



to amount due under para (i) and (ii) above.

- (v) The amount awarded as severance compensation as per para (iii) shall carry interest at a uniform rate of 9% per annum from the date of the award dated 11.4.1990.
- (vi) Parties to bear their respective costs.

(O.P. Sharma) (M.S. Negi)  
Court Master Court Master  
(Signed order is placed on the file)

2

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
CIVIL APPEAL NO(s). 2841 OF 2005

PARVATHY AMMA SARASWATHY AMMA (D) BY LRs. Appellant

VERSUS

STATE OF KERALA Respondent

O R D E R

R.V.Raveendran, J.

The appellant was the owner of Survey No.329/16 measuring 23 Ares and her husband Raman Pillai was the owner of the adjoining land (Survey No.329/17) in village Haripad. Portion of appellant's property (9.20 Ares) and a small portion of her husband's property were acquired for laying a Railway line. While acquisition of appellant's land was in pursuance of preliminary notification dated 15.9.1987, the acquisition of her husband's land was in pursuance of preliminary notification dated 19.9.1987. The Land Acquisition Officer (Special Tehsildar) determined the market value as Rs.6888/- per Are and Rs.90,782/- for the structure, vide award dated 11.4.1990 in the case of the appellant. Compensation was awarded by the LAO, at the

same rate of Rs.6888/- per Are even in regard to her

3

husband's land.

2. The appellant sought reference under Section 18 of the Land Acquisition Act, 1894 ('Act' for short) claiming compensation for the land at Rs.37000/- per Are plus the value of the structure. She also claimed severance compensation as the railway line bifurcated her property and thereby injuriously affecting the remaining property. Out of total area of 23 Ares owned by the appellant, the acquisition of 9.20 Ares, left the remaining 13.80 Ares with the appellant in two small plots lying on either side of the Railway line, that is, Portion-A measuring 4.90 Ares and Portion-B measuring 8.90 Ares.

3. The Reference Court by judgment and award dated 31.1.1995, increased the compensation for the land from Rs.6888/- per Are to Rs.20,000/- per Are. In regard to the building that existed in the acquired portion, the Reference Court on the basis of the commissioner's report and the valuation by the Department awarded Rs.1,43,438/- (that is 75% of the depreciated value of Rs.1,91,000/- for the entire building). It awarded severance compensation of 10% in regard to 8.90 Ares and 20% in regard to 4.90 Ares.

4. Feeling aggrieved, the appellant filed an appeal to the Kerala High Court. The High Court dismissed the appeal by judgment dated 8.4.2003 on the ground that the judgment and award of the Reference court did not call for

4

interference. The said judgment is challenged in this appeal by special leave. On the contentions urged, the only question that arises for consideration is whether the compensation should be increased under the heads of land, building and severance compensation.

Re: Land:

5. As noticed above, the acquisition of the portion of

Sy.No.329/16 was in pursuance of preliminary notification dated 15.9.1987. The adjoining portion from out of appellant's husband property (in Survey No.329/17) was acquired under preliminary notification issued 4 days later, that is, on 19.9.1987. In regard to the land acquired from the adjoining property of her husband, the compensation was determined by the Reference Court vide Judgment dated 29.11.1995 as Rs.28,899/- per Are which attained finality and appellant relied upon the said judgment before the High Court. The High Court refused to act upon it on the ground that there was no evidence to show that two properties were similar. Appellant's husband's property and appellant's property adjoin each other. Portions of both were acquired for the same purpose. The preliminary notifications were issued in the same month. The valuation obviously could not therefore be different. We may also notice that in regard to another nearby land in Sy.No.317/15 acquired for the same purpose under preliminary notification dated 10.5.1988, compensation was awarded at Rs.28,899/- per Are. We are, therefore, of the view that compensation for the land should be Rs.28,899/- per Are instead of Rs.20,000/- per Are.

Re: Building:

6. In regard to the building, the Court has awarded 75% of the value of the building on the value determined by the Commissioner. We find no error in the same.

Re: Severance Compensation:

7. The appellant's property in all measured 23 Ares (2300 sq.m.). The evidence shows that the said property had a constructed house in the middle of it; that as a result of the acquisition of 9.20 Ares, the railway Line passed through the property of the appellant; and that as a consequence, instead of possessing one compact block of

23 Ares, the appellant is left with two small portions measuring 4.90 Ares and 8.90 Ares on either side of the Railway line. In so far as the smaller portion namely, 4.90 Ares situated on one side of the Railway line, having regard to proximity to the Railway line and the requirements relating to set backs and its odd shape, its utility for any residential purposes is severely affected. As far as the larger portion measuring 8.90 Ares, though it could be used for construction, the proximity to the Railway line would be a disadvantage from the point of view of noise, invasion of privacy etc. The commissioner

6

appointed by the court suggested that 60% and 40% of the value as compensation for the two portions, on account of the adverse effects of severance. The Court considered the said percentage to be excessive and the Reference court had awarded 20% and 10% of the value as severance compensation in regard to the two portions. We are of the view that having regard to the fact that the Railway line has bifurcated the property and the utility of the land has been restricted and adversely affected, the severance compensation should be at a uniform 20% of the value of the entire remaining land of 13.80 Ares, that is, the two plots measuring 8.90 Ares and 4.90 Ares.

#### Conclusion

8. Accordingly, this appeal is allowed in part, as follows:

- (i) Compensation in regard to 9.20 Ares of acquired land is increased from Rs.20,000/- per Are to Rs.28,899/- per Are.
- (ii) Compensation regarding Building is not altered.
- (iii) Severance Compensation is awarded at the uniform rate of 20% of the market value (Rs.28,899/- per Are) for the extent of 13.80 Ares retained by the appellant.

(iv) The additional compensation, solatium and interest as awarded by the courts below is upheld in regard to amount due under para (i) and (ii) above.

7

(v) The amount awarded as severance compensation as per para (iii) shall carry interest at a uniform rate of 9% per annum from the date of the award dated 11.4.1990.

(vi) Parties to bear their respective costs.

.....J.  
[ R.V. RAVEENDRAN ]

NEW DELHI  
DECEMBER 9, 2010

.....J.  
[ A.K. PATNAIK ]