

(1992) 06 KL CK 0076
In the High Court Of Kerala
Case No : O.P. No"s. 2465 and 2977 of 1992

Abdul Azeez

APPELLANT

Vs

Special Tahasildars (L.A.) and Others

RESPONDENT

Date of Decision : 10-06-1992

Acts Referred:

Constitution of India, 1950 — Article 14, 19
Kerala Land Acquisition Act, 1961 — Section 5A
Land Acquisition Act, 1894 — Section 17, 17(1), 17(2), 17(4), 4(1)

Citation : (1992) 06 KL CK 0076

Hon'ble Judges : P.K. Shamsuddin, J

Bench : Single Bench

Advocate : P.K. Lakshmanan and P.P. Rajeev Kumar, in O.P. 2465/92 R and T.G. Rajendran, in O.P. 2977/92 D, for the Appellant; H. Hemalatha, Government Pleader, for the Respondent

Judgement

P.K. Shamsuddin, J.—In these two Original Petitions Petitioners have challenged the invocation of emergency provisions contained in Section 17(4) of the Act dispensing with enquiry u/s 5A of the Kerala Land Acquisition Act.

2. The Petitioners in O.P. No. 2465/92 are tenants of shop rooms with door Nos. 10/208 and 10/190 at G.H. Road, Muthalakulam, Kozhikode. The Petitioners in O.P. No. 2977/92 are tenants in occupation of building Nos. 10/188 and 10/159 situated on the same road.

3. For the sake of convenience, I will refer to the documents with reference to the order in which they are marked in O.P. 2465/92.

4. Ext. P-6 notification was published by the Special Tahsildar, National Highway, Kozhikode stating that the land specified in the schedule and situated in the village of nagaram and taluk of Kozhikode is likely to be needed for a public purpose. Item No. 5 is the land in which the Petitioners are interested. Thereafter, the Government of Kerala issued Anr. notification marked as Ext. P-7 invoking emergency provisions contained in Section 17(4) and dispensing with

the enquiry u/s 5A.

5. The main attack made by the Petitioners in these original petitions is against the invocation of emergency provisions depriving of their right to object to the initiation of acquisition proceedings. They have alleged that the acquisition itself is actuated by malafides and on the previous occasions when proceedings were initiated, they objected to the acquisition and the acquisition proceedings were dropped as can be seen from Exts. P-1 to P-5.

6. Section 17(4) states that in the case of any land to which in the opinion of the appropriate Government or the Board of Revenue, the provisions of Sub-section (1) or Sub-section (2) are applicable, the appropriate Government or the Board of Revenue, as the case may be, may direct that provisions of Section 5A shall not apply and if so direct, a declaration may be made u/s 6 of the Land Acquisition Act at any time after the date of publication of the notification u/s 4(1). Thus the State Government and Board of Revenue have powers to invoke: the emergency provisions u/s 17(4) of the Land Acquisition Act in appropriate cases. The contention raised by the learned Counsel is that necessary conditions required for invocation power, conferred by Section 17(4) have not been made out and therefore, the notification Ext. P-7 is liable to be quashed.

7. Learned Counsel invited my attention to a decision of the Supreme Court in State of Punjab and Another Vs. Gurdial Singh and Others, Dealing with the invocation of the emergency provision, Krishna Iyer, J. in his inimitable style observed as follows:

The fourth point about the use of emergency power is well taken. Without referring to supportive case-law, it is fundamental that "compulsory taking of a man's property is a serious matter and the smaller the man the more serious the matter. Hearing him before depriving him is both reasonable and pre-emptive of arbitrariness, and denial of this administrative fairness is constitutional anathema except for good reasons. Save in real urgency where public interest does not brook even the minimum time needed to give a hearing land acquisition authorities should not, having regard to Articles 14 (and 19) burke and enquiry u/s 17 of the Act.

In Seshagiri Mailer v. Tahsildar 1964 KLT 54 Justice Govindan Nair, as he then was, had occasion to comment upon the scope of Section 17(4), and the learned Judge made the following observations:

Under Section 17(4) of the Act, the Government have to form an opinion about the applicability of Section 17(1) or 17(2). And when they so form an opinion and decide to dispense with the provisions of Section 5A, they must be fully aware that a very valuable right statutorily conferred on a citizen to object to the acquisition proposed is taken away. Section 5A gives only 30 days "time" to a person affected or interested to file his objections to the proposed acquisition by a notification u/s 4(1). It appears to me, therefore, that any urgency that demands a dispensation with Section 5A must necessarily be an urgency which

will not brook a delay of 30 days.

In *Dera Phalauli v. State of Punjab and Ors.* Civil Appeal No. 2317/69, the Supreme Court again considered the scope of Sub-Section 4 of Section 17. It observed:

For making the provisions of Sub-section (1) applicable, two things must be satisfied that the land in respect of which the urgency provision is being applied is waste or arable and secondly that there is an urgency to proceed in the matter of taking immediate possession and so the right of the owner of the land for filing an objection u/s 5A should not be made available to him. In the portion of the Notification which we have extracted above, it is neither mentioned that the land is waste or arable nor has it been stated that in the opinion of the Government, there was any urgency to take recourse to the provisions of Section 17 of the Act. A direction to the Collector has been given to take action u/s 17 on the ground of urgency but this is not a legal and complete fulfilment of the requirement of law. It is to be remembered that the right of a person having any interest in the property to file an objection u/s 5A of the Act should not be interfered with in such a casual or cavalier manner as has been done in this case.

In view of the amendment, the requirement that it should be waste or arable land for invocation of emergency provisions is no longer in existence. However the other requirement that the notification should disclose that the Government have formed opinion that there is Urgency to have recourse to provisions of Section 17(4) of the Act is still a condition to be fulfilled before invoking Section 17(4) of the Act. Ext. P-7 falls short of that requirement.

8. The right conferred u/s 5A of the Land Acquisition Act is a valuable right and that right cannot be lightly, taken away invoking the provisions of Section 17 of the Act. Emergency powers conferred on the Government or Board of Revenue have to be used only in exceptional cases where the Government Or the Board of Revenue as the case may be, form an opinion that in view of urgency of situation, the acquisition cannot be postponed until an enquiry u/s 5A of the Act and an order on the objection preferred by parties affected by acquisition proceedings. In the instant case, the State has not succeeded in establishing such an emergency a to warrant deprivation of the Petitioners' right of enquiry into their objection u/s 5A. No doubt, it is essentially for the Government or Board of Revenue to form opinion as to urgency and once an opinion is formed that may not be justifiable unless it is established that the action is actuated by mala fides. But, the notification itself .should disclose formation of such opinion.

9. The foregoing discussion would show that Ext. P-7 notification in O.P. 2465 of 1992 is not sustainable and I quash the same. The Collector will make an enquiry as provided u/s 5 A of the Land Acquisition Act and consider the representations made by the Petitioners and take a final decision before declaration is made.