

(1960) 06 KL CK 0012
In the High Court Of Kerala
Case No : O.P. No. 1111 of 1959

Ammed

APPELLANT

Vs

Krishnan and Others

RESPONDENT

Date of Decision : 20-06-1960

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 4(1), 5A, 5A(1), 5A(2)

Citation : (1960) KLJ 892

Hon'ble Judges : S. Velu Pillai, J

Bench : Single Bench

Advocate : V.R. Krishna Iyer and R. Krishnaswamy Iyer, for the Appellant; P.C. Balakrishna Menon, V. Bhaskaran Nambiar for 1st Respondent and Government Pleader for Respondents 2 and 3, for the Respondent

Judgement

Velu Pillai, J.—This is to bring up the records in a land acquisition case, and for quashing the award therein, as having been passed in violation of the provisions of law. The Government of Madras initiated proceedings under the Land Acquisition Act, 1894, which may be referred to hereafter as the "Act", upon the recommendation made by the Department of Education, which was moved to do so by the first respondent, the manager of a private school. After the Notification prescribed by Section 4 (1) of the Act was published, the notice of enquiry u/s 5-A was issued on March 4, 1956, calling for objections to be filed within fifteen days of the receipt thereof, or thirty days of the publication of the Notification aforesaid, and fixing April 2, 1956, as the date for enquiry. According to the second respondent, who is the Sub-Collector and who may be deemed to be the Collector for the purpose of the Act, the enquiry was held in part on the date fixed and was adjourned to April 28, 1956, on a fresh notice which was issued. No one was present on that date; after more than one adjournment, it could take place only on October 29, 1956, when the second respondent also made a local inspection. On December 10, 1956, he sent his report, and forwarded the records of the case to the Government of the State of Kerala which had then been formed. In paragraph 7 of their affidavit filed on December 13, 1959, the

petitioners have admitted that:

the enquiry u/s 5A of the Act was held on April 2, 1956, and supplemental enquiries on April 28, 1956 and June 5, 1956, after the prescribed notices were duly promulgated and served on all the interested parties.

Having set out these facts, it may be useful, at this stage, to advert to the relevant provisions in the Act and the Rules framed under it, which were said to have been contravened by the second respondent in conducting the proceedings for the acquisition. These are section 5-A, sub-sections (1) and (2) of the Act and Rule 3 (b) of the Rules and are as follows:-

Section 5A (1): "Any person interested in any land which has been notified u/s 4, sub-section (1), as being needed or likely to be needed for a public purpose or for a company, may within thirty days after the issue of the notification, object to the acquisition of the land or of any land in the locality, as the case may be."

(2): "Every objection under sub-section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard either in person or by pleader and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, submit the case for the decision of the appropriate Government, together with the record of the proceedings held by him and a report containing his recommendations on the objections. The decision of the appropriate Government on the objections shall be final."

Rule 3 (b): "If any objections are received from a person interested in the land and within the time prescribed in sub-section (1) of Section 5A, the Collector shall fix a date of hearing the objections and give notice thereof to the objector as well as to the department or company requiring the land, where such department is not the Revenue Department. Copies of the objections shall also be forwarded to such department or company. The department or company may file on or before the date fixed by the Collector a statement by way of answer to the objections and may also depute a representative to attend the enquiry."

Thus Section 5-A enacts, though in general terms, that objections which may be raised to the acquisition, shall be heard, and such further enquiry, as the Collector thinks necessary, shall be made, and Rule 3(b) lays down, the manner in which the enquiry shall be held. The chief ground of complaint for the petitioners, was non-compliance with Rule 3(b) by reason of the omission of the second respondent to give notice, of the objections raised by the petitioners and to forward a copy thereof, to the Education Department, or as may be called, the requiring department. Factually, there was no dispute, that there had been a non-compliance with the Rule as contended.

2. The question is, how far this violation of Rule 3(b) vitiates the proceedings u/s 5-A of the Act and has been answered by a Division Bench of this Court in *Lonappan v Sub-Collector, Palghat*, 1959 K. L. J. 457, by holding, that it renders

"the final order and declaration made by the Government for the acquisition of the land.....without jurisdiction and illegal and liable to be quashed," reversing on appeal, the judgment of the Madras High Court by Balakrishna Iyer J., who apparently had held, that Rule 3 (b) in this respect was only directory. The decision of the Division Bench is binding on me, and has to be followed; but the learned Government Pleader has contended, that the Bench has really held that the Rule is directory and not mandatory, and in the present case, the petitioners were not prejudiced by the infraction of the Rule, that the petitioners had waived the objection as to the want of notice to the requiring department, and that Rule 3(b) is ultra vires of the Act, having without warrant, extended the scope of Section 5-A. In my opinion, these contentions are of no force and cannot prevail.

3. In the opinion of the Division Bench, the object of Rule 3(b) being to afford an opportunity to the requiring department, to review or reconsider its earlier recommendation or decision, in the light of the objections raised, the failure to comply with Rule 3(b), would deprive the Collector and the Government of the "benefit of the views of the concerned department as regards the.....objection before it passed final order, and this is a matter of grave concern to the appellant, who was being dispossessed of his land". Differing from Balakrishna Iyer J. the Division Bench was of the view, that Rule 3(b) is a mandatory provision, and that the deprivation of an opportunity for review or reconsideration by the requiring department by itself spelled prejudice to the owner of the land; this is not to say, that the Rule is directory in character, a violation of which may be treated as inconsequential in the absence of prejudice. I hold, that the Division Bench has held, that Rule 3(b) is mandatory.

4. The plea of waiver was founded chiefly on the circumstance, that on April 2, 1956, when the enquiry was held in part, the petitioner was represented by an advocate, that he knew that the representative of the requiring department was not then present, and that, in spite of this, he did not insist, at any later stage of the enquiry, that notice of the objections must go to the requiring department or that its representative must attend the enquiry. Rule 3(b) does not make it obligatory on the requiring department to depute its representative to attend the enquiry, although it may certainly do so; the insistence by the Rule, is on the issuing of notice to the requiring department and the forwarding to it of a copy of the objections. This need not always be, to the knowledge of the objectors. It is clear law, that in order to constitute waiver, there must not only be "the existence, at the time of the alleged waiver, of a right advantage or benefit", but also "the knowledge, actual or constructive, of the existence thereof, and an intention to relinquish such right, advantage, or benefit....." (See American Jurisprudence, Vol. LVI, Page 113, paragraph 12).

"A pre-requisite ingredient of the waiver of a right or privilege consists in an intention to relinquish it. No man can be bound by a waiver of his rights, unless such waiver is distinctly made with full knowledge of the rights which he intends

to waive" (See American Jurisprudence, Volume LVI, pages 115, 116 paragraph 15).

These cannot be posited in the present case, so far as the petitioners are concerned. The plea of waiver has no foundation.

5. The objection to the vires of Rule 3(b) was, that by providing for the issue of a notice of hearing after the receipt of the objections and for the transmission of copies thereof to the requiring department, the Rule has transgressed the limits of Section 5-A. I cannot agree. Section 5-A(2) has enjoined, that an opportunity must be afforded to the objector to be heard, and that such further enquiry if any, as the Collector thinks necessary, must be made. According to the learned Government Pleader, the import of this Section is only to afford a "reasonable opportunity" for the hearing of objections to the acquisition. The term "reasonable opportunity" is of such wide import, that often it is inexpedient and inadvisable, to leave it to the Collector in each case, to apply what he considers would be proper standards of reasonableness, which may vary from individual to individual. The Rule-making authority has therefore prescribed a procedure, sufficiently comprehensive, but so as to conform to the concept of reasonable opportunity. The object in providing for the issue of notice of hearing after the receipt of the objections, may be stated in the words of the Division Bench itself, in *Lonappan v Sub-Collector, Palghat*:

Before the expiry of the time for filing objections it will not be possible to ascertain from how many persons objections will be received on which notices will have to be issued to the concerned department and enquiries held.

The further provision in the Rule for the issue of notice and the transmission of copies of the objections to the requiring department, is a part of the further enquiry enjoined by Section 5-A of the Act. I see no valid objection in such details being furnished by the Rule, for the guidance of officers who are called upon to exercise the power u/s 5-A, for, the purpose of a rule can well be, to carry out the provisions of the statute more fully and effectively. To my mind, there is no repugnancy between the Rule 3(b) and Section 5-A, for "repugnancy implies a conflict between two provisions neither of which can be given effect to without infringing the other. There can be no such conflict between a bylaw and the general law.....so long as it confines itself within the broader limits of the general law and does not involve any violation of its fundamental principles or policy and is capable of being construed as supplementing the general law". (See *Bindra on the Interpretation of Statutes*, 1957 Edition, page 512).

The learned author has also repudiated the suggestion as untenable that a bylaw cannot add to the law, because the power to make bylaws would then be nugatory. (See page 515). In *The Central Bank of India Vs. Their Workmen*, the Supreme Court observed in passing, that the Rules cannot enlarge the scope of the Section. In *Barisal Co-operative Central Bank Ltd. v Benoy Bhushan Gupta* (A. I. R. 1934 Calcutta 537) the by law introduced an additional qualification,

which was not prescribed by the statute and in *Huzrat Syed Shah Mustarshid Ali Al Quadari v Commissioner of Wakfs* (A.I.R. 1954 436) the Rule authorised the appointment of a mutwalli in circumstances not warranted by the statute. I do not think, that these cases are of any assistance to the respondent here. I therefore hold, that Rule 3(b) is not ultra vires. It was urged, that this case may be referred to a Division Bench in order that the correctness of *Lonappan -v Sub-Collector, Palghat* may be canvassed. I do not find my way to do so. I believe, that it is open to the respondent to test the correctness of this decision in appeal before a Division Bench. The award and the proceedings which " culminated in it are hereby quashed, and as possession had been taken over, a writ will issue as prayed for, to restore possession to the petitioners. I make no order as to costs.