

Thomas Vs. State of Kerala

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Court : Kerala

Decided On : May-21-2015

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

Appellant : Thomas

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR & THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH THURSDAY, THE 21ST DAY OF MAY 2015 31ST VAISAKHA, 1937 LA.App..No. 1610 of 2008 ()
----- AGAINST THE

JUDGMENT

IN LAR342006 of SUB COURT, PALA DATED 27-05-2008
APPELLANT/CLAIMANT: ----- THOMAS, S/O JOSEPH AGED 54 PAREKKATTU MATTAPPALLIL, 7TH MILE ELIKKULAM.P.O.
BY ADV. SRI.R.SUDHIR RESPONDENT: ----- STATE OF KERALA DISTRICT COLLECTOR, COLLECTORATE, KOTTAYAM. BY GOVERNMENT PLEADER SRI.K.K.SAIDALAVI THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON 21-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: T.R.RAMACHANDRAN NAIR & K.P.JYOTHINDRANATH, JJ.

--- Dated this the 21st day of May, 2015

JUDGMENT

Ramachandran Nair, J.

This appeal is filed from the judgment and decree in L.A.R.No.34/2006 on the file of the Sub Court, Pala. The claimant is the appellant. The property was acquired for the construction of Punaloor-Thodupuzha State Highway. The extent acquired is 1.60 Ares out of the total extent of 27 cents in Sy.No.307/3 in Block No.49 of Elikulam village. The notification under Section 4(1) was published on 14.10.2004.

2. The land value awarded by the land acquisition officer is @ `29680/- per Are which has been enhanced to `44,500/- per Are by the reference court. The claim raised by the appellant herein is @ `3,75,000/- per Are.

3. We heard the learned counsel for the appellant Sri.R.Sudhir and the learned Senior Government Pleader Sri.Saidalavi. LAA No.1610/2008 2 4. It is submitted by the learned counsel for the appellant that in spite of adducing evidence sufficiently by producing and marking Exts.A1 and A2 in evidence, the court below has rejected both the documents and has mainly undertaken guess work and enhanced the land value only by `14,820/- per Are. It is submitted that the property in question is in an important locality, namely, in Paika junction. It is a commercial plot and there was a building in the property. Actually, the entire court yard of the appellant has also been cut away for widening the road and a portion of one shop building was also demolished, but no proper compensation was given for the same also. It is also submitted that even though compensation was claimed for injurious affection namely at `75,000/-, nothing was granted by the reference court and the claim was not considered at all.

5. The learned Government Pleader submits that Exts.A1 and A2 documents have not been properly proved. It is also submitted that the reasons stated by the reference court for rejecting Exts.A1 and A2 are justifiable. LAA No.1610/2008 3 6. Ext.A1 is a sale deed which was executed on 5.2.2003 and Ext.A2 is dated 10.2.1993. The learned counsel for the appellant submits that Ext.A2 is a genuine

transaction and the property therein was purchased by Elikulam Service Co-operative Bank and it will surely show the trend of increasing price of land in the locality. It is also submitted that the view taken by the court below is that the property covered by Ext.A1 is purchased for a road which is used for entry to Jyothi public school and it may not be safe to rely upon the same. It is submitted that the said assumption is wrong. It is submitted that there is no contra evidence to show that the school authorities had offered any fancy price. Therefore, the finding rendered by the court below that Ext.A1 does not reflect the real market value of the property in the locality cannot be justified.

7. We have gone through Exts.A1 and A2. In fact, Ext.A1 was one of the documents considered by the land acquisition officer in the award enquiry. The document Ext.R4 has been treated as the basic land for the purpose of fixing compensation. We find from the award LAA No.1610/2008 4 that the properties acquired have been categorized as A, B and C. Category A are dry lands on both sides of Ponkunnam-Pala road from Catholic Church Junction, Paika to 7th Mile Junction, Paika. B category properties are dry lands on both sides of Ponkunnam-Pala road from 7th Mile Junction, Paika to Madukkakunnu bridge. C category property is dry land on eastern side of only of Ponkunnam- Pala road from Madukkakunnu bridge to Cheeramkuzhy junction to Elikkulam village.

8. The report of the Commissioner will show that the acquired property located is in the junction and so many important public institutions are also located near the acquired property. The fact that the property is having commercial importance cannot be doubted also. It is in evidence that there is a shop building in the property itself. While attacking the reliance placed by the reference court on Ext.R4, the learned counsel for the appellant points out that the extent covered by the said document is 44 cents and it is actually agricultural land and therefore it cannot be compared with the acquired property. True, LAA No.1610/2008 5 potentiality of the acquired property as a commercial plot, therefore, ought to have been considered, submits the learned counsel. It is further submitted that if a further opportunity is granted to the appellant, the appellant will be able to adduce further evidence and also will be able to adduce evidence in support of the genuineness of Ext.A1 transaction. We find from the discussion of the evidence

that the court below has not considered the claim for compensation for injurious affection also. Even though there is a finding as regards the non- acceptability of Ext.A1, we find that the observation therein that the school authorities would have purchased the property for a higher price since it was purchased for opening a road therein, is not correct in the absence of any evidence. Neither the vendor nor the purchaser have been examined and there was no opportunity for the assessment of factual aspects leading to the transaction by the court below. Therefore we vacate the above finding and leave open the entire matter for fresh consideration. Accordingly, we set aside the impugned judgment and remand LAA No.1610/2008 6 the matter for fresh consideration by the court below. Both parties are given opportunity to adduce fresh evidence. The court fee paid on the memorandum of appeal will be refunded to the appellant. The appeal is accordingly allowed. No costs. T.R.RAMACHANDRAN NAIR, JUDGE K.P.JYOTHINDRANATH,JUDGE sv.

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