
(1990) 01 KL CK 0024
In the High Court Of Kerala
Case No : L.A.A. No. 180 of 1982

T.K. Narayana Iyer and Others

APPELLANT

Vs

State of Kerala and Another

RESPONDENT

Date of Decision : 10-01-1990

Acts Referred:

Land Acquisition Act, 1894 — Section 23, 4

Citation : AIR 1990 Ker 345

Hon'ble Judges : Varghese Kalliat, J

Bench : Single Bench

Advocate : B. Krishnamani, for the Appellant; Govt. Pleader, N. Sankara Menon and P. Radhakrishnan, for the Respondent

Judgement

Varghese Kalliat, J.—This is an appeal by the claimants in L.A.R. No. 114/1980. The land involved in this case is 5 1/2 cents in Sy. Nos. 110/4A and 110/5 of Guruvayur Village. Notification for the acquisition u/s 3(1) of the Land Acquisition Act was made on 9-3-1976. The Land Acquisition Officer awarded Rs. 4,500/- per cent. The claimants were not satisfied with the compensation awarded by the Land Acquisition Officer. They wanted the matter to be referred to a civil court. The matter was referred and numbered as L.A.R. No. 114/1980 of the Subordinate Judge's Court, Trichur.

2. The acquisition was for widening the East Nada of Guruvayur Sreekrishna Temple and for providing amenities to Pilgrims. The claimants-appellants have claimed Rupees 8,000/- per cent. The court below enhanced the compensation amount by granting Rs. 6,000/- per cent for the land acquired. The claimants have filed this appeal claiming Rs. 8,000/- per cent.

3. Guruvayur Sreekrishna Temple is one of the most ancient and important temples where lakhs of pilgrims used to visit the temple for offering prayers and to conduct pujas. The whole area near the temple is high priced and important is well known. Of course, the court may not be fully justified in determining the market value without sufficient data, on the assumption that the area very near

to an important temple of the State is one worth a pretty penny.

4. The claimants have produced six documents for substantiating their claim for enhanced value. These documents are Exts. A1 to A6. Exts. A1, A2, A5 and A6 are documents admittedly subsequent to the date of notification u/s 3(1) of the Land Acquisition Act. Exts. A1 and A2 are dated 13-1-1977 and Exts. A5 and A6 are dated 8-12-1976. These documents would show that the price fixed for the lands covered by those documents is Rs. 8,000/- per cent. There is also evidence to show that these documents are on the Padinjare Nada of Guruvayur Sreekrishna Temple. The court below did not rely on these documents on the ground that these documents are post acquisition notification. This is not the only reason for discarding Exts. A1, A2, A5 and A6 documents. It is alleged that these properties were purchased by the members of a family having gold business and so the properties were purchased at a fancy price. This is only a figment of imagination of the court below. There is no evidence that these properties were purchased at a fancy price and it has to be noted that the price is only Rs. 8,000/- per cent. The only difficulty in accepting these documents is that the documents were executed after the date of notification. It is not correct to say in fixing a fair market value of the land that in all circumstances, the court is bound to discard the documents which came into existence after the date of notification. If there are reasons to say that by the notification, the area earned some importance and that has been reflected in the documents produced, certainly there is justification to ignore those documents. But there can be positive evidence and circumstance to show that the purpose for which the acquisition was made may not have any influence in regard to the other parts of the locality.

5. In this case, as I said earlier, the acquisition was for widening the East Nada of Guruvayur Sreekrishna Temple. It may not have any serious impact in the value of the properties in the locality. So I feel that there is no sufficient justification for totally discarding Exts. A1, A2, A5 and A6. This aspect of the matter has been considered by the Supreme Court in a recent decision reported in *Mehta Ravindrarai Ajitrai (Deceased) by Lrs and Others Vs. State of Gujarat*, In paragraph 4, the Court said thus :--

"The price has been fixed under the agreement of sale. This agreement of sale was entered into about five months after the publication of Section 4 notification in the case before us. The High Court rejected the said instance on the ground that the contents of the sate deed were not proved although the execution thereof was duly proved. In view of the evidence led after remand, it cannot be disputed that this agreement of sale as well as the sale deed have been duly proved and they have been duly marked as exhibits. The High Court further took the view that in any event, no reliance could be placed on this instance of sale because the acquisition of the land in question before us was for the construction of an industrial estate at Bhavnagar and such construction was bound to have pushed up the prices of land in the surrounding area. There is, however, nothing

in the evidence to show that there was any sharp or speculative rise in the price of the land after the acquisition and this has been noticed by the High Court. It appears that under these circumstances, the High Court was not justified in not taking this instance into account at all as it was done on the ground that it was a post-acquisition sale and could not be regarded as a comparable instance at all. The market value of a piece of property for purposes of Section 23 of the Land Acquisition Act is stated to be the price at which the property changes hands from a willing seller to a willing, but not too anxious a buyer, dealing at arms length. Prices fetched for similar lands with similar advantages and potentialities under bona fide transactions of sale at or about the time of the preliminary notification are the usual and, indeed the best, evidences of market value."

6. In State of Uttar Pradesh Vs. Major Jitendra Kumar and Others, the Supreme Court observed thus :

".....It is true that the sale deed Ext. 21 upon which the High Court has relied is of a date three years later than the Notification u/s 4 but no material was produced before the Court to suggest that there was any fluctuation in the market rate at Meerut from 1948 onwards till 1951 and if so to what extent. In the absence of any material showing any fluctuation in the market rate the High Court thought it fit to rely upon Ex. 21 under which the Housing Society itself had purchased land in the neighbourhood of the land (in) dispute. On the whole we are not satisfied that any error was committed by the High Court in relying upon the sale deed Ext. 21...."

This principle cannot be applied without caution. These kinds of transactions which are later to the notification, can be relied on where there is circumstance or evidence to the effect that there was no upward surge in the prices in the interregnum. In considering the value of small plots in comparison to large and extensive plots, the Supreme Court had occasion to say that "the value of small plots represents what may be called the retail price of the land. What is to be estimated therefrom is the wholesale price of the land. In an old case reported in Bombay Improvement Trust Vs. Mervanji Manekji Mistry, , Macleod C.J. suggested a simple rule :

"..... Valuation cases must be dealt with just as much from the point of view of the hypothetical purchase as the claimant. The valuation itself must often be more or less a matter of guess-work. But it is obviously wrong to fix upon a valuation which, judged by everyday principles, no purchaser would be likely to give....."

"..... I have always been adverse to elaborate hypothetical calculations which are no more likely to lead to a fair conclusion than far simpler methods. But, in any event, no harm can be done by testing a conclusion arrived at in one way by a conclusion arrived at in another...."

".....A very simple method of valuing land wholesale from _retail prices is to take any-thing between one and half one-third, according to circumstances of the

expected gross valuation, as the wholesale price....."

7. I feel that for fixing a fair and proper market value of the land, these documents also can be taken note of by the Court. In a land acquisition matter the fixing of fair market value is an exercise by the Court which do not mill (need?) a meticulous precision. The Court by its very nature must share the imperfections of the evidence on record. Naturally some element of speculation is inevitable in all valuations. Perhaps even in the best of exercise of different criterion for calculations, there will be an area where some measure of conjecture and guesswork is inherent in fixing the market value.

8. In the circumstances, I feel that it may not be quite wrong to take into consideration the purpose of the acquisition, viz., widening the East Nada of Guruvayur Sreekrishna Temple and for providing amenities to Pilgrims. Taking all these factors into consideration, I fix the land value at Rs. 7,500/- per cent. Appeal is allowed to that extent. There will be no order as to costs.