IN THE COURT OF THE SUBORDINATE JUDGE, THIRUVALLA

Present:- Sri. C.K. Madhusoodanan., B.Sc., LL.M., Sub Judge.

Wednesday the 30th day of March 2016

10th day of Chaithra 1938 S.E

**L. A. R. NOs.80/2012, 81/2012 & 82/2012**

**L. A. R. NO .80/2012**

**BETWEEN**

K.O. Mathew,
S/o Chacko Oommen,
Kannyakonil
Punnakunnam muri,
Kuttappuzha village. — Claimants
(By Adv. M. Ayubkhan)

**AND:**

1. State of Kerala represented by District Collector, Pathanamthitta.
2. Southern Railway,Ernakulam, represented by Deputy Chief Engineer( Constructions) — Respondents

(R1 by Adv. Sri. Manoj Mathew, AGP,
R2 by Adv. P. Anilkumar)

Reference filed u/s 18 of LA Act.

**LAR 81/2012**

**BETWEEN**

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| 1. Isha Beevi,<br>Chumathra Thazhchayil,<br>Punnakunnam muri,<br>Kuttappuzha village,<br>Thiruvalla Taluk.<br>2, Mumthaz,<br>Chumathra Thazhchayil,<br>Punnakunnam muri,<br>Kuttappuzha village,<br>Thiruvalla Taluk.<br>3. Beena,<br>Chumathra Thazhchayil,<br>Punnakunnam muri,<br>Kuttappuzha village,<br>Thiruvalla Taluk.<br>4. Majeed,<br>Chumathra Thazhchayil,<br>Punnakunnam muri,<br>Kuttappuzha village,<br>Thiruvalla Taluk. | Claimants |

(By Adv. M. Ayubkhan)

**AND**

| | |
|---|---|
| 1. State of Kerala represented by<br>District Collector,<br>Pathanamthitta. | Respondents |

2. Southern Railway,Ernakulam, represented by Deputy Chief Engineer( Constructions) — Respondents

(R1 by Adv. Sri. Manoj Mathew, AGP,
R2 by Adv. P. Anilkumar)

Reference filed u/s 18 of LA Act.

**LAR 82/2012**

**BEWEEN:**

Mariamma Joseph,
Thudaliparambil,
Kavumbhagom,
Kuttappuzha village,
Thiruvalla Taluk, — Claimant

(By Adv.M. Ayubkhan)

**AND**

1. State of Kerala represented by District Collector, Pathanamthitta.
2. Southern Railway,Ernakulam, represented by Deputy Chief Engineer( Constructions) — Respondents

(R1 by Adv. Sri. Manoj Mathew, AGP,
R2 by Adv. P. Anilkumar)

Reference filed u/s 18 of LA Act.

These LA references jointly heard on 26-3-2016 and having stood over for consideration on 30-3-2016, the court delivered the following;

**COMMON JUDGMENT**

All the references are u/s 18 of the Land acquisition Act.

**L. A. R. Nos.80/2012**

2. An extent of 0.0800 Hectors of land in survey No. 67/6 of Kuttappuzha village was acquired for doubling of Chengannoor – Chingavanam railway track. A total compensation of R.11,22,280/-. The date of Section 4 (1) Notification was 18-7-2009 and as per award No. 129/2011 dated 30-9-2011 in land acquisition case No.123/11 and land was taken possession on 29-5-2012. The claimant, being aggrieved by the order, filed application for reference U/s 18 of the Land Acquisition Act.

3. On receipt of notice, the claimant appeared and filed a detailed statement for his claims. 8 Ares of purayidom was acquired but reasonable and fair compensation was not given. The property has a market value of Rs.10,00,000/- per cent. Its eastern boundary is a Municipal road and other main roads are very near to it. Muthoor bypass road is 200 mtrs. away. M.C. road is only 750 mtrs. away and

Thiruvalla - Mallappally main road is 400 mtrs. away. The acquired property is in Municipality and it is 1 Km. away from traffic junction. Thiruvalla town is a thickly populated rich area. Railway station is 800 Mtrs. away from the property. Pushpagiri Medical College Hospital, Thiruvalla private Bus station and Muncipal stadium are at a distance of 750 Mtrs. K.S.R.T.Bus station, many Schools, Colleges and other Educational Institutions , Hospitals, Markets, Temples, Churches, Banks,Government Offices, Municipal Office, Civil station, Factories, Courts, Industries, Lodges, Hotels, Shopping Malls, Petrol Pumps, Vehicle Show Rooms etc. are within a radious of 3 Kms. The basis land is not comparable or similar to the acquired land. Even fair value is fixed as Rs.3,00,000/- by the Government. The property has a market value of Rs.10,00,000/- per cent and the same has to be awarded.

4. The 1st respondent filed written statement stating that adequate compensation was awarded and the basis land is similar or comparable with the acquired land. Therefore there is no need for enhancement of compensation.

5. The 2nd respondent filed written statement stating that the Land Acquisition Officer considered all such aspects and awarded a fair compensation and the party is not entitled for any enhancement.

**L. A. R. Nos.81/2012**

6. An extent of 0.0530 and 0.1040 Hectors of land in survey Nos. 66/1, 67/5 and 81/6 of Kuttappuzha village was acquired for doubling of Chengannoor – Chingavanam railway track. A total compensation of Rs.7,17,756/-. The date of Section 4 (1) Notification was 18-7-2009 and as per award No. 129/2011 dated 30-9-2011 in land acquisition case No.121/11, 124/11 and 125/2011. The land was taken possession on 29-5-2012. The claimant, being aggrieved by the order, filed application for reference U/s 18 of the Land Acquisition Act.

7. On receipt of notice, the claimant appeared and filed a detailed statement claiming Rs.10,00,000/- per cent for dry land (purayidom) and Rs.1,00,000/- per cent for the wet land (paddy land) and Rs.5,00,000/- for reclaimed wet land. The claims and reasons are exactly similar to L.A.R. 80/2012 and therefore repetition is avoid.

8. The1st respondent filed written statement stating that adequate compensation was awarded and the basis land is similar or comparable with the acquired land. Therefore there is no need for enhancement of compensation.

9. The 2nd respondent filed written statement stating that the Land Acquisition Officer considered all such aspects

and awarded a fair compensation and the party is not entitled for any enhancement.

**L. A. R. No.82/2012**

10. An extent of 0.0070 Hectors of land in survey No. 66/9 of Kuttappuzha village was acquired for doubling of Chengannoor - Chingavanam railway track. A total compensation of Rs.1,37,384/-. The date of Section 4 (1) Notification was 18-7-2009 and as per award No. 129/2011 dated 30-9-2011 in land acquisition case No.122/11 and land was taken possession on 29-5-2012. The claimant, being aggrieved by the order, filed application for reference U/s 18 of the Land Acquisition Act.

11. On receipt of notice, the claimant appeared and filed a detailed statement for his claims. 8 Ares of purayidom was acquired but reasonable fair compensation was not given. The property has a market value of Rs.10,00,000/- per cent. Its eastern boundary is a Municipal road and other main roads are very near to it. Muthoor bypass road is 200 mtrs. away. M.C. road is only 750 mtrs. away and Thiruvalla - Mallappally main road is only 400 mtrs. Away. The acquired property is in Municipality and it is only 1 Km. away from traffic junction. Thiruvalla town is a thickly populated area. Railway station is only 800 Mtrs. away from the

property. Pushpagiri Medical College Hospital, Thiruvalla private Bus station and Muncipal stadium only at a distance of 750 Mtrs. K.S.R.T.Bus station, many Schools, Colleges and other Educational Institutions , Hospitals, Markets, Temples, Churches, Banks,Government Offices, Municipal Office, Civil station, Factories, Courts, Industries, Lodges, Hotels, Shopping Malls, Petrol Pumps, Vehicle Show Rooms etc. are within a radious of 3 Kms. The basis land is not comparable or similar to the acquired land. Even fair value is fixed as Rs.3,00,000/- by the Government. The property has a market value of Rs.10,00,000/- per cent and the same has to be awarded.

12. The 1st respondent filed written statement stating that adequate compensation was awarded and the basis land is similar or comparable with the acquired land. Therefore there is no need for enhancement of compensation.

13. The 2$^{nd}$ respondent filed written statement stating that the Land Acquisition Officer considred all such aspects and awarded a fair compensation and the party is not entitled for any enhancement.

14.From the rival contentions following points arise for consideration.

*1. Whether the claimants are entitled to get enhancement in compensation as prayed for?*

*2. Reliefs and Costs?*

15. During trial Aws 1 to 3 were examined and Exts.A1 to A18, C1 and C1(a)to C1(c) marked. On respondent side RW1 was examined and Exts.B1 to B15 marked. Heard both sides.

16. **Point No. 1**:- The following are the evidence in this case. The claimant in L.A.R. 82/2012 was examined as Aw1 and she tendered evidence for and on behalf of parties in L.A.R 81/2012 and L.A.R. 80/2012 also. She filed a detailed chief affidavit making out the locational importance and other potentialities that might fetch a good market value for these acquired properties. Her affidavit is as follows. Property in LAR 82/2012 has Municipal road access. It is in ward – 2 of Thiruvalla Municipality. Important town junctions are at 500 meters or 700 meters away from this property. The property in LAR80/2012 near to property in L.A.R 811/12. it also has tarred road access. The property in LAR 80/2012 is at its western side. There is a motorable road leading to this property, which starts from southern tar road. From these properties the wet land has a market value of Rs.1,00,000/- per cent and reclaimed wet land has Rs.5,00,000/- per cent, and dryland/residential compounds

will get Rs.10,00,000/- as market value. She deposed about the locational importance of the properties as follows. Traco Cable Factory is only 300 metres away. Bus stand, Many Medical Colleges and other educational institutions, Government Offices, flats, Temples, Churches, Banks, Insurance Offices, Lodges, Shopping Malls, Hotels, Jeweleries, Vehicle Showrooms, Markets and Textiles are within a radius of 3 K.ms.. The basic land is a reclaimed paddy field, surrounded by paddy fields. It has no road access. It is not comparable with acquired land. The properties were acquired in irregular shape and remaining property sustained a diminution in value. The demolished boundary wall and other structures were not properly compensated.

17. On respondent side, RW1 examined and he deposed refuting claims of AW1 and stated that adequate compensation was paid.

18. Ext.B1 and B2 are the deeds of basis lands. Ext.B2 has no road access as discernible from its boundaries. Ext.B1 has only a private way leading to it shared by owners of other neighbouring properties also. Rw1 admits that properties involved have road access and Ext.C1 commission report confirmed the same. Therefore it is not just to take Ext.B1 and B2 to determine market value of the acquired

properties. Ext.A3 and A4 are the judgment in similar case, but it is submitted by claimant's counsel that Exts. A3 and A4 were set aside by the Hon'ble High Court. It is mooted that Ext.A5 to A9 are the sale deeds of some comparable sales. During cross examination Aw1 admits that Ext.A7 is the deed of M/s Ragam Textiles situated next to the K S R T C Bus station and property mentioned in Ext.A8 and A9 are in Deepa Junction. All these places are in the heart of the town and commercial importance of lands covered by Exts.A7 to A9 are clear. It cannot be taken as comparable with acquired properties. As per boundary description of Ext.A5 and A6, there is P W D road access to Ext.A6 property and municipal road access to Ext.A5 property. As the acquired lands also have Municipal road access, Ext. A5 is more comparable to acquired lands. It is in the same village also. Therefore this court accepts Ext.A5 to determine the market value of the acquired dry land properties. Land value shown in it is Rs.4,93,827/- per Are. It is rounded to Rs.4,93,000/- and the same is granted here for drylands (Purayidom).

19.There is a contention that 10.40 Ares in Sy. 81/6 of LAR 81/12, is a reclaimed wet land, and not a paddy land as classified by L.A. officer, seen that, Rs. 2962/- per Are was awarded by L.A. officer. Considering it as paddy land . Except a claim that it is reclaimed wetland, there is no evidence for it. There is no such mention in Ext. C1 commission report. RW1 strongly denies it. In revenue records Sy. 81/6 is 'Nilam'. In the absence of evidence, this court can not consider it as reclaimed wet land. It remains as paddy land. Ext.A18 is the judgment of Hon'ble High Court fixing Rs.30,000/- as market value to the wet lands. Seen that the property in it was acquired by the same Notification. Seen that a land value (for wet land) of Rs.2,966/0 fixed by L.A. Officer was enhanced to Rs.30,000/- in Ext. A18 Judgment. In this case also land value (for wet land) is seen fixed by L.A. Officer at Rs.2,962/- which is almost equal to above situation of Ext. A18 Judgment. Therefore, the said High Court Judgment can be accepted here also to fix land value for wet lands(paddy lands)and Rs.30,000/- per Are can be fixed for paddy lands acquired. There is no diminution in value of the remaining properties because all are within 30 metres of the railway properties and constructions are subject to consent of the railway as before. Value of trees are adequately compensated. For structures, value of compensation was awarded at P W D rate. An expert Engineer was deputed and he filed Ext.A13, A14 and A15 reports showing corresponding market rate or actual cost of such structures. He was examined as Aw3 and there is no reason to discredit his reports. Parties are entitled to actual cost and hence Exts.A13 to A15 reports accepted and compensation for structures is awarded accordingly. Accordingly point is found in favour of claimant to that extent.

20. **Point No.2**:- On the basis of findings on Point No.1, the reference is answered in favour of the claimant and following reliefs granted.

**In the result,**

**1.** In L.A.R. 80/2012 (0.08 Hectors), and L.A.R. 82/2012 the claimants are entitled to enhancement of land value for the drylands (purayidom) at the rate of Rs.4,93,000/- per Are which includes the compensation already awarded by the Land Acquisition Officer .

**2.** In L.A.R. 81/2012 claimants are entitled to enhanced land value for the dry land (purayidam)in Sy. 67/5 at the rate o Rs. 4,93,000/- per Are and the wet lands (paddy lands) at the rate of Rs.30,000/- (Rupees Thirty thousand) per Are,(in Sy.66/1 and 81/6 which includes the compensation (Rs.2,962/- per Are) already awarded by the Land Acquisition Officer.

**3.** In L. A. R. 80/2012 compensation for structures/ buildings is fixed as Rs.95,539/- which includes amount already granted by Land Acquisition Officer.

**4.** In L.A.R. 81/2012, Rs.36,691/- is awarded is compensation for structures, which includes the amount already granted by the Land Acquisition Officer.

**5** In L.A.R. 82/2012 Rs.3,17,809/- is awarded as compensation for structures which includes amount already granted by the Land Acquisition Officer.

**6.** The claimants are entitled to get a sum fixed at 12% on the enhanced land value from date of Section 4 (1) Notification till date of award.

**7.** The claimant is entitled to get a sum fixed at 30% on the enhanced land value in view of the compulsory nature of the acquisition provided U/s 23(2) of the Land Acquisition Act.

8. The claimant is entitled to get interest on the excess compensation at the rate of 9% per annum for a period of one year from date of taking possession and thereafter at the rate of 15% per annum till deposit or realisation.
9. The claimants are entitled to realise the costs of proceedings from the respondents.

Dictated to the Confidential Assistant, transcribed and typed by him, corrected by me and pronounced in open Court on this the 30th day March, 2016.

**C.K.MADHUSOODANAN**
**SUB JUDGE.**

**APPENDIX**

**EXHIBITS MARKED FOR THE CLAIMANTS:**

A1- 13-2-13 Tax receipt No. 3022487 issued by village officer, Kuttappuzha

A2- 21-08-2004 Will deed No. 160/2004 executed by Oommen.

A3- 31-10-2014 Certified copy of Common Judgment in LAR 78/12 & 79/12 of Sub Court, Thiruvalla

A4- 15-10-14 Certified copy of Judgment in LAR 42/2012 of subordinate Judge, Thiruvalla

A5- 18-3-2008 Certified copy of Sale deed No. 866/08 of SRO, Thiruvalla

A6-30-01-2009 Certified copy of Sale deed No. 291/2009 of SRO, Thiruvalla

A7-06-12-2008 Certified copy of Sale deed No. 3861/2008 of SRO, Thiruvalla

A8-18-08-2010 Certified copy of Sale deed No. 2648/2010 of SRO, Thiruvalla.

A9- 21-10-2010Certified copy of Sale deed No. 3323/2010 of SRO, Thiruvalla.

A10- 05-08-2015 Valuation sheet and abstract of estimate of Southern railway in Survey No. 67/5 of Kuttappuzha village owned by Hassan Bhava-Sayde Muhammad Ravuther issued by Executive Engineer, Southern Railway, Kayamkulam.

A11- 05-08-2015 Valuation sheet and abstract of estimate of Southern railway in survey No. 66/9 of Kuttappuzha village owned by Mariamma issued by Executive Engineer,Southern Railway, Kayamkulam.

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| A12- | 05-08-2015 | Valuation sheet and abstract of estimate of Southern railway in survey No. 67/6 of Kuttappuzha village owned by Kannyakonil Chacko Oommen issued by Executive Engineer,Southern Railway, Kayamkulam. |
| A13- | 10-01-2016 | Detailed estimate of cost in re-survey No. 67/6 submitted by Expert Engineer C.T. Thomas. |
| A14- | 10-01-2016 | Detailed estimate of cost in survey No. 67/05 submitted by Expert Engineer C.T. Thomas. |
| A15- | 10-01-2016 | Detailed estimate of cost in survey No. 66/09 submitted by Expert Engineer C.T. Thomas. |
| A16- | 29-09-2007 | Certified copy of sale deed No. 2895/2007 of SRO, Thiruvalla. |
| A17- | 30-08-2008 | Certified copy of Sale deed No. 3008/ 2008 of SRO, Thiruvalla |
| A18- | 04-10-2014 | Certified copy of Judgment in LA App.No. 341/14 of the Hon'ble High Court of Kerala, Ernakulam. |

**EXHIBITS MARKED FOR THE RESPONDENTS**

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|---|---|---|
| B1- | 26-05-2008 | Certified copy of Sale deed No. 1724/2008 of SRO, Thiruvalla |
| B2- | 03-04-2007 | Certified copy of sale deed No. 1042/07 of SRO, Thiruvalla |
| B3- | - | Copy of Basic Tax register in Survey No. 184/4 issued by village officer, Kuttappuzha |
| B4 | - | Copy of Basic Tax register in Survey No. 58/11 issued by village officer, Kuttappuzha |

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|---|---|---|
| B5- | 21-3-2016 | Copy of Basic Tax register in Survey No. 812/10 issued by village officer, Kuttappuzha |
| B6- | 21-3-2016 | Copy of Basic Tax register in Survey No. 116/13 issued by village officer, Kuttappuzha |
| B7- | 30-09-2011 | Copy of notice of award in survey No. 67/6 owned by Sri. K.O. Mathew, issued by Special Tahsildar, Land Acquisition ( General), Pathanamthitta |
| B8 | - | Copy of Mahazar in LACNo. 123/11 issued by Special Tahsildar LA(General), Pathanamthitta. |
| B9 | - | Copy of survey plan in field No. 67 Block No. 8 issued by Special Tahsildar LA(General), Pathanamthitta |
| B10 | - | Copy of Mahazar in LAC 24/11 issued by Special Tahsildar LA(General), Pathanamthitta. |
| B11 | - | Copy of Mahazar in LAC No. 125/11 issued by Special Tahsildar LA(General),Pathanamthitta. |
| B12(a) | - | Copy of Survey plan in field No. 66 Block No. 8 issued by Special Tahsildar LA(General),Pathanamthitta. |
| B12(b) | - | Copy of Survey plan in field No. 66, Block No. 8 issued by Special Tahsildar LA(General),Pathanamthitta. |
| B12(c) | - | Copy of Survey plan in field No. 67 Block No. 8 issued by Special Tahsildar LA(General),Pathanamthitta. |
| B13 | - | Copy of Notice of award in survey No. 66/9 dated 30-9-2011 issued by Special Tahsildar, LA (General),Pathanamthitta. |

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| B14 - | Copy of Mahazar in LAC 122/2011 issued by Special Tahsildar,LA(General),Pathanamthitta. |
| B15 - | Copy of Survey plan in field No. 66, Block No. 8 issued by Special Tahsildar, LA (General),Pathanamthitta. |

**COURT EXHIBITS**

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| C1- | 13-10-2014 | Commission report filed by Commissioner Adv. Sri. Anoop Mohan.G. |
| C1(a)- | 13-10-2014 | Survey Plan prepared by Smt. Salibhai.D, Surveyor, in survey No.67/6, 67/3 |
| C1(b)- | 13-10-2014 | Survey plan prepared by Salibhai.D in re-survey No. 66/1, 67/1,5,81/4,6 |
| C1(c)- | 13-10-2014 | Survey plan prepared by Salibai.D in re-survey No. 66/2,66/9 |

**WITNESS EXAMINED FOR THE CLAIMANTS**

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| AW1- | 24-07-2015 | Mariamma Joseph |
| AW2- | 03-09-2015 | Adv. Anoop Mohan.G |
| AW3- | 05-03-2016 | C.T. Thomas |

**WITNESS EXAMINED FOR THE RESPONDENTS**

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| RW1- | 22-03-2016 | Alexander M.C |

SUB JUDGE

Typed by: Sindhu
Compared by:Gopalakrishnan

PARTICULARS IN LAR Nos. 80/12,81/12, 82/12 AS PER REFERENCES IN LETTER No. D1-60482/96 OF HON'BLE HIGH COURT OF KERALA

(a) Purpose of acquisition : For the doubling of Chengannoor Chingavanam Rail Track

(b) Date of notification u/s 3(1) or 4(1) of the Act as the case may be : 18-07-2009

(c) Date on which possession was taken : LAR 80/12
LAR 81/12
LAR 82/12

(d) Date of award and compensation : 30-8-2016
LAR 80/12 Land vale @ 85561 per Are
LAR 81/12 Land Value @ 2962 per Are
LAR 82/12 Land Value @ 74866 per Are

(e) Whether the court has enhanced compensation or not : Enhanced

(f) If so relevant break up of figures including centage : In LAR 80/12, 0.08(Hectors) and LAR 82/12 the claimants are entitled to enhancement of land value for the drylands(Purayidam)at the rate of 4,93,000/-per are which includes the compensation already awarded by the land acquisition officer.

In LAR 81/12 claimants are entitled to enhanced land value for the dry land(Purayidam) in Sy.No. 67/5 at the rate of Rs. 4,93,000/- per Are and the wet lands(paddy lands) at the rate of Rs. 30,000/-(Rupees Thirty Thousand only )per are in( Sy. 66/1 and 81/6) which includes the compensation (Rs 2962 per Are ) already awarded by the Land Acquisition Officer.

In LAR 80/12 compensation for structures/ buildings is fixed as Rs. 95,539/- which includes amount already granted by the Land Acquisition Officer.

In LAR 81/12 Rs. 36,691 is awarded to compensation for structures, which includes the amount already granted by the Land Acquisition Officer.

In LAR 82/12 Rs. 3,17,809 is awarded as compensation for structures which includes amount already granted by the Land Acquisition Officer.

SUB JUDGE

FAIR/COPY OF COMMON JUDGMENTS
IN L.A.R. NOs. 80/2012,
81/2012 and 82/2012
Date:30th March,2016.