

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN

&

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

WEDNESDAY, THE 30TH DAY OF NOVEMBER 2016/9TH AGRAHAYANA, 1938

LA.App..No. 282 of 2012 ()

AGAINST THE ORDER/JUDGMENT IN LAR 229/2007 of SUB COURT, MAVELIKKARA
DATED 30.11.2011

APPELLANT(S)/CLAIMANT:

VIJAYAMMA
D/O.NANI, PUTHENTHARAYIL, PERINGALA, KAYAMKULAM.

BY ADVS.SRI.GEORGE VARGHESE (PERUMPALLIKUTTIYIL)
SRI.A.R.DILEEP
SMT.NAVA VARGHESE

RESPONDENT(S)/RESPONDENT:

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1. STATE OF KERALA
REPRESENTED BY THE SPECIAL TAHSILDAR (LA) RAILWAYS,
KAYAMKULAM-690502.
 2. SOUTHERN RAILWAY,
REPRESENTED BY ITS DIVISIONAL MANAGER, DIVISIONAL OFFICE,
THIRUVANANTHAPURAM, PIN-695001.

R1 BY SRI PAUL VARGHESE, SR. G.P/.
R2 BY ADV. SRI.DINESH CHERUKAT, SC, RAILWAYS

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON
30-11-2016, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**P.N. Ravindran &
Dama Seshadri Naidu, JJ.**

L.A.A.No.282 of 2012

Dated this the 30th November, 2016

JUDGMENT

P.N. Ravindran, J.

The appellant owned 4.80 Ares of land in Sy. No.116/38-1 of Kayamkulam Village, Karthikappally Taluk, Alappuzha District together with the residential building therein. A portion thereof having an area of 2.74 Ares, including the residential building therein was acquired for the purpose of widening the platform at Kayamkulam Railway Station, as per notification dated 6.10.2004 issued under section 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act' for short). By award passed on 29.3.2006 the Land Acquisition Officer awarded land value at the rate of Rs.53,955/- per Are. He also awarded the sum of Rs.1,51,055/- as compensation for the residential building standing in the acquired land. The appellant was not satisfied with the compensation awarded by the Land Acquisition Officer. She therefore, received the compensation awarded by him under protest and sought a reference of the dispute regarding land value/compensation for the residential building to the competent civil court. She was also aggrieved by the fact that severance compensation had not been granted in respect of the lands remaining

in her possession, having a total area of 2.06 Ares. The Land Acquisition Officer thereupon referred the dispute to the Court of the Subordinate Judge of Mavelikkara where it was taken on file and numbered as L.A.R.No.229 of 2007.

2. Before the reference court, the land owner filed a claim statement claiming land value at the rate of Rs.7,41,000/- per Are. She also contended that she is entitled to receive the sum of Rs.1,00,000/- towards severance compensation and Rs.3,00,000/- for the building, in the place of Rs.1,51,055/- awarded by the Land Acquisition Officer. L.A.R.No.229 of 2007 was tried and disposed of along with L.A.R.Nos.207, 216 and 283 of 2007 which also arose from the same acquisition. Before the reference court, the claimant in L.A.R.No.216 of 2007 (Jaya) was examined as AW1, the expert engineer who valued the buildings/structures standing in the acquired lands was examined as AW2 and the Advocate Commissioner appointed on application filed by the land owners was examined as AW6. The land owners had also examined three other witnesses including AW5 to prove the transactions evidenced by Exts.A1 and A8. The report submitted by the Advocate Commissioner and the mahazars accompanying it were marked as Exts.C1, C1(a), C2, C2(a), C3, C3(a), C4 and C4(a) respectively. The reference court, after considering the

rival contentions and the evidence on record, refixed the land value at the rate of Rs.85,000/- per Are. The reference court also awarded a further sum of Rs.70,000/- towards compensation for the building. The claim for severance compensation was declined. The claimant in L.A.A.No.229 of 2007 has, aggrieved thereby, filed this appeal.

3. We heard Sri George Varghese Perumpallykuttiyil, learned counsel for the appellant, Sri Dinesh Cherukat, learned standing counsel appearing for the Railways and Sri Paul Varghese, learned Senior Government Pleader. We have also gone through the pleadings and the materials on record including the report submitted by the Advocate Commissioner. It is not in dispute that in respect of the lands involved in L.A.R.Nos.207, 216 and 283 of 2007 this court has refixed the land value at the rate of Rs.97,500/- per Are. The lands involved in all the four cases were acquired for the same purpose and are adjoining parcels of land. Necessarily therefore, the appellant will be entitled to have the land value fixed at that rate. Though initially the appellant had claimed enhanced compensation for the building, that claim was given up and the valuation schedule was amended. Presently, in addition to the enhanced land value, the appellant claims only Rs.14,800/- towards expenses for shifting the residence and Rs.1,40,000/- towards severance compensation. Severance

compensation is claimed at 70% of the land value fixed by this court. It has come out in evidence that the claimant was residing in the residential building situate in the acquired lands. It has also come out in evidence that she is presently residing in a temporary shed erected by her in the lands left out after the acquisition, having a total area of 2.06 Ares. Section 23 of the Act stipulates that in determining the amount of compensation to be awarded for the land acquired under the Act, the court shall consider whether in consequence of the acquisition of land by the Collector, the person interested is compelled to change his residence or place of business and in such an event it is stipulated that reasonable expenses, if any, incidental to such change shall be awarded. As stated earlier, the claimant was admittedly residing in the residential building situate in the acquired lands. Presently she is residing in a temporary shed in the adjoining parcel of land. As a result of the acquisition she is compelled to shift her residence. No amount was awarded as compensation in that regard. Having regard to the ground realities, it cannot be said that the claim for award of Rs.14,800/- as compensation for shifting of residence is an exorbitant amount. We accordingly award to the appellant the sum of Rs.14,800/- as compensation for shifting of residence.

4. We shall next consider whether the appellant is entitled to

compensation for injurious affection. It has come out in evidence that after the acquisition, the appellant is left with a parcel of land having a width of 7 metres at its southern end and 5 metres at its northern end. The access to the land left after the acquisition is through the public road lying on the southern boundary of the acquired lands as also the lands left with the appellant after the acquisition. That road also provides access to Kayamkulam Railway Station. Sub-rule (6) of rule 7 of the Kerala Municipality Building Rules, 1999 which applies to the locality where the land is situate, stipulates that when an application to erect or re-erect a building or to make alternation or addition or extension to a building or to make or enlarge any structure situate within 30 metres from any Railway boundary is received, the Secretary of the local authority shall consult the Railway authority concerned before any permission is granted. As stated arier, the appellant was residing in a residential building situate in the acquired lands. If she were to put up another building, even assuming that such building can be constructed in the strip of land without violating the law, the Secretary of Kayamkulam Municipality within whose local limits the rest of the land is situate, will have to consult the Railway authorities before granting such permission. Any person who purchases the property including the land owner on the eastern side will be put to the

necessity of complying with the stipulation contained in sub-rule (6) of rule 7 of the Building Rules. That appears to be the reason why the appellant has not put up a permanent structure in the land left with her after the acquisition and is residing in a temporary shed put up therein. In such circumstances, though access to the lands left with the appellant after the acquisition is not lost, she is disabled from putting the land to convenient use. She cannot, as a result of the stipulations contained in sub-rule (6) of rule 7 of the rules, erect a building without complying with the stipulations contained therein. The stipulation in sub-rule (6) of rule 7 would, in our opinion, reduce the utility and value of the land left with the appellant after such acquisition. In such circumstances, we are of the considered opinion that the appellant has made out a case for award of severance compensation. Having regard to the location, lie and commercial importance of the locality where the acquired lands are situate, we are of the opinion that 70% of the land value fixed by this court, viz. 70% of the sum of Rs.97,500/-, viz. Rs.68,500/- per Are can be taken as the basis for award of severance compensation. Computed on that basis, the compensation payable will be $\text{Rs.68,500/-} \times 2.74 = \text{Rs.1,87,005/-}$. However, in view of the fact that the appellant has limited her claim to Rs.1,40,000/-, we award the said sum only as compensation under that head.

We accordingly allow the appeal in part and in modification of the decree and judgment passed by the reference court, award to the appellant a further sum of Rs.41,100/- as additional land value, Rs.14,800/- towards expenses for shifting of residence and Rs.1,40,000/- as severance compensation aggregating in all to Rs.1,95,900/-, over and above the compensation awarded by the reference court. The appellant will also be entitled to proportionate costs.

(P.N. Ravindran, Judge)

(Dama Seshadri Naidu, Judge)

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