

State of Kerala Vs. Hashim

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Court : Kerala

Decided On : Nov-24-2009

Reported in : 2010(1)KLT95

Judge : Pius C. Kuriakose and; K. Surendra Mohan, JJ.

Appeal No. : L.A.A. No. 1640 of 2008

Appellant : State of Kerala

Respondent : Hashim

Advocate for Def. : T. Reshmi Damodaran,; P.P. Rajeev Laxman,; V.V. Surendra

Advocate for Pet/Ap. : Basant Balaji,; Latha T. Thankappan, Sr. Government Pleaders and;

Disposition : Appeal dismissed

Judgement :

Pius C. Kuriakose, J.

1. All these appeals are preferred by the Government. The cases pertain to acquisition of land in Nagaram Village of Kozhikode City pursuant to Section 4(1) notification published on 26.11.1993. The purpose of the acquisition was straightening of the curve of Muthalakkulam junction and related purposes. LAA.

Nos. 1774/08, 2382/08, 1925/08 and 1640/08 arise out of a common judgment of the reference court in LAR. Nos. 194/2000, 198/2000, 214/2000, 215/2000, 218/2000 and 48/98. LAA. Nos. 397/09 and 266/09 arise out of a common judgment in LAR. Nos. 308/98, 246/98 and 212/2000. The land acquisition officer awarded land value at the rate of Rs. 41,851/- per cent. The reference court in the first instance on the basis of the evidence which came on record re-fixed the land value at Rs. 2 lakhs per cent. The Government preferred appeals and this Court set aside the judgment under appeal and remanded the LAR's to the Reference Court taking the view that one of the judgments which were relied on by the Reference Court was already set aside and remanded to the Reference Court. The impugned judgments have been passed pursuant to the above judgment of remand. After remand, claimants in two cases took out fresh commissions and the claimant in one case produced certified copy of the Jenmom sale deed dated 12.3.1999 executed by one Muhammed Aslam in favour of one Aboobacker reflecting a land value of Rs. 5 lakhs per cent. The advocate commissioners appointed on the basis of the commission applications filed by two of the claimants inspected the properties under acquisition as well as the property covered by the above mentioned document which was marked as Ext. A2 in the common judgment in LAR. Nos. 194/2000, 198/2000, 214/2000, 215/2000, 218/2000 & 48/98. The commissioners reported in very clear terms that having regard the nearness to the important areas and institutions in Calicut city and also in terms of commercial potentiality, the properties under acquisition were superior to the properties covered by Ext.A2. The advocate commissioners recommended for award of land value at the rate of Rs. 5 lakhs per cent to Rs. 6 lakhs per cent for the properties under acquisition. The learned Subordinate Judge did not become inclined to accept the recommendation of the advocate commissioners regarding market value of the property. The court below however, would accept the uncontroverted evidence adduced on behalf of the claimants including the commissioners' reports and hold that the property under acquisition was situated in the most important area of Kozhikode which is undoubtedly the largest city in the whole of Malabar in terms of commerce, industry, transport facilities as well as several other factors including political ones. The court below noticed that not even formal counter evidence was adduced by the Government.

Ultimately, the court below fixed land value at the rate of Rs. 2 lakhs per cent.

2. Extensive submissions were addressed before us by the learned Senior Government Pleaders Sri. Basant Balaji and Smt. Latha T. Thankappan on behalf of the appellant in these appeals. According to them, fixation of market value at the rate of Rs. 2 lakhs per cent is without placing reliance on any document regarding transactions of sale or other transfer in respect of immovable property, The court below having not chosen to place reliance on any of the items of documentary evidence including the commissioners report has fixed the market value of the land under acquisition on guess work which is not lawful.

3. The submissions of the learned Government Pleaders were resisted very forcefully by the learned Counsel for the claimants, viz., Smt. T. Resmi Damodaran and Sri. P.A. Harish. According to them, the property under acquisition was situated on the Muthalakulam Junction which is easily the most important junction in Kozhikode Corporation. Document comparable to the properties were not available. This was why resort was made to Ext.A2. The commissioner on a comparison had reported in clear terms that A2 property is far superior and A2 document is a post notification document. In a given case, post notification document can be relied on especially when there is no evidence to hold that the higher value reflected in the post notification document is not on account of the acquisition in question.

4. We have very anxiously considered the rival submissions addressed at the Bar. This Court became inclined to interfere with the earlier judgment of the Reference Court fixing land value at the rate of Rs. 2 lakhs mainly due to the reasons that such re-fixation was not on the basis of any sale document and on the reason that a court judgment which had been relied on by the Reference Court had been set aside by this Court and remanded to the Reference Court. We notice that the reason for setting aside the court judgment previously relied on by the Reference Court itself was that the said judgment was not on the basis of land value reflected in any relevant sale document. In the instant cases, remand order was passed for enabling the parties to adduce further evidence regarding the market value. Pursuant to remand, commissioners reports C2 and C3 were made available.

Ext.A2 was also produced. The commissioners compared the property covered by Ext.A2 and the property under acquisition and reported that the property under acquisition was far superior to the property covered by A2. No objections were filed by the Government to C2 or C3. We are also convinced as the court below was, that the property under acquisition was far superior to the property covered by Ext.A2 and that the same was in fact among the most valuable and important properties within the area of Kozhikode Corporation which is easily the largest city in the erstwhile Malabar. Determination of market value in land acquisition cases can involve guess work. What is required is only that the guess should be a good one. In order that a guess is good, the same should have some nexus to the evidence available on record. Even if it is assumed that it is on the basis of guess work the learned Subordinate Judge fixed the market value at Rs. 2 lakhs, we are of the view that it is a correct guess that has been made by the learned Subordinate Judge. We notice that at least Ext.A2 was there. Ext.A2 is a document evidencing a genuine transaction of sale in respect of a property situated not far away from the property under acquisition. The property under A2 is far inferior in value and importance to the property under acquisition. A2 was 5 years post notification. The Supreme Court has in G.M. Oil and Natural Gas Corporation Ltd. v. R. Jivanbhai Patel and Anr. 2008 SAR (Civil) 894 ruled that as far as possible the Land Acquisition Court should avoid determination of market value with reference to subsequent/future transactions. However, it is indicated by the Supreme Court in the very same judgment, that if it becomes inevitable, subsequent transactions can be relied on applying greater caution in determining the market value deducting a higher percentage per year than the percentages to be added if pre-notification documents are relied on. The view of the Supreme Court regarding the increase in market value to be given for properties in urban and semi-urban areas is 10% to 15% per annum, and that the same is only 5 to 7.5% per annum in rural areas and the court approved the practice of making additions at that rate when pre-notification documents are relied on. Following the principles laid down by the Supreme Court in the said judgment we are of the view that when placing reliance on a post notification document becomes inevitable it will not be unsafe to make a deduction of 15 to 20% or even more per year from the value reflected in the post notification document in urban areas.

5. We are not unmindful of a recent judgment of another Division Bench of this Court in Spl. Tahsildar (LA) v. Muraleekrishnan 2009 (4) KIT 320 : ELR 2009 (4) Ker. 216 to which one of us (PCK, J.) is a member. Under that judgment this Court disapproved the action of the learned Subordinate Judge who had relied on post notification document executed 30 years subsequent to the date of the Section 4(1) notification in that case for fixing the market value of the land that was acquired therein. But the facts in the present case are different. Here Ext.A2 is executed only 5 years subsequent to the relevant Section 4(1) notification. It is not even suggested in evidence by the Government that the higher value reflected in Ext. A2 is the result of the present acquisition. It is in evidence that the property covered by Ext.A2 is far inferior to the property under acquisition which is situated on one of the most important areas in the city. Ext. A2 in this particular case can be relied on and deductions at the rate of 20% per year can be made and market value calculated in that manner will come to Rs. 2,50,000/-. The rate granted under the impugned judgment is only Rs. 2 lakhs and we have no hesitation to approve that rate.

The upshot of the above discussion is that the appeals fail and will stand dismissed, but in the circumstances without any order as to costs.

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