

Kerala High Court

Mariyamma George vs State Of Kerala on 23 June, 2009

IN THE HIGH COURT OF KERALA AT ERNAKULAM

LA.App..No. 631 of 2004()

1. MARIYAMMA GEORGE, D/O.ISSAC PAULOSE,
... Petitioner

Vs

1. STATE OF KERALA, REP. BY DISTRICT
... Respondent

For Petitioner :SRI.ABRAHAM MATHEW (VETTOOR)

For Respondent :GOVERNMENT PLEADER

The Hon'ble MR. Justice PIUS C.KURIAKOSE
The Hon'ble MR. Justice P.Q.BARKATH ALI

Dated :23/06/2009

O R D E R

PIUS C. KURIAKOSE & P.Q. BARKATH ALI, JJ.

L.A.A. 631 of 2004

Dated: JUNE 23, 2009

JUDGMENT

Pius C. Kuriakose, J.

The claimant is in appeal being dissatisfied by the refixation of compensation by the reference court. The acquisition was of property in Aymanam village in Kottayam taluk, for the purpose of construction of Kottayam Medical College By-pass Reach - II. The relevant sec.4(1) notification was published on 17.9.1995. The land acquisition officer awarded land value at the rate of Rs.44,460/- per Are. The reference court on the basis of the evidence would grant an enhancement of Rs.26,676/- per Are and re-fix the land value accordingly. The appellant had a claim for enhancement on the value of structures. The said claim was completely disallowed by the reference

court. Though several grounds have been raised in this appeal and Mr. Abraham Mathew, learned counsel for the appellant, addressed arguments on all those grounds, the learned counsel gave thrust in his arguments to the following three points:-

- i. The land acquisition officer as well as the reference court went wrong in including the land under acquisition in category B. The land should have been included in category A itself.
- ii. Towards value of the structures, enhancement could have been granted on the general principle that it is not practical to put up constructions adopting the PWD schedule of rates.
- iii. In view of the commissioner's report, some compensation should have been awarded towards injurious affection for 10 cents of property which remains under the ownership of the appellant after acquisition.

2. All the submissions of the learned counsel were very strongly resisted by Sri Bijoy Chandran, learned Government Pleader, who would support the judgment of the reference court and argue that on the evidence actually available on record, the learned Subordinate Judge could not have granted more. The only evidence regarding the market value is the basis document. What the court below has done is to give 50% enhancement over and above the value reflected in the basis document.

3. We have anxiously considered the submissions and we have gone through the relevant records, particularly the mahazar, notes to award, the commissioner's report and the advocate commissioner's oral evidence. Having re-appreciated the evidence, we feel that there is considerable merit in the submission of the learned counsel for the appellant that the appellant's property should have been categorised by the land acquisition officer and the reference court in category A itself. Accordingly we hold that the appellant's land under acquisition falls within category A.

4. Now coming to the question of re-fixing the market value of the land under acquisition, as already indicated, the only document available is the basis document. Going by the basis document and the impugned judgment, the maximum enhancement which can be granted is enhancement of Rs.1500/- per cent over and above what is presently granted by the reference court under the impugned judgment. Mr. Abraham Mathew, learned counsel for the appellant, submitted that there will be relevant documents like the judgments of the court in other acquisition cases and even sale documents executed during the relevant time revealing a much higher land value. He sought for an order of remand permitting the appellant to produce evidence. In view of our finding that the acquired property falls in category A and not in category B, for determining the correct market value, the issue should be reconsidered by the reference court.

We accordingly set aside the impugned judgment and decree and remand the LAR back to the reference court. Since the matter is going back to the reference court, it is only appropriate that the said court examines the claim of the appellant for additional value towards structure and also towards compensation for injurious affection for the remaining extent of 10 cents. Accordingly the

matter is remanded to the reference court. The reference court will afford opportunity to the appellant to adduce further evidence on all the three points indicated herein above. If the appellant adduces further evidence, opportunity will be given to the Government for adducing counter evidence. The court will complete further enquiry and pass revised judgment in the light of the evidence contained therein, at the earliest, at any rate within six months from today. Refund the court fee paid on the appeal memo to the appellant.

PIUS C. KURIAKOSE, JUDGE P.Q. BARKATH ALI, JUDGE mt/-