

TRAVENCORE COCHIN HIGH COURT

K.G. Kunjukrishna Pillai

Vs

State (Travencore Cochin)

A.S. No.233 and 396 of 1122

(Sankaran and Gangadhara Menon, JJ.)

03.06.1952

JUDGMENT

Sankaran, J.

1. These appeals arise out of two Land Acquisition Cases relating to adjoining plots of land. As per the proceedings in L.A.C. No.35/1119 on the file of the Division Peishkar, Trivandrum, an extent of 1 acre and 62 cents of garden land comprised in Survey No.3383 of Madathuvilagam Pakuthy was acquired by the State. From the adjoining Sy. No.3382 of the same Pakuthy a plot of 29.631 cents of garden land was also acquired by the State as per the proceedings in L.A.C. No.37 of 1119. For both these plots the Land Acquisition Officer awarded compensation at the rate of Rs.30/-per cent besides separate values awarded for the trees and buildings that existed on the plots. The owners of the respective plots claimed a much higher value by way of compensation and accordingly the two cases were referred to the District Court at Trivandrum for decision. L.A. Reference Case No.12/1120 of that Court was the reference from L.A. Case No.35/1119 and L.A. Reference Case No.13/1120 was the reference from L.A. Case No.37/1119. For the plot involved in L.A. Ref. Case No.12/1120 the District Judge awarded compensation at the enhanced rate of Rs.100/- per cent for the southern half and at Rs.75/- per cent for the northern half, as land value. The value of the building in that property was enhanced from Rs.84 to Rs.200. In other respects the valuation made by the Land Acquisition Officer was left undisturbed. In L.A. Ref. Case No.13/1120 also the rate of compensation for the land was raised to Rs.100/- per cent. In fixing this rate, the District Judge was mainly guided by the decision in L.A. Ref. Case No.12/1120. The owners of the two plots still maintain that the compensation awarded to them is highly inadequate and they have accordingly preferred these two appeals; A.S. No.233/1122 being against the decision in L.A. Ref. Case No.12 of 1120 and A.S. No.396/1122 being against the decision in L.A. Ref. Case No.13/1120. In A.S. No.233 of 1122 the appellant has claimed land value for the entire extent of 1 acre and 62 cents comprised in Sy. No.3383 at the uniform rate of Rs.150/- per cent. He has claimed that the value of the building should be enhanced to Rs.300/-. In A.S. No.396/1122 the appellant has claimed land value at Rs.200/-per cent i.e., Rs.100/- per cent more than the amount awarded by the lower Court. He has also claimed Rs.63/- on account of the value of three jack trees and Rs.33/- on account of one tamarind tree. An additional amount of Rs.50/- on account of the well that existed on the plot has

also been claimed by him.

As already stated the plots of land involved in these two appeals are adjoining plots and were acquired at about the same time. Hence it will be advantageous to decide these two appeals together and to fix the amount of compensation to be awarded in each case. However A.S.No.233/22 (which is against L.A. Ref. Case No.12/1120) may be taken up for consideration in the first instance, in view of the fact that the decision in L.A. Ref. Case No.12/1120 has been made the basis of the decision in L.A. Ref. Case No.13/1120 which is the subject-matter of A.S. No.396/1122.

2. A.S. No.233/1122 : Ex.VII is the group sketch prepared by Pw. 4 showing the situation of the property acquired in this case with reference to other properties lying all around it. Ex.A is a similar sketch prepared and produced at the instance of the plaintiff-appellant. So far as the situation of the several items of properties shown in Exts.A and VII is concerned, there is practically no difference between the two sketches. But Ex.A gives greater details in a more prominent manner. This sketch was prepared by P.W.2 who is a retired Surveyor and he has sworn to the correctness of the details shown in it. His evidence has not been challenged on behalf of the State. It is seen from Exts.A and VII that the plot of 1 acre and 62 cents of garden land comprised in Sy. No.3383 lies on the northern side of the Museum and the Public Gardens at Trivandrum. The property covered by S.No.3382 also lies on the northern side of the Public Gardens and just to the east of the plot covered by Sy. No.3383. These two plots were acquired by the State for the purpose of extending the Public Gardens towards the north. Ex.VI is the Mahasar prepared in connection with the acquisition of the plot comprised in Sy. No.3383 and it describes the condition of the property at the time of the acquisition. It is seen from the Mahazar that the property was a garden land at the time of the acquisition and that it was lying as one plot.

3. The first point urged on behalf of the appellant is that the lower Court has seriously erred in making an artificial division of this plot into the southern half and the northern half, and in awarding compensation for the two halves at different rates. The reasons stated by the lower Court in justification of such an arbitrary and imaginary division of the property into halves are that the property lies lengthwise from south to north, that it is gradually sloping from south to north and that the northern end of the property is at a very low level compared with the southern end. These facts by themselves do not justify a division of the property into two for the purpose of valuation, by drawing a line at its middle. The evidence in the case is to the effect that at the time of the acquisition the entire property was lying as attractive building sites. Ex.A shows that from the main road leading to the east from the junction on the eastern side of the Museum there is a narrow road leading to the north and extending up to the acquired property. It has also come out in evidence that this road has sufficient width so as to permit the free passage of motorcars along that road. The advantage of this road was available to the acquired property as a whole. Pw.1 the owner of the property has stated that he had made the necessary arrangements for putting up ten buildings in this property by dividing the property into as many different plots. We see no reason to disbelieve him. Dw.4 the Parvathikar who prepared the Mahasar Ex.VI in connection with the acquisition of this property, has also admitted that he had noticed indications of this property having been divided into several plots. He has further stated that even the northern portion of the property was on a level 20 feet higher than the paddy fields to the north of it. The new public offices to the south of the Museum had already begun to function and naturally the demand for residential buildings in that locality had become very keen. It is clear from all these facts that the property acquired in this case lying at a distance of only a few

furlongs from the new public offices had a value of its own as a building site. (Access to the road touching the southern end of this property could be easily availed of by the several plots into which the property was contemplated to be divided by the owner, by opening a common pathway extending from south to north. Under such circumstances the southern portion of the property could not be said to have much more valuable than the northern portion. Even the Land Acquisition Officer did not feel that the situation of the property justified its being valued at different rates for different portions. He valued the entire property at a uniform rate.

4. The arbitrary manner in which the lower Court divided the property into two for the purpose of valuation has undoubtedly caused considerable prejudice to the owner of the property. Such a method of valuation in land acquisition cases, which is technically known as valuation by belts by artificially dividing the property into belts or plots, is generally discouraged for the obvious reason that it involves a considerable extent of arbitrariness. Even while attempting to fix the value of the property for the purpose of awarding compensation on the basis of the evidence disclosing the price at which other properties in the neighborhood possessing similar advantages were sold at about the time of the acquisition, a certain degree of arbitrariness is inevitable. But care has to be taken to keep the scope of such arbitrariness in the matter of fixing the value of the property to the lowest level possible. That is the reason why the method of valuation by belts, which is bound to be arbitrary and artificial, is generally condemned and discouraged. The risk involved in attempting at such a method of valuation by belts is amply borne out by the circumstances of this particular case where the property is said to be gradually sloping from south to north. On account of such a difference in the level of the property the lower Court has chosen to draw a line at the middle and to divide the property into the southern and northern halves. Apparently there is nothing to justify the drawing of the line at the middle of the property. If the division is to be made on the basis of the difference in the level of the property, any number of lines can be drawn from east to west and the property can be divided into numerous belts because of the gradual lowering of the level of the property as we proceed from south to north. The question as to into how many belts this property has to be divided on the basis of the difference in the level of the property, depends on the whim and fancy of the Court concerned and there is no basis for fixing the depth of each belt. Similarly there is no basis for fixing the price for each belt of land. Necessarily the Court has to arbitrarily fix the price of each of these numerous belts. There can be no doubt that this method of valuation involving so much of arbitrariness will be very unfair and unsafe. There may be cases where the method of valuation by belts could be safely resorted to e.g., a distinct portion of a property acquired may be lying as wet land while the remaining portions may be lying as dry land and there may be evidence showing the price at which wet lands and dry lands in the neighborhood of the property were being sold at about the time of the acquisition. Similarly there may be other distinct features by which one portion of the property could be differentiated from another portion where the property acquired is of considerable extent. In such cases the different portions having clear and distinct features can certainly be treated differently as separate belts and valued accordingly. So far as the property in the present case is concerned, it is clear that any division into belts for the purpose of valuation can be done only in an artificial and arbitrary manner. Any such division has to be eschewed. Accordingly we hold that the entire property acquired in this case has to be valued at a uniform rate.

5. Then there is the question of compensation to be awarded to the owner of the land. Such compensation has to be determined on the basis; of the market value of the land at the time of the

acquisition. By market value of the land is meant the price which the owner of the land could have obtained at the time of the acquisition under a private sale by open negotiation and under normal circumstances. It is said to be the price which a willing vendor might reasonably expect to obtain from a willing purchaser in respect of the particular property. In determining such price the disinclination of the vendor to part with his land and the urgent necessity of the purchaser to buy have both to be disregarded. Neither must be considered as acting under compulsion. The vendor may have a sentimental value for the property, but such sentimental value cannot be accepted as the market value of the property for the purpose of awarding compensation. The usual method by which the market value of the acquired land is determined is by taking into account the prices that have been obtained for other lands in the neighborhood possessing similar qualities and similar advantages, under real and genuine private sales at about the time of the acquisition under consideration. It may be that the land acquired possessed certain special features with reference to its position and potentialities. In the present case, the land was attractive as a house site and there was the possibility of the property being used as such site and several buildings constructed upon it in the near future. In such cases the land is not to be valued merely by reference to the use to which it was being put to at the time of the acquisition, but also by reference to the uses to which it was capable of being put in the near future. The owner of the property is entitled to the increase in the value of the land by reason of its possibilities and potentialities in that direction. The value of the potentiality of the land has to be determined on such materials as are available and without indulging in feats of imagination. Here again the attempt should be to ascertain on the basis of the evidence available the price that a willing vendor might reasonably expect to obtain from a willing purchaser, for the land having such potentialities and possibilities. These principles have been fully explained and discussed by the Judicial Committee of the Privy Council in - '*Narayana Gajapatiraju v. Revenue Divisional Officer, Vizagapatam*'¹, and they are generally accepted and followed in the matter of fixing the amount of compensation to be awarded in land acquisition cases.

6. From the facts already stated it is clear that the property involved in this case has to be issued essentially as attractive house sites. Exts.I to III produced on behalf of the State cannot, therefore, be of any use in fixing the value of this property. Ex.I is a sale deed of the year 1120 for a property lying to the east of the Kanekakkunnu Palace Grounds shown in Exts.A and VII. This property is a paddy land part of which has been converted into a cocoanut garden. This property is far to the interior from the

public roads in the neighbourhood and there is no direct access from this property to any of such roads. Ex.II is another sale deed of the year 1117 for a property lying to the west of the property covered by Ex.I. This is a paddy land lying at a low level and it has no direct access to any public road. The next document Ex.III is also a sale deed of the year 1117 for a paddy land lying some distance away from the property acquired and towards the northwest of it. This property has also no direct access to the road and is lying at a very low level. The properties covered by these three documents do not possess any of the advantages possessed by the property involved in the present case and hence the lower court was right in totally discarding Exs. I to III.

Dw. 4 has stated that the award in L.A. Case No.-514/1116 was made the basis for awarding compensation for the property involved in this case at the rate of Rs.30/- per cent. It is stated that the 2 cents acquired from Sy. No.3382 were valued at Rs.30/- per cent in L.A. Case No.314/1118. The property covered by Sy. No.3382 lies just to the east of the property involved in this case. It is common ground that it was for the purpose of extending the road running to the north from the Museum - Vellayambalam Road and lying between the Museum and the

Kanakakkunnu Palace. The two cents of land were acquired from Sy. No.3382. By such extension the road has come right up to the property involved in this case. This extension was of great advantage to the properties covered by Sy. Nos.3382 and 3383. Pw.1 has stated that it was because of the advantage accruing from such an extension of the road that the owner of the property covered by Sy. No.3382 did not complain of the low amount of compensation awarded at the rate of Rs.30/- per cent for the two cents acquired for extending the road. This version appears to us to be probable and true. It is only natural that the owner of the property covered by Sy. No.3382 was willing to part with the 2 cents out of that property at a low or nominal price in consideration of the fact that he got the advantage of the road being extended right along the front side of his property. It is thus clear that the compensation awarded in L.A. Case No.514/1116 cannot also be relied on as a proper basis for fixing the value of the property involved in this case.

7. The plaintiff relied on Exts.B, C and E in support of his claim for compensation at the rate of Rs.150/- per cent. Ex.B is copy of the judgment in L.A. Ref. Case No.2/1112 of the Trivandrum District Court. That reference related to the acquisition of the properties covered by Sy. Nos.3054 and 3056 and which are marked green and touching the new Public Offices as shown in the sketch Ex.A. These properties were acquired in connection with the construction of the new Public Offices buildings. Ex.B shows that the District Court awarded compensation for the property covered by Sy. No.3054 at Rs.150/- per cent and for the property covered by Sy. No.3056 at Rs.175/- per cent. But as per the decision of the High Court as evidenced by Ex.C, judgment, the value of the property covered by Sy. No.3054 was also enhanced to Rs.175/- per cent. These acquisitions were in the year 1112 while the acquisition in the present case was in the year 1119. On behalf of the appellant-plaintiff it is contended that on account of the location of the several public offices in the new buildings to the south of the Museum and for other reasons, the value of the properties in the neighborhood had gone up considerably by the year 1119 from what it was in the year 1112. No doubt, there is considerable force in this contention. But it has to be pointed out that the properties covered by Sy. Nos.3054 and 3056 are situated much nearer to the Museum-Vellayambalam main road while the property involved in the present case lies more, than two furlongs away from that road. The properties covered by Sy. Nos.3054 and 3056 are situated at a considerably more important part of the City and are nearer to the busier part of the City. Under such circumstances, it is clear that the property involved in this case and the properties covered by Sy. Nos.3054 and 3056 could not be treated as of equal importance and potentialities and that the same value could not be expected to be obtained for the properties at these two different centers. Exts.B and C could at best be taken to afford an indication of the prevailing rates of price of properties in the neighbourhood of the Museum in the year 1112. The next document, Ex.E, is a sale deed of the year 1119. Since it represents a transaction of the year in which the acquisition in this case took place, the evidence furnished by Ex.H is of some importance in this case. Dw. 4 has admitted that the property covered by Ex.E is a narrow strip of land lying on the side of the road leading to the Cliff House from the junction in front of the Palace at Nanthencode. He has also stated that the property covered by Ex.E is at a distance of 4 furlongs to the north-west of the property involved in the present case. In view of the situation of the property covered by Ex.H it is clear that it was very attractive as a building site and was purchased as such. The price paid under this document works out at the rate of Rs.150/- per cent. We think that such an attractive price could not be expected to be obtained for the property involved in this case even on a consideration of its position and potentialities. A substantial margin has necessarily to be allowed out of the rate furnished by Ex.E in ascertaining the

reasonable price to be fixed for the property involved in this case. At the same time we feel that the rate of Rs.100/-per cent awarded by the lower Court is inadequate. It is seen from Exs. B and C that the properties lying to the south of the main road to the south of the Museum fetched a price of Rs.175/- per cent even as early as in the year 1112. This rate must have gone up by the year 1119. Even after allowing a wide margin from such rate, the property involved in this case lying more than two furlongs to the north of the main road must have reasonably fetched a price much more than Rs.100/- per cent in the year 1119 particularly in view of the fact that it had a potential value as an attractive house site after the housing of the several public offices in the new buildings to the south of the Museum. On a consideration of all these facts and circumstances we think that Rs.120/- per cent would be a fair and reasonable rate at which compensation has to be awarded for the property acquired in this case. Accordingly the rate at which the property has to be valued for the purpose of awarding compensation is fixed at Rs.120/- per cent. The appellant will get also 15 per cent by way of solatium on the excess amount now awarded. The total of the excess amount due to the appellant will carry 6 per cent interest from the date of the Notification regarding the acquisition of the property.

8. The appellant has not been able to substantiate his claim for enhanced compensation for the building and the well that existed on the property. On the evidence on record the amount awarded by the lower Court towards the value of the building appears to be reasonable and proper. Accordingly the lower Court's decision regarding the value of the building is left undisturbed.

9. In the result, A.S. No.233/1122 is allowed to the extent indicated in para.7 above and is dismissed in other respects. The parties will get costs in proportion to their success throughout. Interest on costs at 6 per cent.

10. A.S. No.396/1122. The property involved in this case is the property covered by Sy. No.3382 and it lies just to the east of the property covered by Sy. No.3383. It is clear from the situation of these properties that they possessed the same advantages and potentialities. The reasons stated in A.S. No.233/22 for fixing the value of the property covered by Sy. No.3383 for the purpose of awarding compensation, hold good with force in the case of the property covered by Sy. No.3382 also. A copy of the judgment in A.S. No.233/1122 will be appended to and read as part of the judgment in this appeal. For the reasons stated in A.S. No.233/22 we fix the value of the property involved in this appeal also at the rate of Rs.120/- per cent and the amount of compensation will be fixed on that basis. The usual solatium of 15 per cent will also be allowed on the excess amount of compensation now awarded. The total of the excess amount payable in this case also will carry 6 per cent interest from the date of the notification regarding the acquisition of the property. Regarding the claim in this appeal on account of the value of 3 jack trees, one tamarind tree and a well, the evidence on record does not support that claim. Accordingly the claim under these items is disallowed.

11. In the result this appeal is allowed to the extent indicated in para 10 above and dismissed in other respects. The parties will get proportionate costs throughout : Interest on costs 6 per cent. Order accordingly.

Cases Referred.

¹ AIR 1939 PC 98(A)

