 120 of 1977 and 135

of 1977. In L.A.R. 120 of 1977 she had filed application and claimed compensation at Rs. 600 per cent. The learned Counsel for the Respondent contended that in L.A.R. 135 of 1977 she failed to claim land value at Rs. 600 per cent. That was only an omission and the fact that she claimed Rs. 600 per cent for the property comprised in Section 388/1 B is sufficient to show her good faith. We are inclined to accept the contention that there was good faith on the part of this Respondent and there was only a bona fide omission on her part in not claiming value at Rs. 600 per cent. We are holding so particularly in view of Section 28A of the Land Acquisition Amendment Act 68 of 1984., Section 28A says that:

Where in an award under this Part, the Court allows to the applicant any amount of compensation in excess of the amount awarded by the Collector u/s 11, the persons interested in all the other land covered by the same notification u/s 4, Sub-section (1) and who are also aggrieved by the award of the Collector may, notwithstanding that they had not made an application to the Collector u/s 18, by written application to the Collector within three months from the date of the award of the Court require that the amount of compensation payable to them may be re-determined on the basis of the amount of compensation awarded by the Court.

So, Section 28A of Act 68 of 1984 has virtually watered down the rigour of Section 27 of the Kerala Land Acquisition Act. Even if the claimant has not put forward a specific claim u/s 9 of the Act, the claimant would be still entitled to claim enhancement, if, in fact, the other claimants have been awarded enhancement by the Land Acquisition Court. Therefore, we hold that the Respondent in L.A.A. 259 of 1980 also is entitled to get enhanced compensation at the rate of Rs. 625 per Are.

In the result, in L.A.R. 118 of 1977 (L.A.A. 180 of 1980) the Respondent is entitled to get enhancement of Rs. 410 per Are in respect of 6.45 Ares.

In L.A.R. 120 of 1977 (L.A.A. 181 of 1980) the Respondent is entitled to get enhancement of Rs. 350 per Are and he is entitled to get compensation in respect of 10.75 Ares.

In L.A.R. 121 of 1977 (L.A.A. 182 of 1980) the Respondent is entitled to get enhancement of compensation at Rs. 350 per Are in respect of 18.60 Ares.

In L.A.R. 235 of 1977 (L.A.A. 183 of 1980) the Respondent is entitled to get additional enhancement at the rate of Rs. 375 per Are for an extent of 77 Sq.m.

In L.A.R. 135 of 1977 (L.A.A. 259 of 1980) the Respondent is entitled to enhancement of compensation at the rate of Rs. 350 per Are in respect of 6.55 Ares.

All the claimants are entitled to get solatium at the rate of 30 per cent for the compensation instead of 15 per cent granted by the Land Acquisition Court. All the Respondents are entitled to get interest at the rate of 9 per cent per annum

on the enhanced compensation from the date of taking possession i.e. 20th December 1975 in L.A.A. 180, 181, 182 and 183 of 1980 and 20th May 1976 in L.A.A. 259/80 for a period of one year and thereafter at the rate of 15 per cent per annum till the amount is paid into Court.

11. Parties to bear costs.