

(2012) 03 KL CK 0205

High Court Of Kerala

Case No: LA. App. No. 346 of 2011

R. Ayyanadar Karthik,
Bhavadharrini, 417 Old
No. 8, Kamaraj Road
Sivakasi, Tamilnadu
and Others

APPELLANT

Vs

State of Kerala and
Designated
Respondent, Registrar,
Kannur University

RESPONDENT

Date of Decision: March 8, 2012

Acts Referred:

Land Acquisition Act, 1894 – Section 23(1A), 23(2), 28, 4(1)

Citation: (2012) 03 KL CK 0205

Hon'ble Judges: Pius C. Kuriakose, J; A.V. Ramakrishna Pillai, J

Bench: Division Bench

Advocate: J. Harikumar, Sri. V. Ramkumar Nambiar, for the Appellant; P.K. Abubackar, SC, Kannur Univeraity for R, R2 and Sri. T.R. Rajesh, Government Pleader for R1, for the Respondent

Judgement

Pius C. Kuriakose, J.

The claimants are the appellants. Their properties in Dharmadam Village were acquired pursuant to Section 4(1)

Notification published on 9-2-2004. The properties were garden lands and the Land Acquisition Officer would fix land value at the rate of Rs.

13,997/- per cent on the basis of the basis document. Before the Reference Court the claimants relied on Exts. A1 to A3 documents. Even though

these three documents were produced, it was on Ext. A2 that greater reliance was placed by the claimants. Ext. A2 was a document dated 7-12-

1998 - a sale deed executed in favour of Dharmadam Co-operative Bank. A2 is related to 10 cents of land in the same Village and same Deshom.

A2 reflected the land value of Rs. 35,550/- per cent. The learned Subordinate Judge discarded Ext. A2 from consideration for the reason that the

Advocate Commissioner who had conducted a local inspection had not made a comparison of the property under acquisition and the property

covered by Ext. A2. Ultimately what the learned Subordinate Judge did was to rely on the basis document itself and to give additions for passage

of time and to re-fix market value at Rs. 23,500/- per cent. In this appeal it is urged that the market value re-determined by the Reference Court is

quite inadequate. It is urged that the learned Subordinate Judge erred seriously in not placing reliance on the various documents produced by the

appellants, particularly Ext. A2. We have heard the submissions of Sri. J. Harikumar, learned counsel for the appellant. Mr. Harikumar drew our

attention to Ext. A2. He submitted that A2 property was in the very same Village. The distance between A2 property and the property under

acquisition was only 500 metres. He submitted that the nearness of A2 property to Cherakuni town which is highlighted by the learned Subordinate

Judge in the impugned judgment is not a very significant thing. In this context he relied on the oral evidence given by RW-1, the Village Officer

which is to the effect that though called town, Cherakuni is a rural area with some 20 or 25 buildings only. The value reflected in A2 should have

been taken to be the value of the land under acquisition as on the date of A2. Placing reliance on the judgment of the Supreme Court in General

Manager, Oil and Natural Gas Corporation Ltd. v. R. Jivanbhai Patel & another, (2008 SAR (Civil) 894) Mr. Harikumar submitted that the area

can be treated as a semi urban area and hence there is every justification for giving additions every year at the rate of 10%. When additions at the

rate of 10% are given for the period of 5 years and 8 months which passed between the date of A2 and the date of promulgation of the Section

4(1) Notification, the value of the land under acquisition will have to be re-fixed roughly at 58% above, i.e., at Rs. 56,169/-. Counsel submitted

that though there is every justification for re-fixing market value of the land under acquisition at the above rate it will suffice if this Court re-fixes

value of the land under acquisition in this case at Rs. 40,000/- as the appellants have limited their claim for land value at Rs. 40,000/- per cent.

2. All the submissions of Sri. Harikumar were stiffly opposed by Mr. T.R.Rajesh, Government Pleader. According to Mr. Rajesh, the value

presently fixed by the learned Subordinate Judge is quite reasonable and there is no warrant for giving any increase. Even though the name of the

standing counsel for the requisitioning authority was shown in the cause list, he has not turned up before us to resist the submissions of Mr.

Harikumar. We have given our anxious consideration to the rival submissions addressed before us. We are in agreement with Mr. Harikumar in his

submission that A2 is not a document liable to be discarded completely from the reckoning. Ext. A2 was in the same Village and same Desom.

The distance between the acquired property and A2 property was only 500 metres. We don't think that because of the nearness to what the

learned Subordinate Judge referred to as Cherakuni town, A2 property can claim much superiority over the property under acquisition. But we

notice another aspect of the matter. A2 property was purchased by the Dharmadam Co-operative Bank for constructing their headquarters

building. It is not difficult to gather that the bank was keen on acquiring a small plot within the area of its operation for accommodating its

headquarters. We have every reason to believe that the Bank has paid a little higher than the market value for acquiring an ideal plot for

accommodating its headquarters within the territorial limits of the bank. We find that the bank paid 20% more than the normal market value as a

fancy price. We note that the property under acquisition was a fairly large extent. It is trite by various decisions of the Supreme Court such as Land

Acquisition Officer and Sub-Collector, Gadwal Vs. Smt. Sreelatha Bhoopal and another, ,
Gafar and Others Vs. Moradabad Development

Authority and Another, , and State of Jammu & Kashmir Vs. Mohammad Mateen Wani
and Others, that when large extents are acquired it is not

proper to award the market value as reflected in sales pertaining to small extents and
ideally a cut ranging between 10% to 30% can be deducted

depending on the largeness of the extent. We feel that in the instant case it will suffice if a
cut of 10% is made on account of the largeness of the

extent. Now the question to be decided is as to what could be the correct market value of
the property covered by Ext. A2. A2 is on the date of

Section 4(1) Notification. Making additions per year at a rate above 7%, the value will
come to Rs. 49,770/-. Making a cut of 20% due to the

circumstances under which the vendee under Ext. A2 purchased A2 property, the value
of A2 property will come to Rs. 39,860/-. Making a

further cut for the largeness of the area in question, the value will come to Rs. 35,834/-
which we round off to Rs. 36,000/- per cent. We allow this

appeal and re-fix market value of land under acquisition at Rs. 36,000/- per cent. The
appellants will be entitled for all statutory benefits admissible

u/s 23(2), 23(1A) and Section 28 of the Land Acquisition Act. The parties are directed to
suffer their respective costs.