

Preetha Itty, vs State of Kerala,

Preetha Itty, vs State of Kerala,

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Court : Kerala

Decided On : Nov-28-2022

Judge : Honourable Mr. Justice a.Muhammed Mustaque,Honourable Mrs. Justice Shoba Annamma Eapen

Appeal No. : LA.App./47/2019

Appellant : Preetha Itty,

Respondent : State of Kerala,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A.MUHAMMED MUSTAQUE & THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN MONDAY, THE 28TH DAY OF NOVEMBER 2022 / 7TH AGRAHAYANA, 1944 LA.APP. NO. 40 OF 2019 [AGAINST THE JUDGMENT AND DECREE DTD.30-6-2018 IN LAR 46/2014 OF II ADDITIONAL SUB COURT,THIRUVANANTHAPURAM]
APPELLANT/CLAIMANT: PADMA GAYATHRI, AGED 54 YEARS, MANIVEENA,PILLAVEEDU NAGAR, T.C.2/231,KESAVADASAPURAM,PATTOM P.O., THIRUVANANTHAPURAM BY ADVS. S.RAJASEKHARAN NAIR

SRI.RAJU

SEBASTIAN

VADAKKEKKARA

RESPONDENT/RESPONDENT: STATE OF KERALA REPRESENTED BY THE DISTRICT COLLECTOR, THIRUVANANTHAPURAM-695 001. BY GOVT. PLEADER SRI.JACOB.E.SIMON THIS LAND ACQUISITION APPEAL HAVING COME UP FOR HEARING ON 28.11.2022, ALONG WITH LA.App..42/2019, DAY DELIVERED THE FOLLOWING: :-2-:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE & THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN MONDAY, THE 28TH DAY OF NOVEMBER 2022 / 7TH AGRAHAYANA, 1944 LA.APP. NO. 42 OF 2019 [AGAINST THE JUDGMENT and DECREE Dated 30.6.2018 IN LAR

APPELLANT/CLAIMANT: AMBILY ITTY, T.C.2/235, KARTHIKAPILLA VEEDU, KESAVADASAPURAM, THIRUVANANTHAPURAM. BY ADVS. S.RAJASEKHARAN NAIR SRI.RAJU SEBASTIAN VADAKKEKKARA RESPONDENT/RESPONDENT: STATE OF KERALA, REPRESENTED BY THE DISTRICT COLLECTOR, THIRUVANANTHAPURAM- 695001. BY GOVT.PLEADER SRI.JACOB.E.SIMON THIS LAND ACQUISITION APPEAL HAVING COME UP FOR HEARING ON 28.11.2022, ALONG WITH LA.App..40/2019 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: :-3-:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE & THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN MONDAY, THE 28TH DAY OF NOVEMBER 2022 / 7TH AGRAHAYANA, 1944 LA.APP. NO. 47 OF 2019 [AGAINST THE JUDGMENT AND DECREE DTD.30.06.2018 IN LAR

APPELLANT/CLAIMANT: PREETHA ITTY, T.C. 2/230, THARANGINI, KESAVADASAPURAM, THIRUVANANTHAPURAM. BY ADVS.

S.RAJASEKHARAN NAIR SRI.RAJU SEBASTIAN VADAKKEKKARA
RESPONDENT/RESPONDENT: STATE OF KERALA, REPRESENTED
BY THE DISTRICT COLLECTOR, THIRUVANANTHAPURAM. BY
GOVT.PLEADER SRI.JACOB.E.SIMON THIS LAND ACQUISITION
APPEAL HAVING COME UP FOR HEARING ON 28.11.2022, ALONG
WITH LA.App..40/2019 AND CONNECTED CASES, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING: :-4-:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A.MUHAMED
MUSTAQUE & THE HONOURABLE MRS. JUSTICE SHOBA
ANNAMMA EAPEN MONDAY, THE 28TH DAY OF NOVEMBER 2022 /
7TH AGRAHAYANA, 1944 LA.APP. NO. 55 OF 2019 [AGAINST THE
JUDGMENT & DECREE DTD.30-6-2018 IN LAR 49/2014 OF II
ADDITIONAL SUB COURT,THIRUVANANTHAPURAM]
APPELLANT/CLAIMANT: GEETHA KUMARI,
T.C.2/302,REVATHY,PILLA VEEDU NAGAR,
KESAVADASAPURAM,THIRUVANANTHAPURAM. BY ADVS.
S.RAJASEKHARAN NAIR SRI.RAJU SEBASTIAN VADAKKEKKARA
RESPONDENT/RESPONDENT: STATE OF KERALA REPRESENTED
BY THE DISTRICT COLLECTOR,THIRUVANANTHAPURAM. BY
GOVERNMENT PLEADER SRI.JACOB.E.SIMON THIS LAND
ACQUISITION APPEAL HAVING COME UP FOR HEARING ON
28.11.2022, ALONG WITH LA.App..40/2019 AND CONNECTED
CASES, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING: :-5-:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A.MUHAMED
MUSTAQUE & THE HONOURABLE MRS. JUSTICE SHOBA
ANNAMMA EAPEN MONDAY, THE 28TH DAY OF NOVEMBER 2022 /
7TH AGRAHAYANA, 1944 LA.APP. NO. 50 OF 2019 [AGAINST THE

JUDGMENT & DECREE DTD.30.6.2018 IN LAR

APPELLANT/CLAIMANT: PRIYA ITTY THUSHARAM, T.C.2/312 B33, PILLAVEEDU NAGAR, THIRUVANANTHAPURAM REP. BY POWER OF ATTORNEY HOLDER CHANDRIKA ITTY BY ADVS. S.RAJASEKHARAN NAIR RAJU VADAKKEKARA
RESPONDENT/RESPONDENT: STATE OF KERALA REPRESENTED BY THE DISTRICT COLLECTOR, THIRUVANANTHAPURAM-695001. BY GOVERNMENT PLEADERSRI.JACOB.E.SIMON THIS LAND ACQUISITION APPEAL HAVING COME UP FOR HEARING ON 28.11.2022, ALONG WITH LA.App..40/2019 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: :-6-:

JUDGMENT

[LA.App. Nos.40/2019, 42/2019, 47/2019, 55/2019, Shoba Annamma Eapen J: These Land Acquisition Appeals are filed against the

judgment and decrees in a batch of references under

Section 18 of the Land Acquisition Act, 1894 (for short 'the Act') in respect of the land acquired for the purpose of widening of National Highway from Kesavadasapuram Mosque to Chaithanya Hospital pursuant to a Notification under the Act on 28.02.2011. Dissatisfied with the compensation awarded, the claimants are in appeal. The reference court conducted joint trial since the acquisitions were from the same notification and were adjacent properties and they are of the same nature and lie.

2. Heard Sri.S.Rajasekharan Nair, learned counsel for the appellants and the learned Government Pleader. :-7-:

3. Properties in Sy.Nos. 1422/1, 1428/4,

Taluk were acquired for the purpose of widening of National Highway from Kesavadasapuram Mosque to Chaithanya Hospital pursuant to notifications issued

under the Land Acquisition Act on 28.02.2011. The Land Acquisition Officer fixed the land value at Rs.9,19,540/- per Are. The Reference Court enhanced and re-fixed the value of the land at Rs.14,00,000/- per cent (Rs.34,58,000 per Are). It is aggrieved by the inadequacy of the amount awarded by the reference court that the claimants have come in appeal. The land was taken possession on 04.02.2014. On the side of the claimants in these cases, the evidence consists of oral testimonies of AW1 and AW2, Exts.A1 to A3, C1, C1(a), C1(b) and on the side of respondents, Exts.R1 to R4 were marked. No evidence was adduced on the side of the respondents.

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4. Before the Reference Court, the appellants

sought land value for the acquired lands at Rs.150 lakh per Are and before this Court, the appellants have limited the land value at Rs.72,62,877/- per Are. Exts A1 and A2 are the documents placed on record by the claimants in support of their claims. LAA No.40/2019 is considered as the leading case.

5. Ext.A1 is a certified copy of Sale Deed

No.3691/2008 of the SRO, Pattom relating to the property in Sy.No.1714/4-1 of Kowdiyar Village situated near to the acquired property. The value shown in the deed is Rs.72,62,877/- per are.

6. Ext.A2 is the certified copy of Judgment in LAR No.213/2015. The property referred in the said appeal is a property acquired for the development of Pattom-Medical College-Ulloor Road, which is a by-road starting from Pattom Junction in Pattom- :-9-: Kesavadasapuram part of the National Highway. This Court fixed the land value in the said appeal as Rs.42,29,925/- per Are.

7. The learned counsel for the claimants submits

that all the acquired properties are adjacent properties and they are of the same nature and lie. The learned counsel further submits that the acquired property is very near to the property described in Ext.A1 and the Commissioner, in his report,

has stated that Ext.A1 property and the acquired property is of same nature, value and importance. It was also submitted that the value fixed by the Reference Court is less and the claimants are entitled to get the value shown in Ext.A1 sale deed.

8. Per contra, the learned Government Pleader for the respondent submits that the amount fixed by the Reference Court is on the higher side. It is submitted that the property in Ext.A1 is in respect of a :-10-:

larger extent and the amount shown in the deed cannot be relied upon and further contended that the properties in Ext.A1 document and the acquired properties are not similar.

9. The Reference Court found a balance between the amount shown in Ext.A1 sale deed and Ext.A2

Judgment and fixed the fair value at Rs.14,00,000/- per

cent.

10. We have verified the records and the evidence

gathered in these cases. From a comparison of all the documents produced, we find that Ext.A1 Sale Deed is the most suitable property for making a comparison. The deed was executed on 27.08.2008, which is two and a half year prior to the notification. The Advocate Commissioner has categorically reported that the acquired property is in a

prime locality and that there are many important buildings, institutions, shopping complex, schools, PSC :-11-: office, hospital etc. The report reveals the importance of the acquired property. The requisitioning authority has not filed any objection to the commission report as well.

11. The Advocate Commissioner has also reported

that the distance between the property in Ext.A1 and the acquired property is only 1 km and the nature, value and importance of the acquired property and Ext.A1 property is one and the same. The commission report is silent about the property

mentioned in Ext.A2 Judgment. The learned counsel for the claimants has submitted that the property in Ext.A2 Judgment is less important than the acquired property and the amount awarded by this court is at Rs.42,29,925/- per Are. Having regard to the importance of the locality, the location and lie of the property, we are of the opinion that the amount awarded by the Reference Court is not adequate and has to be enhanced.

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12. Hence we are of the view that interest of justice would be best met if the value of the property involved herein be fixed at Rs.16,00,000/- per cent. In the result, all these appeals filed by the

claimants are allowed. The land value awarded by the Reference Court is enhanced and fixed at Rs.16,00,000/- per cent. The appellants are entitled for all other statutory benefits admissible under the Land Acquisition Act, 1894, and costs. Sd/- A.MUHAMED MUSTAQUE, JUDGE Sd/- SHOBA ANNAMMA EAPEN, MBS/ JUDGE

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