

State of Kerala Vs. Kuruvila

State of Kerala Vs. Kuruvila

SooperKanoon Citation : sooperkanoon.com/726206

Court : Kerala

Decided On : Jun-21-2005

Reported in : 2005(3)KLT580

Judge : K.A. Abdul Gafoor and; K. Hema, JJ.

Acts : [Land Acquisition Act, 1894](#) - Sections 4(1)

Appeal No. : L.A.A. Nos. 1066 and 1594 of 1998

Appellant : State of Kerala

Respondent : Kuruvila

Advocate for Def. : P.K. Kurian, Sr. Adv.;; Antony Dominic and; A.M. Shaffiq

Advocate for Pet/Ap. : Aloysious Thomas, Government Pleader

Judgement :

K.A. Abdul Gafoor, J.

1. First among these two appeals is by the State impugning the enhancement of the land value and the latter one is by the claimant seeking further enhancement for the land acquired from him.

2. The land was acquired for the purpose of railways based on a notification issued on 14.2.1989. In the reference application, mainly three disputes were

raised by the claimant. One is regarding the extent of the land. According to him, the land measured 22 cents equal to 8.94 Ares, whereas according to the Collector, it was only 18 cents equivalent to 7.29 Ares based on the title deed. According to the claimant, he was entitled to get compensation for the land taken from his possession from within the compound walls on all the four sides. It was his own residential property. The second among the claims raised was with regard to the land value. According to him, he was entitled to Rs. 15,000/- per cent equal to Rs. 37,065/- per Are based on the market value available in the locality in and around the date of notification. The Collector fixed the land value only at Rs. 7,135/- per Are. He had a further case that the structures including the residential building in the land acquired ought to have been valued at Rs. 10 lakhs. Rs. 2,29,477/- alone was fixed as the value for the structures including the residential building. The Reference Court enhanced the former to Rs. 22,500/- per Are and the latter to Rs. 4,80,049/- and rejected the contention of the claimant with regard to the dispute in the area acquired and accepted the area mentioned by the Collector in his award. Compensation was accordingly worked out. This is impugned in these appeals by either side.

3. It is contended by the Government Pleader assailing enhancement that the court below had not really accepted Ext.A1 sale deed dated 17.10.1984. In the absence of Ext.A1 there was no other evidence with regard to the land value. Therefore, the court below ought to have accepted the fixation of land value by the Collector at Rs. 7,135/- per Are. Equally so, is the valuation for the building. He submits that when the claimant did not have title for the property in excess of 18 cents, he is not entitled to get land value for any area in excess of the one mentioned in his title deed. So he is entitled to get compensation for 18 cents only.

4. Claiming further value for the land and building, it is submitted by the claimant that the acquired property is within the heart of the city having access to important institutions as deposed to by AW. 1, the claimant and AW.2 an independent witness. He further submits that Ext.A1 is a sale deed dated 17.10.1984 reflecting a land value in that transaction at Rs. 23,475/- per Are. Even that much is not given by the court below. The court below also had not taken note of more than 4 years difference between the dates of Ext.A1 and the date of Section 4(1)

notification in this case. Had it been taken note of based on the principles laid down by the Supreme Court in *Krishi Utpadan Mandi Samiti, Sahaswan v. Bipin Kumar and another* : (2004)2SCC283 , the valuation would have been more than what the claimant had claimed before the Land Acquisition Officer. He further submits that he had taken the services of an expert to prove the valuation of the building and other structures in the land acquired. Ext.C3 is the report prepared by a Retired Chief Engineer. He had given the valuation for the building after deducting depreciation, at Rs. 4,80,049/-. True, the court below has accepted it in its entirety, but there are two important defects in the said report. (1) He had deducted 1.5% per annum towards depreciation. It ought to have been only by 5/6%. In this regard the decisions reported in *Mytheen Kunju Abdulrahiman Kunju v. State* (1954 KLT 798) and *Bhavani Ramalakshmy v. State of Kerala* (1990 (2) KLT 581 : 1990 (2) KLJ 627) are relied on. The court below did not consider this aspect. It is further submitted that the rate for valuation adopted by the Chief Engineer in Ext.C3 is the P.W.D. rate. It will be far less than the existing rate. So considering these two aspects, the court below should have granted more value for the building, the claimant contends. It is further submitted that the property acquired from him had been compounded on all the four sides as it was his residential plot. The entire property compounded on all sides measured 22 cents equal to 8.94 Ares. He was in possession thereof and had interest in its entirety. Nobody else had been given notice of interest on the land by the Land Acquisition Officer. Therefore, he ought to have been awarded land value for the entire land taken from his possession rather than confining it to the area mentioned in the title deed viz., 18 cents. To prove his possession over the entire 22 cents, he had taken out a commission and the Commissioner has filed ExtC1 report. No objection had been filed by the State. It shows that the area taken from his possession was 22.646 cents. Therefore, the court below erred in granting compensation only for 18 cents mentioned in the title deed.

5. We have to arrive at a conclusion considering these rival contentions.

6. Ext.A1 is a document concerning a transaction of 10 cents effected on 17.10.1984. It has come through the evidence of AW.3 who had been a witness to ExtA1 that it was lying closer to the National Highway as compared to the acquired

property. Necessarily, nearness to the National Highway will be an added advantage and in that respect Ext.A1 will fetch more value than the acquired one. Learned Government Pleader is well justified in contending so. It is taking note of the value prevalent in the locality where Ext.A1 property did situate and the location of the acquired property about 1 K.M. away from Ext.A1, the court below fixed the land value at Rs. 22,500/- per Are. We notice from the reading of the impugned judgment that the court below did not advert to an important aspect in this regard. The date of notification is after more than 4 years of the date of Ext.A1. If that aspect is taken note of, necessarily, a further increase ought to have been given to find out the land value in respect of that property as on the date of the notification. The Supreme Court in the decision in *Krishi Utpadan Mandi Samithi, Sahaswan v. Bipin Kumar and Anr.* : (2004)2SCC283 has accepted 15% increase in land value per annum.

7. The land is situated within the municipal area of Alappuzha. When we take note of this aspect a further increase, taking into account, at least 10% price difference shall do justice to the claimant in this case. When Ext.A1 dated 7.10.1984 reflected the land value at the rate of Rs. 23,475/- in the year 1984, necessarily, the value of the said property will increase in the year 1989 by Rs. 10,000/- at least. Necessarily, an increase of Rs. 9,000/- per Are to the acquired property over the land value fixed by the court below is, in any way, reasonable. So, we fix the land value of the acquired property at Rs. 31,500/- per Are.

8. Now, we will consider the dispute regarding the area of the land acquired. The Government had not, in respect of the property taken possession from the claimant, given notice to anyone else having interest in the property. Necessarily, the claimant alone is having interest in the entire area taken from his possession. It is an admitted case that the area taken in possession from the claimant had been compounded on all the four sides with well built walls. It was his residential plot. It is seen from Ext.C1 that the area so lying within the compound wall and acquired from the claimant was 22.464 cents. There is no objection filed by the State to Ext.C1. Necessarily, we have to accept such evidence on record as contained in Ext.C1 with regard to the area. It is the only evidence available concerning the area taken from his possession. The contention of the Government

Pleader that the claimant did have title over 18 cents alone is no answer when the area taken possession from the claimant extends to 22.454 cents and when the State had not given notice regarding the interest in the property to anyone else. Therefore, we have to conclude that the land taken possession from the claimant from his occupation extends to 22 cents equivalent to 8.94 Ares. Necessarily, the balance area in excess of that mentioned in the title deed executed in the year 1964 taken from his possession within his compound walls had been in his possession for about more than 35 years. Therefore, he had, on that strength of possession as well, entitlement for the compensation in respect of that area.

9. Now, we will come to the consideration regarding the valuation of the building and other structures in the property acquired. Ext.C3 is the report regarding the valuation of the building. Ext.C3 had been prepared by an expert, a Retired Chief Engineer. It is submitted by the counsel for the claimant that the P.W.D. valuation will be less than the actuals always. In this regard, the claimant had attempted to prove the value of the materials by examining A.Ws.4 and 5, who were engaged in vending building materials, timber, cement etc. and A.W.6 a mastery, who spoke about labour cost. But, at the same time, the Government had also prepared and notified certain rates. They have been preparing it time and again. In such circumstances, that will have more authoritative value than what had been spoken to by private individuals. Necessarily, when the court below had adopted the PWD rates, it has to be accepted. Therefore, the contention in that regard by the claimant will have to be repelled.

10. But at the same time, the claimant is well justified in submitting that the rate of depreciation at 1.15% taken by the Chief Engineer who prepared Ext.C3 is on a higher side. This court in the decision reported in *Bhavani Ramalakshmy v. State of Kerala* (1990 (2) KLT 581 : 1990 (2) KLJ 627) relying on an earlier decision in *Mytheen Kunju Abdulrahiman Kunju v. State* (1954 KLT 798) has made it clear that depreciation of A class building shall be at 5/6% from the 3rd year onwards and that it shall be 5/6% from 1st year onwards. The total value of the building fixed in Ext.C3 is Rs. 7,28,783/- being the mean value based on the rates of the years 1990 and 1992. He had calculated depreciation for about 27 years thereof. Necessarily, based on the yardstick adopted in the decision in *Bhavani*

Ramalakshmy v. State of Kerala (1990 (2) KLT 581 : 1990 (2) KLJ 627) which we approve, it shall be fixed at 5/6% from year one onwards, it being a B class building.

11. Ext.A2 is a certificate issued by the Municipal Chairman which shows that the building had come into existence in the year 1964. The notification was in the year 1989. That means, the acquisition was after 25 years. Anyhow, the Chief Engineer had adopted the age of the building at 27 years. Necessarily, we have to accept that being the evidence given by an expert. 5/6% per annum for 27 years shall be deducted from the total value of the building of Rs. 7,28,783/- fixed in Ext.C3 and the remaining shall be the value of the building and other structures. It shall be:

7,28,783 - (7,28,783 x 5) 27 Rs. 5,64,807/-

100 x 6

This shall be the value of the building.

12. Finally, the claimant contended that the court below ought to have given interest on the solatium awarded. It is now trite as per the decision reported in Sunder v. Union of India, : AIR 2001 SC3516 that all the components of the compensation shall attract interest. Consequently, the solatium shall also attract interest. The claimant will be entitled to the statutory benefits including solatium on the valuation as fixed by us above and the interest shall be worked out on solatium as well.

Accordingly, L.A.A.No. 1066/98 filed by the State is dismissed and L.A.A.No. 1594/98 filed by the claimant is allowed in part.