

State of Kerala Vs. Choyikutty

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SooperKanoon Citation : sooperkanoon.com/730741

Court : Kerala

Decided On : Dec-20-2002

Reported in : 2003(1)KLT494

Judge : K.A. Mohamed Shafi and; Pius C. Kuriakose, JJ.

Acts : Land Acquisition Act, 1988 - Sections 4(1)

Appeal No. : L.A.A. No. 169 of 2000

Appellant : State of Kerala

Respondent : Choyikutty

Advocate for Def. : P. Sanjay, Adv.

Advocate for Pet/Ap. : Alosyous, Government Pleader

Judgement :

K.A. Mohamed Shafi, J.

1. This appeal is preferred by the State challenging the judgment passed by the Subordinate Judge's Court, Kozhikode in L.A.R. No. 288 of 1996. The lower court tried the above L.A.R. together with L.A.R. Nos. 191, 192 and 193 of 1996 of the same court and disposed of by the common judgment.

2. In L.A.R. No. 288 of 1996 an extent of 0.0356 hectare of land comprised in R.S. No. 40/21 of Elathur Village was acquired for the purpose of Calicut bye-pass road of N.H. 47 as per the Notification dated 31.12.1993 issued under Section 4(1) of the Land Acquisition Act. By award dated 31.10.1995, the Land Acquisition Officer awarded land value at the rate of Rs. 4,600/- per cent. Dissatisfied with the compensation awarded by the Land Acquisition Officer, the claimants sought reference of their claim for enhanced compensation under Section 18 of the Land Acquisition Act and accordingly the above L.A.R. was registered before the lower court. The reference court tried the above L.A.R. along with L.A.R. Nos. 191, 192 and 193 of 1996 and by the common judgment dated 30.6.1999 enhanced the land value at the rate of Rs. 18,000/- per cent. Hence the State has preferred this appeal contending that the enhancement of compensation awarded by the lower court is exorbitant.

3. The lower court after considering Exts. A1 to A5, Ext. C1 commission report and the evidence of RW. 1 found that land value in this case can be enhanced to Rs. 18,000/- per cent. The State has not adduced any contra evidence before the lower court. The lower court has accepted Ext. A5 judgment in L.A.R. Nos. 277 and 278 of 1996 of the same court to arrive at the conclusion that Rs. 18,000/- per cent will be the adequate market value for the property acquired in this case.

4. On going through the evidence on record, we find that the enhancement of compensation awarded by the lower court is reasonable in this case. Therefore, we find no ground to interfere with the judgment passed by the lower court enhancing compensation.

5. The State has raised another contention that the lower court is wrong in awarding 12% additional market value from 7.10.1992 since the date of the Notification issued under Section 4(1) of the Land Acquisition Act was 31.12.1993 and as such the claimant is entitled to get additional market value only from 31.12.1993 to 30.10.1995.

6. Section 23(1-A) of the Land Acquisition Act provides as follows:

'In addition to the market value of the land as above provided, the court shall in every case award and amount calculated at the rate of 12% per annum on such market value for the period commencing on and from the date of the publication of the notification under Section 4(1) in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.

Explanation. - In computing the period referred to in this sub-section, any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any court shall be excluded.'

Therefore, it is clear from the above provisions of Section 23(1-A) of the Land Acquisition Act that the additional amount at the rate of 12% per annum on the market value of the property calculated should be paid for the period commencing on and from the date of publication of the Notification under Sub-section (1) of Section 4 of the Land Acquisition Act in respect of the land till the date of the award by the Collector or the date of taking possession of the land whichever is earlier.

7. Section 4 of the Land Acquisition Act reads as follows:

'4. Publication of preliminary notification and powers of officers thereupon.-
(1) Whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose or for a company, a notification to that effect shall be published in the Official Gazette and in two daily newspapers circulating in that locality of which at least one shall be in the regional language and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the notification.

(2) Thereupon it shall be lawful for any officer, either generally or specially authorised by such Government in this behalf, and for his servants and workmen,-

to enter upon and survey and take levels of any land in such locality;

to dig or bore into the sub-soil;

to do all other acts necessary to ascertain whether the land is adapted for such purpose;

to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon;

to mark such levels, boundaries and line by placing marks and cutting trenches; and,

where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle: provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so.'

Sub-section (1) of Section 4 contemplates the publication of the Notification in the Official Gazette and in two daily newspapers circulating in the locality of which at least one shall be in the regional language and also public notice of the substance of such notification to be given at convenient places in the locality by the Collector.

8. Learned Government Pleader submitted that the date of publication of the Notification as contemplated under Section 4(1) of the Land Acquisition Act should be the date of the public notice of the substance of the notification to be given by the Collector at convenient places in the locality from where the property is sought to be acquired and not the date of publication of the Notification in the Official Gazette and the daily newspapers.

9. No ruling of this Court or Supreme Court directly dealing with the issue as to whether the date of publication of the Notification under Section 4(1) of the Land Acquisition Act in the Official Gazette and in two daily newspapers or the date of public notice of the substance of the notification issued by the Collector at the convenient places in the locality has to be reckoned for awarding the benefits under Section 23(1A) of the Land Acquisition Act is placed before us.

10. In the decision reported in *Narinderjit Singh v. State of U.P.* (AIR 1973 SC 552) the Supreme Court has observed as follows:

'..... It lays down in unequivocal and clear terms that both things have to be simultaneously done under Section 4(1), i.e., a notification has to be published in the Official Gazette that the land is likely to be needed for any public purpose and the Collector has to cause notice to be given of the substance of such notification at convenient places in the locality in which the land is situated.'

11. If the Notification in the Gazette and the public notice of the substance of the Notification by the Collector at the convenient places in the locality are simultaneously issued as laid down by the Supreme Court in the above judgment, no difficulty with regard to the date of Notification under Section 4(1) of the Land Acquisition Act will arise.

12. In the decision reported in *Collector (Dist. Magistrate), Allahabad v. Raja Ram* (AIR 1985 SC 1622) the Supreme Court has observed thus:

'A bare perusal of Section 4(1) clearly shows that in order to comply with the statutory requirements therein set out, a notification stating therein the land which is needed or is likely to be needed for a public purpose has to be published in the Official Gazette. The second part of the sub-section provides that the Collector has to cause public notice of the substance of such notification to be given at convenient places in which the land proposed to be acquired is situated. Both the conditions are mandatory.'

13. In both the above decisions, the Supreme Court has laid down that Notification issued under Section 4(1) of the Land Acquisition Act in the Official Gazette and in two daily newspapers should be followed by public notice of the substance of such Notification at convenient places in the locality by the District Collector. Therefore, it is clear that the issuance of the notification in the Official Gazette as well as in two daily newspapers is a condition precedent for taking out public notice of the substance of such Notification at the convenient places in the locality.

14. In the decision reported in *Fakirappa Dyappa v. State of Mysore* (1966 (2) Mys. L.J. 126), a Division Bench of the Karnataka High Court has considered the provisions of Section 4(1) of the Land Acquisition Act with reference to the time for preferring objections under Section 5A of the Act and held that the period of 30 days within which objections may be filed to the proposed acquisition of the land is the period from the date of publication of the Notification in the Official Gazette irrespective of the date on which the public notice was caused to be given of the substance of the Notification in the locality by the Land Acquisition Officer. In the above decision, the Division Bench has observed thus:

'The Notification to which this sub-section refers is the Notification to be published under Section 4(1). Section 4(a) speaks of a Notification in the Gazette and of a public notice which should contain the substance of the Notification. The reference therefore, to the 'thirty days after the issue of the Notification' to which Sub-section (1) of Section 5 A refers is manifestly the period commencing on the date of the Gazette Notification directed by Section 4(1). That period cannot be understood as one commencing on the date of the public notice. The Notification to which the phrase within 30 days after the issue of the Notification in Section 5A(1) refers is clearly the Gazette Notification to which Section 4(1) refers.

We should not overlook the distinction between the Notification which should be published in the Official Gazette under Section 4(1) and the public notice which should be caused to be given in the locality, while one is called a Notification by Section 4(1), the other is called by that section as 'notice'. So, the word 'Notification' in Section 5A(1) is no other than the Gazette Notification and not the public notice. So understood, the period of thirty days within which the objection may be produced to a proposal, is the period which commences on the date of the Notification.'

15. In the decision reported in *Kashmiri Lal v. State of Punjab* (AIR 1984 Punjab & Haryana 87 (FB.)), the Full Bench of the Punjab & Haryana High Court has observed as follows:

'It would thus appear both on principle and on logic that the word 'notification' as employed in Section 4 has been used in its pristine sense of being the formal

declaration, proclamation and publication of an order in the manner prescribed.'

16. In the decision reported in *State of Punjab v. Des Raj Mehta* (Vol. XCIX - (1991-1) PLR 139) a Division Bench of the Punjab and Haryana High Court has observed thus:

'..... We find that the purpose of the publication of the substance of the notification in the locality is not only that the land owners can file objections but it is also to enable and permit the State Government to enter upon the land for the purpose of survey and for taking levels or to dig or bore into the sub-soil etc.'

17. It is clear from the above judgments of the Supreme Court as well as the High Courts of Karnataka and Punjab & Haryana that the publication of the Notification in the Official Gazette and the daily newspapers should be preceded and the same should be followed by issuance of a public notice regarding the substance of the Notification at the convenient places of the locality. Therefore, the starting point of the land acquisition proceedings is the publication of the Notification under Section 4(1) of the Land Acquisition Act in the Official Gazette and 2 daily newspapers. Though public notice of the substance of the Notification at the convenient places in the locality should follow the Notification in the Official Gazette immediately, it cannot be contended that the time of publication should be reckoned from the date of public notice of the substance of the Notification to be given at convenient places in the locality by the Land Acquisition Officer. In view of the clause in Sub-section (1) of Section 4 of the Land Acquisition Act to the effect that the date of such publication and the giving of public notice being hereinafter referred to as the date of publication of the Notification, it cannot be contended that the date of public notice of the substance of the Notification is the date of publication of the Notification as it is clear that the publication of the Notification in the Official Gazette and in two daily newspapers are entirely different and distinct from the causing of public notice of the substance of such Notification to be given at convenient places in the locality. It is not possible to comprehend that the date of publication of the Notification should be reckoned from the date of causing of public notice of the substance of the Notification to be given at the convenient places in the locality by the Land Acquisition Officer. Therefore, the argument

advanced by the learned Government Pleader that the date of publication of the Notification should be treated as the date of causing of the public notice of the substance of the Notification at convenient places in the locality by the Land Acquisition Officer is absolutely unfounded.

18. We find that the date of publication of the Notification should be reckoned as the last date of the publication of the Notification in the Official Gazette and in two daily newspapers as stipulated in the first part of Section 4(1) of the Land Acquisition Act. Even though in the latter part of that sub-section it is stated that the last date of such publication and the giving of public notice being hereinafter referred to as the date of publication of the Notification, issuance of the Notification and public notice of the substance of the Notification cannot be equated. As it is clear that what is contemplated is the publication of the Notification in the Official Gazette and two daily newspapers and not the public notice of the substance of the notification under Section 4(1) of the Land Acquisition Act being the starting point of the land acquisition proceedings giving of public notice cannot be equated with or construed as the publication of the Notification. Therefore, the date of publication of the Notification in the Official Gazette and in two daily newspapers should be reckoned as the publication of the Notification. Hence the date of publication of the Notification in the Official Gazette or in two daily newspapers of the Notification should be considered as the date of Notification as laid down in the latter part of Section 4(1) of the Land Acquisition Act.

19. Thus viewed on the basis of the above finding, the respondents are entitled to the benefit under Section 23(1-A) of the Land Acquisition Act from the date of publication of the Notification, i.e. 7.10.1992 and not from the date of public notice of the substance of the Notification at the convenient places in the locality by the Land Acquisition Officer as contended by the appellant. Hence we find that the award of the benefits under Section 23(1-A) of the Land Acquisition Act from 7.10.1992 to 30.10.1995 is perfectly justified and no interference is called for against that award.

In view of what is stated above, the appeal being devoid of any merit, is dismissed.

