
(1973) 01 KL CK 0007
In the High Court Of Kerala
Case No : O.P. No. 2090 of 1970

Appu	Vs	APPELLANT
State of Kerala and Others		RESPONDENT

Date of Decision : 25-01-1973

Acts Referred:

Kerala Land Acquisition Act, 1961 — Section 2(3), 5

Citation : (1973) 01 KL CK 0007

Hon'ble Judges : V.P. Gopalan Nambiyar, J

Bench : Single Bench

Advocate : A.P. Chandrasekharan, for the Appellant;

Final Decision : Allowed

Judgement

V.P. Gopalan Nambiyar, J.—The petitioner seeks to quash S. 3(1) Notification dated 29th July 1967 issued under the Kerala Land Acquisition Act (Ex. P3) and the S. 6 Declaration dated 26th April 1969 (Ex. P6), issued in respect of one acre and 19 cents in Sy. No. 457/1 of Ollukkara Village, belonging jointly to the petitioner and his mother and sisters. Two main grounds are urged to quash the notification and the declaration, namely, first that the S. 5, enquiry has not been conducted in the manner provided by the statute and the petitioner has not been afforded an opportunity of being heard on the objections; and second, that the acquisition was not really for a public purpose.

2. As far as the first of these objections is concerned, S. 3(3) of the Act requires the Collector to publish a notification in the gazette and also cause public notice of the substance of such notification to be given at various places in the locality S. 5(1) enables any person interested in the land acquired to object to the acquisition of the land within thirty days of the issue of the notification. S. 5(2) enjoins the Collector to give the objector an opportunity of being heard either in person or by Counsel. The Kerala Land Acquisition R. 1963 have been framed under the Act. R. 5(b) states that if objections are received within time, the Collector shall fix the date for hearing the objections and give notice thereof to

the objector. The form in which the notice is to be issued has been prescribed as Form IV (B). The petitioner has alleged in Para. 10 of the petition that after preferring Ex. P2 objections he did not receive any notice of enquiry enjoined by S. 5 of the Act, nor was he heard in support of the objections. To this, the answer made in Para. 6 of the counter affidavit is in very vague and general terms, namely, that the S. 5 notice was served on all interested parties by registered post and the enquiry was conducted by the Tahsildar on 26-2-1967 (the date 26-2-1967 is an obvious mistake, and the learned Government Pleader who appeared stated at the hearing that the correct date was 26-10-1967). The learned Government Pleader stated with reference to the files that he was unable to say that notice on the enquiry on the objections had actually been served on the petitioner. This one ground is sufficient to vitiate the proceedings.

3. There is yet another illegality in regard to the enquiry into the objections under S. 5 of the Act. Ex. P3 notification shows that the Tahsildar was constituted the Collector for purpose of land acquisition as defined by S. 2(3) of the Act. The petitioner has alleged in Para. 5 of the petition, that the Tahsildar who made the enquiry reported that the acquisition is not necessary. In Para 4 of the counter affidavit it is admitted that the Tahsildar was of the opinion that the acquisition may be withdrawn. The said paragraph proceeds to state that further enquiries were made by the Revenue Divisional Officer and the District Collector and that these reveal that the acquisition was necessary. It is also stated therein that after the service of notice under S. 5 of the Land Acquisition Act, on all the interested persons, the S. 5 enquiry was conducted by the Revenue Divisional Officer in the presence of the petitioner, and that the Tahsildar has also conducted enquiries on 26-2-1967 (26-10-1967?). The Tahsildar having been constituted expressly by the notification as the "Collector" for purpose of the land acquisition, I do not think that simultaneously the Collector and Revenue Divisional Officer can also exercise concurrent jurisdiction and function in respect of the acquisition proceedings. The Government Pleader contended that the definition in S. 2(3) of "Collector" takes in the "Collector" primarily, and only "includes" the "Officer appointed to perform the functions of the Collector." But to hold that both can function simultaneously would be to introduce chaos and confusion in the land acquisition proceedings. The reasonable inference from S. 3, 4 and 5 is that one and the same authority should function for the purposes of these sections, and not that two separate sets of Officers can function concurrently. Whatever that be, the association of the Revenue Divisional Officer who does not figure as a Collector either in the primary sense or in the inclusive sense of the definition is certainly unwarranted and unjustified, and that is sufficient to introduce a second vitiating element in these proceedings.

4. The petitioner's Counsel also contended that the acquisition was not for a "public purpose" as the object was only to cut a canal from the eastern side of the petitioner's property, where it is bounded by the Peechi Canal and take the waters to the western boundary of his property, and no more. The purpose, it was said, was really to benefit the lands of one Kaipulli Krishnan situated on the

west of the petitioner's property, at whose instance, according to the petitioner, the land acquisition proceedings have been set afoot. It was contended by the petitioner's Counsel that the proposed canal being confined only to the petitioner's property and intended to benefit only Krishnan's property, the underlying purpose of the acquisition cannot be regarded as public. The Government Pleader contended and the counter affidavit has stated that the canal is meant to irrigate not only the lands of Krishnan, but also Sy. Nos. 456, 448 etc. of Ollukara Village. On the averments and materials placed, I am not satisfied that the acquisition is for a public purpose. The S. 3 notification is therefore liable to be quashed. I allow this writ petition and quash Ex. P3 notification and Ex. P6 declaration. I make no order as to costs.