

Daisy and Another

Vs

The State of Kerala

Civil Appeals Nos. 1010-1011 of 1967

(G. K. Mitter, A. N. Reddy JJ)

20.01.1971

JUDGMENT

MITTER, J. -

1. These two appeals by certificate arise out of a common judgment of the Kerala High Court disposing of the claim for enhancement of compensation made by the appellants in respect of three plots of land acquired under the Land Acquisition Act, 1894. The High Court allowed enhancement in respect of two of the plots and the appellants before us claim further enhancement not only in respect of these two plots but also in respect of the other plot in respect of which no enhancement was allowed by the High Court.

2. The facts are as follows. Civil Appeal No. 1010 of 1967 relates to a plot of land numbering 67/1A-1 in Vijayapuram village in Kottayam District measuring 90.742 cents. This was the balance of Ac. 1-00 which remained with the appellant after two earlier acquisitions i.e. one of 7.770 cents and the other of 1.488 cents for construction of a railway line. Civil Appeal No. 1011 of 1967 relates to two plots one measuring 255 cents and numbering 67/1A-2 and 67/2 and the other with an area of 45 cents in No. 67/1A-4.

3. The plot 67/1A-4 abuts the main Kottayam-Kumili Road. Plot 67/1A-1 which lies at some distance north of 67/1A-4 about on a road of such less importance while plots 67/1A-2 and 67/2 have no road frontage. The largest plot 67/1A-2 is practically a hill-side, one side of the plot being 70 ft. higher than the other side and on an average the slope of the land is 1 in 6. This is however not an uncommon feature in the neighbourhood which is hilly with slopping roads and houses built thereon at different levels by the creation of terraces. The appellant in Appeal No. 1010 of 1967 claimed compensation at the rate of Rs. 750/- per cent for the entire plot 67/1A-1. The appellant in the other appeal claimed at the rate of Rs. 750/ per cent in respect of two plots 67/1A-2 which are contiguous and at the rate of Rs. 1,200/- per cent in respect of 45 cents numbering 67/1A-4. The Land Acquisition Collector awarded Rs. 200/- per cent to the appellant in Appeal No. 1011 of 1967 and Rs. 180/- per cent in respect of the larger plot of 255 cents and Rs. 226/- per cent in respect of the plot of 45 cents. The District Court disposed of the applications under Section 18 of the Act by enhancing the rate of compensation to Rs. 325/- per cent with regard to the first plot, Rs. 250/- per cent with regard to the second plot and Rs. 350/- with regard to the third plot. The High Court enhanced the compensation by Rs. 25/- per cent in respect of the first plot, and by Rs. 400/- per cent in the case of the third plot but left unaffected the compensation with regard to the largest plot.

4. Before the High Court the appellants relied on seven documents Exs. P-1 to P-7 as also a judgment of the High Court in A.S. No. 537 of 1961 in respect of land which was contiguous to the

appellants' land. Before us learned Counsel for the appellant sought to rely principally on Ex. P-7 and the judgment in A.S. No. 537 of 1961. P-7 was a judgment of the District Court Kottayam concerning acquisition of a piece of land on the northern side of the Civil Lines Kottayam which is situate quite close to the appellant's lands. In respect of the western portion of the said property the District Judge awarded compensation at the rate of Rs. 1,000/per cent. The High Court refused to be guided by Ex. P-7 observing that no attempt had been made before it to compare the relative importance of the land involved in Ex. P-7 and that in the appeals before it. The High Court further commented that :

"Admittedly, the lands in the vicinity of the Civil Lines vary largely in their relative importance, the western side of the Civil Lines being the busiest part of the town and the eastern side, far less important."

and on this basis held that Ex. P-7 could not afford proper guidance in fixing the compensation for the acquired plots. With regard to judgment in A.S. No. 537 of 1961 adjoining the Civil Lines in the east the High Court took the view that land abutting on K.K. Road must be given the same land value. The High Court was not however prepared to accord the same compensation in respect of the second plot on the ground that it had no road frontage and that it was a "quick slope" with a difference in level of 70 ft. between the two sides and at the time of acquisition only some rubber trees stood on the land with no building on it : accordingly it did not see fit to disturb the awarded land value at Rs. 250/- per cent. With regard to the first piece of land the High Court held that it abutted on a narrow road lying to the north of the Civil Lines and had also a slope between the two sides, that there was no building on the land at the time of acquisition but only some rubber trees. In view of the award in A.S. No. 537 of 1961, the High Court held that enhancement of Rs. 25/- per cent over Rs. 325/- per cent awarded was called for.

5. Ex. P-7 arose out of reference under Section 18 in respect of six contiguous plots in S. No. 67/1 in the said village covering a total area of Ac. 4-44.2 cents. The notification under Section 4 in this case was issued on February 19, 1957 and possession was taken on April 17, 1957 while the notification in the appeals before us was, dated September 29, 1956, possession being taken in October and November, 1956. It is therefore clear that the acquisitions in the two cases took place within a very short space of time. As is to be seen from the map Ex. D-10 PLOT 67/1 was situated quite close to the Civil Lines and was a matter of fact now forms part of the Civil Lines itself. It was surrounded on all sides by road one of them being the major K.K. Road. The District Judge giving (open land) and it was facing the Civil Lines and was suitable as a commercial building site. Considering the evidence before him in some detail, the District Judge found that half of the maidan portion of the property had a potential value at Rs. 1,250/- per cent and the remaining half at Rs. 750/- per cent and in this view he fixed the average market price for the entire maidan at Rs. 1,000/- per cent. It is true that the plot 67/1A-1 has not the same advantage as the six plots in 67/1 covered by Ex. P-7 but it abuts on a road and is not far removed from 67/1. In our it will not be improper to fix the compensation for this plot of land at Rs. 500/- per cent.

6. With regard to the major plot measuring 255 cents we feel that there is no ground for disturbing the basis of compensation of Rs. 250/- per cent already awarded. While it is true that this plot of land is contiguous to the plot 67/1A-1 it must be borne in mind that it has no road frontage and what is more, is a part of hill-side with a slope of 1 in 6. This block of land can only be utilised for erecting houses at a considerable cost of levelling and terracing and cannot be put on a par with plot 67/1A-1.

7. With regard to 67/1A-4 which abuts on the main K.K. Road our view is that it should be compensated for at the same rate as the average rate awarded to plot 67/1. As has been found it is more or less a level plot and abuts on the main K.K. Road. We therefore enhance the rate of compensation with respect to this plot by another Rs. 250/- per cent.

8. In view of the fact that the appellants have succeeded only with regard to two of the minor plots of land they should be awarded half the costs of the appeals. There will be one hearing fee for the two appeals.

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