State of Kerala Vs Ramachandran Nair and Others

Court: High Court Of Kerala

Date of Decision: March 27, 1996

Acts Referred: Kerala Land Acquisition Act, 1961 â€" Section 19, 19(1), 20
Land Acquisition Act, 1894 â€" Section 11, 17, 17(3A), 18, 23(1A)

Hon'ble Judges: T. Ramachandran, J; K.K. Usha, J

Bench: Division Bench

Advocate: A.A. Mohammed Nazir, Government Pleader, for the Appellant; P. Sukumaran Nair and G. Unnikrishnan for Respondent No, 1, for the Respondent

Judgement

K.K. Usha, J.
State of Kerala is the Appellant. Challenge is against the judgment of Sub Court, Trivandrum in L.A.R. No. 215/82. 71.74

ares (1 acre 77 cents) in Pallichal Village. Neyyattinkara Taluk was pcouired from the Respondents for Defence Department. Notification u/s 3(1)

of the Land Acquisition Act was issued on 11th October 1977. Award was passed on 16th, September 1980 and possession was taken on 25th

Octomber 1980 Land Acquisition Officer granted land value at the rate of Rs. 370 per are (Rs. 150 per cent) while the claim was for Rs. 1,000

per cent. Being not satisfied with the award the claimant sought reference. The reference Court in L.A.R. No. 215/82 granted enhancement and

fixed the land value at the rate of Rs. 2161 per are (Rs. 875 per cent). The Appellant contends that the enhancement granted by the reference

Court is totally unjustified.

2. There is a cross appeal filed by the Respondent/claimant. He claims statutory benefit as per the amended provisions contained u/s 23(1A) and

Section 28 of the Land Acquisition Act, 1894.

3. Before examining the contentions raised by the Appellant and Respondent/claimant on merits of the case we would consider certain legal

objections raised by the Respondent, which would go to the root of appreciation of evidence in this case. Learned Counsel appearing on behalf of

the Respondent submitted that the Appellant cannot be permitted to rely on the notes on award etc., in this case so long as it has not been marked

at the time of examination of R.W. 1 before the reference Court. According to the learned Counsel, documents forwarded along with the reference

statement by the District Collector to the Court are not to be treated automatically as evidence in the case unless they are proved in accordance

with the provisions of the Evidence Act. It is further pointed out that in this case even the reference statement is not in accordance with law. Further

objection is against reliance made by the Appellant on the basis of document which was marked as Ext. R-2 through R.W. 1 without examining the

vendor or vendee of the document.

4. Provisions regarding Collector''s reference statement to the Court as contained in Section 19 of the Land Acquisition Act, 1894 read as follows:

19. Collector''s statement to the Court.-(1) In making the reference, the Collector shall state for the information of the Court, in writing under his

hand,-

(a) the situation and extent of the land, with particulars of any trees, buildings or standing crops thereon;

(b) the names of the persons whom he has reason to think interested in such land;

(c) the amount awarded for damages and paid or tendered under Sections 5 and 17, or either of them, and the amount of compensation awarded

u/s 11;

[(cc) the amount paid or deposited under Sub-section (3-A) of Section 17; and]

(d) if the objection be to the amount of the compensation, the grounds on which the amount of compensation was determined.

(2) To the said statement shall be attached a schedule giving the particulars of the notices served upon, and of the statements in writing made or

delivered by, the parties interested respectively.

Clause (cc) was added by amendment in the year 1984. Kerala Land Acquisition Act, 1961 contained similar provisions except Clause (cc). We

find merit in the contention of the learned Counsel appearing on behalf of the Respondent that the statement of reference made by the District

Collector in this case to the Sub Judge, Trivandrum does not satisfy the requirement of Section 19. The reference statement in this case is in the

form of a letter, which reads as follows:

I am forwarding herewith the case records in respect of L.A.C. No. 25/80 duly listed with the statement of particulars for adjudication u/s 20 of

the K.L.A. Act.

This case relates to the acquisition of 71.14 ares of land in Sy. No. 237/1A/38-1 of Pallichal Village in Neyyattinkara Taluk for the Defence

Department. The award in this case has been passed on 16th September 1980 as item No. 10 of A.S. No. 3/80-81. The land has been taken

possession and handed over to the Military Authorities on 25th October 1980. An amount of Hs. 47,162.88 has been awarded to the parties as

L.A. compensation. The amount of compensation has been paid under protest and the individual has filed reference application on 3rd November

1980.

Yours faithfully,

(Sd.)

Special Tahsildar.

List of documents in L.A.C. 25/80:

1. Mahazar

2. Sketch

3. 9(3) notice

4. Claim statement

5. 5. D.V.S.

6. Award

7. 12(2) notice

8. Reference application.

We have no hesitation to observe that the above letter will not satisfy the requirement of Section 19 for reference statement. Similar view had been

taken by a Division Bench of this Court in State of Kerala Vs. Mariamma Abraham and Another, . The learned Government Pleader submitted

that even though the reference is not strictly in the form in which it should be as per the provisions contained u/s 19(1), since all the relevant

materials are available under the covering letter and the documents enclosed therein it should be taken as substantial compliance and no separate

statement is necessary. It is seen that an objection was taken in the statement filed by the Respondent in the reference Court that the reference was

not maintainable and that it was not in accordance with law. The fact that such a contention is raised is seen from the iudgment also. The objection

was not further developed nor any argument seen addressed on that ground. Both sides therefore proceeded to contest the matter on merits and if

we are now to hold that the reference was not proper it will not certainly be in the interest of the Respondent/claimant. The Appellant has not

raised such an objection before us. Under these circumstances, we do not propose to interfere with the judgment of Court below on the ground

that there was no proper reference. But we take this opportunity to alert District Collectors to take more care while drawing up reference

statement and to follow the requirements contained in Section 19(1) of the Land Acquisition Act. If the statement of reference is not in accordance

with Section 19(1), it is open to the office of the subordinate Courts to return the same on the ground that the reference statement is not in

accordance with law.

5. The next objection raised by the learned Counsel for the Respondent is that no reliance could be made on the notes on award in this case as it

has not been proved or marked through the Land Acquisition Officer. The learned Counsel brought to our notice a judgment of the Supreme Court

in Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another, , where reference is made to the following factors which are

relevant while considering a reference, it reads as follows:

A reference u/s 18 of the Land Acquisition Act is not an appeal against the award and the Court cannot take into account the material relied upon

by the Land Acquisition Officer in his award unless the same material is produced and proved before the Court.

The Court has to treat the reference as an original proceeding before it and determine the market value afresh on the basis of the material produced

before it.

In this case except the basic document and the group sketch no other document which is part of the acquisition proceeding on which reliance was

made by the awarding officer to fix the land value has been produced before the reference Court. Therefore the Respondent No. 1 was fully

justified in contending that the notes on award cannot be looked into by this Court in support of the contentions raised by the Appellant.

6. Learned Counsel appearing on behalf of the Respondent claimant further contended that the Appellant cannot be allowed to rely on the basic

document which is produced as Ext. R-2, so long as neither the vendor nor the vendee of the document was examined to prove the same. In

support of the above contention he relied on the following decisions of the Supreme Court: The Collector, Raigarh Vs. Harisingh Thakur and

Another, , Kummari Veeraiah and Others Vs. State of A.P., ; Union of India (UOI) and Others Vs. Sunil Chandra Saha and Another, and Major

Pakhar Singh Atwal and others Vs. State of Pujab and others, . He further contended that the decision of the Supreme Court in P. Ram Reddy

and Others Vs. Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad and Others, , relied on by the learned

Government Pleader where a different note is struck has to be treated as a judgment per incuriam.

7. In The Collector, Raigarh Vs. Harisingh Thakur and Another, what was considered by the Court was whether production of a sale statement

made by Revenue Inspector will be evidenced to show the price of comparable sites in question. It1 was held that the sale statement by itself

without examining either the vendors or the vendees or the persons attesting the sale deeds is not admissible in evidence and cannot be relied upon.

It is a case where the sale deed as such was not produced before the Court when the Land Acquisition Officer was examined in support of the

award. In Kummari Veeraiah and Others Vs. State of A.P., Supreme Court held that in view of the provisions contained u/s 51-A certified copies

of sale deeds are admissible in evidence as secondary evidence. But unless either the vendor or vendee was examined as witness to testify not only

the consideration paid but also their specific knowledge and circumstances in which the sale deed came to be executed, the sale deeds cannot be

relied on to determine market value of the acquired lands. In this case document was sought to be produced by the claimant to support his claim

without examining the vendor or vendee to the document. From para 2 of the above judgment in Union of India (UOI) and Others Vs. Sunil

Chandra Saha and Another, it is not clear whether sale deeds marked by the Land Acquisition Officer were sale deeds which were referred to in

the notes on award and relied on by the awarding officer for drawing of the award. In Major Pakhar Singh Atwal and others Vs. State of Pujab

and others, the claimant who was seeking enhancement of compensation from what has been granted wanted to rely upon sale transactions which

were referred in the award by the Land Acquisition Officer. The Supreme Court held that the claimant cannot be allowed to rely on such sale

transactions unless steps were taken to prove those documents.

8. In P. Ram Reddy and Others Vs. Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad and Others, relied on by the

Government Pleader there is elaborate consideration about the effect of the introduction of Section 51 A of the Land Acquisition Act in paragraph

19 and also the requirement of examining vendor or vendee of the document on the basis of which award is made as follows:

...However, the mere fact that a certified copy of the document is accepted as evidence of the transaction recorded in such document does not

dispense with the need for a party relying upon the certified copies of such documents produced in Court in examining witnesses connected with

documents to establish their genuineness and the truth of their contents. Therefore the certified copies of registered documents, though accepted as

evidence of transactions recorded in such documents, the Court is not bound to act upon the contents of those documents unless persons

connected with such documents give evidence in Court as regards them and such evidence is accepted by the Court as true. But when the L.A.O.

or the Collector has made his award based on the contents of documents, as found in the registers kept under the Registration Act and produces

registration copies of such documents in support of his award in Court, they could be regarded acceptable as evidence by Court given in support

of the award unless it is shown by contra-evidence on behalf of the claimants that such documents could not have been relied upon by the

Collector or L.A.O. in making the award. It would be so for the reason that when the L.A.O. produces in Court registration (certified) copies of

those documents which he had made the basis for determining the market value, that would be only to support his award and not to establish

something independent of the award. If that be so, when such documents are produced on behalf of the L.A.O. in Court, they cannot be rejected

on the ground that the witnesses associated with those documents cannot be examined by the L.A.O., inasmuch as even without producing such

documents he can rely upon the award made by him to show that he had looked into those documents and he had determined the market value on

their basis. Hence, the mere fact that witnesses associated with such certified copies of documents produced as evidence in Court were not

examined on behalf of the L.A.O. will not in any way affect the award of the L.A.O. if he has determined the market value of the acquired land

having perused those documents as found in the registers kept under the Registration Act or their certified copies before determining the market

value of those lands on the basis of such documents.

We find that P. Ram Reddy and Others Vs. Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad and Others, is the

only case where the question whether the vendor or vendee of the basic document has to be examined or by the Land Acquisition Officer in the

Court to support the award has come up for specific consideration. It has been held that even without examining the vendor or vendee the Land

Acquisition Officer can rely on the certified copy of the document to support his award, if he had relied on those documents for making the award.

We are therefore of the view that there is no merit in the contention that P. Ram Reddy and Others Vs. Land Acquisition Officer, Hyderabad

Urban Development Authority, Hyderabad and Others, was decided per incuriam and therefore the dictum laid down therein cannot be relied on.

9. Now coming back to the facts in the case from the evidence of R.W. 1 it is seen that the acquired property was included in category No. 4

which took in slopping and comparatively less fertile land. The reference Court has held that the categorisation of land made by the acquisition

officer for the purpose of fixing the market value of the land is unscientific, illegal, irrational and without any basis. It is not known on what material

the above finding has been entered by the reference Court. In paragraph 5 of the judgment it is observed that Counsel appearing for the claimant

challenged the classification of the lands acquired into five categories and perusing the entire records it can be seen that such classification is

without any basis. Referring to the written statement filed by the claimant before the reference Court, we do not find any contention against

classification of the properties involved in the entire acquisition or inclusion of the property in category No. 4. Only on the basis of the evidence

given by the claimant as P.W. 2 the reference Court should not have come to the conclusion that the entire classification is bad. The observation

that no rational explanation was forthcoming from R.W. 1 regarding the classification of land is also not correct. We cannot therefore agree with

the view of the Court below that the classification of the land into five categories was unsustainable.

10. Before the reference Court reliance was placed by the claimant on Ext. A-l assignment deed dated 18th September 1973 which was proved

through A.W. 1 who was the vendee of the document. The value of the land fixed in the above document was at the rate of Rs. 875 per cent.

A.W. 1 has stated that the property acquired is about one furlong away from his property. A.W. 3 is the owner of the property which is covered

under Ext. A-2 judgment in L.A.R. No. 453/75. He has stated that his property is adjacent to the acquired property and that the acquired

property is more fertile than his property. Apart from referring to the evidence of A.W. 1 and A.W. 3 the Court below has referred to the mahazar

prepared by the Land Acquisition Officer and found that the land acquired has got a road frontage. The Court below refused to look into Ext. R-2

for the reason that it was not proved through the vendor or vendee of the document. On the basis of the evidence of R.W. 1 the Court below then

observed that the acquired property is situated in a very important locality where there are institutions like Victory School, Railway Station,

Hospital, Post Office, Police Station Cinema theatre and market. There is a further statement in the judgment that ""It has also been brought out in

evidence that the land acquired is very fertile rubber plantation"". The Court below then came to the conclusion that the price shown in Ext. A-l

document can be fixed the market value of the acquired land for considering the potential value of the land acquired and importance of the locality

where the acquired land is situated. There is also a finding that the property is located in a residential area.

11. It is contended by the learned Government Pleader that the Court below has enhanced the land value and fixed it at the rate of Ext. A-1

document without any material also. According to him, the evidence in this case would clearly show that the property covered by Ext. A-1 is not a

comparable land at all. On the other hand, the property covered by Ext. R-2 basic document has many similarities with the acquired property

except for the fact that property covered by Ext. R-2 is levelled ground and not slopping as in the case of acquired property and it was more

fertile. He also submitted that on the basis of the objection raised by the Respondent/claimant that no document connected with the acquisition

proceedings which is not separately marked before the reference Court cannot be looked into, it should be taken that the reference Court has

committed a mistake in referring to the mahazar in this case to hold that the property is having road frontage.

12. The oral evidence in this case is that of the claimant as A.W. 2, the vendee of Ext. A-1 as A.W. 1 and the owner of the property covered by

Ext. A-2 judgment as A.W. 3 on the side of the claimant and the Revenue Inspector who assisted the acquisition officer as R.W. 1, on the side of

the Appellant herein.

13. Documents produced are Ext. A-1 sale deed dated 18th September 1973, Ext. A-2 copy of the judgment in L.A.R. No. 453/75 dated 9th

November 1977, Ext. R-1 group sketch and Ext. R-2 dated 1st September 1976 the basic document sale deed No. 2414/76.

14. The reference Court valued the acquired property on the same value as in Ext. A-1 document. The question to be considered is whether in the

nature of the evidence in this case reference Court is justified in granting the same land value as was given in Ext. A-1 to the acquired property.

Ext. A-1 is a sale deed executed four years before the date of notification. A.W. 1 has proved the document. He is the vendee of the land.

Property admeasuring 7 1/2 cents was conveyed for consideration of Rs. 6,500 which worked out as Rs. 875 per cent. A.W. 1 has stated that his

property is near Edakat Junction. Even though he denied the suggestion that the property was acquired with intention of putting up a house thereon,

he later admitted that he had constructed a house thereon. His property is lying by the side of the road viz., Nemom-Marukil road. He has

deposed that his property is one furlong towards the north of the acquired property. No where in his evidence there is a statement that the

property covered by Ext. A-1 is a comparable with the acquired property.

15. Ext. A-2 is a judgment of Principal Sub Judge, Trivandrum in L.A.R. No. 453/75 and L.A.R. No. 462/75. The property covered by Ext. A-2

belonged to A.W. 2. He has deposed that the acquired property is on the nothern side of his property. Apart from a baid statement that the

acquired property was better than his property. No material was available from the evidence of A.W. 3 as to why the acquired property has to be

treated as better property. The cultivation in acquired property is rubber. But in Ext. A-2 property cultivation is different. Of course A.W. 3 states

that his property has no direct road frontage as in the case of acquired property. But it can be seen from Exit. A-2 land value was fixed on the

basis of Anr. judgment. A.W. 2 claimant has stated that his property is by the side of Pamangottu-Mukkunnimala Bangalow Road and it is lying

half a kilometre away from Pavangottu Junction. Even though he states that there is water supply and electricity supply on Pamangottu-

Mukkunnimala road, he has admitted in cross-examination there was no electricity or water connection to his house in the acquired property. He

has also admitted in cross-examination that his property lies slopping towards the northern side. He had further admitted that a portion of

Mukkunnimala which is near the acquired property would come within the firing range of Military Camp.

16. R.W. 1 has deposed that the acquired property is lying 30 chain away from the basic property covered by Ext. R-2. He has further stated one

chain would be 66 ft. Ext. R-2 is in the same survey number as that of the acquired property. From the recitals m the document it can be seen dial

the property was originally assigned to the vendor by the Government for cultivation of rubber. Ext. R-2 takes in 1 hectare 29.52 ares. The total

consideration paid was Rs. 24,000. Amount per are would come to Rs. 185. It can be seen that the awarding officer has granted enhancement to

the acquired property from the value shown in Ext. R-2. R.W. 1 has also deposed that there is no electric connection or water connection to the

acquired property. A six feet wide lane is going by the side of the acquired property while Ext. R-2 has a road frontage. He has also stated that

near the acquired property there is a military firing range. R.W. 2 has given evidence that Ext. A-1 property is lying 800 metres away from the

acquired property and near a junction. R.W. 1 has stated that the acquired property is not fit for residential purpose, it lies slopping towards south.

Fertility is also on the lower side.

17. In the light of the above evidence we have to consider whether the reference Court was justified in holding that the acquired land is fertile

rubber plantation, the area where acquired land situated is a residential one, that the acquired land is situated in a very important locality where

there are so many public institutions and considering the potential value of the land acquired the importance of the locality where the land is situated

and the price shown in Ext. A-1 document market value of the acquired property can be fixed at Rs. 875 per cent. Property covered by Ext. A-1

is only a very small extent of land viz., 7 1/2 cents, It has been held repeatedly, by the Apex Court that the rate of price shown in a document

covering small extent of land cannot as such be applied when larger extent of land is acquired. In this case the land acquired would come to 1 acre

77 cents. Secondly it has come out in evidence that Ext. A-1 property is near a junction where as the acquired property is away from the road

junction. The distance between the two would come to 800 metres. Property covered by Ext. A-1 has proper road frontage whereas the acquired

property is lying by the side of six feet lane. Ext. A-1 takes in a house site whereas acquired property is a plantation, even though there is a

residential building also in the property. There is no water connection or electric connection to the acquired property. It has the disadvantage of

having a military firing range nearby. These are the minus factors the acquired property is having while compared with Ext. A-1. The only

favourable factor is that Ext. A-1 is a document dated 18th September 1973 whereas the acquisition was under notification dated 11th October

1977. Ext. A-1 is a document which has come into existence four years prior to the acquisition. These aspects are also to be taken into

consideration while dealing with the question whether the value given in Ext. A-1 can as such be granted to the acquired property. On the other

hand, the property covered by Ext. R-2 which is dated 1st September 1976 is almost in all respect similar to the acquired property. As mentioned

earlier, the property covered by Ext. R-2 is in the same survey number as the acquired property. Going by the nature of the cultivation is also the

area acquired it can safely be taken that the acquired property is comparable with property covered by Ext. R-2. The acquired property has the

disadvantage of having military firing range nearby and the land is slopping towards south. Situation of the property and potential value are also the

same for Ext. R-2 and the acquired property. Both the properties were originally assigned by the Government to the respective parties for the

purpose of raising rubber plantation and they were cultivated with rubber. We are therefore inclined to hold that property covered by Ext. R-2 is

more comparable with the acquired property than the property covered by Ext. A-1.

18. Even if Exit. A-1 is taken as the basis, in view of the principles laid down by the Supreme Court in Administrator General of West Bengal v.

Collector, Varanasi. AIR 1988 S.C. 963, the value shown in Ext. A-1 cannot be as such adopted. Ext. A-1 covers a house site property

admeasuring 7Ã¯Â¿Â½cents whereas property acquired is agricultural land measuring 3 acres and 20 cents. Therefore the market price of the acquired

property in 1973 can be taken as Rs. 437 per cent. There is no evidence adduced in this case about the rate of increase of land value in the area

during the period from 1973 t0 1977. Ext. A-2 Judgment in respect of a property acquired in 1973 the land value was fixed at Rs. 1000 per are

(Rs. 405 per cent). At the same time one year before the acquisition in Ext. R-2 which covers comparable agriculture property the valuation is at

Rs. 150 per cent. Even if it is taken that current market price was not reflected in Ext. R-2 we are of the view that the value fixed by the reference

Court for the acquired property at the rate of Rs. 875 per cent is certainly excessive. Taking into consideration the entire aspects we feel Rs. 750

per cent (Rs. 1852.50 per are) would be fair and reasonable market value for the acquired property.

19. Thus an amount of Rs. 125 per cent which would come to Rs- 300.75 per are for 71.74 ares has to be reduced from the land value granted

by the Court below. The contention taken by the claimant in the cross appeal that the Court below has commuted an error in awarding interest at a

uniform rate of 12 per cent is correct. We hold that the claimant is entitled to the benefit of the amended provision contained in Section 28 of the

Land Acquisition Act, 1894. He is entitled to the benefit of Section 23(2) but not for interest on solatium m view of the decision of the Supreme

Court in Yadavrao P. Pathede (Dead by Lrs. etc.) v. State of Maharashtra J.T. 1996 (2) 249. Benefit u/s 23(1A) is also not due to the claimant.

The judgment and decree of the Court below are modified as above. The appeal and cross appeal stand partly allowed without any order for

costs.

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