

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH

&

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

THURSDAY, THE 31ST MAY 2007 / 10TH JYAISHTA 1929

LA.App.No. 1210 of 2002(T)

LAR.23/2000 of SUB COURT, QUILANDY

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APPELLANT: 2ND RESPONDENT

THE SECRETARY,
PAYYOLY GRAMA PANCHAYAT, P.O. MELADY

BY ADV. SRI.C.VALSALAN
SRI.GHOSH YOHANNAN

RESPONDENTS: CLAIMANT AND 1ST RESPONDENT

1. PANDARACHALIL MOIDU S/O. BAVA,
MELADI AMSOM, DESOM, MELADI P.O.,
KOYILANDY TALUK, KOZHIKODE DISTRICT

2. THE DISTRICT COLLECTOR, KOZHIKODE,
CIVIL STATION, CALICUT.

BY ADV. SRI.V.V.ASOKAN
SMT.S.AMINA

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD
ON 31/05/2007, ALONG WITH L.A.A.No.1306/2002 THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P.No.5103/2002 IN L.A.A.NO.1210/2002

DISMISSED

31-5-2007

SD/- KURIAN JOSEPH, JUDGE

SD/- T.R.RAMACHANDRAN NAIR, JUDGE.

/ TRUE COPY /

KURIAN JOSEPH & T.R.RAMACHANDRAN NAIR,JJ.

**L.A.A.Nos.1210, 1306, 1307 of 2002
and 4 of 2003**

Dated this the 31st day of May, 2007

JUDGMENT

Kurian Joseph,J.

These appeals are at the instance of the State and the requisitioning authority. They arise from a common judgment in L.A.R.Nos.23, 21 and 22 of 2000 on the file of the Subordinate Court, Koyilandy. The acquisition is for the purpose of bus stand-cum-shopping complex in the Payyoli Grama Panchayat. The Section 4(1) notification was issued on 24-10-1997. The Land Acquisition Officer fixed Rs.6919/- as the market value. Dissatisfied, the claimants took up the matter before the reference court.

2. On behalf of the claimants, Exts.A1 and A2 documents were produced and a Commission was also taken. One of the claimants was also examined as AW1. On behalf of the respondents, apart from the land acquisition records, RWs. 1 and 2 were examined, who were the Special Revenue Inspector and Secretary respectively of the Grama Panchayat. The reference court, having regard to the entire facts and circumstances of the case, found that the fixation made by the Land Acquisition Officer was not just and proper and hence made a fixation at the rate of Rs.12,000/- per cent along with the statutory benefits.

3. The question is whether the fixation of the market value by the reference court at the rate of Rs.12,000/- is just, proper and correct.

4. The available evidence would show that there is a court, government offices, school, banks and a good number of shops and commercial buildings near the acquired property. The acquired property is situated near the National Highway. Even according to the State it is only 18 metres off the National Highway. But it has to be seen that large extent of properties including the property covered by these appeals have been acquired for the purpose of construction of the bus-stand and shopping complex. The basis land is situated on the side of a mud road which starts from Payyoli-Perambra road. The reference court noted that the parties to the basis document were not examined. However, the Advocate Commissioner reported that the acquired lands were far more important than the basis land. According to him the importance is double. Ext.A2 showed a sale consideration of Rs.14,52,500/- and the extent is 7.2 Ares. Ext.A1 is only a small extent of around 2 cents. According to the Commissioner Ext.A1 property is at a distance of around 50 metres from the acquired land and Ext.A2 property is situated about 5 Kms away from the acquired

properties. But the sale as per Ext.A2 took place about two years prior to the Section 4(1) notification. Ext.A2 was also a low lying land which was filled up by earth like the acquired property. According to the Commissioner, taking note of the importance of the locality, the acquired property would value at the rate of Rs.17,500/- per cent. The reference court found that the basis land is at the back side of the court building. It was also found that Exts.A1 and A2 and the Commission report cannot be fully relied on for the purpose of fixation of the market value. The Commission report also was not accepted since there was no plan attached to the report. The appellant would content that being a low lying land and since the land was originally used for dumping waste, it cannot fetch the value fixed by the reference court. But the fact remains that the acquisition is for bus-stand-cum-shopping complex, that the property is situated in an important locality, that it is not exactly similar to the basis land and that Ext.A2 which is situated about 5 Kms away from the acquired property has been valued at Rs.81,674/- per cent. It was in such circumstances only the reference court found that the acquired lands are having much more commercial and other importance than the basis land, being situated in Payyoli bazar. The nature of the land also

L.A.A. NO.1210/2002 &
Connected Cases.

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has been noted as garden land. Thus on consideration of all the relevant aspects including the location, the commercial importance and the potential use and also on appreciation of the evidence only the reference court fixed the market value at Rs.12,000/- per cent along with statutory benefits. We are of the view that the fixation made by the reference court is just, proper and reasonable. Thus there is no merit in the appeals; they are accordingly dismissed.

(KURIAN JOSEPH, JUDGE)

(T.R.RAMACHANDRAN NAIR, JUDGE)

ahg.

**KURIAN JOSEPH &
T.R.RAMACHANDRAN NAIR,JJ.**

**L.A.A.Nos.1210, 1306,
1307 of 2002
and 4 of 2003**

JUDGMENT

31st May, 2007