(2011) 07 KL CK 0113

In the High Court Of Kerala

Case No : LA. App. No. 1896 of 2008

The Secretary Mullassery Grama — APPELLANT

Vs

Kishore and Others — RESPONDENT

Date of Decision : 18-07-2011

Acts Referred:

Citation : (2011) 07 KL CK 0113

Hon'ble Judges : Pius C. Kuriakose, J;C.K. Abdul Rahim, J

Bench : Division Bench

Advocate : K.B. Mohandas, for the Appellant; Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Pius C. Kuriakose, J.—The Requisitioning Authority, the Mullassery Grama Panchayat is in appeal. The acquisition in all these cases was of lands situated in Mullassery village for the purpose of establishment of a Bus Stand and Shopping Complex for the Mullassery Grama Panchayat. The acquisition was pursuant to Section 4(1) notification published on 01/08/01. The Land Acquisition Officer categorised the properties into two. Included in category 1 were properties enjoying the direct frontage of main road. For these properties he awarded land value at the rate of Rs. 26,370/- per Are. Included in category 2 were properties with frontage of the Panchayat road. For these properties he awarded land value at the rate of Rs. 24,300/- per Are. Before the Reference Court which tried these and a few other references jointly the evidence adduced on the side of the claimants consisted of Exts.A1 to A22, oral evidence of AW1 to AW7, R1 to R17 series oral evidence of RW1 and Exts.X1 to X5 Commission Report in various cases. The Reference Court on evaluating the evidence would place more reliance on Exts.A10 and A20 documents reflecting land value of Rs. 36,742/- per cent and Rs. 40,000/- per cent respectively and would re-fix the value of lands included in category 2 at Rs. 60,877/- per Are and would give an increase of 7.5% to the properties in category 1 and would re-fix the value of properties in category-1 at Rs. 70,008/- per Are.

2. In all these appeals, grounds are raised challenging what is described as the excessiveness of the compensation re-determined by the Reference Court. In L.A.A.1897/08 another ground is seen raised that the reference was barred by limitation and should not have been entertained.

3. We have heard submissions of Sri.K.B. Mohandas, the learned Counsel for the Appellant/Panchayat and also those of the learned Counsel appearing for various claimants, particularly Sri. Shyjo Hassan. Sri. Mohandas submitted that the court below was not justified in placing reliance on Exts.A10 and A20. Sri. Mohandas pointed out that the claimants have admitted in their evidence that their properties were more comparable to the properties covered by the basis documents Exts.R1 and R2. Exts.A10 and A20 according to the learned Counsel should not have been relied on as the parties to those documents were owning properties adjacent to the properties covered by them. They were keen on purchasing those properties and the price paid by them was fancy price. The properties were situated in remote area and the value presently fixed is far above the correct value of the property at the relevant time.

4. Coming to L.A.A.1897/08 Sri. Mohandas submitted that it became evident that award notice u/s 12 (2) was received by the claimant on 21/10/2002 and the reference application was filed by them long thereafter, on 11/04/2007. The reference was per se time barred. Sri. Shyjo Hassan and other counsel for the claimants would resist all the submissions of Sri. Mohandas. According to them, it is a reasonable compensation that is re-fixed by the Reference Court and there is no warrant for interference.

5. Coming to the question of limitation in L.A.A.1897/08 Sri. Shyjo Hassan submitted that the question of limitation was not specifically raised by the Panchayat before the trial court and hence, should not be allowed to be raised in appeal before this Court.

6. We have given our anxious consideration to the rival submissions addressed at the Bar. We have carefully gone through the impugned judgment. We have made a quick reappraisal of the evidence on record.

7. Having made a re-appraisal of the evidence, we feel that the court below cannot be blamed for having relied on Exts.A10 and A20. We notice that the court below did not award the full rate reflected in Exts.A10 and A20. It is only much lesser rates than what is evident from Exts.A10 and A20 that is presently awarded. At the same time, having made an overall evaluation of the evidence, we feel that the rates presently fixed by the Reference Court is slightly on the high side. We are of the view that on a better assessment based on available evidence itself, the value of properties included by the Land Acquisition Officer in category-1 (for which he awarded value at the rate of Rs. 26,370/- per Are) can be re-fixed at Rs. 66,000/- per Are. We similarly feel that the values of properties which were included by the Land Acquisition Officer in category-2 (for

which he awarded rate of Rs. 24,300/- per Are) can be re-fixed at Rs. 58,000/- per Are. Allowing all these appeals we re-fix the value of properties included in category-1 at Rs. 66,000/- per Are and the values of all the properties included in category-2 at Rs. 58,000/- per Are.

8. We are not impressed by the submission of Sri.K.B. Mohandas that the reference pertaining to L.A.A. No. 1897/2008 was barred by limitation and should not have entertained. The learned Counsel for the claimant placed before us a copy of the judgment of this Court in W.P.(C) No. 3060/2006 and submitted that it was pursuant to the directions contained in the above judgment that the Land Acquisition Officer acted on Ext.P3 treating Ext.P3 as an application submitted on 03/09/2004. Nobody disputes that the judgment in W.P.(C) No. 3060/2006 has attained finality. It is therefore, not open to the requisitioning authority to raise the contention at this stage that the reference should not have been entertained. We repel the contention based on the issue of limitation.

9. All appeals are allowed re-fixing the market value of the lands included in category-1 at Rs. 66,000/- per Are and the market value of the lands included in category-2 at Rs. 58,000/- per Are. The claimants will be entitled for all statutory benefits on the re-fixed compensation in all these cases. Parties are directed to suffer their respective costs.