

A MURALI ALIAS DHANANJAYAN

v.

STATE OF KERALA

(Civil Appeal No. 138 of 2012)

B MARCH 2, 2021

[INDU MALHOTRA AND AJAY RASTOGI, JJ.]

- Land Acquisition Act, 1894 – s.28(A) and s.4(1) – Re-determination of compensation in accordance with enhanced compensation awarded to other land owners when lands acquired under a common Notification – Lands owned by appellant, his father and his brother, which were situated in the same survey number, acquired under a common Notification issued u/s.4(1) in the year 1981 – Award of Land Acquisition Officer was contemporaneously challenged by Appellant, his father and his brother in the year 1997 in separate Reference petitions – In Reference petitions filed by appellant's father and brother, the Reference Court enhanced the compensation to Rs. 8,500/- per Are – In case of appellant however, the Reference Court held that his Reference Application was barred by limitation – Relying upon s.28(A), claim of appellant for re-determination of compensation in accordance with enhanced compensation awarded to his father and brother – Held: The Reference Court did not advert to earlier judgments passed by the same Court in Reference Applications filed by father and brother of Appellant, wherein a uniform rate of Rs. 8,500 per Are was granted – The Reference Court did not hold that delay in filing Reference Petitions in the case of father and brother of Appellant was a ground to deny them relief – Land belonging to Appellant is similarly situated in the same Survey – No reason why compensation awarded in Reference Applications filed by father and brother of Appellant is not granted to Appellant @ Rs.8,500 per Are for land which was acquired under the same Notification.*

G **Allowing the appeal, the Court**

HELD: The Reference Court has not even adverted to the earlier judgments passed by the same Court in L.A.R. No. 25/1997 filed by the father, and L.A.R. No. 22/97 filed by the brother of the Appellant, wherein a uniform rate of Rs. 8,500 per Are was granted.

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The Reference Court did not hold that the delay in filing the Reference Petitions in the case of the father and the brother of the Appellant was a ground to deny them relief. The land belonging to the Appellant is similarly situated in the same Survey No. 166. There is no reason why the compensation awarded in L.A.R. No. 22/97 and L.A.R. No. 25/97 is not granted to the present Appellant @ Rs.8,500 per Are for land which has been acquired under the same Notification dated 11.05.1981. It is considered appropriate to grant compensation to the Appellant @ Rs.8,500 per Are for the land owned by him. The Appellant is entitled to Solatium @ 30% of the amount awarded, and other benefits under Section 23(1A) and Section 28 of the Land Acquisition Act, 1894, as well as half of the costs incurred in the proceedings. Appellant is further entitled to Interest at the same rate as awarded to the claimants in L.A.R. No. 22/97 and L.A.R. No. 25/97 filed at the instance of the father and brother of the appellant. [Paras 15, 16][170-A-E]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 138 of 2012 D

From the Judgment and Order dated 06.11.2008 of the High Court of Kerala at Ernakulam in W.P.(C).NO.29939 of 2008(L)..

Abhilash MR, Nishe Rajen Shonker, Mohammed Sadique, Ms. Anu K. Joy, Alim Anvar, Advs. for the appellant. E

C. N. Sreekumar, Sr. Adv., G. Prakash, Advs. for the respondent

The Judgment of the Court was delivered by

INDU MALHOTRA, J.

1. The present Civil Appeal pertains to an area of 30.1 Ares of land comprising of 28.89 Ares of wet land and 1.21 Ares of dry land situated in Survey No. 166/5-5 in Cherthala North Village, Kerala owned by the Appellant, which was acquired vide Notification issued under Section 4(1) of the Land Acquisition Act, 1894 on 11.05.1981. The land was acquired for the public purpose of construction of the Ernakulam-Alappuzha Kayanukulam BG railway line. F

2. The land of the father of the Appellant comprised in Survey No. 166/9-A, as also the land of his brother viz. Sugandhan Sanu comprised in Survey No. 166/1A-4 were acquired by the same Notification. G

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A 3. Possession of the lands was taken on 09.11.1981. The Land Acquisition Officer vide Award dated 05.04.1982 determined the compensation of these lands at Rs. 454 per Are for wet land, and Rs.2,137 per Are for dry land.

B On 29.04.1982, the Appellant-landowner was paid an amount of Rs.18,764.30 towards compensation.

C 4. The Appellant herein filed Reference Petition bearing L.A.R. No. 23/97 before the Court of Subordinate Judge, Cherthala. Similar Reference Petitions were filed by the father of the Appellant being L.A.R. No. 25/97, and the brother of the Appellant being L.A.R. No. 22/97 before the Subordinate Court.

D 5. The Reference Court vide judgment and order dated 14.03.2001 passed in L.A.R. No. 25/97 filed by the Appellant's father, enhanced the compensation to Rs.8,500 per Are.

E 6. Subsequently, in Reference Petition being L.A.R. No. 22/97 filed by the brother-Sugadhan Sanu, the Court of Subordinate Judge, Cherthala placing reliance on the judgment dated 14.03.2001 passed in the father's case, enhanced the compensation for the land of the brother comprising of 22.80 Ares to Rs.8,500 per Are, after deducting the amount which had already been paid. The Subordinate Court granted Solatium @ 30% of the amount awarded, and other benefits under Section 23(1A) and Section 28 of the Land Acquisition Act, 1894, as well as half of the costs incurred in the proceedings. The applicant was also granted Interest @ 12% p.a. for the period commencing from 11.05.1981 till 09.11.1981, and Interest @ 9% p.a. for a period of one year from 10.11.1981 to 09.11.1982, and thereafter at the rate of 15% p.a. till the date of realisation of the aggregate amount.

F 7. In the case of the Appellant, the Reference Petition being L.A.R. No. 23/97 filed on his behalf was taken up for hearing on 02.08.2001. However, since no lawyer represented him before the Court, it was recorded that the amount fixed by the Land Acquisition Officer was G adequate, and the Reference was answered accordingly.

H 8. Aggrieved by the Order dated 02.08.2001, the Appellant filed I.A. No. 263/2004 seeking restoration of his Reference Petition on the ground that his counsel could not appear on the date of hearing.

I The Reference Court dismissed the Application for restoration of the Reference Petition.

9. The Appellant filed W.P. (C) No. 10902/2006 before the Kerala High Court to challenge the Order of the Reference Court dated 02.08.2001, and the Order dismissing the Application for Restoration. The High Court vide Order dated 17.10.2007 set aside the Order of the Reference Court dated 02.08.2001, and restored L.A.R. No. 23/97 to the file of the Court of the Subordinate Judge, Cherthala. The learned Subordinate Judge was directed to decide the matter after giving an opportunity of hearing and liberty to adduce evidence to both the claimant and the Government, and decide it in accordance with law.

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10. On remand, the Reference Court vide order dated 28.03.2008 once again held that the Reference Application was barred by limitation, since it was filed beyond six months from the date of the knowledge of the Collector's Award. In these circumstances, the Court held that it was not bound to answer the Reference, and declined to answer the same.

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11. Aggrieved by the aforesaid Judgment, the present Appellant then filed W.P. (C) No. 29939/2008 before the High Court of Kerala. The High Court vide the impugned order held that in the absence of any convincing explanation from the side of the Appellant regarding the inordinate delay of 15 years, it would not be proper to interfere with the reasoned order passed by the Subordinate Judge.

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12. Aggrieved by the said judgment, the Appellant has filed the present Appeal before this Court.

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We have heard the learned counsel for the parties and perused the impugned judgment and the documents placed on record.

13. From a perusal of the records, we find that the Reference Court had awarded an amount of Rs. 8,500 per Are for the lands owned by the father and brother of the Appellant under the same Notification. The land owned by all three parties is comprised in the same Survey No. 166.

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14. The Reference Petitions in all the three cases were filed by the Appellant, his father, and his brother contemporaneously in the year 1997, to challenge the Award passed by the Land Acquisition Officer.

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The Appellant relies on Section 28(A) of the Land Acquisition Act, 1894 to submit that the Act conferred a right on persons interested whose lands were acquired by a common Notification, to claim re-

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- A determination of the compensation in accordance with the enhanced compensation awarded by the Civil Court to other land owners.
 - 15. We find that the Reference Court has not even adverted to the earlier judgments passed by the same Court in L.A.R. No. 25/1997 filed by the father, and L.A.R. No. 22/97 filed by the brother of the Appellant,
- B wherein a uniform rate of Rs. 8,500 per Are was granted. The Reference Court did not hold that the delay in filing the Reference Petitions in the case of the father and the brother of the Appellant was a ground to deny them relief. The land belonging to the Appellant is similarly situated in the same Survey No. 166.
- C 16. We see no reason why the compensation awarded in L.A.R. No. 22/97 and L.A.R. No. 25/97 is not granted to the present Appellant @ Rs.8,500 per Are for land which has been acquired under the same Notification dated 11.05.1981. We consider it appropriate to grant compensation to the Appellant @ Rs.8,500 per Are for the land owned by him. The Appellant is entitled to Solatium @ 30% of the amount awarded, and other benefits under Section 23(1A) and Section 28 of the Land Acquisition Act, 1894, as well as half of the costs incurred in the proceedings. Appellant is further entitled to Interest at the same rate as awarded to the claimants in L.A.R. No. 22/97 and L.A.R. No. 25/97 filed at the instance of the father and brother of the appellant.
- E 17. In the aforesaid terms, the Appeal is allowed with no orders as to costs. The judgment of the Reference Court as also that of the High Court are set aside.

Pending applications, if any, are disposed of.

Bibhuti Bhushan Bose

Appeal allowed.