
(2009) 05 KL CK 0095

In the High Court Of Kerala

Case No : Writ Petition (C) . No. 3784 of 2009 (A)

C.V. Sasidharan

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 26-05-2009

Acts Referred:

Land Acquisition Act, 1894 — Section 3, 4(1), 6, 9(3)

Citation : (2009) 05 KL CK 0095

Hon'ble Judges : K. Balakrishnan Nair, J;C.T. Ravi Kumar, J

Bench : Division Bench

Advocate : P.B. Sahasranaman, for the Appellant; Government Pleader, for the Respondent

Judgement

Balakrishnan Nair, J.—The petitioner owns 20 cents of land in Sy.Nos.634/40 and 634/41 of Eravipuram Village in Kollam district. For acquiring the said land, proceedings under the Land Acquisition Act, 1894 (hereinafter referred to as "the Act"), including preliminary notification u/s 4(1) and declaration by the Land Revenue Commissioner u/s 6 of the Act, have been completed. The lands covered by the proceedings are notified as per Ext.P1. The petitioner has been served with notice u/s 9(3) of the Act, for taking possession of the land, as per Ext.P2. Going by Exts.P1 and P2, it would appear that the acquisition is being made for rehabilitation of the victims of Tsunami, which hit the coastal areas of Kerala in December, 2004. That is evident from Exts.P3 and P4. Ext.P3 is the rehabilitation scheme and Ext.P4 is a Government order dated 4.7.2007, deciding to acquire land expeditiously for implementing the Tsunami Rehabilitation Programme. This Writ Petition is filed, challenging Exts.P1 to P4.

2. The petitioner has mainly raised the following grounds: (1) The purpose for which the acquisition is made, is not a public purpose in terms of Section 3(f) of the Act. In support of that submission, the petitioner refers to Ext.R2(a) scheme produced by the Government along with its counter affidavit. Going by that scheme, the petitioner points out, it is evident from the priority fixed that the

beneficiaries include not only families whose houses were destroyed or damaged by Tsunami, but also others who are likely to be hit by Tsunami in future. (2) The area sought to be acquired from the petitioner is also a Tsunami prone area. So, no purpose will be served by rehabilitating the persons who are likely to be hit by Tsunami in future, in the lands proposed to be acquired.

3. The respondents have filed a counter affidavit, denying the allegations of the petitioner. They submit that the purpose notified is definitely a public purpose in terms of Section 3(f) of the Act. They have also denied the allegation of the petitioner that the land sought to be acquired from him is also a Tsunami prone area. They say, only after conducting a site inspection and on finding that the lands are suitable for rehabilitation and re-settlement, the notification was issued.

4. Section 3(f) of the Act defines public purpose. It is an inclusive definition, which reads as follows:

(f) the expression "public purpose" includes--

(i) the provision of village-sites, or the extension, planned development or improvement of existing village-sites;

(ii) the provision of land for town or rural planning;

(iii) the provision of land for planned development of land from public funds in pursuance of any scheme or policy of Government and subsequent disposal thereof in whole or in part by lease, assignment or outright sale with the object of securing further development as planned;

(iv) the provision of land for a corporation owned or controlled by the State;

(v) the provision of land for residential purpose to the poor or landless or to persons residing in areas affected by natural calamities, or to persons displaced or affected by reason of the implementation of any scheme undertaken by Government, any local authority or a corporation owned or controlled by the State;

(vi) the provision of land for carrying out any educational, housing, health or slum clearance scheme sponsored by Government or by any authority established by Government for carrying out any such scheme, or, with the prior approval of the appropriate Government, by a local authority or a society registered under the Societies Registration Act, 1860, or under any corresponding law for the time being in force in a State, or a co-operative society within the meaning of any law relating to co-operative societies for the time being in force in any State;

(vii) the provision of land for any other scheme of development sponsored by Government, or, with the prior approval of the appropriate Government, by a local authority;

(viii) the provision of any premises or building for locating a public office, but

does not include acquisition of land for Companies." Going by the above definition, the provision of village sites or extension or planned development or improvement of the existing villages sites will be a public purpose. Provision for acquisition of land for residential purpose to the poor or landless or to persons residing in areas affected by natural calamities will also come under the above definition. Provision of land for carrying out housing schemes also is covered by the said definition. Acquisition for any scheme of development sponsored by the Government will also come under the said definition. Going by the above definition, we are of the view that the acquisition contemplated for implementing Tsunami rehabilitation scheme will definitely be for a public purpose. Even if the scheme covered those who are living in Tsunami prone areas, still, we feel that the acquisition will be for a public purpose.

5. The next contention raised is that the area sought to be acquired is also a Tsunami prone area. But, the said contention has been denied by the respondents in their counter affidavit.

6. The petitioner has raised other incidental contentions also regarding the prohibition in making constructions etc., close to the coastal area. The above contention of the petitioner has been denied by the respondents in their counter affidavit at para 9. They also pointed out that some of the lands covered by Ext.P1 will come under the Coastal Regulation Zone (CRZ). But, the Government have decided to exempt those lands from acquisition. In view of the above stand of the Government that the lands sought to be acquired are not covered by CRZ, in the absence of any materials before this Court to show that they are so covered, it is unnecessary for this Court to proceed further in the matter.

In view of the above findings, the Writ Petition fails and it is dismissed.