

(2009) 09 KL CK 0068
In the High Court Of Kerala
Case No : L.A. App. No. 896 of 2005

The Special Tahsildar (LA)

APPELLANT

Vs

P.K. Muraleekrishnan

RESPONDENT

Date of Decision : 17-09-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 2
Land Reforms Act, 1894 — Section 23(1)A

Citation : (2009) 4 ILR (Ker) 216 : (2009) 3 KLJ 456 : (2009) 4 KLT 320

Hon'ble Judges : C.K. Abdul Rehim, J

Bench : Single Bench

Advocate : Basant Balaji, G.P, for the Appellant; T.P. Aravindakshan, K.P. Sreekumar, P.M. Satheesan and R. Gireesh Varma, for the Respondent

Judgement

C.K. Abdul Rehim, J.—Both the appeals arise out of a common judgment in LAR. Nos. 118/96 and 254/96 of the Subordinate Judges Court, Kozhikode. In LAA. No. 896/2005 arising out of LAR. No. 118/96 an extent of 1729 sq. ft. (3.96 cents) of land was acquired for widening of Sub Jail Road in Kozhikode city. Section 3(1) notification was issued on 19.4.1966 and possession of the land was taken over on 2.2.1993. The land acquisition officer fixed value at Rs. 375/- percent, as per award dated 15.9.1980. The reference court, by its judgment dated 18.2.1988, refixed the compensation at Rs. 75,000/- per cent. In LAA. No. 1094/2005 arising out of LAR. No. 254/96 an extent of 738.84 sq. meters (18.25 cents) of property was acquired for widening of Pavamani Road in Kozhikode City. Section 4(1) notification was published on 25.5.1981 and possession of the land was taken over on 16.3.1993. The Land Acquisition Officer awarded compensation @ Rs. 4095/-per cent through award dated 19.9.1986. The Reference Court, through judgment dated 23.2.1999, relying on the judgment in LAR. No. 118/96, refixed land value at Rs. 75.000/- per cent. The land in question in that case contained a theater viz. "Coronation Theater" and by widening of the Road, the porch, portico and shop building situated in the front including the Gate and compound wall were demolished. It has come out in

evidence that the theater building was to be remodelled and it has lost considerable space which was used as parking area. Hence the Reference court allowed an amount of Rs. 10 lakhs to be paid for remodelling of the theater and a further sum of Rs. 15 lakhs for injurious severance along with other statutory benefits.

2. The judgment in LAR. No. 118/96 and 254/96 were challenged in appeal before this Court by the State in LAA. No. 1630/98 and 960/99 respectively. This Court through a common judgment dated 13.2.2003 set aside the judgments and remanded the matter for fresh adjudication. This Court while setting aside those judgments found that the Reference Court has not accepted Exts. A1 and A2 documents which were executed after a period of 4 years and 30 years respectively, from the date of notifications in these cases. Eventhough there was a commission report, the Commissioner was not asked to fix the land value and it is noticed that the commissioner's report was also rejected by the Reference Court. This Court found that having rejected Exs. A1 and A2 documents and the commissioner's report, there is no material to assess the value and from the impugned judgments of the Reference Court it is not clear as to on what basis the court had fixed the value. This Court noticed that the Government also had not adduced any evidence and not even produced the basic document. Therefore in the absence of any materials the impugned judgments were set aside and the cases were remanded for fresh adjudication with a direction to the Reference Court to allow the parties to adduce fresh evidence.

3. After remand, commissions were taken out in both the cases and Exts.C2 and C4 are the reports and Ext.C3 is the sketch prepared (Exts.C1 and C2 are commission reports in LAR. No. 1 18/96 and Ext.C3 and C4 are the sketch and commission report in LAR. No. 254/96). After remand AW1 was again examined. The Reference Court considered the evidence and documents in LAR. No. 118/96 in order to have a reconsideration regarding enhancement on the land value. The Claimant contended that the basis land and the acquired property are not similar in nature and they are not similarly situated. According to the claimant, the market value fixed by the Land Acquisition Officer based on the value of the basis land, is highly erroneous and illegal. Even on the date of Section 3(1) notification the centage value of the property in the area in question was Rs. 3 lakhs. In order to substantiate this contention much reliance was placed on Ext.A2 document. (Ext.A2 was seen marked again after the remand as Ext.A17). The State on the other hand opposed enhancement contenting that the award was passed taking into consideration of all available statistics of similar properties. The reference court found that the document pertaining to the basis land is only a transfer of jenmom right in favour of the tenant who was already in possession of the land and who had put up a building therein. The purchaser being a tenant who was holding right to fixity of tenure under the provisions of the Land Reforms Act, the reference court found that transaction in Ext.A1 document is only illusory and one made without any benefits. The reference Court further found that the acquired property is situated in a most important area of the

Kozhikode city at Palayam junction abutting the main road and opposite to the Corporation Public Bus Stand and the land in question is very near to the Palayam junction, Palayam vegetable market, General Hospital, Kottaparamba, Division Theater, Apsara theater, Jayanthi building, Railway Station etc. It is further found that the Madras-Calicut Trunk Road (National Highway) is only 15 meters away from the said property. The basis land is situated in a place having only lessor importance, and on considering the nature of Ext.A1 document, the Reference Court discarded the value in Ext.A1 document and held that the acquired property is situated in a more important place having more potentialities than the basis land. In Ext.C2 commission report the Advocate Commissioner had assessed the centage value of the acquired property as Rs. 1 lakh per cent as on the date of notification. But the Reference Court has not accepted the same since the Commissioner was not examined.

4. With respect to Ext. A2 document, the Reference Court found that the importance and potentiality of the acquired property are also available to the property covered under Ext. A2 and both are similar in nature and similarly situated. But it is found that Ext. A2 is post notification document came into existence after 30 years of the date of Section 3(1) notification in this case. But the Reference Court found that Ext.A2 document can be relied on by giving deduction on account of time lag of 30 yeas. The centage value in Ext.A2 is Rs. 90,909/- and the extent is only 1.65 cents. The Reference Court adopted deduction @ Rs. 530/- for each year. Thus the value of the acquired property

5. Since this Court, while remanding cases for fresh consideration, has not made any observation against the award passed in LAR. No. 254/96, the Reference court has not interfered with the findings regarding land value fixed thereon, inspite production of Ext.C3 and C4 commission report and sketch assessing the land value at Rs. 1 lakh. The compensation for remodelling of the building as well as compensation for injurious severance granted in LAR. No. 254/2006 was also confirmed in accordance with the earlier judgment of the Reference Court. The References were allowed accordingly fixing the enhanced land value at Rs. 75,000/- per cent in both the cases and allowing remodelling charges and compensation for injurious severance in LAR. No. 254/96, along with 30% solatium on the market value and the amount calculated at 12% from the date of notification till the date of award, as provided u/s 23(1)A, along with interest @ 9% for one year and 15% thereafter till deposit. State is in appeal against the common judgment in the above reference cases.

6. The main question mooted for consideration in this appeal is as to what extent a post notification document can be relied on for fixing land value of the property acquired, and as to whether there can be a total non-acceptance of any post-notification document. The contention of the Appellant State is against acceptance of Ext.A2 document for fixing the land value. Admittedly Ext. A2 is a document executed after a period of 30 years from the date of notification. The Reference Court adopted a method of deducting Rs. 530/- for each year from the

centage value in Ext.A2 in order to arrive land value of the acquired land. In the case at hand it is evident that both sides could not adduce any other convincing evidence before the Reference Court to rely on, in order to arrive at the proper land value of acquired land, as on the date of notification.

7. The learned Government Pleader placed reliance on a decision of the Hon''ble Supreme Court in G.M. Oil and Natural Gas Corporation Limited v. Rameshbhai Jivanbhai Patel and Anr. 2008 SAR (civil) 894. The Hon''ble Supreme Court observed that determination of market value by providing appropriate escalation over the proved market value of nearby lands transacted in previous years is a reasonably safe method, where the relied on sale transaction precedes the subject acquisition only by a few years, that is up to 4 to 5 years. Beyond that it may be unsafe, even if it relates to a neighbouring land . This is because over the course of years, the rate of annual increase may itself undergo drastic change apart from the likelihood of occurrence of varying periods of stagnation in prices or sudden spurts in prices affecting the very standard of increase. The Honourable Apex Court held that much more unsafe is the method to determine the market value with reference to future sale transaction or acquisitions. The Hon''ble Supreme Court illustrated that taking statistics relating to sale/ acquisition in future, say after 4 or 5 years, as basic price and working out back by making deductions @ 10% to 15% p.a. is not a dependable or safe method. The Honourable Supreme Court further observed as follows:

Therefore, if the percentage to be added with reference to previous acquisitions/ safe transactions is 10% per annum, the percentage to be deducted to arrive at, a market value with reference to future acquisition/sale transactions should not be 10% per annum, but much more. The percentage of standard increase becomes unreliable. Courts should therefore avoid determination of "market value with reference to subsequent/future transactions. Even if it become inevitable, there should be greater caution in applying the prices fetched for transactions in future. Be that as it may.

8. Sri. T.P. Aravindakshan, learned Counsel for the respondent in both the appeals, contended on the contra that reliance on post notification documents cannot be discarded in toto. According to him there is no other document relating to any transaction or acquisition available in this case, upon which reliance can be placed in order to arrive the land value. Our attention is drawn in this regard to the earlier judgment of this Court whereby the matter was remanded. It is pointed out that this Court while setting aside the earlier judgments had taken note of the fact that the Government has also not adduced any evidence nor even produced the basic document. This Court observed that it is very unfortunate that the Government is also taking such an attitude when huge amount is involved. This Court allowed both the parties to adduce further evidence. But inspite of the severe criticism, the Government had failed to adduce any fresh evidence. Therefore the Government is not entitled to object the reliance made on Ext. A2 is the contention. It is further submitted that this

Court in the decision in *Jacob v. State of Kerala* 1997 (2) KLT 872 held that there is no inflexible rule that invariably in all cases post notification document cannot be looked into to ascertain the market value of property acquired. The test to be applied in such cases is to find out whether after publication of the notification the price of the lands in the locality has been increased, which has to be determined on the facts proved in the case and the onus to prove such facts is on the party who objects to the consideration of such sale transactions, and where there is no such proof, they can be taken into consideration.

9. We notice that even in *G.M. Oil and Natural Gas Corporation* case (cited supra) the Honourable Supreme Court has not totally restrained the courts from adopting the method of fixing land value based on post notification document. But it is only observed that as far as possible such method could be avoided. At the same time the Honourable Supreme Court observed that if in a case of pre notification document the rate of escalation is adopted as 10%, in the case of post notification document the rate of escalation should be more than that.

10. In the case at hand the Reference Court found that there is no other document apart from Ext.A2 (marked as Ext. A17 after remand) which can be relied on for arriving at the land value. But the Reference Court has not stated any basis or reasoning for adopting the deduction @ Rs. 530/- per year. The criteria in fixing Rs. 530/- as rate of deduction on yearly basis, is not seen explained. The Centage value in Ext.A2 document is Rs. 90909/-. The amount of Rs. 530/- will come only between 0.59 and 0.6 percentage of the said value. Therefore it cannot be accepted that the Reference Court has adopted a percentage wise deduction. Further since the relied on document is executed after 30 years of the date of notification, percentage wise deduction is not practical and workable. If we adopt 10% deduction per year, then the value will become zero after 10 years. If it is calculated at 5% basis the value will become zero after 20 years.

11. Under the above circumstances, while answering the question regarding acceptability of post-notification document, considering the dictum laid by the hon'ble apex Court in *G.M.Oil and Natural Gas Corporation* case (cited supra) we hold that as far as possible reference court shall not place any reliance on a post-notification document in order to fix land value. But in case, where absolutely no other reliable evidence are available, post-notification documents executed within a reasonable period of 4-5 years can be considered as a basis, provided the percentage wise deduction in the price for each year has to be calculated, always on a higher rate (percentage) than what is normally adopted in the case of pre-notification document as escalation in the value. But as stated above considering the facts and circumstances of this case the document executed after a period of 30 years is not at all acceptable, especially because a percentage wise deduction on the value is not at all possible or desirable.

12. While remanding the matter for fresh adjudication, this Court clearly observed that there is no proper material adduced by either side before the

reference court to assess" the value. Hence while remanding the matter this Court permitted both parties to adduce further evidence. From Exts.C2 ,C3 and C4 commission reports we notice that the claimants have adduced further evidence in the matter. The valuation of the property was seen fixed by the Commissioner after referring to various documents and acquisition awards, and after comparing the nature and lie of lands covered under those documents with the acquired land. The reference court has not accepted the valuation estimated by the Advocate Commissioner on the ground that the Advocate Commissioner was not examined in evidence. In this regard learned Counsel for the respondent had drawn our attention to the judgment rendered by one among us in KSIDC v. Vayalambraon Krishnan 2008 (4) KLT 726. Referring to the decision of the Honourable Supreme Court in The Special Land Acquisition Officer and another etc. etc. Vs. Sri Siddappa Omana Tumari and others etc., and the judgment of this Court in Satheeshkumar v. Special Tahsildar (LA) 2000(1) KLT 416 it is observed that those judgments never dictated that the commissioner's reports should have been rejected in toto by the reference court for the reason that the data or materials on the basis of which the report was prepared was not placed before the court. On the other hand it is observed that those documents mandate that whenever the court proceeds to rely on a report submitted by an Advocate Commissioner regarding market value of the acquired property, the court should not do so merely on the basis of the report, but should insist that the materials on the basis of which the report is prepared should also be placed by the commissioner or by the party before the court, in the instant case the Advocate Commissioner had narrated all comparisons with the available documents for arriving at the conclusion with respect to the land value. Hence we are of the opinion that in spite of non examination of the Advocate Commissioner reliance can be placed to some extent on the report of the Advocate Commissioner. As stated above the Advocate Commissioner had fixed the land value at Rs. 1 lakh per cent. At the same time it is evident that in Ext.A2 document, executed with respect to a transaction which occurred after 30 years, the land value is only Rs. 90909/- per cent. Therefore the valuation noted by the Advocate Commissioner is definitely on the higher side. From the side of the Government no evidence is adduced to prove that there occurred any spurt or sudden hike in the rate of increase of land value, due to any special reasons prevailed in the vicinity. The acquired land is in the heart of Kozhikode city which is a municipal corporation since last so many decades. Hence we are of the opinion that atleast 60% of the price which is mentioned in Ext.A2 report can safely be adopted as market value of the acquired property as on the date of notification. Calculated on that basis, the value per cent is fixed as Rs. 54,545/-.

13. The learned Government Pleader contended that the amount of Rs. 10 lakh granted by the reference court for remodelling of the theater and Rs. 15 lakhs granted for injurious severance is excessive and there is no proper basis for arriving at such compensation. Learned Counsel for the respondent opposed this argument on two grounds. First contention is that there is no ground taken in the

memorandum of appeal on the aspects and the appellant precluded from raising such a ground in the course of hearing, in view of the provisions contained in Order XXI Rule 2 of the CPC. Secondly it is contended that in the first round of appeals the said contention was not agitated before this Court and there is no finding to the effect of quashing the award granting those compensations in LAR.254/ 2006. We are persuaded to accept the contentions of the respondents in this regard. More so because, we find that the amount granted under these heads are not excessive or exorbitant.

14. Learned Government Pleader contended that which respect to LAA. No. 896/2005 which arises out of LAR. No. 118/96, 12% additional market value awarded u/s 23(1)A from the date of notification till the date of award, u/s 23(1)A is not sustainable in view of the fact that the date of award is 15.9.1980, which is prior to 30.4.1982. Going by the principles laid in the reference order of the Honourable Supreme Court in *Lilawati Agarwal v. State of Chharkhand* 2008 (2) KLT 224 SC and *Paripoornan's II* case, the entitlement for such compensation is limited to cases where the award by the Collector is passed subsequent to 30.4.1982. We find force in this contention and we are inclined to reverse the findings of the reference court in this regard.

15. In the result the appeals are partly allowed, refixing market value of the acquired lands in both the references at Rs. 54,545/- per cent. The claimants in LAR No. 254/96 are entitled to get a sum of Rs. 10 lakhs as compensation for remodelling and making of the theater again operational. They are also entitled to get a further sum of Rs. 15 lakhs for the injurious severance suffered by them. We set aside the impugned judgment of the reference court to the extent it granted additional compensation at 12% of the market value from the date of notification till the date of award in LAR. 118/96 while allowing the said benefit in LAR.254/96. The claimants will be eligible for rest of the benefits worked out in the terms of the impugned judgments on the basis of the refixed rate of compensation.