

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 23RD DAY OF JULY 2019 / 1ST SRAVANA, 1941

LA.App..No.241 OF 2016

AGAINST THE JUDGMENT IN LAR 5/2013 DATED 23-12-2015 OF SUB COURT,
KASARAGOD

APPELLANT/CLAIMANT:

HAMSA M.A,
S/O. MAYIPADY AHAMMED, KEEZHUR CHANDRAGIRI,
REPRESENTED BY THE POWER OF ATTORNEY HOLDER CA
MOIDEEN KUNHI, S/O ABDULKHADER MUSSALIYAR, POST
CHANDRAGIRI, KALANAD, KASARAGOD DISTRICT.

BY ADVS.
SRI.SURESH KUMAR KODOTH
SRI. ANTONY BINU

RESPONDENTS/REFERRING OFFICER & RESPONDENTS 1 & 2:

- 1 THE MANAGING DIRECTOR, BEKAL RESORTS DEVELOPMENT
CORPORATION, PALAKKUNNU 671123
- 2 THE SPECIAL TAHSILDAR (LA) ,
KASARGOD. 671121
- 3 THE DISTRICT COLLECTOR,
KASARGOD 671121
- 4 THE EXECUTIVE ENGINEER,
PWD, ROADS DIVISION, KASARGOD. 671121

BY ADVS.
SRI.B.R.MURALEEDHARAN, SR.GOVERNMENT PLEADER FOR R2 ,
R3 & R4
SMT.M.U.VIJAYALAKSHMI, SC, FOR R1

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON
23.07.2019, ALONG WITH LA.App..277/2016, LA.App..302/2016,
LA.App..337/2016, LA.App..347/2016, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 23RD DAY OF JULY 2019 / 1ST SRAVANA, 1941

LA.App..No.277 OF 2016

AGAINST THE JUDGMENT AND DECREE IN LAR 1/2013 DATED 23-12-2015
OF SUB COURT, KASARAGOD

APPELLANT/CLAIMANT:

ASMABI,
W/O ABDUL RAHIMAN, CHEMBERIKA, CHANDRAGIRI P.O,
REPRESENTED BY THE POWER OF ATTORNEY HOLDER C A
MOIDEEN KUNHI, S/O ABDULKHADER MUSSALIYAR, POST
CHANDRAGIRI, KALANAD, KASARGOD DISTRICT.

BY ADVS.
SRI.SURESH KUMAR KODOTH
SRI.K.P.ANTONY BINU

RESPONDENTS/REFERRING OFFICER & RESPONDENTS:

- 1 THE SPECIAL TAHASILDAR (LA) ,
KASARGOD 671 123.
- 2 THE MANAGING DIRECTOR,
BEKAL RESORTS DEVELOPMENT CORPORATION, PALAKKUNNU,
671 121.
- 3 THE DISTRICT COLLECTOR,
KASARGOD 671 123.
- 4 THE EXECUTIVE ENGINEER,
PWD, ROADS DIVISION, KASARGOD 671 131.

BY ADV.
SRI.B.R.MURALEEDHARAN, SR.GOVERNMENT PLEADER FOR
R1,R3 & R4
SMT.M.U.VIJAYALAKSHMI, SC, FOR R2

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON
23.07.2019, ALONG WITH LA.App..241/2016, LA.App..302/2016,
LA.App..337/2016, LA.App..347/2016, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 23RD DAY OF JULY 2019 / 1ST SRAVANA, 1941

LA.App..No.302 OF 2016

AGAINST THE JUDGMENT AND DECREE IN LAR 4/2013 DATED 23-12-2015
OF SUB COURT, KASARAGOD

APPELLANT/CLAIMANT:

KHADEEJA,
W/O.MOIDEEN KUTTY,KALLAMVALAPPE ROAD,LAKSHAMVEEDU
COLONY,CHEMBERIKA,CHANDRAGIRI.P.O,REPRESENTED BY
THE POWER OF ATTORNEY HOLDER C.A.MOIDEEN
KUNHI,S/O.ABDULKHADER MUSSALIYAR,POST
CHANDRAGIRI,KALANAD,KASARGOD DISTRICT.

BY ADVS.
SRI.SURESH KUMAR KODOTH
SRI.K.P.ANTONY BINU
SRI.SANIL JOSE

RESPONDENTS/REFERRING OFFICER & RESPONDENTS:

- 1 THE SPECIAL TAHSILDAR (LA) ,
KASARGOD-671131.
- 2 THE MANAGING DIRECTOR,
BEKAL RESORTS DEVELOPMENT CORPORATION,PALAKKUNNU-
671121.
- 3 THE DISTRICT COLLECTOR,
KASARGOD-671131.
- 4 THE EXECUTIVE ENGINEER,
PWD,ROADS DIVISION,KASARGOD-671131.

BY ADVS.
SRI.B.R.MURALEEDHARAN,SR.GOVERNMENT PLEADER FOR R1,
R3 & R4
SMT.M.U.VIJAYALAKSHMI, SC, FOR R2

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON
23.07.2019, ALONG WITH LA.App..241/2016, LA.App..277/2016,
LA.App..337/2016, LA.App..347/2016, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 23RD DAY OF JULY 2019 / 1ST SRAVANA, 1941

LA.App..No.337 OF 2016

AGAINST THE JUDGMENT AND DECREE IN LAR 9/2013 DATED 23-12-2015
OF SUB COURT, KASARAGOD

APPELLANTS/CLAIMANTS:

- 1 M.A.JAMEELA,
D/O. BEEFATHIMA, MAYIPADY HOUSE, CHEBARIKA,
CHANDRAGIRI.
- 2 M A LATHEEFA, D/O. BEEFATHIMA, MAYIPADY HOUSE,
CHEBARIKA, CHANDRAGIRI.
(BOTH REPRESENTED BY THE POWER OF ATTORNEY HOLDER
CA MOIDEEN KUNHI, S/O. ABDULKHADER MUSSALIYAR, POST
CHADRAGIRI, KALANAD, KASARGOD DISTRICT).

BY ADV. SRI.SURESH KUMAR KODOTH

RESPONDENTS/REFERRING OFFICER & RESPONDENTS 1 & 2:

- 1 THE MANAGING DIRECTOR,
BEKAL RESORTS DEVELOPMENT CORPORATION, PALAKKUNNU -
671 121.
- 2 THE SPECIAL TAHSILDAR (LA) ,
KASARGOD - 671121.
- 3 THE DISTRICT COLLECTOR,
KASARGOD - 671121.
- 4 THE EXECUTIVE ENGINEER,
PWD, ROADS DIVISION, KASARGOD - 671131.

BY ADVS.

SRI.B.R.MURALEEDHARAN, SR.GOVERNMENT PLEADER FOR R2,
R3 & R4

SMT.M.U.VIJAYALAKSHMI, SC, FOR R1

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON
23.07.2019, ALONG WITH LA.App..241/2016, LA.App..277/2016,
LA.App..302/2016, LA.App..347/2016, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 23RD DAY OF JULY 2019 / 1ST SRAVANA, 1941

LA.App..No.347 OF 2016

AGAINST THE JUDGMENT AND DECREE IN LAR 3/2013 DATED 23-12-2015
OF SUB COURT, KASARGOD

APPELLANT/CLAIMANT:

KHADEEJA,
W/O SHEIK ABDUL RAHIMAN, LAKSHAMVEEDU COLONY,
CHEMBERIKA, CHANDRAGIRI P.O, REPRESENTED BY THE
POWER OF ATTORNEY HOLDER CA MOIDEEN KUNHI, S/O
ABDULKHADER MUSSALIYAR, POST CHANDRAGIRI, KALANAD,
KASARGOD DISTRICT.

BY ADVS.
SRI.SURESH KUMAR KODOTH
SRI.K.P.ANTONY BINU

RESPONDENTS/REFERRING OFFICER & RESPONDENTS:

- 1 THE SPECIAL TAHASILDAR (LA) ,
KASARGOD 671 121.
- 2 THE MANAGING DIRECTOR,
BEKAL RESORTS DEVELOPMENT CORPORATION, PALAKKUNNU
671 121.
- 3 THE DISTRICT COLLECTOR,
KASARGOD 671 121.
- 4 THE EXECUTIVE ENGINEER,
PWD, ROADS DIVISION, KASARGOD 671 131.

BY ADVS.
SRI.B.R.MURALEEDHARAN, SR.GOVERNMENT PLEADER FOR R1,
R3 & R4
SMT.M.U.VIJAYALAKSHMI, SC, FOR R2

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON
23.07.2019, ALONG WITH LA.App..241/2016, LA.App..277/2016,
LA.App..302/2016, LA.App..337/2016 THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

L.A.A Nos.241, 277, 302, 337 & 347 of 2016

J U D G M E N T

These appeals are directed against the decrees and judgments in a few references under Section 18 of the Land Acquisition Act, 1894 (the Act) in respect of lands acquired for widening of a road leading to the site of Bekel Resorts Development Corporation in Kasaragod District, pursuant to a notification issued under the Act on 10.08.2010.

2. The extent of lands involved in these matters varies between 0.06 Ares to 1.08 Ares. The Land Acquisition Officer fixed the land value for the acquired lands at the rate of Rs.30,183.40 per Are. Dissatisfied with the fixation of the land value made by the Land Acquisition Officer, the claimants sought reference for adjudication of their larger claims. Before the reference court, the claimants sought not only additional land value and compensation on that basis, but also compensation for the injurious affection in respect of the remaining lands. The reference court re-fixed the land value for the acquired lands at the rate of Rs.1,72,900/- per Are. Coming to the compensation for injurious affection, the reference court granted Rs.15,000/- to the claimant in L.A.A No.347 of 2016, Rs.5,000/- to the claimant in L.A.A No.302 of 2016 and Rs.30,000/- to the claimant in

L.A.A No.241 of 2016. Similarly, the reference court granted Rs.20,000/- to the claimants in L.A.A No.337 of 2016 and Rs.25,000/- to the claimant in L.A.A No.277 of 2016 towards compensation for injurious affection. The claimants are aggrieved by the inadequacy of the land value fixed by the reference court as also the compensation granted for injurious affection. Hence these appeals.

3. Heard the learned counsel for the appellants as also the learned Government Pleader.

4. It is seen that among the five documents produced by the claimants in support of the claim for enhanced compensation, the reference court found that only the land covered by Ext.A1 judgment in an earlier reference in respect of a few other lands acquired for the same purpose is comparable. Consequently, the reference court re-fixed the land value based on the land value fixed in the said cases. The materials on record indicate that Ext.A1 judgment is one rendered in respect of lands acquired for the same purpose pursuant to a notification issued on 23.06.2008 and the reference court re-fixed the land value of the lands involved in the said cases at Rs.1,72,900/-. The said amount has been accepted by the reference court as the fair land value in the case involved in these matters as well. As noted, the notification in the instant case is issued on 10.08.2010. In other words, the notification in the instant case was one issued almost after 26

months of the notification for the acquisition of lands covered by Ext.A1 judgment. Since the notification in the instant case was one issued after about 26 months, according to me, before accepting the land value shown therein as fair land value to be given for the lands involved in these matters, the reference court should have equated the land value as directed by the Apex Court in **General Manager, Oil and Natural Gas Corporation Limited v. Rameshbhai Jivanbhai Patel and another** [(2008) 14 SCC 745]. Had it been so, applying the cost escalation at the rate of 10%, the land value of the lands involved in Ext.A1 cases would have been as on the date of the notification in the cases on hand at Rs.2,09,209/- per Are. In so far as it is found that the lands are comparable, according to me, the land value can be fixed at Rs.2,09,209/- per Are in all these cases. The land value fixed by the reference court in all these cases is, therefore, to be modified as Rs.2,09,209/- per Are, in the place of Rs.1,72,900/- per Are.

5. Coming to the compensation granted for injurious affection, it is seen that the Advocate Commissioner appointed in the matter has reported the lie and nature of the acquired lands after the acquisition. I shall first deal with the claim made by the claimant in L.A.A No.277 of 2016. Paragraph 5 of the report of the Advocate Commissioner deals with the remaining land in the possession of the said claimant, which reads thus:

“5. The property subject matter of the above L.A.R 1/2013 is comprised in R.S.No.129/1(R.S.No.127/47 Kalnad village) and it measures extent of 17 sqm. The said plot is marked as 'I') in the eye sketch prepared by the Commissioner. The 'A1' marked is the remaining property of the claimant. There is a residential house in the 'A1' property. The eastern line of the acquired land is situated just half metres away from the wall of the house. The land upto the steps of the house is acquired and the said acquired portion includes the front court yard of the house and now the door of the house is opened into the road.”

As noted, the eastern line of the acquired land now stands situated just half a meter away from the wall of the residential building in the property. It is also seen that the land upto the steps of the residential building was acquired and the acquired portion includes the front courtyard of the residential building and the door of the house can be opened only to the road. The reference court has granted only a sum of Rs.25,000/- by way of compensation for injurious affection. According to me, the reference court should have granted at least Rs.65,000/- to the claimant in the said appeal. The claimant is therefore, entitled to a further sum of Rs.40,000/- by way of additional compensation for injurious affection.

6. Similar is the case as regards the claimant in L.A.A No.347 of 2016. The relevant portion of the report of the Advocate Commissioner dealing with the remaining land in the possession of the said claimant reads thus:

“6. The Commissioner has identified the property subject matter of L.A.R 3/2013. The said property is comprised in R.S.No.129/1pt(129/45) of

Kalnad village measuring an extent of 11 sqm. The said property is marked as '2' in the sketch prepared by the Commissioner. 'B1' is the remaining property of the claimant. The eastern line of the acquired land is situated just 1 metres away from the walls of the claimant house. The land upto the steps of the house is acquired, and said acquired portion includes the front court yard of the house and now the door of the house is opened into the road."

The position in this case is same as that of the claimant in L.A.A No.277 of 2016. The Land Acquisition Officer has granted only a sum of Rs.15,000/- by way of compensation for injurious affection in this case. In this matter, according to me, the claimant is entitled to a further sum of Rs.40,000/- by way of additional compensation for injurious affection .

7. Similar is the case as regards the claimant in n L.A.A No.302 of 2016. The relevant portion of the report of the Advocate Commissioner dealing with the remaining land in the possession of the said claimant reads thus:

"7. The Commissioner has identified the property subject matter of LAR 4/2013. The said property is comprised in R.S.No.129/1part(129/34 and 129/39) of Kalnad village and it measuring 10 sqmts and 6 sqmts respectively. The said plots are marked as serial no.'3' in the sketch prepared by the Commissioner. The wall of the toilet of the claimant is just touching to the road (acquired land). The remaining property of the claimant is marked as 'C1' in the eye sketch."

The position is same in this case also. The Land Acquisition Officer has granted only a sum of Rs.5,000/- by way of compensation for injurious affection. In this matter also, according to me, the claimant is entitled

to a further sum of Rs.40,000/- by way of additional compensation.

8. Coming to the case of the claimants in L.A.A No.337 of 2016, the position is slightly different. The report of the Advocate Commissioner in relation to the said land reads thus:

“12. The Commissioner has identified the property subject matter of L.A.R.9/2013. The property is comprised in R.S.No.134/2cl(134/14,15 and 17) measuring to an extent of 108 sqmts of Kalnad village. The said plot is marked as sl.no'9' in the eye sketch. The Commissioner noted that due to the acquisition there is no road access to the claimant's property from the acquired land(road) the remaining property of the claimant is 1.5 mts higher in level. The remaining property of the claimant is marked as 'F' in the eye sketch.”

As noted by the Advocate Commissioner, the land including the acquired land was lying at about half meter to one meter above the road level. After the acquisition, the height difference of the acquired land and the road increased by 1.5 meters. The length of the remaining extent of land is reported to be 30 meters. The reference court has granted only a sum of Rs.20,000/- by way of compensation for injurious affection. As there will be reduction in the value of the remaining land which has a frontage of 30 meters, according to me, having regard to the land value fixed for the acquired lands, the reference court should have granted Rs.60,000/- more to the claimants by way of compensation for injurious affection.

9. Similar is the case in relation to the land involved in L.A.A No.241 of 2016. In this case, the land was lying at a height of

almost half a meter to one meter before the acquisition and the height difference was increased by 1 to 2 meters, after the acquisition. The reference court has granted only a sum of Rs.30,000/- by way of compensation for injurious affection. Having regard to the facts and circumstances, I am of the view that the claimant is entitled to a further sum of Rs.30,000/- by way of compensation for injurious affection.

In the result, the land acquisition appeals are disposed of re-fixing the land value at Rs.2,09,209/- per Are. The claimants will be entitled to admissible statutory benefits and proportionate costs on that basis. The claimants in L.A.A Nos.277, 347 and 302 of 2016 are also entitled to additional compensation by way of injurious affection to the tune of Rs.40,000/- each and the claimants in L.A.A No.337 of 2016 and L.A.A No.241 of 2016 are entitled to additional compensation by way of injurious affection to the tune of Rs.60,000/- and Rs.30,000/- respectively. As it is found that the appellants have not paid the balance court fee payable on the memorandums of appeal, the decree shall be drafted in tune with this judgment only on payment of the balance court fee, wherever balance court fee is not paid. All interlocutory applications in the appeals are closed.

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P . B . SURESH KUMAR

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JUDGE