
(1997) 08 KL CK 0053
In the High Court Of Kerala
Case No : O.P. No. 2566 of 1996

Devasia Chacko

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 12-08-1997

Acts Referred:

Land Acquisition Act, 1894 — Section 17, 17(1), 17(4), 4, 4(1)

Citation : (1997) 2 KLJ 285

Hon'ble Judges : J.B. Koshy, J

Bench : Single Bench

Advocate : Tom Jose, for the Appellant; Noble Mathew) and T.R. Harikumar, for the Respondent

Final Decision : Allowed

Judgement

J.B. Koshy, J.—By Ext.P2 a scheme was published for house construction by the third respondent, Kerala State Housing Board, in Kattapana. The aims of the scheme was for providing house accommodation facilities in the village town of Kattapana. Fifteen acres of land was acquired for the above scheme. 38 houses were constructed as per Ext.P2 scheme by utilising about two acres of land and more than 13 acres of land still remains for house construction. Third respondent again wanted further property to be acquired towards the scheme as per Ext.P3 notification. Section 4 notification was published on 7.12.1994. It is stated that urgency provision u/s 17(4) was invoked dispensing with Section 5A enquiry. Petitioners' properties were also sought to be acquired. It is the contention of the petitioners that as per Ext.P2 scheme published in 1990 fifteen acres of land were already acquired. Out of the above fifteen acres of land only two acres of land were utilised for construction of 38 houses. All those houses are also not given and they are lying vacant giving facility for antisocial elements and there is no need for further acquisition. On receiving notice petitioners made representations. But, various representations filed by the petitioners were not considered. By Ext.P10 dated 3.11.1995 petitioners were informed that if the

land value fixed is not enough they can proceed for higher land value as per the provisions of the Land Acquisition Act. It is contended by the petitioners that Section 17 was invoked without any urgency. Already fifteen acres of land was acquired. Only two acres were utilised and 38 houses were constructed. This is not disputed in the counter affidavit also. Thirteen acres of land is lying vacant. Further it is contended that eventhough Section 4 notification was published in the official gazette on 7.1.1995 and Section 17(4) urgency provision was invoked dispensing with Section 5A enquiry, and first notice was published in the newspaper as early as on 7.12.1994 (Ext.P3), petitioner's land was not taken possession of nor Section 6 declaration was published till the writ petition was filed on 12.2.1996. That shows that there is no urgency and Section 17 was invoked unnecessarily. The emergency provision u/s 17 can be invoked only if such an urgency is there which cannot brook the delay in conducting section 5A enquiry. It has been held repeatedly that urgency contemplated by the provisions of Section 17(1) and (4) of the Act must be of such a character that it cannot brook the delay of the period of inquiry u/s 5A of the Act. The urgency must be such that the period required for inquiry u/s 5A of the Act would cause great prejudice or inconvenience so as to defeat the very purpose of acquisition and the purpose of acquisition cannot be fulfilled. Of course it is for the authorities to explain the delay. A public purpose acquisition cannot be defeated merely for inaction of the officers. But however, the delay should be explained. However in this case no circumstances were given to explain the delay. When there is unexplained delay in taking possession after invocation of the urgency clause, the acquisition proceeding reflects absence of urgency and the proceeding is liable to be quashed as held by the Andhra Pradesh High Court in Chevuru Suryanarayana Reddy and Others Vs. Government of Andhra Pradesh and Another, . In this case no stay order was passed this Court. Eventhough Section 4 declaration was published in the Gazette on 7.1.1995 and urgency provision was invoked on that day itself, possession of the property was not taken so far. It was held in M.K. Jhunjhunwala and Others Vs. State of Orissa and Others, that unexplained delay between the notification u/s 4(1) and 17(4) and the declaration under Sec. 6 shows absence of urgency. If land already acquired is lying unutilised, this clearly negatives the case of urgency, as held by the Allahabad High Court in the decision in Vinod Kumar and others Vs. State of U.P. and others, .

2. Here fifteen acres of land already acquired for the same purpose is lying unutilised. Out of the fifteen acres only in two acres houses were constructed. In this connection I also refer to the decision of the Orissa High Court in Chandramani Sahu and Others Vs. State of Orissa and Others, where it was held that where the declaration u/s 6 was made about 1 1/2 years after the publication of the notification under Sections 4(1) and 17(4), the delay defeats the plea of urgency. However, if the delay is satisfactorily explained it will not affect the proceeding. Here there is no satisfactory explanation for the delay. Therefore, I am of the view that in view of the unexplained long delay in making

declaration and taking possession of the land sought to be acquired, and the major portion of the land acquired for the same public purpose lies unutilised, invocation of Section 17(4) is not justified. Merely because invocation of urgency clause of Section 17(4) is set aside as unjustifiable Section 4 notification will not become invalid. Only condition is that Section 5A enquiry should be conducted. Even if Section 17 is valid, only Section 5A enquiry can be dispensed with. But declaration u/s 6 has to be issued. The provision in Section 6(1) not only insists on the Government being satisfied that a particular land is needed for a public purpose but that a declaration to that effect should be published within the time specified in the Act. So even in cases of emergencies arising u/s 17 such a declaration u/s 6(1) should be made and duly published. Therefore, even if Government has rightly chosen to act u/s 17(4) and has dispensed with the procedure prescribed u/s 5A, it cannot be said that Section 6(1) and (2) need not be complied with. By invoking Section 17(4) only Section 5A enquiry is dispensed with but procedure prescribed u/s 6 should be complied with. Publication of Section 6 declaration is mandatory. Therefore, in a case where a notification is published u/s 4 of the Act and a direction is made u/s 17(4) of the Act dispensing with the requirement of considering objections u/s 5A of the Act, it is still necessary for the State Government to issue a declaration u/s 6 of the Act. Here Section 6 declaration is dated 20.3.1996 published later. As can be seen from Ext.P11, Section 4 notification was published on 17.1.1995 in the Kerala Gazette. Proviso to Section 6 provides that no declaration in respect of any particular land covered by a notification u/s 4, sub-section (1) published after the commencement of the Land Acquisition (Amendment) Act, 1984 shall be made after the expiry of one year from the date of publication of the notification. Here Section 6 declaration is after one year of the publication of Section 4 notification. The writ petition was filed in February 1996. Declaration is dated 20.3.1996 after filing of the writ petition. Section 4 notification was published on 17.1.1995. But the time writ petition was filed in February 1996, time for publishing Section 6 declaration was over. Even now compensation is not paid or compensation was tendered to the petitioners. In any event, since Section 6 declaration was not published within one year from the date of publication of Section 4 notification, the entire acquisition proceedings initiated against the petitioners lapsed. Therefore, Section 4 notification published in the Gazette on 17.1.1995 as well as Ext.P11 declaration are set aside. However, this will not prevent the respondents from taking fresh proceedings of acquisition according to law.

The Original Petition is allowed accordingly.