(2011) 06 KL CK 0108

In the High Court Of Kerala

Case No : L.A.A. No''s. 880, 888, 916, 917, 918, 920, 967, 988, 989, 990, 997, 1011, 1029, 1055, 1086, 1087, 1089, 1109, 1147 and 1262 of 2009

Yoosuf Kunju and Another — APPELLANT

Vs

The State of Kerala and Another — RESPONDENT

Date of Decision : 02-06-2011

Acts Referred:
Land Acquisition Act, 1894 — Section 23(1A), 23(2), 28, 4(1), 9(3)

Citation : (2011) 06 KL CK 0108

Hon'ble Judges : Pius C. Kuriakose, J;N.K. Balakrishnan, J

Bench : Division Bench

Advocate : K.K.M. Sherif, for the Appellant; B. Krishna Mani, for the Respondent

Final Decision : Allowed

Judgement

Pius C. Kuriakose, J.—L.A.A. Nos. 1262, 1147, 1109, 1089, 1055, 1029, 1011, 997, 988, 967 of 2009 are preferred by the claimants and the other L.A.A. Nos. 880, 888, 916, 917, 918, 920, 989, 990, 1086 and 1087 of 2009 are preferred by the Requisitioning Authority namely the Punalur Municipality. The lands under acquisition were in Punalur village within the area of Punalur Municipality. The acquisition was on the basis of Section 4(1) notification published on 03/12/91 and 23/07/92. In the initial notification as well as in the notices issued u/s 9(3) to the claimants, the properties were described as "Nilam". But going by the Mahazars prepared and going by the evidence adduced, it has been brought out that substantial portions of those properties were already reclaimed at the time of acquisition. The Land Acquisition Officer awarded two rates for the properties under acquisition. For properties which were enjoying the direct frontage of Kollam - Shenkotta interstate road, he awarded value at the rate of Rs. 2816/- per Are. For the other properties he awarded value at the rate of Rs. 2347/- per Are. Before the Reference Court, the claimants relied on in support of the claim for enhanced value, Exts.A1 to A9 and oral evidence of AWs.1 to 7. The court on appreciating the evidence, in the first instance would re-fix the land value at the rate of Rs. 12,000/- per cent for properties enjoying frontage of the Kollam - Shenkotta interstate road and for other properties at the rate of Rs. 10,000/- per cent. These awards were set aside by this Court on appeal by the Requisitioning Authority following the judgment in Steel Authority of India Ltd. v. State of Kerala 1995 (2) KLT 683. Pursuant to that judgment, the Requisitioning Authority came on record before the Reference Court and participated in the enquiry. On the side of the Requisitioning Authority Exts.R1 to R3 sale documents were produced and three witnesses RW1 to RW3 were examined. The Reference Court on appreciating the entire evidence which was available on record has re-fixed the value of properties enjoying frontage of Kollam - Shenkotta road involved in LAA.920/09 corresponding to LAR.4/96, L.A.A No. 918/09 corresponding to LAR.11/96 and LAA. No. 1086/09 corresponding to LAR.12/96 at Rs. 9,000/- per cent. For all the other properties the court would re-fix the land value at Rs. 7,500/- per cent.

2. In the appeals preferred by the claimants they have raised grounds challenging what they describe as the inadequacy in the compensation re-determined by the Reference Court whereas in the appeals preferred by the Requisitioning Authority they challenge what they describe as the excessiveness of the compensation determined by the court below.

3. Sri. Ziayad Rahman, the learned Counsel for the Appellant/claimants and Sri. B. Krishna Mani, the learned Standing Counsel for the Requisitioning Authority addressed us in detail on the basis of the grounds raised in the appeal memoranda respectively filed by them. According to Sri. Ziayad Rahman the court below has not taken into account the importance of the locality where the properties were situated. The properties, according to the learned Counsel, were situated in commercially the most important area of Punalur town. The learned Counsel highlighted before us Ext.A1, a notification published by the local authority in respect of a shopping complex put by them on the acquired property. We notice that the said property is situated in one of the most important localities of Punalur town. The so called minus factors referred to by the learned Subordinate Judge were not minus factors. If these were minus factors they were offset well by the plus factors. Sri. Krishna Mani per contra would resist all the submissions of Sri. Ziayad Rahman. According to Sri. Krishna Mani, the learned subordinate Judge after discussing the various items of evidence available on record has fixed the market value purely on guess work. Exts.A4, A5 and A6, according to the learned Counsel should have been discarded straight away as they were post notification documents. Ext.A7, according to Sri. Krishna Mani is the one document which can have some relevance. But then Ext.A7 is in respect of dry land and the value reflected in Ext.A7 is only Rs. 3,200/- per cent. Ext.A8 document, which is in respect of original dry land having frontage of two roads, reflects the value of Rs. 6,000/- per cent only. At any rate, the value fixed by the Reference Court is excessive.

4. We have very anxiously considered the rival submissions addressed at the Bar.

We have made a quick survey of the evidence available on record. We find force in the submission of Sri. Krishna Mani that the post notification documents could not have been relied on. We also find force in his submission that the learned Subordinate Judge after appraising the documents and scrutinizing them thoroughly in the judgment has proceeded to fix the market value purely on guess work. We notice some force in the submission of Sri. Ziayad Rahman that the properties were situated in one of the important localities of the Punalur town. We are convinced that the market value awarded by the Land Acquisition Officer in his award was grossly inadequate and there was justification for enhancing the market value. The question is as to what extent enhancement is justifiable. As observed by us, documents Exts.A4, A5 and A6, the documents very much relied on by the claimant, could not have been relied on as post notification documents. Exts.A7 and A8 are the two documents which have more probative value and decisive force in this particular case in the matter of re-determination of the market value. Relying on those documents and keeping in mind the plus and minus factors pertaining to the properties under acquisition, we come to the conclusion that the market value of Rs. 9,000/- per cent fixed by the learned Subordinate Judge for properties involved in Exts.A4, A5 and A6 at Rs. 9,000/-, is slightly excessive. According to us, based on the available legal evidence and doing some guess work on the basis of the oral evidence available in the case, the market value of the properties involved in those cases can be re-fixed at Rs. 8,500/- per cent. In the same way, we feel that the market value of Rs. 7,500/- per cent fixed by the learned Subordinate Judge for the properties involved in the other cases which are not enjoying direct frontage at all is excessive. In modification of the impugned judgments and decrees, we re-fix the market value of those properties at Rs. 6,500/- per cent.

5. The appeals preferred by the Requisitioning Authority are allowed to the above extent. The appeals preferred by the claimants are dismissed. It is needless to mention that the claimants will be entitled for all statutory benefits admissible under Sections 23(2), 23(1A) and u/s 28 of the Land Acquisition Act on the total re-fixed compensation to which they become eligible by virtue of the judgment. In the facts and circumstances of the cases, we order that all the claimants will be entitled to the cost on the trial side as per receipts and certificates already produced by them.