
(1991) 08 KL CK 0024

In the High Court Of Kerala

Case No : O.P. No's. 4518 of 1989-K and 2482 of 1990-U

Balakrishna Pillai and Another etc.

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 01-08-1991

Acts Referred:

Constitution of India, 1950 — Article 226

Evidence Act, 1872 — Section 114

Land Acquisition Act, 1894 — Section 4(1), 6, 6(1), 6(2)

Citation : AIR 1992 Ker 136 : (1991) 3 ILR (Ker) 404

Hon'ble Judges : K. Sreedharan, J

Bench : Single Bench

Advocate : M.M. Abdul Aziz, for the Appellant; M.C. Gopi, Govt. Pleader and V. Sreedharan Nair, for the Respondent

Final Decision : Dismissed

Judgement

K. Sreedharan, J.—Petitioners in these Original Petitions challenge the proceedings initiated by the Government under the Land Acquisition Act, hereinafter referred to as the Act for acquiring lands belonging to them for the Neyyattinkara Municipality. Issues raised in these petitions are identical. Therefore I consider it advantageous to dispose of them by a common judgment.

2. O.P. 4518/89 was filed by two petitioners. First petitioner filed statement dated 14-12-1990 to the following effect:

"I have decided not to challenge the acquisition of my property. Hence it is essential in the interest of justice to vacate the stay in C.M.P. No. 13073/89 with regard to my property and allow me to withdraw my challenge against the acquisition of my property."

Thus the second petitioner alone is interested in O.P. 4518/89.

3. The Neyyattinkara Municipality passed a resolution on 29-7-1976 to acquire three acres 90 cents of property in various survey numbers in Neyyattinkara

village for construction of a shopping complex. In pursuance to that resolution notification u/s 3(1) of the Kerala Land Acquisition Act, hereinafter referred to as the "Kerala Act" was published in 1978. No further step was taken on the basis of that notification. Consequently it lapsed. In 1980, a fresh notification u/s 3(1) of the Kerala Act was published for acquiring the identical properties. Some of the land owners challenged the proceedings initiated under the Kerala Act before this Court in O.Ps.8578/82 and 10628/82. The authorities under the Kerala Act did not pursue the proceedings in pursuance to the notification of 1980. Consequently the entire proceedings lapsed. Hence the Original Petitions were disposed of as having become infructuous. Thereafter fresh proceedings were initiated under the Act of 1894. Notification u/s 4(1) was issued. It was published in the official Gazette dated 15-9-1987, in Kerala Kaumudi and Mathrubhumi dailies dated 24-8-1987 and 28-8-1987 respectively. The substance of the notification was published in the locality on 12-10-1987. Objections were filed challenging the notification. These objections were considered by the Board of Revenue. Declaration u/s 6(1) of the Act was made by the Board of Revenue on 7-10-1988. It was published in the locality on 7-10-1988 itself. Declaration was published in Kerala Kaumudi and Mathrubhumi dailies dated 11-10-1988 and 12-10-1988 respectively. It was notified in the Gazette dated 11-10-1988. Owners of two properties questioned the validity of the declaration before this Court in O.P. 10051/88 on the ground that the declaration was made after expiry of one year from the date of the notification u/s 4(1) of the Act. That Original Petition was dismissed and the petitioners therein took up the matter in Writ Appeal 432/89. The decision, in the Writ Appeal is reported in *Bhaskara Panicker v. State of Kerala*, (1989) 2 KLT 71. This Court upheld the declaration made u/s 6(1) of the Act observing:

"We have therefore no hesitation in repelling the contention of the appellants that the declaration u/s 6(1) was made in this case after the expiry of one year from date of publication of the notification u/s 4(1)."

After that decision-when the authorities proceeded with the steps for passing the award these Original Petitions have been filed.

4. Petitioners in O. P. 4518/89 moved C.M.P. 13073/89 praying for stay of operation of the proceedings for the acquisition. This Court by order dated 22-6-1989 directed the respondents not to take possession of the land pending disposal of the writ petition. Similarly petitioners in O.P. 2482/90 moved C.M.P. 4478/90. There also this Court passed an order of stay of the dispossession of the petitioners. Municipality has filed C.M.P. 10835/90 in O.P. 4518/89 and C. M. P. 10842/91 in O.P. 2282/90 for vacating the orders of stay.

5. The main contention raised by the petitioners in these Original Petitions are the following. The resolution passed by the Neyyattinkara Municipality to acquire 3 acres and 90 cents of land is mala fide. It is the outcome of the personal vendetta of the then President of the Municipality against the owners of the land who belonged to the Vellala Community. Since the action of the Municipality is

actuated by mala fides, acquisition proceedings have to be quashed. It was then contended that there was no proper publication of the declaration as contemplated by Section 6 of the Act. Publication in the Gazette of the declaration u/s 6 should have preceded the publication in newspaper and in the locality. This sequence having been violated, the entire proceedings have to be set at naught. Lastly it was contended that an area of 2.50 acres is not at all necessary for the construction of a shopping complex. The intention of the Municipality to acquire 2.50 acres bring out their mischievous motive. I shall proceed to deal with these aspects in detail.

6. It is averred by the petitioners that the then President of the Neyyattinkara Municipality brought into existence a trust deed for the management of Melatharavu Shri Mutharamman temple and its properties. As per the trust deed he was to manage the properties. The inhabitants of the locality including the petitioners objected to the above move of the President. They approached the Munsiff's Court, Neyyattinkara to defeat that attempt by filing O.S. 106/76. That suit happened to be decreed against the then President. It was only to wreak vengeance on the people who were staying near the temple and who belong to Vellala community, it is alleged, he caused a resolution to be passed by the Municipality for acquiring 3 acres and 90 cents. I am not impressed with this contention. Even if the then President of the Municipality was having an intention to get the management of the Mutharamman kovil and its properties, that cannot in any way be taken as the circumstance to pressurise the Municipal Council an elected body to pass a resolution to acquire the land. Further this Court is not to test the legality or otherwise of the proceedings initiated under the Act on the ground whether the land was owned by persons belonging to any particular community. Taking note of the He of the property, the Municipality found this land to be suitable for the construction of the shopping complex, office complex, go-down, etc. The argument that majority of the occupants of the land belong to a particular community will not in any way go to invalidate the action taken for acquiring the land under the Act. Petitioners have no case that apart from the then President of the Neyyattinkara Municipality any other councillor was ill-disposed or inimical towards the owners of this land. In such a situation. I have no hesitation in holding that the challenge based on mala fides is only to be rejected. I do so.

7. In *Bhaskara Panicker v. State of Kerala*, (1989) 2 KLT 71 this Court upheld the declaration made in, this case. The declaration made by the Board of Revenue on 7-10-1988 was found to be valid. Therefore petitioners cannot be allowed to challenge the validity of declaration made u/s 6(1) of the Act. Their contentions is that even-though the declaration was made validly, it was not published as contemplated by Section 6(2) of the Act. Learned counsel representing the petitioners disputed the Government's contention that the declaration was published in the locality on 7-10-1988. Since declaration u/s 6(1) was made by the Board of Revenue on 7-10-1988; according to counsel, public notice of the substance of that declaration could not have been given at convenient places in

the locality on the same day itself. For verifying this, I directed the learned Government Pleader to make available the entire files relating to the acquisition proceedings. From the files it is seen that substance of the declaration u/s 6 (1) of the Act was published in convenient places in the locality on 7-10-1988, itself. Since notification u/s 4 (1) of the Act was published in the locality on 12-10-1987, the officers were running against time to have the declaration u/s 6(1) published within the time prescribed by the statute, namely, within only one year from the date of notification u/s 4(1). So without wasting any time, immediately after the Board of Revenue made the declaration on 7-10-1988, public notice of the substance of that declaration was given in the locality on the same day. The official acts done by the officers should be presumed to have been regularly performed. The endorsement made by the Village Officer to the effect that public notice of the substance of the declaration u/s 6(1) of the Act was given in the locality on 7-10-1988 is entitled to the protection of the presumption u/s 114 of the Evidence Act as well. In the absence of any evidence to rebut that presumption, I hold that declaration u/s 6(1) was published in the locality on 7-10-1988 itself.

8. On the basis of the decision of the Supreme Court in Collector (District Magistrate) Allahabad and Another Vs. Raja Ram Jaiswal, learned counsel representing the petitioners argued that the publication of the declaration u/s 6 should be in the following order. First in the official gazette and then in the newspapers and/or in the locality. If publication in the official Gazette is subsequent to the publication in the newspaper or in the locality, according to counsel it will be in violation of the provisions contained in Section 6(2) of the Act and hence invalidate the entire proceedings under the Act. In the decision referred to, Their Lordships were concerned with the validity of the notification u/s 4(1) of the Act as it stood prior to the amendment of 1984. It was observed by Their Lordships (para 16 of AIR):

"Assuming that a notification in the official Gazette is a formal expression of the decision of the Government, the decision of the Government is relevant, unless it takes the concrete shape and form by publication in the official Gazette. Where a decision of the Government to be effective and valid has to be notified in the Government Gazette, the decision itself does not become effective unless, a notification in the official Gazette follows.....

Section 4(1) further requires that the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality. The expression "such notification" in the latter part of Section 4(1) and sequence of events therein enumerated would clearly spell out that first the Government should reach a decision to acquire land, then publish a notification u/s 4 (1) and simultaneously or within a reasonable time from the date of publication of the notification cause a notice to be published containing substance of such notification meaning thereby that notification which is published. Obviously, therefore, there cannot be a publication in the locality prior

to the issuance of the notification." :

On the basis of this, it is contended that publication in the locality of the substance of the declaration should have been made after the publication in the official gazette. In the instant case, declaration was made on 7-10-1988. Substance of that declaration was given in the locality on 7-10-1988 while it was published in the Gazette on 11-10-1988 only.

According to counsel, the public notice of the substance of the declaration in the locality should be subsequent to the publication in the official Gazette. The sequence cannot be altered. This sequence has been violated and hence the entire proceedings must fail.

9-10. The facts before their Lordships were as follows. Government issued a notification dated 6-2-1975 u/s 4(1) of the Act. The same was published in the Gazette dated 15-2-1975. Notice dated 6-3-1975 was given to the owner. Substance of the notification was published in the locality at about the same time. As per this notification the land sought to be acquired was mentioned as plot 62 measuring 8265 sq. yards. Subsequently 22-3-1975 a corrigendum dated 13-3-75 was published in the Gazette whereby the earlier notification was sought to be corrected by reading at as plot 26 instead of 62 and the area sought to be acquired as 2865 sq. yards, instead of 8265 sq. yards. It was by this corrigendum that for the first time plot No. 26 was mentioned by Government as required for a public urpose. Public notice of this notification was never given. In such a situation Their Lordships made the above observations. Public notice was given of the notification which mentioned plot No. 62 and not of plot No. 26. As far as plot No. 26 was concerned public notice of the substance of the notification concerning that plot had not been given at all either before or after the publication of the corrigendum in the Gazette. So the observations made by Their Lordships in the passage quoted above has no relevance for the decision of this case.

11. Section 4 (1) of the Act has undergone legislative change after the above mentioned decision, in 1984. By the amendment notification u/s 4(1) has to be published in two daily newspapers circulating in the locality. Further the following words have also been added to Clause (1) of Section 4. "The last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of publication of the notification". As the statutory provision now stands the Government have to take a decision that the land is or is likely to be needed for a public purpose and to notify the same in three modes prescribed therein. The modes or publication of notification are publication in official gazette, two newspapers having circulation in the locality and public notice of the substance of the notification at convenient places in the locality. As per the newly added words to Section 4(1) the last of the dates of publication of the notification or giving of public notice shall be treated as the date of publication of the notification. It makes it abundantly clear that the legislature does not prescribe any sequence of publication to be obligatory or mandatory. If the notification has

been published in accordance with the three modes mentioned in Section 4(1), the variation in the sequence in which the publication takes place, shall not invalidate the notification. In other words, there is no substance in the contention that the Collector cannot publish the notification u/s 4 (I) before the same is published in the official Gazette. This, view is supported by a Division Bench of the Allahabad High Court in M/s. Garg Farms, Delhi and others Vs. State of U.P. and others, . This principle equally applies to the publication of declaration u/s 6 of the Act. I do not find my way to accept the contention raised by the petitioner that the publication of the declaration in two daily newspapers and public notice of the substance of the declaration in the locality must be made only after the publication in the official Gazette. This public notice given in the locality, of the substance of the declaration made by the Board of Revenue on 7-10-1988 itself is valid and legal. As and when the declaration is made by the Board of Revenue or the Government, it becomes binding and operative. Publication of that declaration contemplated by Clause (2) of the section is meant only for giving publicity. Publication in official Gazette of that declaration is having no more sanctity than the publication in the newspapers or the public notice of its substance in the locality. Therefore I find it difficult to accept the petitioners' contention that declaration u/s 6(1) of the Act is invalid on account of the public notice given in the locality on 7-10-1988 prior to its publication in the official Gazette.

12. The last contention raised by the petitioners is that an extent of 2.50 acres is not necessary for the construction of the shopping complex. This contention has been answered by the Municipality in its counter affidavit. According to the Municipality, 1.4 acres has been earmarked exclusively for construction of shopping complex building. 67 cents of land is reserved for rehabilitating the existing affected persons. 43 cents is provided for formation of new roads, widening of National Highway and P.W.D. roads and for parking vehicles such as autorikshaws, taxies and mini lorries. From this it is seen that the 2.50 acres are required to meet the public needs. In P. S. N. Motors v. State of Kerala, (1989) 1 KLT 30 I took the view that setting up of shopping centre can never be considered to be anything other than public purpose. The income derived by Municipality from the shopping centre can be made use of by it for discharging statutory obligations cast on it under the Municipalities Act. So the construction of shopping complex is nothing but a public purpose. This view was confirmed by a Division Bench in Writ Appeal 1055/88. The Municipality has set apart some property for rehabilitating the existing affected persons, for parking place, for widening the National Highway and the roads. Those purposes are also public purposes and the acquisition of the land for the said purpose is not to be interfered with by this Court. The actual extent needed for a purpose is to be decided by the authorities under the Act and not by this Court in exercise of the powers under Article 226 of the Constitution.

13. The files produced before Court show that awards have been passed on 12-12-1990. Municipality has deposited a sum of Rs. 68,12,000/- before the

Deputy Collector, Land Acquisition towards the value of the properties. If the property is not taken possession of and handed it over to the Municipality, they will have to pay interest on the above amount to the Kerala Urban Development Finance Corporation Ltd. without getting any returns from the principal. So I do not find any ground to delay the proceedings under the Act.

14. Yet another argument advanced by the learned counsel representing the petitioners is that the Government had given an undertaking in its letter No. I4218/D3/82/ LA & SWD to provide land not less than 5 cents in extent to the displaced persons. That undertakings, according to counsel must be directed to be nonoured by the Government. After the undertaking dated 6-11-1982, much water had flowed under the bridge. I am not in a position to state whether the then existed conditions prevail now. So if the petitioners are so advised, they can move the Government and get their grievances redressed.

In view of what has been stated above, I find no merit in these Original Petitions. They are accordingly dismissed.

Issue photo copy of this judgment to the parties on usual terms.