

A K.S. RAJAN (D) THROUGH LRS

v.

THE STATE OF KERALA & ANR.

(Civil Appeal Nos. 6281-6282 of 2009)

B AUGUST 10, 2018

[ABHAY MANOHAR SAPRE AND S. ABDUL NAZEER, JJ.]

Land Acquisition:

C *Acquisition of land – Compensation for ‘Dry’ land, and for ‘Chira’ land and for ‘Wet’ land – Determination of – Held: In view of nature of ‘Wet’ land, its surroundings and location and similarity with the land owned by other landowners to whom compensation was awarded @ Rs. 2000/- per cent, the appellant-landowners are entitled to compensation for ‘Wet’ land @ Rs. 2000/- per cent in place of Rs. 500/- – The rates of ‘Dry’ and ‘Chira’ lands do not call for any interference – Land Acquisition Act, 1894 – ss. 4,6, 11 and 18.*

D **Partly allowing the appeals, the Court**

E **HELD: 1. The award of Rs. 2000/- per cent for the wet land appears to be just proper and reasonable keeping in view the nature of the land, its surroundings and location and similarity with the land owned by other landowners to whom compensation was awarded at the rate of Rs. 2000/- per cent. It represents correct market value of the wet land on the date of acquisition and was, therefore, rightly determined by the Reference Court in cases of other landowners in relation to their lands acquired in these proceedings. The appellants are entitled to claim compensation for their wet land at the rate of Rs. 2000/- per cent in place of Rs. 500/- per cent determined by the High Court in the impugned order. As a necessary consequence, the appellants are also entitled for other statutory compensation payable under the Land Acquisition Act, 1894, keeping in view the enhancement made by this Court. So far as the rates of other two nature of lands are concerned, namely, dry and chira, their rates do not call for any interference. [Paras 18-20] [1067-G-H; 1068-A-C]**

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CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 6281- A
6282 of 2009.

From the Judgment and Order dated 05.03.2003 and 06.12.2006 of the High Court of Kerala at Ernakulam in LAA. No. 905 of 1995 and Review Petition No.205 of 2004 respectively.

Chandan Kumar Mandal, Ajay Singh, Romy Chacko, Haris Beeran, B
R.S. Jena, Dev Prakash, C. K. Sasi, Advs. for the appearing parties.

The Judgment of the Court was delivered by

ABHAY MANOHAR SAPRE, J. 1. These appeals are filed C
against the final judgment and order dated 05.03.2003 passed by the High Court of Kerala at Ernakulam in LAA No.905 of 1995 whereby the Division Bench of the High Court dismissed the appeal filed by the original appellant herein. Against the said order, the appellant filed review petition being R.P. No.205 of 2004 which was also dismissed.

2. In order to appreciate the short controversy involved in these D
appeals, it is necessary to set out few relevant facts hereinbelow.

3. During the pendency of the appeals in this Court, the appellant died and his legal representatives were brought on record.

4. The original appellant is the owner of the land measuring E
around 4.30 acres situated in the District of Kottayam (Kerala). The State of Kerala issued a notification dated 25.11.1980 under Section 4 of the Land Acquisition Act, 1894 (for short called "the Act") and acquired total land measuring around 30 acres in Kottayam Municipality for implementation of "multipurpose development scheme at Kodimatha" on the acquired land. It was followed by declaration under Section 6 of F
the Act. The appellant's land (4.30 acres) was also acquired in these acquisition proceedings by notification issued under Section 4 of the Act.

5. The Land Acquisition Officer (LAO) then held an enquiry, as G
contemplated under Section 11 of the Act, for payment of compensation to the landowners and by his award dated 06.08.1984 determined the compensation as under:

For Dry land	:	Rs.4631/- per cent
For Chira land	:	Rs.1725/- per cent
For Wet land	:	Rs. 203/- per cent

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A 6. The appellants felt aggrieved by the determination made by the LAO and sought reference to the Civil Court. By award dated 28.02.1990, the Reference Court re-determined the compensation as under:

	For Dry land	:	Rs.7500/- per cent
B	For Chira land	:	Rs.2000/- per cent
	For Wet land	:	Rs.2000/- per cent

C 7. Felt aggrieved by the award of the Reference Court, the State filed an appeal in the High Court of Kerala. The High Court, by order dated 23.06.1992 allowed the appeal and remanded the case to the Reference Court for fresh determination. After the remand, the Reference Court by award 07.01.1995 re-determined the compensation as under :

	For Dry land	:	Rs.5000/- per cent
D	For Chira land	:	Rs.2500/- per cent
	For Wet land	:	Rs.450/- per cent

E 8. By the aforesaid award passed by the Reference Court, the appellant felt aggrieved and filed appeal in the High Court. By impugned order, the High Court made partial modification in the compensation and determined the compensation as under:

	For Dry land	:	Rs.5000/- per cent
	For Chira land	:	Rs.2500/- per cent
	For Wet land	:	Rs.500/- per cent

F 9. The appellant felt aggrieved by the order passed by the High Court and filed review petition in the High Court. By order dated 02.09.2003, the High Court disposed of the review petition and made partial modification in the compensation as under:

	For Dry land	:	Rs.8000/- per cent
G	For Chira land	:	No increase
	For Wet land	:	No increase

H 10. The original appellant (landowner) felt aggrieved by the order of the High Court passed in main appeal as well as in the review petition, filed the present appeals by way of special leave in this Court.

11. So far as the appellants are concerned, they are mainly A
concerned with the determination made by the Courts below for the
“wet land” and “chira land”.

12. Therefore, the short question, which arises for consideration B
in these appeals, is whether the determination made by the Courts below
in relation to “wet land” and “chira land” is just and proper or it requires
any modification by way of enhancement as claimed by the appellants
(landowners) in these appeals.

13. Heard learned counsel for the parties.

14. At the outset, learned counsel appearing for the appellants C
brought to our notice that the Reference Court in another case of the
landowners, whose lands were also acquired in these very acquisition
proceedings, determined the compensation at the rate of Rs. 2000/- per
cent for the wet land.

15. It was his submission that the determination made by the D
Reference Court was not challenged by the State and hence it became
final. Learned counsel, therefore, contended that since the appellants’
land and the other landowners’ land, who were awarded compensation
in these very acquisition proceedings, are identical in all respects,
therefore, they are also entitled to claim the compensation at the same
rate, i.e., Rs. 2000/- per cent which was awarded to other landowners E
for their wet land.

16. We find force in the submission of learned counsel for the F
appellants. It is more so when the learned counsel for the respondents
could not dispute this factual statement except to support the reasoning
and the conclusion arrived at by the High Court in the impugned order.

17. Even otherwise on perusal of the entire record of the case G
and the findings of all the Courts below, we are of the opinion that the
findings recorded by the Reference Court in the earlier round of litigation
awarding Rs. 2000/- per cent for the wet land though set aside by the
High Court in the earlier round yet it deserves to be restored again.

18. In other words, in our view, the award of Rs.2000/- per cent H
for the wet land appears to be just, proper and reasonable keeping in
view the nature of the land, its surroundings and location and similarity
with the land owned by other landowners to whom compensation was
awarded at the rate of Rs.2000/- per cent. In our opinion, it represents

A correct market value of the wet land on the date of acquisition (25.11.1980) and was, therefore, rightly determined by the Reference Court in cases of other landowners in relation to their lands acquired in these proceedings.

19. So far as the rates of other two nature of lands are concerned, namely, dry and chira, their rates do not call for any interference and nor any attempt was made by the appellants to question its legality and, in our view, rightly.

20. In this view of the matter, we are of the considered view that the appellants are entitled to claim compensation for their wet land at the rate of Rs. 2000/- per cent in place of Rs. 500/- per cent determined by the High Court in the impugned order. As a necessary consequence, the appellants are also entitled for other statutory compensation payable under the Act keeping in view the enhancement made by this Court.

21. In view of the foregoing discussion, the appeals succeed and are hereby allowed in part. The Impugned order is modified to the extent indicated above.

Kalpana K. Tripathy

Appeals partly allowed.