State of Kerala Vs. P.P Joy

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Court : Kerala

Decided On : Mar-04-2015

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

Appellant : State of Kerala

Respondent : P.P Joy

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 WEDNESDAY, THE4H DAY OF MARCH201513TH PHALGUNA, 1936 LA.App..No. 101 of 2012 () -------------------------- AGAINST THE

JUDGMENT
IN LAR1462009 of PRINCIPAL SUB COURT,NORTH PARAVUR DATED1208-2011 APPELLANT/FIRST RESPONDENT IN LAR: -- STATE OF KERALA REPRESENTED BY THE DISTRICT COLLECTOR, ERNAKULAM68201. BY GOVERNMENT PLEADER SRI.ALOYSIOUS THOMAS RESPONDENT/CLAIMANT AND SECOND RESPONDENT IN LAR: -- 1. P.P JOY S/O.PAPPACHAN, PYNADATH HOUSE, MAIKKAVU VAPPALASSERY, NEDUMBASSERY VILLAGE.PIN683585 2. THE DEPUTY CHIEF ENGINEER (CONSTRUCTION) SOUTHEN RAILWAY. PIN682011 R1 BY ADV. SRI.PAUL

JACOB R1 BY ADV. SRI.PEARL K.DAVIS R1 BY ADV. SRI.LAIJA GEORGE.K R2 BY ADV. SRI.M.C.CHERIAN,SR.SC.,RAILWAYS R2 BY ADV. SMT.REZIYA.P.A.,SC, RAILWAYS THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON0403-2015, ALONG WITH CO. 54/2012 & LAA. 852/2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: T.R.RAMACHANDRAN NAIR & P.V.ASHA, JJ.

- L.A.A.No.101 OF2012 Cross Objection No.54/2012 in L.A.A.No.101/2012 and L.A.A.No.852/2014 - Dated this the 4th day of March, 2015

JUDGMENT
Ramachandran Nair, J.

These appeals are respectively filed from the judgments and decrees in L.A.R.Nos.146/2009 and 111/2009 of the Sub Court, North Paravur. We heard the appeals together, since the items of properties involved in these cases are categorised in Category No.7, among various categories. The acquisition is for the purpose of construction of Angamaly-Sabarimala Railway line.

2. L.A.A.No.101/2012 is filed by the State aggrieved by the enhancement in land value granted by the reference court. The notification under Section 4(1) was published on 14.11.2006 and the land acquisition officer awarded land value @ `1,00,076/- per Are. The acquired property was categorised as wet lands without any road frontage. The reference court by relying upon Ext.A1 sale deed has L.A.A.Nos.101/2012 & 852/2014 2 enhanced the land value and fixed it @ ` 3,71,800/- per Are. The claimant had sought for compensation for injurious affection for an extent of 11.90 Ares of land and since the same has been denied, the claimant has filed cross objection in this appeal.

3. As far as L.A.A.No.852/2014 is concerned, the land value fixed by the land acquisition officer is at the same rate. The same has been enhanced to `1,72,852/- per Are by the reference court. Therein the reference court relied upon Exts.A1 and A2 which are sale deeds produced by the claimant.

4. We heard the learned Government Pleader Sri.Aloysious Thomas for the State, Sri.Paul Jacob for the claimant in L.A.A.No.101/2012, Sri.Arun Sreedhar for the appellant in L.A.A.No.852/2014 and also the learned standing counsel Sri.John Mathew for the requisitioning authority-Railways.

5. Since the land value fixed by the reference court in L.A.R.No. 146/2009, which is the subject matter of L.A.A.No.101/2012 is on a higher side than the value fixed in L.A.A.Nos.101/2012 & 852/2014 3 L.A.R.No.111/2009, which is the subject matter of L.A.A.No.852/2014, we heard L.A.A.No.101/2012 in detail, since it may have reflection on the claim for enhancement of land value in L.A.A.No.852/2014 also. Therefore we proceed to consider L.A.A.No.101/2012 and cross objection therein at first.

6. The evidence adduced by both sides will show that the claimant relied upon Exts.A1 to A3 and the respondents have produced Exts.R1 to R4. Exts.C1 is the report of the Advocate Commissioner.

7. Actually a common judgment was rendered in L.A.R.Nos.146/2009 and 155/2009. From the judgment and decree in L.A.R.No.155/2009, L.A.A.No.107/2012 is pending. Since the property therein is categorised as category No.8, this Court proceeded to consider the dispute as raised in this appeal alone at present, even though the land value granted in both the cases is the same.

8. The learned Government Pleader submitted mainly that the method adopted by the reference court in granting enhancement is not the correct one. It is submitted that the acquired property is not having L.A.A.Nos.101/2012 & 852/2014 4 direct road frontage. It was originally paddy land and therefore it is not having any commercial importance also. It is submitted that the reference court even though discussed Exts.A1 and A2 , did not entirely rely upon the documents and by a process of reducing certain percentage from the value reflected in Ext.A1, the land value has been fixed. It is submitted that the land involved in these cases cannot be compared since the property covered by Ext.A1 is within the Angamaly municipality. It is actually a residential plot with a building. Since the features of the properties are dissimilar, it is submitted that the enhancement granted by relying

upon the said document cannot be justified. It is also submitted that the acquired properties were mainly paddy lands and even though they are near to Cochin International Airport, since they cannot be used for any other purpose, the potential value of the acquired property will have to be reckoned based on the use to which the property could have been utilized viz; as paddy land alone. It is therefore submitted that the enhancement granted is exorbitant. L.A.A.Nos.101/2012 & 852/2014 5 9. We find from the judgment that the reference court by a detailed consideration referred to the distance between the property acquired and Ext.A1 property and considered the advantages of Ext.A1 property in paragraph 19 of the judgment, compared to the acquired property and then reduced 25% of value by considering those aspects. The aspects considered are : a) Ext.A1 property is situated in Angamaly Municipality, whereas the acquired properties are situated in Nedumbassery Panchayath. b) Ext.A1 property is situated in a well known and well reputed residential area abutting municipal road, whereas the acquired properties are paddy fields without road access. c) Ext.A1 property is only 400 metres away from National Highway, Angamaly railway station, private bus stand, whereas the acquired properties are situated 1 km. away from National Highway, Railway station and private bus stand .

10. A further reduction is made as seen from paragraph 20 for the reason that the acquired properties are paddy lands. Thus 45% has L.A.A.Nos.101/2012 & 852/2014 6 been reduced from the land value reflected in Ext.A1 namely `5,20,000/- and the land value arrived at is `2,86,000/-. By considering the time lag between the date of the transaction in Ext.A1 namely two years to that of the notification under Section 4(1) of the Act, 30% has been added (`85,800/- )and finally the land value has been fixed at `3,71,800/- per Are.

11. The learned counsel for the claimant in L.A.A.No.101/2012 Sri.Paul Jacob submits that the said method cannot be said to be faulty. According to him, the acquired property is very near to the International Airport viz; only at a distance of 200 metres. There are so many important institutions and other commercial establishments very near to the acquired property. The same is clear from the Commissioner's report as well as the mahazer prepared by the land acquisition officer. According to him, the property even though was paddy land, after the

International airport was established, water sources have been interfered with due to various constructions and therefore none of the properties could be utilised as paddy lands. It is L.A.A.Nos.101/2012 & 852/2014 7 submitted that very near to the acquired properties, villas, hotel complexes and other institutions have come up which will indicate that actually a township has developed in that locality and therefore the property will have to be treated as a potential land having commercial importance. According to him, even though Ext.A1 property is situated within Angamaly Municipality, the same can be compared going by the well settled principles rendered by the Apex Court.

12. The learned counsel relied upon various other aspects reported by the Commissioner. It is submitted that the property even though is 2 kms. away from the National Highway, it had high potential and therefore the said factor can be considered by this Court for fixing the land value. It is also submitted that the property situated on the side of NH47may not have much importance compared to the acquired property since the acquired properties are situated very near to the International airport. It is also submitted that there is high appreciation in the land value because of the various advantages including the availability of electricity, public conveyance and the fact L.A.A.Nos.101/2012 & 852/2014 8 that it is near to 2 or 3 junctions in the Angamaly route itself. It is also submitted that railway station and important industrial establishments are also within 2 kms. of the acquired property. It is submitted that all these facts have been analysed and assessed by the reference court correctly and this has led to the fixation of enhanced land value by the reference court.

13. We have gone through the evidence in this case. The report of the commissioner Ext.C1 shows that the property is lying as waste (uncultivated) land, without proper maintenance. The Commissioner was examined as CW1. The alignment of the railway line is through the middle of the property and the property has been divided on either side because of the acquisition. The commissioner found that the balance property on the southern side is remaining as waste land without any road access. It is stated that the acquired property is having commercial importance. The hotel apartments, flats and villas of Lord Krishna Builders Pvt. Ltd are at a distance of 125 metres. There are other flats and villas

nearby apart from Sreekrishna temple, L.A.A.Nos.101/2012 & 852/2014 9 Akaparambu and many other commercial establishments and hotels and apartments are situated within 1 km. of the acquired property. The other important institutions noted in paragraph 4 are Saj Fleight and foods (distance 700 metres), Sha-Shib Aviation Academy (900 metrs) IOC petrol bunk outlet (1.100 km.), Federal Bank Airport (1.100 Km.), Saj Earth Resorts (500 metres), Lulu International (750 metres), Nedumbassery police station (1.700 km.), Royal Wings Hotel (1.400 km.), CIAL Academy (1.700 km.), Abad Hotel, Federal Bank, Malayala Manorama, CISF Airport Unit, Obroi Flight Service, Apple Flight are situated within 1.800 - 1.900 km. The other important institutions are also noticed which are Mar Sabora Affroath Jacobite Cyrian Catheral Valiya Pally Estd. AD825 Akaparambu (1 km.), St. Gervacis & Prothasis RC Church, Akaparambu (1.100 km.), Union Library, Mekkavu, SBI (1.700 km.), Kariyadu Grama Panchayath, Village Office, Mekkadu post office etc. and Angamaly railway station, private bus stand etc. are within 2.7 to 3 kms. The Commissioner has reported that the land value in that area will be L.A.A.Nos.101/2012 & 852/2014 10 between Rs.3 lakhs to 4 lakhs.

14. The features of property included in Ext.A1 sale deed, as discussed in the judgment may have to be considered now. In paragraph 17, the relevant details have been discussed by the reference court. Ext.A1 is dated 23.3.2004. The extent involved is 5 Ares of land including a building therein, which was sold for a consideration of `45 lakhs. The building itself is valued at `19 lakhs. Therefore the land value for 5 Ares of land will be `26 lakhs and per Are the value is `5,20,000/-. The trial court then proceeded to consider the comparison made by the Commissioner between Ext.A1 property and the acquired property. According to the Commissioner also, the property in Ext.A1 is superior. It is found by the reference court that the property in Ext.A1 is situated in Municipality, whereas the acquired property is in Nedumbassery Panchayath. The acquired properties are paddy fields, whereas Ext.A1 property is in a residential area, that too abutting municipal roads. The conclusion therefore drawn is that the said document is not reliable. But in paragraph 19, it is found that Ext.A1 L.A.A.Nos.101/2012 & 852/2014 11 can be accepted by adopting approximate deductions. Thus, the trial court tried to reconcile the matter by relying upon Ext.A1 itself. The question is

whether the said method is correct or not.

15. The judgments relied upon by the learned counsel for the respondent in this context are Sahiba Mohammed Yusuf Abdul Hamid Mulla (D) by L.Rs. And Ors. v. Special Land Acquisition Officer and Ors. (2012) 7 SCC595 Neison Fernandes and Others v. Special land Acquisition Officer, South Goa and Ors. (2007) 9 SCC447as well as the judgment of a Division Bench of this Court in State of Kerala v. Jose Simon (2009 (1) KLT760 and the judgment in LAA No.85/2012.

16. We will now discuss the judgment in L.A.A.No.85/2012, which is heavily relied upon by the learned counsel for the respondent pointing out that the acquired property therein was similar to the acquired property herein and this Court fixed the land value at `3 lakhs.

17. We have gone through the judgment in detail. Therein the L.A.A.Nos.101/2012 & 852/2014 12 land acquired, was included in category No.8, ie. wet land having access to road frontage and awarded land value @ `1,15,087/- per Are by the Land Acquisition Officer. This Court found that the land value has to be enhanced and finally refixed it at `3 lakhs per Are.

18. The learned Senior Government Pleader pointed out that going by paragraph 8 of the judgment, this Court treated the land as dry land and accordingly fixed it at `3 lakhs and therefore the same cannot be relied upon by this Court. Even though Sri.Paul Jacob submits that the property therein being wet land, fixation at `3 lakhs should be treated as one for wet land itself, we are of the view that in the light of paragraph 8 which we extract below it cannot be taken as conclusive that the said value has been fixed for wet land under category No.8 : "8. Even the Land Acquisition Officer has maintained a ratio between the values of wet lands and corresponding dry land. We don't think that the ratio maintained by the Land Acquisition Officer is correct. But, still we can always find that there is a co-relation between the values of dry lands and wet lands situated within the same local area, we are of the view that taking cue from Ext.A1 itself, the market L.A.A.Nos.101/2012 & 852/2014 13 value of the land under acquisition which is dry land, can be fixed at Rs.3 lakhs." 19. Actually the property therein was included in category No.8. Therefore, the question raised herein will have to be

considered independent of the same. The judgment of the Division Bench of this Court in State of Kerala v. Jose Simon (2009 (1) KLT760 is relied upon by the learned counsel for the respondent to show that the percentage of escalation to be accepted based on the time lag between the date of document and the date of Section 4(1) notification will be between 10% to 15% in urban or semi-urban areas. The said principle has been laid down by this Court by relying upon the various judgments of the Apex Court. Particular reference is made to G.M.Oil & Natural Gas Corporation Ltd. v. R.Jivandhai Patel and Another (2008 SAR (Civil) 894).

20. The decision of the Apex Court in Neison Fernandes and Others v. Special land Acquisition Officer, South Goa and Ors. (2007) 9 SCC447 is also one dealing with the deduction towards L.A.A.Nos.101/2012 & 852/2014 14 development charges, where the deduction permitted is 33%. It is therefore submitted that the deduction at 45% from the sale consideration in Ext.A1 is not justified.

21. The learned counsel for the claimants in L.A.A.No.852/2014 relied upon two other judgments namely Subh Ram and others v. State of Hariyana and Another (2010) 1 SCC444and Rajendra Vassudev Deshprabhu (dead) Through Lrs. and Others v. Deputy Collector (Retd) and Land Acquisition Officer, Panaji (2011 KHC4939= (2011) 10 SCC596 . In the first one of the decisions, in paragraph 18, their Lordships have held that "when different categories of lands (or lands with different situational advantages) are acquired for the same purpose, say for forming of a residential layout, courts have some times felt that determination of their value with reference to previous status or situation should be avoided and a uniform rate of compensation should be awarded for all lands acquired under the same notification." This is relied upon to point out that when different items of land were acquired for the L.A.A.Nos.101/2012 & 852/2014 15 same purpose, those should be treated together for fixing land value.

22. As far as the judgment in Rajendra Vassudev Deshprabhu (dead) Through Lrs. and Others v. Deputy Collector (Retd) and Land Acquisition Officer, Panaji 2011 KHC4939is concerned, it is submitted by the learned counsel for the claimant-appellant that the said judgment reiterates the principle that even if land is used for

agricultural purposes and sanction had to be obtained for sale of such land, it will not depress the price of the land or affect its potential for being developed as residential or industrial use. The same has been relied upon in the light of the argument made by the learned Senior Government Pleader that as far as conversion of acquired lands are concerned for use of residential or commercial purpose, it requires permission under the Land Utilization Order. In paragraph 8, the Apex Court has held as follows : "8. The next contention of the respondents is that a land purchased by a tenant under Chapter IIA of the Tenancy Act, could not be sold without the previous sanction of Mamlatdar, under S.18 K of the Tenancy Act. The mere L.A.A.Nos.101/2012 & 852/2014 16 fact that the sanction has to be obtained from Mamlatdar for sale of such land would not depress the price of the land, nor affect its potential for being developed as residential or industrial use." The said judgments will be of applicability here to ascertain the potential value of the acquired property 23. The general principles as far as the fixation of land value is concerned have been discussed in detail by the Apex Court in Sahiba Mohammed Yusuf Abdul Hamid Mulla (D) by L.Rs. And Ors. v. Special Land Acquisition Officer and Ors. (2012) 7 SCC595in paragraphs 13 and 14. In paragraph 14, positive and negative factors have been identified and they have been given in a table which we reproduce below : "The amount of compensation cannot be ascertained with mathematical accuracy. A comparable instance has to be identified having regard to the proximity from time angle as well as proximity from situation angle. For determining the market value of the land under acquisition, suitable adjustment has to be made having regard to various L.A.A.Nos.101/2012 & 852/2014 17 positive and negative factors vis-a-vis the land under acquisition by placing the two in juxtaposition. The positive and negative factors are as under : Positive Factors Negative Factors (i) smallness of size (i) largeness of area (ii) proximity to a road (ii) situation in the interior at a distance from the road (iii) frontage on a road (iii) narrow strip of land with very small frontage compared to depth (iv) nearness to developed (iv) lower level requiring the area depressed portion to be filled up (v) regular shape (v) remoteness from developed locality (vi) level vis-a-vis land under (vi) some special acquisition disadvantageous factors which would deter a purchaser (vii) special value for an owner of an adjoining property to whom it may have some very special advantage

24. Therefore in every case various aspects referred to therein may have to be considered. As far as the acquired properties herein are concerned, they being near to a developed area unlike properties L.A.A.Nos.101/2012 & 852/2014 18 situated in an underdeveloped area, it may get prominence. Of course when negative factors are applied, we find that it cannot be termed as a land situated in an interior place or in a remote area from a developed locality. There cannot be any dispute also that the acquired properties are situated very near to PWD road namely Akaparambu-Angamaly road. Of course there may not be frontage to road, but other access is there.

25. If these features are considered in tune with the various factors pointed out earlier, what we find is that the acquired property is situated in a very important locality namely very near to the International airport, Kochi at Nedumbassery. After the establishment of the airport, it is clear that the area has developed as a township also. The various important public institutions, commercial establishments, large number of hotels, villas and flats, the construction of which are evident from the report of the Commissioner shows that actually a township has developed in that area. The location of the acquired property being near to a developed township will have potential as a L.A.A.Nos.101/2012 & 852/2014 19 commercial plot also. Therefore while considering the various positive aspects, this Court may have to fix land value based on the said aspect also.

26. Now we will proceed to consider the documents discussed in L.A.A.No.852/2014, which is from L.A.R.No.111/2009. The documents relied upon by the claimant therein are Exts.A1 and A2. The general features of the land are similar to the ones already discussed by us. The said acquired property is at a distance of 10 metres from the nearest road and 100 metre from PWD road. As far as nearness to the airport also, practically the distance is the same. Therefore, we will proceed to consider the discussion of Exts.A1 and A2 therein. The learned counsel for the appellant submitted that the land value requires enhancement in view of the importance of the acquired property than that of the properties covered by Exts.A1 and A2. Learned Government Pleader opposed the said contention.

27. The property in Ext.A1 was having an extent of 4.01 Ares showing `6,50,000/- as consideration. Ext.A2 relates to sale of 2.91 L.A.A.Nos.101/2012 & 852/2014 20 Ares purchased for a consideration of ` 5,03,000/-. Therefore, the land value as per Ext.A1 is `1,62,095/- and the land value as per Ext.A2 is `1,72,852/-. Since the value reflected in Ext.A2 is higher, the same was accepted by the reference court to fix the value of the acquired property. The contention of the learned counsel for the appellant is that the real value may not have reflected in a transaction and those properties are beyond the national highway whereas the acquired property is situated very near to the airport. Therefore, the learned counsel sought for a reasonable enhancement from the land value reflected in Ext.A2 and that fixed by the reference court therein.

28. In this context, we will refer to the report of the Commissioner who had inspected the properties - Exts.A1 and A2 as well as the acquired property. The Commissioner had visited the basic land also. After referring to the details of the basic land, it is stated that the same is not comparable. In paragraph 2 of the report, the details of the properties covered by Exts.A1 and A2 are stated. To reach Ext.A1 property one has to travel 1 Km. towards east from MAHS School stop L.A.A.Nos.101/2012 & 852/2014 21 in the Alwaye-Angamaly Highway, and towards northern side. It is situated within an area known as 'Rose Garden Society Nagar' and the same is situated on the side of a tarred road as plot No.4 which is a reclaimed paddy land. On two sides of the property, there are thodus and beyond that there are paddy lands lying at a lower level. Ext.A2 property lies in the 'Rose Garden Society Nagar' on the side of a road which projects from another tarred road lying east west. It is seen from the Commissioner's report that on two sides there are thodus and there are paddy lands on the north and south. The Commissioner has, in paragraph 3, detailed the important establishments near the acquired properties which are common as far as this case also.

29. The question is whether Exts.A1 and A2 sale deeds in L.A.R.No.111/2009 can be relied upon, which is a point vehemently raised by the learned Government Pleader. Of course, Exts.A1 and A2 are lying at a distance of more than 1 km. from the National Highway. As far as the airport is concerned, it is at a distance of 2.5 km. from the national highway. But when coming to the importance of the

L.A.A.Nos.101/2012 & 852/2014 22 locality where Exts.A1 and A2 are situated and the acquired properties are concerned, in the light of the discussion already made by us, we are of the view that the acquired properties are situated in a more important locality having more potential also. The only similarity is that the properties covered by Exts.A1 and A2 were also paddy lands which are now lying as reclaimed land. In that view of the matter, definitely the acquired properties being very near to a well developed township near to airport will have much potential. This aspect may require proper consideration by this Court, when the advantages and disadvantages are compared together. Of course this Court may have to indulge in guess work, but the said guess work should be based on real facts also.

30. In this context, reliance is placed by the learned counsel on two documents which are produced as Annexures I and II in L.A.A.No.852/2014. Annexures 1 and 2 are respectively sale deed Nos. 5920/2005 and 7819/2006 of Chengamanad Sub Registry. It is submitted by the learned counsel for the appellant that the same can be considered for fixing the market value. The learned Government L.A.A.Nos.101/2012 & 852/2014 23 Pleader submits that the documents relate to dry lands and not wet lands. Annexure I is the same document which was produced as Ext.A2 in L.A.A.No.101/2012. We are of the view that we will not be justified in adopting the same for the purpose of deciding the land value herein.

31. The reference court in the judgment which is subjected to appeal in L.A.A.No.101/2012 held in paragraph 12 that going by the report of the Commissioner, the acquired lands are having sufficient commercial importance as well as locational potentiality due to the nearness of various public institutions as deposed by AW1 and as reported by the Commissioner. The court after considering the fact that the acquired lands are paddy fields further considered the fact that due to the nearness of public and private institutions including Cochin International Airport, the acquired land has got some of its own commercial importance as well as locational potentiality. Therefore the property was treated as commercially important. We also agree with the said view. The negative factors going by the details projected by L.A.A.Nos.101/2012 & 852/2014 24 the learned Government Pleader with regard to the acceptability of Ext.A1 in

L.A.A.No.101/2012 are that the property is in a well developed area in the municipality and is a garden land, whereas the acquired property is not having such features. The method adopted by the reference court shows that 25% has been reduced from the land value reflected in Ext.A1 in view of the nearness of Ext.A1 property to Angamaly railway station, private bus stand and because of the fact that the acquired property is away from National Highway, railway station and private bus stand. Again 20% is deducted from the land value in Ext.A1 considering the fact that the property is a paddy land.

32. When we compare the documents which have been produced in both these land acquisition reference cases, what we find is that the properties which were the subject matter of transactions in Exts.A1 and A2 in L.A.R.No.111/2009 relate to paddy lands originally. As far as Ext.A1 property in L.A.R.No.146/2009 is concerned, it is really a document concerning a residential plot, where a substantial building is there. The appreciation for a willing purchaser for such a property need not be over emphasised. Therefore when compared to the features of the acquired property, the property covered by Ext.A1 in L.A.A.No.101/2012 may not have much similarities. Therefore again we will have to go back to the documents in L.A.R.No.111/2009 which is the subject matter of L.A.A.No.852/2014. As we have already noticed from the report of the Commissioner, the properties are situated in an area known as 'Rose Garden Society Nagar'. The importance of the locality is not clear and not specified in the report of the commissioner. But still we are of the view that in view of the locational importance of the acquired properties, it can be seen that they being near to the township, where International Airport is situated, it will be more in an important area that the properties in Rose Garden Society Nagar. As we have already noticed, the advantages for the acquired property, due to nearness to Airport cannot be disregarded also. Therefore a reasonable enhancement from the land value reflected in Exts.A1 and A2 in L.A.A.No.852/2014 is required to arrive at a just and fair decision. Even without totally disregarding Ext.A1, which is relied upon by the reference court in L.A.A.No.101/2012 also, we will be able to arrive at a proper and correct figure. The claimant therein actually has not produced the sale deed of a comparable land. What was available before the court was obviously relied upon by the

reference court even if it was found that it is not that much comparable. But the reduction therein made, according to us, should have been more, if a reasonable amount had to be arrived at. Therefore we propose to fix a reasonable amount as far as the acquired properties are concerned after considering all the relevant aspects which we have discussed above.

33. According to us, even though the reference court has reduced 45% from the document value in Ext.A1 in L.A.A.No.101/2012, non-comparability of the land being a dry land and in view of the importance of Ext.A1 which is lying within the municipal limits in a residential area, it may require further reduction. Therefore at least 60% of the amount ought to have been deducted. Then the land value will be Rs.208,000/-. Even if 30% is added for L.A.A.Nos.101/2012 & 852/2014 27 the time lag, it will be Rs.2,70,400/-. If we take a reasonable enhancement from the document value in Ext.A2 in L.A.A.No.101/2012, namely by 50% of the same, it will be Rs. 2,59,278/-. We therefore will have to adopt guess work also to fix a reasonable rate and we therefore refix the land value at Rs.2,65,000/- per Are for the acquired property in L.A.A.Nos.101/2012 and 852/2014.

34. The learned counsel for the claimant in L.A.A.No.101/2012, while referring to the cross objection submitted that no amount has been granted towards injurious affection. We have considered the discussions made by the reference court in paragraph 24. The claim of the cross objector is that the entire property was lying as a single holding and due to the acquisition the property has been divided into two plots namely on either side of the railway line once it is completed. The claim is @ Rs. 5 lakhs per cent. The total area of the property before acquisition in L.A.R.No.146/2009 is concerned, going by the mahazar, will be 21.50 Ares and the acquired property is L.A.A.Nos.101/2012 & 852/2014 28 having an extent of 9.60 Ares and therefore the balance will be 11.9 Ares. With regard to the injurious affection, the learned counsel relied upon the report of the commissioner and the evidence of the Commissioner. It is seen from the evidence of the Commissioner also that the property is cut off without any access. The trial court did not grant any amount for want of evidence regarding the extent of the property. But we find from the mahazar itself, that the extent of the property available with the claimant is 11.9 Ares. The learned counsel submits that in the light of the provisions of the

Railways Act, no construction can be made at a distance of 25 metres from the railway track. The issue is whether the property can be profitably used for any purpose. But since the railway line cuts off the property, the claimant will not be able to get the same land value as it was before as there will not be any willing purchaser for the property. Sufficient and easy access is also not there. Therefore we will have to consider the injurious affection by reckoning these aspects. In that view of the matter, we will be justified in granting the amount representing 50% of L.A.A.Nos.101/2012 & 852/2014 29 the amount awarded by us towards injurious affection in L.A.A.No.101/2012, namely in cross objection No.54/2012. Even though we fix it at 50%, since the claimant has claimed it at a lesser rate namely @ Rs.25,000/- per Are in Cross Objection No.54/2012, the claimant will be entitled only for the same. The claimant in L.A.A.No.842/2014 will be entitled to injurious affection as we have already fixed i.e. 50% of market value.

35. The appeals and cross objections are accordingly disposed of. The judgment of the reference court will be modified as shown below : In L.A.R.No.146/2009 which is the subject matter of L.A.A.No.101/2012 and in L.A.R.No.111/2009, which is the subject matter of L.A.A.No.852/2014, the land value is refixed at Rs.2,65,000/- per Are. Both appeals are allowed to the above extent. In Cross Objection No.54/2012, the claimant will be entitled to injurious affection @ Rs.25,000/- per Are for 11.90 Ares of land. The claimant in L.A.A.No.842/2014 will be entitled to compensation for injurious L.A.A.Nos.101/2012 & 852/2014 30 affection as we have already specified. The claimant in both the cases will be entitled for statutory benefits as granted by the trial court. There is a delay of 809 days in filing the appeal in L.A.A.No.852/2014, which has been condoned as per order in C.M.Appl.No.961/2014 on condition that if ultimately the appeal is allowed, the claimant will be entitled to interest under Section 28 for the above period, which we reiterate and the grant of statutory benefits will be subject to the above direction. The parties will be entitled to proportionate costs in cross objection No.54/2012 as well as in the appeal - L.A.A.No.852/2014. T.R.RAMACHANDRAN NAIR, JUDGE P.V.ASHA, JUDGE sv.