

**Mariam and ors. Vs. the State and ors.**

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**Court :** Kerala

**Decided On :** Dec-10-1979

**Reported in :** AIR1980Ker176

**Judge :** P. Subramonian Poti and; P. Janaki Amma, JJ.

**Acts :** [Land Acquisition Act, 1894](#) - Sections 23; [Evidence Act, 1872](#) - Sections 40 to 43

**Appeal No. :** L.A.A. Nos. 440 and 443 of 1976

**Appellant :** Mariam and ors.

**Respondent :** The State and ors.

**Advocate for Def. :** Govt. Pleader

**Advocate for Pet/Ap. :** K. Ravivarma Thampan, Adv.

**Disposition :** Appeals allowed

**Judgement :**

**Subramonian Poti, J.**

1. These are appeals against the same judgment, that of the Court of Subordinate Judge of Parur, in a Land Acquisition Reference Case, The former appeal is by claimants 1, 2 and 4, while the other appeal is by the State. The claimants

challenge the decision of the court below on the ground that the compensation awarded is inadequate but the State's complaint is that the amount awarded is excessive.

2. The acquisition was of 29.39 Area of land comprised in Sy Nos. 243/9B1, 243/10B2, 243/10C3 and 244/4-4 of Alwaye Village in Alwaye Taluk. The acquisition was pursuant to a notification under Section 3 (1) dated 22-11-1972. The property was acquired for forming the Alwaye Bye-pass in the National Highway. The Land Acquisition Officer determined land value separately for 1.21 Area, 9.51 Area, 1.86 Area, 14.36 Area and 2 Area and 45 sq. m. The different values given for these are Rs. 2000/-per Arc, Rs. 1500/- per Arc, Rs. 1500/-per Arc, Rs. 1000/- per Arc Rs. 1500/-per Arc respectively. On the application for reference, the reference court had taken up proceedings for enhancement.

3. Though the Land Acquisition Officer seems to have determined land value based on sale deeds, Exts. B5 to B7, no attempt has been made to prove these documents properly by examining persons concerned with their execution. For this reason the court below has rightly said that reliance on these documents cannot be placed. On the side of the claimants reliance was placed on Exts. A1 and A2 sale deeds of lands in the area and also Ext. A4 judgment in L. A. R. Nos. 133 and 136 of 1973 of the same court. The court below found that Exts. A1 and A2 were not of use as indicating value of comparable land. Evidently it was not impressed with Ext. A4 also. Having stated so the court proceeded to determine what it considered as reasonable enhancement. Without indicating any logical reason it determined the enhancement at cent per cent and observed that such as and would 'meet the ends of justice'. It adopted the same pattern of valuation as adopted by the Land Acquisition Officer by determining the value of the acquired plot as if it is five belts. The enhancement was worked out in that manner.

4. In the appeal by claimants 1, 2 and 4, the claim is limited to enhancement of value of 11.37 Area in respect of which enhancement by way of Rs. 1000/- per Arc is claimed, and value of 1/3rd of 2.45 Area in respect of which 4th plaintiff claimed enhancement by way of Rs. 1000/- per Arc. The appeal must be taken to be limited to this.

5. Exts. A1 and A2 are not of much use. That is because Ext. A1 is a sale deed for 5 1/2 cents of land with four buildings thereon. These are buildings bearing number 50 to 53 of Always Municipality. The consideration for the sale deed is Rs. 27,500/-, Unless there is reliable evidence in the case to determine the value of the buildings, it will not be possible to base the determination of the value of the acquired property on the price noted in Ext. A1. Of course Ext. A1 property has not been found to be comparable for other reasons too, such as the situation 1 1/2 furlongs away, it being of very small extent and the situation in an important place, near the railway station and adjacent to the transport bus station. Further Ext. A1 had material road frontage also. Ext. A2 is also of a small plot of land with a building. The sale consideration is Rs. 8000/-, and the area transferred is 1.35 Area. The location is in an important place near the market. There-fore its situation also is not comparable with the acquired property, which is not shown to have road frontage and which is not in a locality as important as that of Exts. A1 & A2 lands. The acquired property is of much larger area.

Apart from all these, the fact that there are buildings in Exts. A1 and A2 and no serious attempt has been made to determine the value of such buildings is a matter which is of relevance in considering whether these documents can be made use of for the purpose of determining the land value of the acquired land. We may reiterate here what we had occasion to say more than once that despite what has been said by courts, the practice of letting in evidence of deeds of sale of properties with buildings, without adducing independent evidence as to value of buildings, seems to persist still in many courts. It would be a sheer waste of time to produce evidence of such sale deeds unless parties take care to adduce evidence of the value of the buildings standing on the lands sold. It is usual practice for the vendor or the vendee to speak in court about the estimation of the value of the building standing in the property as if that would be sufficient for the court to determine what the land value would be. The opinion of the party is not the opinion of an expert which opinion alone would be relevant in a court. In the absence of any attempt to obtain the evidence of an expert, such as by the issue of a commission, the document of sale of a property with a building thereon would be of very little value as evidence of transaction in regard to comparable properties. The courts would be justified in such circumstances in refusing to consider such

evidence as of any value. Hence we agree with the court below that Exts. A1 and A2 may not be of material assistance in this case.

6. Ext. A4 is a judgment in Land Acquisition Reference Cases 133 and 136 of 1973 of the same court. The notification under Section 3 (1) relevant to the said case was of the date 17-5-1972. The claim before the court in that case was Rupees 10,000/- per Arc for the land acquired and the court awarded prices ranging from Rs. 2600/- per Arc to Rupees 6500/- per Arc. There is no material for this court to understand what factors were relevant in determining values ranging from Rs. 2600/- to Rupees 6500/- as fixed in that case. That is sufficient to discard the evidence of Ext. A4. It must be remembered that a judgment not inter partes would not be admissible unless it is admissible under some provision or other of the Evidence Act. If the judgment is inter partes it would operate as res judicata. The judgment in a case determining compensation for land acquired is a judgment in persona and not a judgment in rem. If so, the admissibility of such judgment must be considered in the background of Section 43 of the Evidence Act. If the judgment does not fall under Sections 40, 41 and 42 of the Act, it would be irrelevant unless the existence of such judgment, order or decree is a fact in issue or is relevant under some other provisions of the Act. Even so, it would only be the existence of the judgment that would be relevant and not the contents thereof. That this would be the position has been noticed by the Supreme Court in City Improvement Trust, Bangalore v. N. Narayanaiah, (AIR 1976 SC 2403). The court added :

'We do not think it necessary to take so restrictive' a view of the provisions of Sections 11 and 13 of the Evidence Act as to exclude such judgments altogether from evidence even when good grounds are made out for their admission.'

7. So far as Ext. A4 judgment is concerned, there is absence of any material to show that it relates to land similarly situate. The similarity of the situation is a matter for proof. The proximity of the land to the acquired land, its situation such as whether it is on the side of a road which makes it important, the level of the land, its condition, its adoptability to the same purpose, are matters which may be relevant. Therefore unless the party seeking to adduce evidence of transactions of

comparable lands places such material before court, it may be difficult for the court to make use of the material relating to transactions in regard to such properties. Evidently in regard to Ext. A4 there is no material which would be sufficient for the court to satisfy itself the value under Ext. A4 here would be relevant. It is more so when for reasons which are not evident on the face of the judgment Ext. A4 different and widely varying values have been awarded for different plots in Ext. A4 itself.

8. What we have said above is sufficient to show that there was no material before the learned Judge on which enhancement could have been based. But the court seems to have felt that the compensation awarded was inadequate. Therefore a cent per cent increase was found to be called for. Why the increase should have been cent per cent and not more or less is not a matter on which any indication is available in the judgment. The said estimate is nothing but arbitrary.

9. In the appeal by the claimants, challenge is also made to the adoption by the learned Judge of valuation of different plots at different prices. Of course, this is a method adopted by the Land Acquisition Officer himself. It has been assumed by the claimants that this is on the basis of dividing the acquired property into several belts. The learned Additional Advocate General has no case that it is on any basis other than belting that different values have been adopted for different plots. No other basis is evident from the records.

10. The main attack of counsel for the appellants in L. A. A. 440 of 1976 is that the system of belting which apparently has been adopted by the Land Acquisition Officer is a practice which has been frowned upon by this court and is a practice which is not in accordance with law. The learned counsel refers to the decision of the High Court of Travancore-Cochin *Kunjukrishna v. State* (AIR 1953 TC 177) approved by this court in *Ananthan Pillai v. State of Kerala* (1961 Ker LT 723). This court viewed the method of valuation by belts as an arbitrary method and observed that it is generally discouraged for the obvious reason that it involves a considerable extent of arbitrariness. Of course this does not mean that to adopt the same would vitiate valuation by the Land Acquisition Officer. If the system is adopted in cases where it could be adopted by making a scientific and logical

approach there could possibly be no objection. But such approach is rarely made.

11. Where land acquired is a small plot, there is no scope for determining value by dividing it into different belts. That is because in such a case uniform value can be obtained for the entire land. But when large plots of land in urban areas are acquired, it may be that part of such land may have more importance and potential than the rest and so the value may not be uniform. The value will depend on the advantageous situation of part of the land in comparison with the rest. Where a large plot of land adjoins a road which gives importance to the land as a commercial site or as a residential site the land situate adjoining the road would be of larger value than the area lying away from the road. Even in regard to land not touching the road the nearness to the road may justify a higher price in view of consequent potential of the site. In such cases land value need not be determined necessarily at a uniform rate. But it would be unscientific if an arbitrary basis is adopted for dividing the property into different belts. The scientific approach would call for a rational basis for determining the depth of each belt. The immediate contiguity to the main road is an important element in the value of all urban lands. Where there is no frontage on the main road, easy access to the road is equally an important fact. These are the basic reasons for adoption by valuers of the system of belting lands when they are called upon to value urban lands of a large area. This system or method consists of taking up a certain depth from the road as more important area than that which lies behind it. Such depth must necessarily depend upon the disposition of shop sites or residential houses, as the case may be, in that area. Justice Macleod said as early as in 1908 in *Government of Bombay v. Karim Tar Mohammed* (1908) ILR 33 Bom 325 (at 328) thus:

'When determining the value of frontage land the depth is a question of supreme importance. What is a suitable depth must primarily depend on the character of the building in the locality but in an ordinary shop and chawl locality like the one I have to deal with it has been the custom for surveyors to calculate the depth at 100 feet. In the next place the value of a building frontage must depend on the higher rents that can be obtained for the shops or rooms facing the street, and as the proportion of these rents to the lower rents of the back rooms decreased so does the value of the whole frontage land decrease.'

It should be evident that the depth of the belt would depend primarily on the extent of the effect of the presence of the road. In a commercial area the character of the constructions that would usually be made in exploiting the land must determine the depth of the land on the road side which would be considered as appropriate for being treated as a belt having a higher value. What should be the proportional value of land in belts further removed from the road would be a question of fact depending upon the use to which land in each belt can be put to and the comparative difference in value depending upon the facts and circumstances. Rarely is there a scientific attempt made to justify the classification into appropriate belts and that is the reason why the system of belting yields arbitrary results. Therefore while scientifically and theoretically there can be no objection to valuation on the basis of the system of belting, unless it is resorted to by expert valuers well-versed in the rule of belting and they act upon appropriate materials which would justify the classification adopted by them, there is bound to be a gross error in the ultimate valuation. Possibly, there may be cases where valuation of land is made by competent valuers who on the basis of data properly collected are able to determine the value of lands on the basis of their relative importance, regard being given to the situation of such land. Once this approach is found to be absent and the belting is seen to be arbitrary, it would be objectionable as not yielding results which could be said to be accurate or even approximately correct.

12. This court, in the decision in *Ananthan Pillai v. State of Kerala*, (1961 Ker LT 723), need not be taken to have said that the system of valuation by the belts ought not to be resorted to under any circumstances. In fact such valuation has been noticed by the Supreme Court and approved. The case before the Supreme Court in *State of U. P. v. Ram Swarup* ((1971) 3 SCC 857) was one where the land had been treated in different belts and different prices fixed for the areas involved in the different belts. The Supreme Court did not consider this as objectionable. The question directly arose in a later decision of the Supreme Court in *M. N. Khan v. Collector (L. A)* (AIR 1974 SC 2247). In that case the court had adopted a higher value for a strip 50 feet wide adjoining the road, based on the principle of belting. Noticing that the strip adjoining an important road will have a higher value than what is in the rear, the court observed:

'While no general principle can be laid down in these matters, local circumstances guide the courts.'

13. In the case before us, it cannot be said that different values were adopted on the basis of any intelligible data. We see that higher value has been adopted with regard to 1.21 Area of land on the road side. Why such a small plot of land on the road side alone would have such higher value is not evident. The valuation therefore calls for reconsideration and to that extent also the appellant in L. A. A. 440 of 1976 succeeds.

14. The result is that we set aside the decision of the court below and remit the case back for determination of land value afresh keeping in view what we have stated earlier in this judgment. If the parties are interested in adducing further evidence in the case they may be permitted to do so provided proceedings are not protracted further. We make it clear that by reason of the remand there shall be no reconsideration in respect of any area other than that to which the appeal by the claimants relate and that too limited to the extent of relief prayed for in the appeal.

The case will stand posted before the court below for appearance of parties to 22nd January, 1980. The parties will suffer costs in these appeals. The court-fee paid on the memorandum of appeal will be refunded to the respective appellants.

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