

Director vs lysha

Director vs lysha

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Court : Kerala

Decided On : Dec-04-2020

Judge : Honourable Mr.Justice K.Vinod Chandran,Honourable Mr. Justice T.R.Ravi

Appeal No. : LA.App./94/2015

Appellant : Director

Respondent : IYSHA

Judgement :

LAA NO.92/15 & CON.CASES 1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN & THE HONOURABLE MR. JUSTICE T.R.RAVI FRIDAY, THE 04TH DAY OF DECEMBER 2020 / 13TH AGRAHAYANA, 1942 LA.App..No.92 OF 2015(C) AGAINST THE JUDGMENT AND DECREE DT.25.8.2014 IN LAR 4/2010 OF II ADDITIONAL SUB COURT,THRISSUR APPELLANT/2ND RESPONDENT: DIRECTOR "KILA", MULAMKUNNATHUKAVU, THRISSUR. BY ADVS. SRI.K.B.MOHANDAS SRI.LELLULAL T.G.THUNDATHIL

RESPONDENTS/CLAIMANT & RESPONDENTS 1 & 3:

1 RUKIYA W/O.MUHAMMED BASHEER, KADAVIL HOUSE, KIZHUPILLIKARA, THRISSUR, REPRESENTED BY POWER OF ATTORNEY HOLDER, SUHARA HYDROSE, W/O.HYDROSE, PUTHIYAVEETIL HOUSE, KIZHUPILLIKARA, THRISSUR-680702. 2 SPL.TAHSILDAR (LA), GENERAL THRISSUR-680020. 3 DISTRICT COLLECTOR, THRISSUR-680003. R1 BY ADV. SRI.E.ADITHYAN R1 BY ADV. SMT.MEERA RAMESH R1 BY ADV. SHRI.RAJAN E. R2 & R3 BY SENIOR GOVERNMENT PLEADER SRI.T.K.SHAJAHAN THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON

04-12-2020, ALONG WITH LA.App..93/2015(C), LA.App..94/2015(C), LA.App..111/2015(C), LA.App..113/2015(C), LA.App..114/2015(C)& LA.App..116/2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: LAA NO.92/15 & CON.CASES 2

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN & THE HONOURABLE MR. JUSTICE T.R.RAVI FRIDAY, THE 04TH DAY OF DECEMBER 2020 / 13TH AGRAHAYANA, 1942 LA.App..No.93 OF 2015(C) AGAINST THE JUDGMENT AND DECREE DT.25.8.2014 IN LAR 5/2010 OF II ADDITIONAL SUB COURT,THRISSUR APPELLANT/2ND RESPONDENT: DIRECTOR "KILA" MULAMKUNNATHUKAVU, THRISSUR. BY ADVs. SRI.K.B.MOHANDAS SRI.LELLULAL T.G.THUNDATHIL RESPONDENTS/CLAIMANT & RESPONDENT 1 & 3:

1 MUHAMMED BASHEER S/O. KOCHAVARU, KADAVIL HOUSE, KIZHUPILLIKARA, THRISSUR, REPRESENTED BY POWER OF ATTORNEY HOLDER SUHARA HYDROSE, W/O. HYDROSE, PUTHIYAVEETIL HOUSE, KIZHUPILLIKARA, THRISSUR-680 702. 2 SPL. TAHSILDAR (LA) GENERAL THRISSUR-680 020. 3 DISTRICT COLLECTOR THRISSUR-680 003. R1 BY ADV. SRI.E.ADITHYAN R1

BY ADV. SMT.MEERA RAMESH R1 BY ADV. SHRI.RAJAN E. R2 & R3
BY SENIOR GOVERNMENT PLEADER SRI.T.K.SHAJAHAN THIS
LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON

04-12-2020, ALONG WITH LA.App..92/2015(C), LA.App..94/2015(C),
LA.App..111/2015(C), LA.App..113/2015(C), LA.App..114/2015(C)&
LA.App..116/2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING: LAA NO.92/15 & CON.CASES 3

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN & THE
HONOURABLE MR. JUSTICE T.R.RAVI FRIDAY, THE 04TH DAY OF
DECEMBER 2020 / 13TH AGRAHAYANA, 1942 LA.App..No.94 OF 2015(C)
AGAINST THE JUDGMENT AND DECREE DT.25.8.2014 IN LAR 7/2010 OF II
ADDITIONAL SUB COURT,THRISSUR APPELLANT/2ND RESPONDENT:
DIRECTOR, KILA, MULAMKUNNATHUKAVU, THRISUR. BY ADVS.
SRI.K.B.MOHANDAS SRI.LELLULAL T.G.THUNDATHIL
RESPONDENTS/CLAIMANTS 1 TO 4 & RESPONDENT 1 & 3: 1 MRS.IYSHA,
W/O PRASAD,

THARANILATHU HOUSE, POOVANI KOLAZHI, THRISSUR - 680 010.
2 BIJOY PRASAD, S/O PRASAD, THARANILATHU HOUSE, POOVANI,
KOLAZHI, THRISSUR - 680 010. 3 SPL. TAHSILDAR (LA), GENERAL,
THRISSUR-680 020. 4 DISTRICT COLLECTOR THRISSUR-680 003.
R1 & R2 BY ADV. SRI.E.ADITHYAN R1 & R2 BY ADV. SMT.MEERA
RAMESH R1 & R2 BY ADV. SHRI.RAJAN E. R3 & R4 BY SENIOR
GOVERNMENT PLEADER SRI.T.K.SHAJAHAN THIS LAND
ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON

04-12-2020, ALONG WITH LA.App..92/2015(C), LA.App..93/2015(C),
LA.App..111/2015(C), LA.App..113/2015(C), LA.App..114/2015(C)&
LA.App..116/2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING: LAA NO.92/15 & CON.CASES 4

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN & THE HONOURABLE MR. JUSTICE T.R.RAVI FRIDAY, THE 04TH DAY OF DECEMBER 2020 / 13TH AGRAHAYANA, 1942 LA.App..No.111 OF 2015(C) AGAINST THE JUDGMENT AND DECREE DT.25.8.2014 IN LAR 8/2010 OF II ADDITIONAL SUB COURT,THRISSUR APPELLANT/2ND RESPONDENT: DIRECTOR "KILA" MULAMKUNNATHUKAVU, THRISSUR. BY ADVS. SRI.K.B.MOHANDAS SRI.LELLULAL T.G.THUNDATHIL RESPONDENTS/CLAIMANT & RESPONDENT 1 AND 3:

1 AMINA HYDROSE PUTHIYAVEETIL HOUSE, KIZHUPILLIKARA, THRISSUR, REPRESENTED BY POWER OF ATTORNEY HOLDER SUHARA HYDROSE, W/O. HYDROSE, PUTHIYAVEETIL HOUSE, KIZHUPILLIKARA, THRISSUR-680 702. 2 SPL. TAHSILDAR (LA), GENERAL, THRISSUR-680 020. 3 DISTRICT COLLECTOR THRISSUR-680 003. R1 BY ADV. SRI.E.ADITHYAN R1 BY ADV. SMT.MEERA RAMESH R1 BY ADV. SHRI.RAJAN E. R2 & R3 BY SENIOR GOVERNMENT PLEADER SRI.T.K.SHAJAHAN THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON

04-12-2020, ALONG WITH LA.App..92/2015(C), LA.App..93/2015(C), LA.App..94/2015(C), LA.App..113/2015(C), LA.App..114/2015(C)& LA.App..116/2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: LAA NO.92/15 & CON.CASES 5

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN & THE HONOURABLE MR. JUSTICE T.R.RAVI FRIDAY, THE 04TH DAY OF DECEMBER 2020 / 13TH AGRAHAYANA, 1942 LA.App..No.113 OF 2015(C) AGAINST THE JUDGMENT AND DECREE DT.25.8.2014 IN LAR 3/2010 OF II ADDITIONAL SUB COURT,THRISSUR APPELLANT/2ND RESPONDENT:

DIRECTOR, "KILA" MULAMKUNNATHUKAVU, THRISSUR. BY ADVS.
SRI.K.B.MOHANDAS SRI.LELLULAL T.G.THUNDATHIL
RESPONDENTS/CLAIMANTS 1 TO 4 & RESPONDENTS 1 & 3:

1 SUHARA, W/O. HYDROSE, AGED 58, PUTHIYAVEETIL HOUSE, KIZHUPILLIKARA, THRISSUR-680702. 2 SHANAVAS HYDROSE NAICKER AGED 50, S/O. HYDROSE, PUTHIYAVEETIL HOUSE, KIZHUPILLIKARA, THRISSUR, REPRESENTED BY POWER OF ATTORNEY HOLDER 1ST CLAIMANT SUHARA, W/O. HYDROSE, PUTHIYAVEETIL HOUSE, KIZHUPILLIKARA, THRISSUR-680702. 3 SHAHEENAS AZIM AGED 48, D/O. HYDROSE, PUTHIYAVEETIL HOUSE, KIZHUPILLIKARA, THRISSUR, REPRESENTED BY POWER OF ATTORNEY HOLDER 1ST CLAIMANT SUHARA, W/O. HYDROSE, PUTHIYAVEETIL HOUSE, KIZHUPILLIKARA, THRISSUR-680702. 4 SAHEER HYDROSE AGED 45, S/O. HYDROSE, PUTHIYAVEETIL HOUSE, KIZHUPILLIKARA, THRISSUR-680702.

LAA NO.92/15 & CON.CASES 6 LA.App..No.113 OF 2015(C) 5 SP. TAHSILDAR (LA), GENERAL, THRISSUR-680020. 6 DISTRICT COLLECTOR THRISSUR-680003. R1-R4 BY ADV. SRI.E.ADITHYAN R1-R4 BY ADV. SMT.MEERA RAMESH R1-R4 BY ADV. SHRI.RAJAN E. R5-R6 BY SENIOR GOVERNMENT PLEADER SRI.T.K.SHAJAHAN THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON 04-12-2020, ALONG WITH LA.App..92/2015(C), LA.App..93/2015(C), LA.App..94/2015(C), LA.App..111/2015(C), LA.App..114/2015(C) & LA.App..116/2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: LAA NO.92/15 & CON.CASES 7

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN & THE HONOURABLE MR. JUSTICE T.R.RAVI FRIDAY, THE 04TH DAY OF DECEMBER 2020 / 13TH AGRAHAYANA, 1942 LA.App..No.114 OF 2015(C) AGAINST THE JUDGMENT AND DECREE DT.25.8.2014 IN LAR 6/2010 OF II

ADDITIONAL SUB COURT,THRISSUR APPELLANT/2ND RESPONDENT:
DIRECTOR, 'KILA' MULAMKUNNATHUKAVU,THRISSUR BY ADVS.
SRI.K.B.MOHANDAS SRI.LELLULAL T.G.THUNDATHIL
RESPONDENTS/CLAIMANT & RESPONDENT 1 AND 3:

1 AMINA HYDROSE PUTHIYAVEETIL HOUSE,KIZHUPILLIKARA,
THRISSUR REPRESENTED BY POWER OF ATTORNEY HOLDER
SUHARA HYDROSE,W/O.HYDROSE, PUTHIYAVEETIL
HOUSE,KIZHUPILLIKARA, THRISSUR 680 702 2 SPL. TAHSILDAR
(LA), GENERAL, THRISSUR 680020 3 DISTRICT COLLECTOR
THRISSUR 680 003 R1 BY ADV. SRI.E.ADITHYAN R1 BY ADV.
SMT.MEERA RAMESH R1 BY ADV. SHRI.RAJAN E. R2 & R3 BY
SENIOR GOVERNMENT PLEADER SRI.T.K.SHAJAHAN THIS LAND
ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON

04-12-2020, ALONG WITH LA.App..92/2015(C), LA.App..93/2015(C),
LA.App..94/2015(C), LA.App..111/2015(C), LA.App..113/2015(C)&
LA.App..116/2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING: LAA NO.92/15 & CON.CASES 8

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN & THE
HONOURABLE MR. JUSTICE T.R.RAVI FRIDAY, THE 04TH DAY OF
DECEMBER 2020 / 13TH AGRAHAYANA, 1942 LA.App..No.116 OF 2015
AGAINST THE JUDGMENT AND DECREE DT.25.8.2014 IN LAR 9/2010 OF II
ADDITIONAL SUB COURT,THRISSUR APPELLANT/2ND RESPONDENT:
DIRECTOR, 'KILA' MULAMKUNNATHUKAVU, THRISSUR. BY ADVS.
SRI.K.B.MOHANDAS SRI.LELLULAL T.G.THUNDATHIL
RESPONDENTS/CLAIMANT & RESPONDENT 1 & 3:

1 IYSHA W/O. KOCHAVARU, KADAVIL HOUSE, KIZHUPILLIKARA,
THRISSUR REPRESENTED BY POWER OF ATTORNEY HOLDER

SUHARA HYDROSE, W/O. HYDROSE, PUTHIYAVEETIL HOUSE, KIZHUPILLIKARA, THRISSUR - 680 702. 2 SRI.TEHSILDAR (LA), GENERAL, THRISSUR - 680 020. 3 DISTRICT COLLECTOR THRISSUR - 680 003. R1 BY ADV. SRI.E.ADITHYAN R1 BY ADV. SMT.MEERA RAMESH R1 BY ADV. SHRI.RAJAN E. R2 & R3 BY SENIOR GOVERNMENT PLEADER SRI.T.K.SHAJAHAN THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON

04-12-2020, ALONG WITH LA.App..92/2015(C), LA.App..93/2015(C), LA.App..94/2015(C), LA.App..111/2015(C), LA.App..113/2015(C)& LA.App..114/2015(C), THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: LAA NO.92/15 & CON.CASES 9 K.VINOD CHANDRAN & T.R. RAVI,JJ. ----- L.A.A.Nos.92, 93, 94, 111, 113,114 & 116 of 2015 ----- Dated this the 4th day of December, 2020

JUDGMENT

T.R.Ravi, J.

These appeals have been filed challenging the common judgment

passed by the 2nd Additional Sub Court, Thrissur on 25.8.2014 in seven Land Acquisition Reference cases. The appeal has been filed by the requisitioning authority challenging the enhancement of the land value by 20% on the amount awarded in the Award.

2. Heard. An extent of about 5 acres of land was acquired for the purpose of development of the Kerala Institute for Local Administration (for short, KILA). Claiming that the compensation

granted by the Land Acquisition Officer was inadequate, the landowners sought reference under Section 18 of the Land Acquisition Act, which resulted in Land Acquisition Reference cases numbered as

LAR Nos. 3 to 9 of 2010 before the Sub Court, Thrissur. Except LAR No.7 of 2010, the landowners in the other cases were members of the same family and the properties belonging to them were lying as a compact plot. They were also the legal heirs of their predecessor in interest who was the sole title holder in his lifetime.

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3. The Land Acquisition Officer had categorised the properties

into 2 categories; as those with road frontage and those without and awarded land value at a reduced rate for the lands without road frontage. The landowners challenged such a categorisation on the ground that the entire property was lying as a single plot and they intended to develop the entire extent and construct residential apartments. According to the landowners, there cannot be an artificial categorisation of these properties as land with road frontage and land without road frontage. The award was based on the price shown in the basic document which was produced as Exhibit A2 before the Reference Court. The Reference Court fixed the land value at 20 % above the value shown in the said document. This was done since the land comprised in Exhibit A2 had lesser road frontage compared to the acquired property. The requisitioning authority has challenged the finding of the Reference Court on the ground that there cannot be any addition on the basis of such road frontage.

4. The counsel for the appellant submits that road frontage is

available only to the claimants in three cases and the properties belonging to the other claimants do not have road frontage. We are unable to accept the above contention. Admittedly, except the property belonging to the claimant in LAR No.7/2010, which is of an extent of about 45 cents, the rest of the property of about 450 cents

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lie as a single plot with road on the northern side. As such, we do not find anything wrong with the judgment of the Reference Court, fixing the same value of land for

the entire extent, treating the entire property as property with road frontage. The Court below took into consideration the fact that the property belonged to the same family and they have spoken of the fact that they had intended to develop the entire property as an apartment complex. In such a fact situation, there was no justification for categorising the land as those with road frontage and those without road frontage. It cannot be denied that, being members of the same family, all of them will be entitled to have road access, whether the property belonging to a member is situated adjoining the road is the second or third plot farther from the road. Since everyone of them will have the right to have a way to their plot, there is no scope for any artificial categorisation. The counsel for the appellant relied on to decisions of the Hon'ble Supreme Court in Smt.Kausalya Devi Bogra and others vs. Land Acquisition Officer, Aurangabad and another reported in (1984) 2 SCC 324 and Loveleen Kumar vs. State of Haryana and others reported in

(2018) 7 SCC 492, in support of his contentions.

5. Kausalya Devi(supra) was relied on to contend that when large tracts of land is acquired the documents relating to smaller extents of properties cannot be the proper guideline for fixing the LAA NO.92/15 & CON.CASES 12 value of land. The above judgment was rendered in 1984. Subsequently, in several judgments, the Hon'ble Supreme Court has

held that it cannot be held as an absolute proposition and that there

can be situations where documents relating to sale of smaller extents can be relied on and applied with some modifications/deductions. (See Land Acquisition Officer v. Nookala Rajamallu & others reported in (2013) 12 SCC 334 and Special LAO & another v. M.K.Rafiq Saheb reported in (2011 KHC 4582). It was submitted that Exhibit A2 document related to a small extent and could not have been the basis for fixing the land value for a larger extent of about 5 acres of land. The above contention cannot be accepted. Exhibit A2 relates to the sale of an extent of 1 acre 23.620 cents of coconut garden and the value shown for per are is Rs. 2,22,383/-. The document is the basic document relied on by the Land Acquisition Officer. Even though the appellant had taken a contention that the Land Acquisition Officer

went wrong in treating Ext.A2 as the basic document, no evidence was tendered to support the contention or to show how the Land Acquisition Officer had gone wrong. Moreover, we do not think that an extent of 1 acre 23.620 cents is a small extent of land when compared to the extent of about 5 acres belonging to 7

persons with plots of smaller extents. The evidence available on record would suggest that the properties are comparable. The LAA NO.92/15 & CON.CASES 13 appellants have not let in any evidence to show that the acquired properties are not similarly situated as the properties covered by Ext.A2. The above judgment does not in any way help to improve the case of the appellant.

6. Loveleen(supra) was relied on by the counsel for the

appellant to argue that the onus to prove entitlement to receive higher compensation is on the claimants and they have not submitted any evidence to justify enhancement of the compensation already granted by the Land Acquisition Officer. The said judgement also will not in any manner help the cause of the appellant. It may be true that even though the claimants relied on Exhibit A1 document as a document relating to a more similarly situated property, the same was not accepted by the Court below since the property was not identifiable owing to the improvements made. However, the Court below has on the basis of the evidence on record, specifically found that both Exhibits A1 and A2 documents relate to properties which are situated near the acquired properties. The Court has found that Exhibit A2 property is situated on the western boundary of the acquired properties. So, there can be no scope for a contention that the properties are not at all similar. It is also found that the acquired properties have road frontage on the northern side. Exhibit A2 document is dated 20.08.2008. Section 4 notification regarding the

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acquisition was issued on 31.12.2008 and possession was taken on 29.03.2010, after the award was passed. The Award relating to LAR Nos.3, 4, 5, 8 and 9 of 2010 was passed on 25.3.2010 and that relating to LAR Nos.6 and 7 of 2010, was passed on 30.3.2010. The Court below found that, since the entire northern

boundary of the property covered by Exhibit A2 does not have road frontage while the acquired properties lying as a compact plot had road frontage, the claimant is entitled to a 20% hike in the value shown in Exhibit A2 document. We are of the opinion that the Reference Court is justified in arriving at the compensation in the above manner.

7. The basic document relied on by the Land Acquisition

Officer does not have road frontage on its entire northern boundary. The Revenue Inspector who was examined as RW1 has admitted that the properties of the claimants in all the LAR's except L.A.R.No.7/2010 are persons belonging to one family and the properties are lying as one whole plot within a common boundary. It is also admitted by him that the entire northern boundary of the Ext.A2 property is not road. As such, we are of the opinion that there is sufficient evidence available to justify the enhancement of the compensation and it is not a case where the claimants have not tendered any evidence at all in support of their claim for enhancement of the compensation awarded. The enhancement granted is also perfectly in accordance with the

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precedents which reckon the value of large extents by taking into account the enhancement possible on development of such larger extents. In the decision in *Chimanlal Hargovinddas v. Special Land Acquisition Officer* reported in (1988) 3 SCC 751 in paragraph 4, the Hon'ble Supreme Court noted broad guidelines that are to be followed while ascertaining the compensation to be paid on acquisition of land. The apex court by means of illustration identified the "plus" factors and "minus" factors that have to be kept in mind, while carrying out the exercise. The Court finally observed that the evaluation of the factors stated would depend on the facts of each case, that there cannot be any hard and fast or rigid rule and that common sense is the best and most reliable guide. The Hon'ble Supreme Court has held that when determining the value of the property reckoning the prospects of developing it there could be reduction made for such development by provision of roads drainages and so on and so forth. The above judgment has been relied on and followed in several subsequent decisions of the Hon'ble Supreme Court.

(See Manoj Kumar v. State of Haryana reported in (2018) 13 SCC 96, Union of India v. Dyagala Devamma reported in

(2018) 8 SCC 485, State of Haryana & anr. v. Rohtas etc.etc reported in (2017 SCC Online SC 1560). The basic document relied on in this case was itself a large extent and the acquired land of 5 LAA NO.92/15 & CON.CASES 16

acres if developed as villa plots would definitely have fetched a far higher value, which could even be double the value. The Court below was cautious in granting only a 20% increase presumably considering the reduction ensuing a development activity.

8. We do not find any grounds for interference with the

judgment of the court below. The Land Acquisition Appeals are

dismissed. The parties will bear their respective costs. Sd/- K. VINOD
CHANDRAN JUDGE Sd/- T.R. RAVI JUDGE dsn

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