

Chacko Vs. State of Kerala

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Court : Kerala

Decided On : Nov-11-2013

Judge : Honourable Mr.Justice S.Siri Jagan

Appellant : Chacko

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE S.SIRI JAGAN & THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN MONDAY,THE11H DAY OF NOVEMBER201320TH KARTHIKA, 1935 LA.App..No. 1326 of 2009 () ----- LAR.NO. 110/2007 of SUB COURT, PALA. APPELLANT(S)/CLAIMANT: ----- CHACKO S/O. CHACKO, KAYANBLACKAL HOUSE CHENNAD KARA, THALAPPALAM ERATTUPETTA, REPRESENTED BY HIS POWER OF ATTORNEY HOLDER K.C.CHACKO ALIAS JOY KAYANPLACKAL HOUSE CHENNAD KARA, THALAPPALAM ERATTUPETTA. BY ADVS.SRI.JOSE MATHEW (KAVALAKALAM) SRI.T.J.MICHAEL RESPONDENT(S):RESPONDENT ----- STATE OF KERALA REPRESENTD BY DISTRICT COLLECTOR, KOTTAYAM. BY GOVT. PLEADER SRI.P.P.PADMALAYAN THIS LAND ACQUISITION APPEAL HAVING COME UP FOR ADMISSION ON1111-2013, ALONG WITH LAA. 1327/2009, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: tss L.A.A. NO.1326/2009

APPENDIX APPELLANTS ANNEXURES A1:- NOTORIZED COPY OF SALE DEED NO.1209/97 OF ERATTUPETTA SRO DTD155.97. A2:-NOTORIZED COPY OF SALE DEED NO.1530/95 OF ERATTUPETTA SRO DTD264.95. RESPONDENTS ANNEXURES NIL TRUE COPY P.S. TO JUDGE tss S.SIRI JAGAN & K.RAMAKRISHNAN, JJ.

----- L.A.A.Nos.1326 and 1327 of 2009
----- Dated this, the 11th day of
November 2013 Judgment Siri Jagan, J.

The appellants in these two appeals are the claimants in L.A.R.Nos.110/07 and 126/07 before the Sub Court, Pala. The properties belonging to the appellants were acquired by the State as per a notification dated 30.06.2004 issued under Section 4(1) of the Land Acquisition Act. The Land Acquisition Officer fixed land value at Rs.23,109/- per are. The Sub Court, after considering the evidence adduced by the parties, re-fixed the land value at Rs.45,000/- per are. The appellants are challenging the land value fixed by the Sub Court.

2. The contention of the appellants is that the appellants had produced several documents before the commissioner, who had compared the properties involved in those documents with the acquired properties and reported that the properties are comparable, despite which, the Sub Court did not take into account the commissioner's report for the purpose of LAA1326& 1327 OF20092 fixing the land value based on those documents. It is also submitted that in the case of L.A.A.No.1326/09, after acquisition, 1.30 ares of land was left, which is a narrow strip, in which no construction could be made by the appellant and consequently, the same has diminished in value. The appellant claimed compensation for injurious affection, which was not considered by the Sub Court, is the contention of the appellant.

3. We have heard the learned Government Pleader also.

4. The Sub Court has considered the basis document relied on by the Land Acquisition Officer and came to the conclusion that the same is not in respect of comparable properties. Thereafter, the Sub Court considered Ext.A2 judgment in

L.A.R.No.139/07 of the same court in which, the land value fixed was Rs.45,000/- per are. The Sub Court came to the conclusion that the property involved in Ext.A2 document is very near to the acquired land, which was acquired under the same notification for the same purpose. On that ground, the Sub Court fixed the same land value fixed in L.A.R.No.139/07 for the acquired property also. LAA1326& 1327 OF20093 The appellants would canvass for the proposition that the property involved in Ext.A2 and the acquired properties are not similar in nature and the acquired properties have better potential than the property involved in Ext.A2. It is further submitted that the lands compared by the commissioner, which are comparable properties, have fetched much better value than Rs.45,000/-. The commissioner cannot search out documents in respect of properties and come to a conclusion that the properties involved in those documents are comparable with the acquired properties. All that he can do is to ascertain the matters, which he has been directed by the Court to ascertain. There is no evidence to show that the documents in respect of the properties compared by the commissioner have been produced in evidence also. The only documents mentioned in the impugned judgment are Exts.A1 and A2. Ext.A1 is the power of attorney executed in favour of AW1 and Ext.A2 is the certified copy of the judgment in LAR No.139/07. Such a comparison of properties made by the commissioner as per documents, which have not been produced before court, cannot be the basis for fixing the land value. The appellants have not cared to LAA1326& 1327 OF20094 adduce any evidence to prove that the acquired properties have better potential than the property involved in Ext.A2 judgment. In fact, when the appellant himself has relied on Ext.A2 judgment by producing and marking the same in evidence, in the absence of other evidence to show that the acquired property is more valuable than the property involved in Ext.A2 judgment, there is nothing wrong in the Tribunal fixing the land value based on Ext.A2 judgment relied on by the appellant himself. Moreover, the Sub Court has come to the conclusion that the property involved in Ext.A2 judgment is in the same survey block as the acquired property and both properties were acquired under the same notification for the same purpose. In such circumstances, we do not find anything wrong in the Sub Court adopting the same land value fixed in Ext.A2 judgment for the acquired property also. Although the appellants have produced some documents along with IA Nos.3878/09 and

3886/09 to prove that the acquired property is similar to the properties involved in those documents, we are not inclined to allow the applications at this stage since the appellant has not shown sufficient reasons as to why he could not LAA1326& 1327 OF20095 produce the same before the lower court. In the above circumstances, we do not find any infirmity whatsoever, in the judgment of the Sub Court, whereby the Sub Court has re-fixed the land value based on Ext.A2 judgment in respect of comparable properties. However, in respect of LAA No.1326/09, as far as the property left is 1.30 ares, which is lying as a narrow strip of land, certainly, there will be some reduction in the land value of the remaining land after acquisition. Therefore, we are granting 25% of the land value fixed for the acquired land as compensation for injurious affection for the 1.30 ares of land left with the appellant after acquisition. The compensation under that head would come to Rs.14,625/-. Accordingly, the appellant in LAA No.1326/09 would be entitled to additional compensation of Rs.14,625/- for injurious affection. The land value fixed by the Sub Court in both the appeals is confirmed. Accordingly, LAA No.1326/09 is disposed of granting compensation for injurious affection as stated above and LAA No.1327/09 is dismissed. The appellant would be entitled to all LAA1326& 1327 OF20096 statutory benefits for injurious affection as applicable under law. S.SIRI JAGAN, JUDGE K.RAMAKRISHNAN, JUDGE sta LAA1326& 1327 OF20097 LAA1326& 1327 OF20098

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