

(1989) 09 KL CK 0007

In the High Court Of Kerala

Case No : O.P. No's. 7457, 7530, 7627 and 7876 of 1989

Abdul Rahiman

APPELLANT

Vs

G.C.D.A. and Others

RESPONDENT

Date of Decision : 27-09-1989

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala Land Acquisition Act, 1961 — Section 18, 34

Citation : (1989) 09 KL CK 0007

Hon'ble Judges : K. Sukumaran, J

Bench : Single Bench

Advocate : M.M. Abdul Aziz, A.K. Basheer and P.V. Surendranath, for the Appellant; M.V. Joseph and A.N. Rajan Babu, Government Pleader for Respondent Nos. 2 to 4, for the Respondent

Judgement

K. Sukumaran, J.—These writ petitions raise a common point of some general interest in relation to the interpretation of the provisions of the Kerala Land Acquisition Act.

2. The land which belonged to the Petitioners had been acquired by the Government. The acquisition is not in challenge. On the quantum of compensation, there is controversy.

3. There is no dispute that in relation to all the matters covered by Section 18 of the Act, there is a royal road to the Court of Law to enforce all that is due under law by way of compensation. The only controversy actually urged at the time of arguments is in relation to the interest due, from the time the land is taken over, to the time of disbursement of the compensation. At this juncture, the merits of the claim need not be looked into in view of a threshold question, about the propriety of the Petitioners rushing to the Constitutional Court, for the enforcement of their legal rights.

4. It is well settled that if statutory remedies be open, the writ Court would

ordinarily direct the aggrieved party to the remedies so specifically provided by the Legislature itself. This obstacle is sought to be overcome by contending that as regards the interest payment, no reference u/s 18, is possible under law. Whether that is the position, has, therefore, to be considered.

5. The acquisition of land for public purpose by its very scheme, involves an element of compulsion. Looked that way, there is an invasion of the right to hold property. That invasion is, however, found to be justified, by the promotion of a public weal, achieved thereby. Vast stretches of Railways, state structures, where business of the traditional sovereign type, and of the detailed developmental pattern, and Ors. of that kind, would be impossible, without the aid of a statute permitting acquisition of land ignoring the willingness of the owner to part with it. In addition to the compensation payable for the land, the Legislature gave some solace to the unwilling owner: Solatium. Various safeguards were made to ensure that he got the full measure of the price. Even factors like the injurious affection had been reckoned in the computation of the compensation.

6. It was not merely a fixation of the compensation that was attempted by the statute. The manner in which the right was to be enforced was also subject matter of detailed provisions under the enactment. A hierarchy of regular courts was to adjudicate the justness or otherwise of the award passed by the executive agencies. The role of the reference Court, a Civil Court, and that of an appellate Court, - again a Civil Court - have to be understood in this background. (The scheme of the enactment, on a detailed examination, would demonstrate that it is a complete code, in relation to the right of the State to proceed with the acquisition, the right of the owner of the land to have a due computation of his compensation, and the availability of a Court forum for the ultimate determination of the compensation. The first of its kind of legislation, as far as India is concerned, was passed in 1898. Under the distribution of legislative power, legislation happened to be made by the States in later times. The basic framework, however, remains the same.

7. It is unnecessary for the purpose of the case to summarise the provisions of the enactment starting from its preamble and ending with the last provision of repeal, to parade and demonstrate the scheme of the enactment. Such attempts have been made in a multiplicity of cases, including the numerous decisions of the Supreme Court. Is it rational to assume that one single and simple element relating to the payment of interest as consciously excluded from the province of the Civil Court's adjudication? I am clearly of the view that it is not. If Section 18 is capable of two interpretations, one which would give a bounteous power for the Civil Court, (a power only of adjudgment) and one unnecessarily restricting or constricting it, I would lean in favour of that interpretation, under which the Civil Courts get greater authority. It is impossible to conceive that the Legislature, even at a time when a constitutional remedy was not provided, visualised that in relation to a dispute regarding payment of interest, the party will not have a reference remedy but only a difficult route of a regular suit,

paying full court fee and the like. Even when other allied and more important questions such as the extent of the land or the rate of compensation are being tried in the reference Court, the simple question of interest will have to be fought out in a separate Court, if the interpretation advocated for by the Petitioners, is accepted. I am clearly of the view, that such an interpretation has to be discarded.

8. Compensation is a term not susceptible of precise definition or description. Courts have acknowledged this fact from very early times. A fairly exhaustive summary of judicial thoughts on that aspect is seen in Commissioner of Income Tax, Punjab, Jammu and Kashmir and Himachal Pradesh, Patiala Vs. Dr. Sham Lal Narula, Patiala, . That case dealt with the term from the point of view of the taxing provisions. The following observation is very pertinent :

The words "compensation" and "interest" which occur in Section 34 may now be considered. In the absence of any statutory definitions, their uncircumscribed application is prone to cause confusion. As the connotation of these two terms does not admit of precision, and admits of considerable flexibility and varying shades of meaning, which are both narrow and broad....

The fact that from the taxation point of view, interest payment had been held to be other than compensation, would not therefore, be conclusive of the interpretation to be placed on that term as occurring in Section 18. The decision of this Court in Peter John v. Commr. of Income Tax 1985 KLT 687, where again, the view point was of the taxation measure, is not of any help in this context. The decisions relied on, on behalf of the Petitioners, cannot, therefore, be helpful to them.

9. A direct decision on the point is that of the Karnataka High Court reported in Channarajamanni v. Union of India AIR 1988 Kar 49. That decision overruled a decision of a Single Judge which took the view that a reference is permissible in relation to the payment of interest. I am not persuaded to accept, with great respect, the reasoning of the Divisional Court. No elaborate consideration of the question appears to have been made in that case. The Court proceeds more on the basis of the literal interpretation, than on an evaluation of the scheme and the totality of the provisions of the statutory enactment. The observation;

The claim is not higher compensation but arises consequent on acceptance of the compensation awarded.

is the only logic by which this complex question was sought to be discussed and answered. The various matters including the multiplicity of meanings the term compensation can have, dependant upon the scheme of the statutory enactment, had not been adequately considered by the Division Bench.

10. For reasons indicated above, I am unable to persuade myself that Section 18 of the Act, should receive a narrow interpretation.

11. The entitlement of interest, on merits, can depend upon satisfaction of a

variety of factors. It may not be desirable that the writ Court is requested to go into those questions of fact in exercise of the extraordinary power under Article 226 of the Constitution.

In view of the finding regarding the availability of an alternate efficacious remedy, I decline to entertain the writ petitions.