

(2007) 02 KL CK 0049

In the High Court Of Kerala

Case No : L.A.A. No's. 1787, 1815 and 1888 of 2002 and 120, 158, 172, 197, 228, 703 and 592 of 2003

State of Kerala

APPELLANT

Vs

Zacharia, Varampathu Veedu

RESPONDENT

Date of Decision : 23-02-2007

Acts Referred:

Land Acquisition Act, 1894 — Section 4(1), 50, 50(2)

Citation : (2007) 02 KL CK 0049

Hon'ble Judges : Kurian Joseph, J;K.T. Sankaran, J

Bench : Division Bench

Advocate : Government Pleader, for the Appellant; Philip M. Varughese, for the Respondent

Judgement

K.T. Sankaran, J.—These Land Acquisition appeals are filed by the State challenging the common judgment dated 24.8.2001 in L.A.R. No. 1/96 and connected cases. There were 10 Land Acquisition Reference cases. Notification u/s 4(1) was issued in some cases on 23.11.1995, in respect of some other cases on 22.1.1993 and in respect of the rest, on 23.7.1992.

The Land Acquisition Officer passed an award granting land value at the rate of Rs. 2,347/- per Are in some cases and Rs. 2,816/- per Are in other cases. The Land Acquisition Court held that the land value awarded by the Land Acquisition Officer is too low and enhanced the land value at Rs. 10,000/- per cent of land in certain cases and, at Rs. 12,000/- per cent in cases where the acquired land abutted the Kollam-Chenkotta road. The State contends that the amount awarded by the Land Acquisition Court is highly excessive.

2. The land was acquired for establishing a Municipal bus stand at Punalur. Before the Land Acquisition Court, A.Ws.1 to 7 were examined and there was no evidence on the part of the State or the requisitioning authority. The requisitioning authority was not a party before the Reference Court. Relying on the evidence of A.Ws.1 to 7 and the documentary evidence produced before the

court, the court below held that the value in respect of the basis land cannot be taken as the criterion for fixing the land value. Though certain documents produced before the reference court were after the notification issued in most of the cases, the reference court took note of the upward trend in land value in the years 1994 and 1995. In Ext.A7, which is a document before Section 4(1) notification, the land value was Rs. 3,200/- per cent. The Land Acquisition Officer did not grant land value even at that rate.

3. It has come out in evidence that the acquired land, except some plots in some of the reference cases, is on the side of the Kollam-Chenkotta road. It has also come out in evidence that in between a portion of the acquired land and Kollam-Chenkotta road, shop buildings are there. The evidence disclosed that the acquired land is in Punalur town itself. As per certain documents produced by the claimants, in respect of the property situated away from the Punalur town, much higher land value is shown. Therefore, as rightly held by the Reference Court, the land value awarded by the Land Acquisition Officer is too low.

Learned counsel for the appellant as well as the learned counsel appearing for the requisitioning authority submitted that the judgment passed by the court below is liable to be set aside on the short ground that the requisitioning authority was not made a party to the proceedings before the court below and that no notice was issued to the requisitioning authority in the cases. The counsel relied on the decision of the Constitution Bench in *U.P Awas Evam Vikas Parishad Vs. Gyan Devi (Dead) by L.Rs. and another, etc. etc.,* .

The Constitution Bench held thus :

25. To sum up, our conclusions are :

1. Section 50(2) of the L.A. Act confers on a local authority for whom land is being acquired a right to appear in the acquisition proceedings before the Collector and the reference Court and adduce evidence for the purpose of determining the amount of compensation.

2. The said right carries with it the right to be given adequate notice by the Collector as well as the reference Court before whom acquisition proceedings are pending of the date on which the matter of determination of compensation will be taken up.

3. The proviso to S.50(2) only precludes a local authority from seeking a reference but it does not deprive the local authority which feels aggrieved by the determination of the amount of compensation by the Collector or by the reference Court to invoke the remedy under Art.226 of the Constitution as well as the remedies available under the L.A. Act.

4. In the event of denial of the right conferred by Section 50(2) on account of failure of the Collector to serve notice of the acquisition proceedings the local authority can invoke the jurisdiction of the High Court under Art.226 of the Constitution.

5. Even then notice has been served on the local authority remedy under Art.226 of the Constitution would be available to the local authority on grounds on which judicial review is permissible under Art.226.

6. The local authority is a proper party in the proceedings before the reference Court and is entitled to be impleaded as a party in those proceedings wherein it can defend the determination of the amount of compensation by the Collector and oppose enhancement of the said amount and also adduce evidence in that regard.

7. In the event of enhancement of the amount of compensation by the reference Court if the Government does not file an appeal the local authority can file an appeal against the award in the High Court after obtaining leave of the Court.

8. In an appeal by the person having an interest in land seeking enhancement of the amount of compensation awarded by the reference Court, the local authority should be impleaded as a party and is entitled to be served notice of the said appeal. This would apply to an appeal in the High Court as well as in this Court.

9. Since a company for whom land is being acquired has the same right as a local authority under S.50(2), whatever has been said with regard to a local authority would apply to a company too.

10. The matters which stand finally concluded will, however, not be reopened.

The counsel also relied on the decision of the Supreme Court in *Abdul Rasak and Others Vs. Kerala Water Authority and Others*, , wherein relying on the Constitution Bench decision reported in *U.P Awas Evam Vikas Parishad Vs. Gyan Devi (Dead) by L.Rs. and another, etc. etc.*, , the Supreme Court held that when an appeal filed by the State was pending on the date when the decision of the Constitution Bench was rendered, it is to be taken that the matter is pending. It was held that in such cases, the reference case should be remitted to the reference court and that the requisitioning authority should be impleaded. The Supreme Court also relied on the decision in *Agra Development Authority v. Special Land Acquisition Officer* (2001) 2 SCC 646 to hold that even when an officer of the requisitioning authority was examined as a witness, and the requisitioning authority was aware of the proceedings before the Land Acquisition Court, that was not sufficient compliance with Section 50 of the Land Acquisition Act. In view of the aforesaid decisions, the judgment and decree passed by the court below are liable to be set aside and the appeals are liable to be allowed.

It is necessary, therefore, to remand the matter to the Land Acquisition Court for a fresh disposal. The Land Acquisition Officer shall make the requisitioning authority a party to the proceedings. Since the requisitioning authority has filed an impleading petition in these cases, it is not necessary to issue fresh notice to the requisitioning authority and it shall appear before the Land Acquisition Court.

4. Learned counsel for the claimants submitted that some of the witnesses who were examined in the case may not be available and that simply because they

are not available for further cross examination at the instance of the requisitioning authority, their evidence may not be discarded. The Supreme Court in Abdul Rasak's case (supra) also had safeguarded the interests of the claimants in such a way, holding thus :

Kerala Water Authority shall be allowed an opportunity of cross-examining the witnesses which have already been examined. However, such of the witnesses as are not available, and, therefore, cannot be called before the Court, their statements shall not be excluded from consideration and shall be read in evidence.

Therefore, we are inclined to accept the contention raised by the claimants that the evidence of those witnesses who are not available, and whose presence cannot be made available before Court, need not be discarded only on the ground that they are not available for further cross examination.

5. Learned counsel for the claimants also submitted that the court below was not justified in not granting interest on solatium and they relied on the decision in *Sunder v. Union of India* (2001) 7 KLT SCC 211. In view of the decision in *Sunder's* case (supra), the claimants are entitled to get interest on solatium. Since the judgment and decrees passed by the court below are being set aside, the court below shall consider this aspect as well, while passing fresh judgment.

6. For the aforesaid reasons, the common judgment and decrees passed by the court below are set aside. The Land Acquisition Reference cases are remanded to the court below for fresh disposal after affording both parties an opportunity of being heard and an opportunity to produce such other evidence as they wish to produce. The court below shall implead the requisitioning authority. Needless to say that the parties will have fresh opportunity to file additional statement, and to put forward such other materials and evidence as are relevant. Parties shall appear before the court below on March 24, 2007. The court below shall dispose of the cases in accordance with law afresh, and shall decide afresh the enhancement of land value to be awarded, in the light of the observations made above, within four months from the date fixed for appearance of the parties.