

Vijayan Vs. State of Kerala and Others

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Court : Kerala

Decided On : May-20-2015

Judge : Honourable Mr.Justice P.N.Ravindran

Appellant : Vijayan

Respondent : State of Kerala and Others

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN & THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN WEDNESDAY, THE 20TH DAY OF MAY 2015 30TH VAISAKHA, 1937 LA.App..No. 274 of 2010 ----- AGAINST THE

JUDGMENT

DATED 31.01.2009 IN L.A.A.NO.128/07 OF SUB COURT, MOOVATTUPUZHA

----- APPELLANT(S)/CLAIMANT : -----

VIJAYAN, S/O.CHAKRAPANI, VADAKKETHARA KANDACHATHARA, KALAMPOOR KARA, PIRAVAM. BY ADV. SRI.RAJEEV V.KURUP

RESPONDENT(S) : ----- 1. THE STATE OF KERALA, REPRESENTED BY DISTRICT COLLECTOR, KOTTAYAM.

2. THE PROJECT MANAGER, JBIC ASSISTED KERALA WATER SUPPLY PROJECT, CHERTHALA MUNICIPALITY, CHERTHALAI P.O.

3. THE SECRETARY, CHERTHALA MUNICIPALITY, CHERTHALAI P.O.

4. THE MANAGER, STATE BANK OF INDIA, VELLOOR BRANCH, VELLOOR P.O. R1 BY GOVERNMENT PLEADER SRI.MOHAMMED SAVAD R2 BY ADV. SRI.MILLU DANDAPANI, S.C R3 BY ADV. SRI.JOBY CYRIAC THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON 11/03/2015, THE COURT ON 20/05/2015 DELIVERED THE FOLLOWING: Msd. P.N.RAVINDRAN & ANIL K.NARENDRAN, JJ.

----- L.A.A.No.274
OF 2010----- Dated this the 20th day of May,
2015

JUDGMENT

Anil K.Narendran, J.

The appellant is the claimant in L.A.R.No.128 of 2007 on the file of the Court of the Subordinate Judge of Muvattupuzha. The land owned by the appellant having an extent of 1.26 Ares comprised in Survey No.876/20-4 of Piravom Village in Muvattupuzha Taluk was acquired for the laying of Raw Water Pipeline for Japan Bank for International Co-operation (JBIC) assisted Kerala Water Supply Project to Cherthala Municipality and adjoining villages. The notification under section 4(1) of the Land Acquisition Act, 1984 was published on 10.2.2006. By award passed on 17.10.2006, the Land Acquisition Officer awarded the appellant/claimant an amount of 23,189/- as compensation, fixing the land value at the rate of 12,350/- per Are. Possession of the land was taken on 1.11.2006. L.A.A.No.274/10 -:2:- 2. Dissatisfied with the award passed by the Land Acquisition Officer, the appellant/claimant sought a reference to the court under section 18 of the Act. A reference was accordingly made to the Court of the Subordinate Judge of Muvattupuzha, where it was taken on file and numbered as L.A.R.No.128 of 2007.

3. Before the reference court, the appellant/ claimant filed a statement contending that, the acquired land is situate in a very important locality having commercial importance and that schools, public offices, factories, etc. are situate very near to it. The appellant claimed land value at the rate of 2,00,000/- per cent and also

claimed compensation for injurious affection in respect of a strip of land having a width of 4 metres and a length of 15 metres, lying in between the PWD road and the acquired land, after the acquisition.

4. Before the reference court, AWs1 to 3 were examined and Ext.A1 was marked on the side of the appellant/claimant. On the side of the respondents, the file L.A.A.No.274/10 -:3:- of the Land Acquisition Officer in L.A.C.No.72 of 2006 containing the mahazar and rough sketch was marked as Ext.R1. The respondents did not adduce any oral evidence. The report and rough sketch prepared by the Advocate Commissioner, who was examined as AW3, were marked as Exts.C1 and C1(a).

5. On an appreciation of the facts of the case and the evidence on record, the reference court by judgment dated 31.1.2009 held that, the appellant/claimant is entitled for 7,781/- towards enhanced land value together with 30% of the said amount as solatium and 12% increase on the additional land value for the period from 10.2.2006 till 17.10.2006. The reference court held further that, the appellant/claimant is entitled for 7,000/- as compensation for injurious affection and that he is entitled for 9% interest on the enhanced land value together with 30% solatium and 12% increase for a period of one year from 2.11.2006 and thereafter at the rate of 15% per annum till the amount is deposited in court. The reference court has also L.A.A.No.274/10 -:4:- held that, the parties shall pay and receive costs in proportion to their success and failure.

6. Aggrieved by the judgment of the reference court dated 31.1.2009 in L.A.R.No.128 of 2007, the appellant/claimant is before us in this appeal.

7. We heard the arguments of the learned counsel for the appellant/claimant, the learned Government Pleader appearing for the first respondent as also the learned Standing Counsel for the second respondent.

8. As borne out from records, an extent of 1.26 Ares of land owned by the appellant/claimant comprised in Survey No.876/10-4 of Piravom Village in Muvattupuzha Taluk was acquired based on a section 4(1) notification dated 10.2.2006. The Land Acquisition Officer fixed land value of the acquired property

at 12,350/- per Are relying on document No.111/2006 of SRO, Piravom, as the basic document. A perusal of Ext.R1 file of the Land Acquisition Officer in L.A.C.No.72 of 2006 would show that, the property covered by that document does not have any PWD L.A.A.No.274/10 -:5:- road frontage and the Land Acquisition Officer himself has admitted that, the said property is having lesser importance than the acquired property. Further the property covered by document No.111/2006 is situate at a distance of about 2 KMs away from the acquired property which is having PWD road frontage on two sides.

9. It is relying on Ext.A1 judgment in L.A.R.No.20 of 2001 on the file of the Court of the Additional Subordinate Judge of Kottayam, the appellant/claimant is claiming enhanced land value. A perusal of Ext.A1 judgment would show that property comprised in Survey Nos.588/10, 588/12-3 and 588/12-5 of Velloor Village owned by one P.K.Narayanan, who was examined as AW2 was acquired for the construction of a water treatment plant, based on a section 4(1) notification published on 20.5.1999. The Land Acquisition Officer passed an award fixing the land value at the rate of 40,137/- per Are. The reference court granted 60% enhancement of the land value fixed by the Land Acquisition Officer and granted L.A.A.No.274/10 -:6:- enhanced compensation at the rate of 24,082/- per Are together with solatium and other statutory benefits, thereby fixing land value of the property under that acquisition at the rate of 64,219/- per Are.

10. The appellant/claimant as AW1 has deposed that his property is having PWD road frontage on two sides and that there is bus service through one of such PWD roads. AW1 has also deposed about the commercial importance of the locality and that Hindustan Newsprint Factory, schools, college, Post Office, etc. are situate in the vicinity of his property. The evidence of AW2, who was the claimant in L.A.R.No.20 of 2001 covered by Ext.A1 common judgment, would show that the property under acquisition in that case was acquired based on a section 4(1) notification dated 20.5.1999 and that the said property is not having any PWD road frontage, that other than Hindustan Newsprint Factory, no other public institution is situate near the said property and that the said property is having lesser commercial importance than the acquired property owned L.A.A.No.274/10 -:7:- by the appellant/claimant in this case.

11. The Advocate Commissioner who prepared Ext.C1 report and Ext.C1(a) rough sketch was examined as AW3. The report of the Advocate Commissioner would show that the acquired property is having commercial importance, that it is situate by the side of a PWD road, that it is 1.5 KMs away from Hindustan Newsprint Factory and that Public Health Centre, High School, bank, temples and Railway Station are situate in the vicinity of the said property. The Commissioner, who had also inspected the property that was the subject-matter of Ext.A1 judgment, has reported that the property in that case is situate in a locality having lesser commercial importance when compared to the acquired property owned by the appellant/claimant in this case. The Advocate Commissioner has reported that, the acquired property is having PWD road frontage on two sides and that a large number of public institutions are situate in its vicinity.

12. As we have already noticed, the respondents L.A.A.No.274/10 -:8:- have not chosen to adduce any oral evidence. Ext.R1 file of the Land Acquisition Officer in L.A.C.No.72 of 2006 would show that, the property covered by the basic document is situate at a distance of nearly 2 KMs away from the acquired property owned by the appellant/claimant. There is absolutely no material to show that the said property is in any manner comparable to the acquired property owned by the appellant/claimant in this case. On the other hand, the evidence of AWs 1 to 3 and Ext.C1 report of the Advocate Commissioner, makes it explicitly clear that, the property covered by Ext.A1 judgment, which was acquired based on a section 4(1) notification dated 20.5.1999, is having only lesser commercial importance than the property acquired in the present case. In Ext.A1 judgment, the reference court granted 60% enhancement in the land value of 40,137/- per Are fixed by the Land Acquisition Officer, thereby fixing land value at the rate of 64,219/- per Are. In such circumstances, we are of the view that, the land value in respect of 1.26 Ares of land comprised in L.A.A.No.274/10 -:9:- survey No.876/10-4 of Piravom Village, acquired vide section 4(1) notification dated 10.2.2006 can be re-fixed at the rate of 40,000/- per Are. Therefore, the appellant/claimant will be entitled for enhanced compensation at the rate of 21,475/- per Are together with 30% solatium, 12% increase on the additional market value for the period from 10.2.2006 till 17.10.2006 and 9% interest on the enhanced compensation for a period of one year from 2.11.2006 and thereafter at 15% per annum till the amount is deposited

in court.

13. Now we shall consider the claim made by the appellant/claimant for compensation towards injurious affection in respect of an extent of land having a width of 4 metres and a length of 15 metres lying in between the PWD road and the acquired property. The evidence of the appellant/claimant as AW1 would show that the aforesaid strip of land is now separated from the remaining extent of land owned by the appellant/claimant and that the use of the said strip of land has been injuriously affected by the L.A.A.No.274/10 -:10:- acquisition in question. Ext.C1 report of the Advocate Commissioner and Ext.C1(a) rough sketch would indicate that the aforesaid strip of land is now lying in a disadvantageous position. The reference court has already awarded a sum of 7,000/- as compensation for injurious affection. In the facts and circumstances of the case, we find absolutely no grounds to enhance the amount already awarded by the reference court towards compensation for injurious affection. In the result, this appeal allowed in part, holding that the appellant/claimant is entitled for an enhanced compensation of 21,475/- per Are for 1.26 Ares of land comprised in survey No.876/10-4 of Piravom Village together with all statutory benefits. The appellant shall also be entitled for the costs of this proceedings. Sd/- P.N.RAVINDRAN, JUDGE Sd/- ANIL K.NARENDHRAN, JUDGE dsr

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