

**State of Kerala Vs. Amina**

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**SooperKanoon Citation :** [sooperkanoon.com/15220](http://sooperkanoon.com/15220)

**Court :** Kerala

**Decided On :** Dec-19-2014

**Judge :** Honourable Mr.Justice T.R.Ramachandran Nair

**Appellant :** State of Kerala

**Respondent :** Amina

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR & THE HONOURABLE SMT. JUSTICE P.V.ASHA FRIDAY, THE 19<sup>H</sup> DAY OF DECEMBER 2014 28<sup>TH</sup> AGRAHAYANA, 1936 LA.App..No. 264 of 2014 ()  
----- AGAINST THE

ORDER

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JUDGMENT

IN LAR722011 of SUB COURT, MUVATTUPUZHA DATED 17-10-2013 APPELLANTS/RESPONDENTS IN LAR: ----- 1. STATE OF KERALA REPRESENTED BY THE DISTRICT COLLECTOR, ERNAKULAM.

2. THE EXECUTIVE ENGINEER PWD ROADS DIVISION, MUVATTUPUZHA. BY ADVS.GOVERNMENT PLEADER SRI R.PADMARAJ SRI.K.A.JALEEL, ADDL. ADVOCATE GENERAL RESPONDENT/CLAIMANT IN LAR: -----

AMINA W/O. HANEEFA RAWTHER, PARATHOTTIL HOUSE RAMANGALAM KARA, MARADY VILLAGE. R1 BY ADV. SRI.BECHU KURIAN THOMAS R1 BY ADV. SRI.S.SREEDEV THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON 19/12-2014, ALONG WITH CO. 192/2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: T.R.RAMACHANDRAN NAIR & P.V ASHA, JJ.

----- L.A.A No.264 of 2014 & C.O.No.192 of 2014 ----- Dated this the 19th day of December, 2014

## JUDGMENT

### **Ramachandran Nair, J.**

The Land Acquisition Appeal is filed by the State represented by the District Collector and another as appellants and the Cross Objection is filed by the claimant.

2. The two parcels of land belonged to the claimant were acquired for the purpose of construction of Ernakulam-Thekkady road (Nas road), ie. 0.87 Ares of dry land comprised in Re Survey No.379/11/11 and 4.59 Ares of dry land comprised in Survey No.380/3-6, both in Marady village. The notification under Section 4(1) of the Land Acquisition Act was published on 15.03.2008. The Land Acquisition Officer awarded land value @ Rs.3,85,006/- per Are for 0.87 Ares and Rs.3,46,506/- per Are for 4.59 Ares.

3. For enhancing the land value, the reference Court relied upon Ext.A1 judgment in L.A.R No.18/2010. Accordingly, for the first parcel of land namely, 0.87 Ares, the land value has been fixed at Rs.4,50,000/- per cent, which is equivalent to L.A.A No.264 of 2014 & C.O.No.192 of 2014 2 Rs.11,11,950/- and for 4.59 Ares, the land value has been fixed at Rs.5 lakhs per cent, which is equivalent to Rs.12,35,500/-.

4. The learned Senior Government Pleader submitted that Ext.A1 judgment, even though relied upon by the trial court, the transaction in Ext.A1 sale deed showed

that the property therein is on the side of M.C.Road, namely in a more important locality. It is submitted therefore that the value fixed in Ext.A1 judgment could not have been granted in full. It is also submitted that the judgment namely Ext.A1 was taken up in appeal before this Court in L.A.A No.346 of 2012, wherein this Court has refixed the land value below 20% of the value, of the transaction therein. Accordingly, the land value has been refixed at Rs.11,10,675/- for similarly situated properties. Herein the property is on the side of the Muvattupuzha-Arakkuzha road. The property is a dry land also. In that view of the matter, we refix the land value at Rs.11,10,675/- for the entire extent comprising of two items in two different survey numbers namely, 0.87 Ares in Re Survey No.379/11/11 and 4.59 Ares in Survey No.380/3-6.

5. The Cross Objection is filed by the respondent in the appeal, pointing out that the Reference Court was not right in L.A.A No.264 of 2014 & C.O.No.192 of 2014 3 rejecting the claim of injurious affection. It is also submitted that a portion of the building had to be demolished and therefore, the same should have been considered for granting compensation. Further it is submitted that in the property, coconut trees and miscellaneous trees were there, for which also proper value ought to have been granted. Lastly, it is submitted that the claimant had shifted her residence from the property and therefore shifting charges also have to be granted. It is also one of the contentions that the building value given for the building in the property is also on a lower side.

6. We find from the discussion in the evidence that the trial court has referred to the report filed by the Commissioner in para.12 of the judgment. The claimant was examined as AW1. Exts.C1 and C1(a) are the report of the Commissioner and the rough sketch appended to it. In Survey No.379/11/11, there was an old residential building on the western side which was near to Muvattupuzha-Arakkuzha road and some portion of it on the western side was demolished for the purpose of acquisition. It is the case of the claimant that the remaining portion will collapse at any time. But the court below found that the said aspect was not reported by the Commissioner and that the claimant can do L.A.A No.264 of 2014 & C.O.No.192 of 2014 4 maintenance work. It was also found that AW1 has not taken expert commission for convincing that she is entitled to get Rs.25,00,000/- as

compensation for the building in her acquired land. We fully agree with the above view.

7. One of the contentions raised by the claimant was that excluding the building portion acquired, only a corner portion of land exists which cannot be used for any purpose. As regards this aspect is concerned, it was found by the court below that even before the acquisition, the same was the position and therefore, it is not because of the acquisition that there is any injurious affection. In that view of the matter, we confirm the view taken by the trial court in that regard.

8. As regards the shifting charges, it was found by the trial court that such a claim was not there in the reply to the notice under Section 9(3) and it was only a new claim. Apart from that, no evidence was adduced to show that the amount of Rs.1 lakh is the actual shifting charge. Since the evidence was wanting on the said aspect, rightly this claim was rejected by the reference court.

9. The learned counsel for the Cross Objector submitted that this Court can grant reasonable amount for shifting charges. L.A.A No.264 of 2014 & C.O.No.192 of 2014 5 But unless cogent evidence is established, we will not be justified in granting anything towards the same.

10. But we are of the view that the valuation granted to the buildings and to the coconut trees requires modification since the buildings have been valued as per the PWD rates. This Court is usually granting 30% further on the building value adopted by the Land Acquisition Officer. We enhance the value granted to the buildings by 30%. As regards the value granted for coconut trees as well as miscellaneous trees, we further grant Rs.5,000/-. The Cross Objection is allowed to that extent. Accordingly the appeal and Cross Objection are allowed as shown above. The claimant will be entitled for proportionate costs in the Cross Objection.  
Sd/- T.R.RAMACHANDRAN NAIR Judge Sd/- P.V.ASHA Judge rtr/ /true copy/ P.S  
to Judge