

(1979) 11 KL CK 0011

In the High Court Of Kerala

Case No : C.M.P. No"s. 13981 to 13986 and 13987 of 1979

Commissioner, Trichur Municipality

APPELLANT

Vs

C. Narayanan Nair and Another

RESPONDENT

Date of Decision : 19-11-1979

Acts Referred:

Kerala Land Acquisition Act, 1961 — Section 55

Citation : AIR 1980 Ker 170

Hon'ble Judges : V. Khalid, J

Bench : Single Bench

Advocate : M.C. Sen, for the Appellant; P.G.P. Panicker, V. Sivaraman Nair, C.P.D. Nair, V. Parameswara Menon and Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

V. Khalid, J.—These petitions raise a common question and are being disposed of by a common order. In all these petitions, the Commissioner, Trichur Municipality, is the petitioner. These petitions arise from Land Acquisition Proceedings, L. A. R. No. 137 of 1976. Lands were acquired for the purpose of construction of Bell Mouth and Shopping Centre for the Municipality in the Naduvilal Junction, Trichur. The original compensation awarded was enhanced by the court below. The Municipality has to pay this. The State has not filed any appeal. In these petitions the Commissioner of the Municipality requests that leave may be granted to him for filing appeals against the judgment and decree in L. A. R. No. 137 of 1976 on the file of the Subordinate Judge's Court, Trichur.

2. I shall consider the facts in L. A. R. No. 137 of 1978 for the purpose of this judgment. This appeal was filed on 16th August, 1979 and the present application for leave u/s 151, C. P. C. on 3rd October, 1979. These two dates show that the appeal as originally filed was not accompanied by the leave petition. The question is whether the defect in presentation of the appeal will be cured by the subsequent application. This defect is common to all the petitions though the dates are different.

3. The contesting respondents have raised several pleas. According to them the appeals are not maintainable. In any case no leave can be granted since the leave petitions were not filed along with the appeals. They cannot cure the defect as they cannot operate retroactively.

4. Two questions arise in these petitions. (1) Whether a company or a local authority in whose favour an acquisition is made, is a person interested and (2) whether such a person has a right of appeal against the order of compensation.

5. Regarding the first question; a company or a local authority in whose favour an acquisition is made has an interest in the acquisition proceedings because it has to pay the compensation. But its rights are restricted; it cannot demand a reference. It can only appear and adduce evidence for the purpose of determining the amount of compensation. Section 55 of the Kerala Land Acquisition Act makes this clear. It reads;

"55. Acquisition of land at cost of a local authority, or company -- (1) Where the provisions of this Act are put in force for the purpose of acquiring land at the cost of any fund controlled or managed by a local authority or of a company, the charges of and incidental to such acquisition shall be defrayed from or by such fund or company:

(2) In any proceeding held before a Collector or Court in such cases, the local authority or company concerned may appear and adduce evidence for the purpose of determining the amount of compensation:

Provided that no such local authority or company shall be entitled to demand a reference u/s 20". Powers not enumerated in the Section are not available for the company or the local authority; hence no power to demand reference or to file an appeal.

6. In *Corporation of the City of Nagpur Vs. Narendrakumar Motilal and Others*, a Division Bench of the Bombay High Court held with reference to the Land Acquisition Act, 1894, that the local authority or company for whose benefit an acquisition is made, is not a person interested. In *Mandalay Municipal Committee v. Maung It* (AIR 1929 Ran 115) a Division Bench of that Court held that persons interested in Section 20 of the Act are persons interested in the land acquired as owners, tenants and the like and not persons interested as acquiring the land through the Secretary of State. Such persons had only a limited right and that is to appear and adduce evidence. The company or a local authority for whose benefits an acquisition is made can make evidence available before the Land Acquisition Officer or the court to fix the compensation. It cannot demand a reference. So viewed, it cannot be said to be a person interested. I am in respectful agreement with the principle enunciated in the above decisions.

7. The second question is whether such a person has a right of appeal against the compensation awarded. It is settled law that persons who are not parties to a proceeding but are aggrieved by the decree or order passed, can file an appeal

questioning such order or decree after obtaining leave from the appellate court. In other words while there is no right to file an appeal, the appellate court can grant leave to do so, In Executive Officer, Sri Padmanabhaswamy Temple Vs. Raghavan Pillai and Another, a Division Bench of this Court held that "a person who is not on the party array but who is bound by the decree or whose interests are prejudicially affected by it may appeal with the leave of the appellate court". In S. Govinda Menon Vs. K. Madhavan Nair and Others, another Division Bench of this Court held.

"It may therefore be taken as settled law that a person who is not a party to the decree or order may with leave prefer an appeal from such decree or order. Leave in appropriate cases is granted to a person who without being a party is either bound by the order or is aggrieved by it or is prejudicially affected by it".

8. In Sabapathy Pillai v. Special Tah-sildar (1970 K LT 1015) another Division Bench of this court held that a person who is not a party to an award but is bound by it or whose interests are affected by it, may file an appeal with the leave of the appellate court, though he cannot file an appeal as of right.

9. Recently "Poti, J., in Commr. Trichur Municipality v. Krishna Menon (1979 K LT 546) while considering the scope of Sections 55 (2) and 60 of the Land Acquisition Act, 1961 (Kerala), observed referring to, AIR 1974 Andh Pra 299, that

"that decision would not be of assistance to the appellant because in that case the party had moved for leave since the party had no right to appeal. There is no such application for leave and therefore there is no scope for considering the same".

This passage was relied upon to contend that the learned Judge had impliedly held that even though there was no right of appeal for local authority -- the learned Judge also was considering the case of a local authority there -- leave could be granted if applied for. What is settled by these authorities is that a local authority or company in whose favour an acquisition is made, has no right of appeal but in appropriate cases the court can grant leave to appeal. The question for consideration is whether this is one such case.

10. Under what circumstances can leave be granted? In The Andhra Pradesh Agricultural University Vs. Begari Sayanna Dies L.Rs. and Begari Gangamma and Others, Chinnappa Reddy, J., as he then was, had occasion to consider a kindred question. The learned Judge was considering a land acquisition appeal by the Andhra Pradesh Agricultural University. It was held that leave of the court was necessary where a person who was not a party to the proceeding desired to prefer an appeal "but a pre-condition to the grant of leave is that he must satisfy certain basic requirements, one of which is that he should have a right of appeal". The learned Judge observed that a local authority or a company had only a right to adduce evidence. It was further observed that the Agricultural University was not entitled to the grant of leave to appeal merely because it will

ultimately have to meet the costs of acquisition. The fact that the University has to pay the compensation, according to the learned Judge, was not of such consequence. The person really affected is the person who has been deprived of the property. He cannot be compelled to fight a legal battle against the person for whose benefit the land is acquired. With utmost respect, while agreeing with the learned Judge that leave is necessary for filing an appeal by a local authority or a company, I find it difficult to accept the proposition that such a person must establish a pre-condition and certain basic requirements, one of which was that he should have a right of appeal. Such a person has no right of appeal since the Act does not confer such a right. The local authority or company can only appear and adduce evidence. The right of appeal is subject to the granting of permission by the court. What should not be lost sight of in such matters is that a person who has been deprived of the property should not be compelled to fight a battle against the person for whose benefit the acquisition is made and it is only under exceptional circumstances that leave can be granted for filing an appeal.

11. A decision reported in *The Punjabi University, etc. Vs. Acharya Swami Ganesh and Another*, was also brought to my notice. There a joint appeal was filed by the Punjabi University and the Punjab Government against an award of the court. There was some delay in filing the appeal. The delay was sought to be explained on the ground that the Registrar of the Punjabi University miscalculated the dates. The Punjab High Court refused to condone the delay on the ground that the right to file the appeal was primarily that of the Punjab Government who has not explained the delay. The Supreme Court held that delay should be condoned since it was for the benefit of the Punjabi University that the land was being acquired and it was the University who was meeting the cost of acquisition and for that reason it was that the Government left the matter to the University. Sufficient assistance Cannot be sought from this judgment. In that case a joint appeal was filed by the Punjab Government and the Punjabi University and that makes all the difference. That the Government had a right of appeal cannot be disputed and an application for condonation of delay is a concomitant of that right. What is deducible from the authorities is that an appeal can be filed by a local authority only when permission is granted by the court. The local authority has to establish compelling reasons for the grant of permission. Permission will not be granted as a matter of course. The policy of the law is to discourage such appeals, for the good reason, that a citizen who is deprived of his property, should not be dragged to court on flimsy grounds at the instance of a person for whose benefit acquisition is made. The citizen loses his property not voluntarily but through coercive legal procedure. He cannot prevent acquisition, if properly made. Therefore he should not be compelled to face further litigation in relation to the compensation due to him. Though the local authority pays, it does not have the right to call the tune. In this case the petitioner has not made out a case for grant of permission except that he is aggrieved by the enhancement of compensation.

12. The petitioners in this case have an additional difficulty. Since there is no

right of appeal for the Municipality, the appeal when it was presented was incompetent. The leave petitions are filed long after the filing of the appeals perhaps by which time the appeals themselves had become barred. Without the applications to grant leave to appeal, the appeals cannot exist. These petitions cannot act retroactively. They can do so only if the original appeal had life. Since the Municipality has no right of appeal, the subsequent petitions cannot clothe those appeals with life. The applications should have been filed along with these appeals. This not having been done, no leave can be granted. To meet this contention the petitioner's counsel invited my attention to a Division Bench decision of this Court in *Thayoob Sait v. Ayyappan* (1963 K LT 455) where it has been held as follows:

"No hard and fast rule of general applicability can be laid down for dealing with appeals defectively filed under Order XLI Rule 1. Appropriate orders will have to be passed having regard to the circumstances of each case, but the most important step to take in cases of defective presentation of appeals is that they should be carefully scrutinised at the initial stage soon after they are filed and the appellant required to remedy the defects. These principles should govern all defective proceedings filed in court. The decision in 1961 KLT 874, only points out that an appeal or petition filed beyond the period of limitation is liable to be dismissed if there is no prayer to condone the delay and that the office should put up such appeal or petition for orders without waiting for the party to give an application to condone the delay".

In rare cases an application to excuse delay in filing an appeal can be filed after the appeal is presented. I have, with great respect, my own misgivings about the principle of law enunciated in this judgment. However, I do not think it necessary to consider the same as it can be distinguished from the case on hand. There the application for condoning the delay is filed by a person who has a right of appeal. That application if allowed can always operate retroactively. Here the petitions filed long after the filing of the appeal are by persons who have no right of appeal. For this reason also these petitions have to be dismissed.

I dismiss these petitions. No costs.