

(2010) 01 KL CK 0139

In the High Court Of Kerala

Case No : W.A. No. 2680 of 2009 and connected cases

Dr. Jamaluddin, K.A. and Another

APPELLANT

Vs

District Collector and Others

RESPONDENT

Date of Decision : 22-01-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Land Acquisition Act, 1894 — Section 17(1), 17(4), 4(1), 5A, 5A(2)

Citation : (2010) 01 KL CK 0139

Hon'ble Judges : P.S. Gopinathan, J; P.R. Raman, J

Bench : Division Bench

Advocate : C.M. Mohammed Iqbal, for the Appellant; K.V. Manoj Kumar, Government Pleader, for the Respondent

Judgement

P.R. Raman, J.—All the above Writ Appeals raise the common questions of law and facts. Hence, we heard all the petitions together and dispose of the same by a common judgment.

2. The lands belonging to the Appellants were sought to be acquired by invoking the emergency provision under the Land Acquisition Act and dispensing 5A enquiry. Notifications were issued u/s 4(1) of the Land Acquisition Act proposing to acquire the lands belonging to the Appellants, which is the subject-matter of challenge in the Writ Petitions filed by them. The learned Single Judge, before whom the Writ Petitions came up for consideration, considered the various points urged and finding that there is no merit in the contentions raised, dismissed the original petitions. Hence, these appeals.

3. For the purpose of convenience, we refer to the facts in W.A. 2681 of 2009 and W.P. (C) No. 22883 of 2009 from which the Writ Appeal arises. However, factual difference, if any, will be referred to at the appropriate place.

4. The Appellant in W.A. 2681 of 2009 filed W.P. (C) No. 22883 of 2009. He has lands in Kasaragode District. Ext. P-2 is a notification issued u/s 4(1) read with

Section 17(4) of the Act. The purpose of the acquisition as per notification was for the rehabilitation of Tsunami victims affected or likely to be affected. According to the Appellants, the land acquisition proceedings were initiated in February, 2009 for rehabilitation of the people affected in Tsunami attack happened on 26-12-2004. According to them, the District of Kasaragode was not at all affected by Tsunami. Since there are no such persons in Kasaragode District, who are affected by Tsunami, the acquisition for the said purpose is of no use. According to the Appellants, they are having land only for meeting residential purpose. Admittedly, the first Petitioner, who is the first Appellant, does not own any property therein, but he approached this Court since notice was issued to him. According to them, Ext. P-2 notification is for the purpose of rehabilitation of Tsunami victims and provisions u/s 17(4) of the Act have been invoked in this case. The notification is challenged on the ground that it is issued in an arbitrary manner and without application of mind. It is contended that other barren land, which are more suitable are available and for reasons best known to the authorities, such lands are given a go by and property belonging to the Appellants is sought to be acquired, which is arbitrary and unfair. Referring to the Tsunami Rehabilitation Programme, rehabilitation was for persons, who are affected by Tsunami and whose houses were destroyed. Almost all the persons directly affected by Tsunami had already been rehabilitated. It is also contended that invoking of emergency clause u/s 17(4) of the Act at this distance of time amounts to mala fide intentions and motives. They would further contend that the right of the owner to point out the land to be acquired has been lost by invoking the emergency provision and dispensing an enquiry u/s 5A. There is no justification for invoking the emergency clause. W.A. 2681 of 2009 arises from out of the judgment in W.P. (C) No. 22883 of 2009. Ext. P-2 is the relevant notification produced in the case. It is contended that as per the Programme, the rehabilitation has to be done in a phased manner and even those who are occupants, having residential building upto 500 metres of High Tide Line of the sea coast are to be rehabilitated in the first part. If the last of the priority is ultimately to be implemented, the Petitioners, whose land is within 500 metres of sea coast, are not suitable for the purpose for which it is acquired. Since one of the purposes for which acquisition is made is to rehabilitate even a possible victim of tomorrow, there arises no emergency for dispensing the enquiry u/s 5A. Elaborating the argument, it was contended that mere exigency of emergency is not sufficient. Both emergency as also the need for dispensing the enquiry is to be shown by the authority.

5. In W.A. No. 2680 of 2009, besides the above points, it was also added to say that the land proposed to be acquired from the Appellants was dropped based on an earlier proposal. Yet Anr. land earlier proposed was also dropped. But, in the case of the Appellants, they continued with the proposal afresh and it is contended that there is no difference between lands owned and possessed by the Petitioners and lands subsequently dropped from acquisition proceedings. In W.A. 2828 of 2009, it was contended that identification of the land has to be made by

the concerned Panchayat and placing reliance on a resolution it was contended that 49 cents of land in their possession was readily offered for the purpose of construction of a flat and ignoring such resolution, authorities have proceeded to acquire the land belonging to the Petitioners rather than the land offered by the Panchayat. At the very outset, it was pointed out by the learned Counsel for the Panchayat that they have already taken the stand that there is no other land similar to the one sought to be acquired. On the part of the learned Government Pleader, it was stated that when there was delay in the identification of the land by the concerned authority, there is no justification for waiting for the land to be identified by the Panchayat. It was in such circumstance, according to him, that suitable lands were identified in a joint meeting organised by the revenue authorities and the officials of the Panchayat and identified the land before issuing the notification.

6. Both sides have placed reliance on some of the decisions of the Apex Court and that of this Court in support of their contentions. The learned Government Pleader brought to our notice that similar acquisition for identical purposes issued elsewhere in the State was the subject-matter of challenge in various other writ petitions and a Division Bench of this Court in W.P. (C) 32802 of 2008, after considering the various arguments, found no merit in the contention and the writ petition was dismissed. Yet in Anr. writ petition, W.P. (C) No. 10888 of 2008 also the submission made by the Respondents therein was found to be without any substance. It was also found that emergency provision will have to be invoked in acquisition of this nature and dismissed the original petition. Yet in Anr. writ petition, W.P. (C) No. 5158 of 2009 also, by an elaborate judgment, all the aspects of the matter, including as to whether the notification issued is for public purpose and whether invocation of the emergency clause is justified were considered and it was held that no good grounds existed for quashing the notification and upheld the action of the Government. As against the judgment in W.P. (C) No. 32802 of 2008, a SLP preferred before the Apex Court as SLP No. 14095 of 2009 was dismissed even at the admission stage.

7. Being confronted with the judgments of this Court referred earlier and referred to by us as above, an attempt was made to distinguish the present case from the facts of those cases. It was pointed out by the learned Counsel Sri Narayanan appearing in W.A. 2681 of 2009 that, the purpose of the acquisition in the present appeal is for rehabilitation of Tsunami Victims and Tsunami Rehabilitation Scheme is not the purpose as is found in the notification, which was considered in the judgment in W.P. (C) No. 5158 of 2009. According to him, the purpose is different. In the case of Tsunami Rehabilitation Scheme, victims of Tsunami and people who are living in coastal regions are to be rehabilitated, whereas there exists no such Scheme when the acquisition is for rehabilitation of Tsunami victims only as in the present case. It is further pointed out that even as per the Scheme, there are four priorities, namely, (1) to provide houses for people who are victims of Tsunami; (2) to rehabilitate persons, who are living within 10 metres of the High Tide Line; (3) to rehabilitate persons who live within 200

metres of the High Tide Line; and (4) to rehabilitate persons, who are living within 500 metres of the High Tide Line. Therefore, according to him, it is evident that ultimate proposal and goal of the Government is to rehabilitate persons, who are living within 500 metres of the High Tide Line. It is pointed out that lands belonging to the Appellants in W.A. 2681 of 2009 is lying within a distance of 460 metres of the High Tide Line, whereas in the case of Appellants in W.P. (C) No. 5158 of 2009, the land started from 342 metres and ending beyond 500 metres from High Tide Line. According to him, the contention regarding providing of alternate site found in W.A. No. 2686 of 2009 cannot be equated with the finding of the judgment in W.A. No. 5158 of 2009. It is submitted that the land sought to be acquired is "Nanja III" land and the alternate site offered was rejected on the ground that the land offered was "Nanja III" land. Since the very land that is proposed to be acquired is Nanja III, the rejection of the alternate site on the said same ground is illegal. Learned Government Pleader, however, points out that the land proposed to be acquired in the case of the Appellant is Punja and not Nanja, i.e. to say land proposed to be acquired is a "VAYAL", whereas the alternate site proposed is a wet land.

8. We may now proceed to consider the points, which are covered by the decision of this Court in W.A. 5158 of 2009, since, the said decision is also rendered by a Division Bench of this Court in respect of similar acquisition to rehabilitate Tsunami victims and we are bound by the said decisions except there exists any factual difference leading to a different conclusion to be reached.

9. Petitioners in W.P. (C) No. 5158 of 2009 were also owners of various extents of land at Chavakkad Taluk in Thrissur District. Ext.P-2 is the notification made in the said writ petition issued u/s 4(1) of the Act. There also the land was acquired invoking the provisions of Section 17(4) of the Act dispensing with the enquiry u/s 5A. Declaration was also made by the Land Revenue Commissioner u/s 6 of the Act as in the present case. Representations made to the authorities by the Petitioners therein also did not yield any favourable results. The challenge was with reference to Exts. P-2 to P-4 therein. The main ground raised by the Petitioners therein was that the urgency clause has been invoked without any justification and that the land is not suitable for constructing residential buildings. Further it is covered by CRZ notification. Even an allegation of mala fide, that the Petitioners therein owe allegiance to Anr. political ideology, was put forth as a ground to challenge the same. A specific contention was raised that the land was acquired not to rehabilitate any person hit by Tsunami. As part of the Tsunami Rehabilitation Programme, the Government has decided to resettle families residing in vulnerable areas on sea coast by providing them with new houses at safer place. There the land proposed to be acquired starts from a distance of 342 metres from the sea shore. Though the CRZ notification as per which construction is prohibited, the prohibition only applies to an area within 200 metres and between 200 to 500 metres from the High Tide Line, construction can be made for the benefit of the fishermen community. It was contended by the State that substantial number of persons, who are the

beneficiaries of the Scheme, are the fishermen, who can settle in the area within 200 to 500 metres from the High Tide Line. After referring to the averments made in the writ petition as also in the counter-affidavit, this Court found that the invocation of the emergency clause u/s 17(4) for acquiring other lands under the Tsunami Rehabilitation Programme has already been upheld by this Court in several decisions, one of which is W.P. (C) No. 181 of 2009. Actually as per the original plan, the Scheme was to be completed by 31-3-2009. But, on the request of the State Government, the Central Government extended the time for acquisition upto 30-6-2009 and completion of the Scheme upto 31-12-2009. Because of the time constraint, emergency clause was invoked. This submission of the State was accepted and the writ petition was dismissed. After referring to the relevant provision of CRZ notification extracted in Page 11 of the judgment, it was found that the measurement of the land from the sea wall has been correctly made and the acquired land from 342 metres from the sea wall upto 500 metres can be used for fishermen among the beneficiaries, going by the terms contained in the notification, as aforesaid, namely, construction, reconstruction of dwelling units for customary uses like residence etc. is found permissible.

10. Coming to the notification on hand, Ext. P-2, to which we have already referred to above, the purpose stated in the notification dated 18-2-2009 is not only to rehabilitate the victims affected by Tsunami, but to those, who are also likely to be affected in future. In the judgment in W.P. (C) No. 32802 of 2008, in paragraph 6 it was held that, the acquisition is for public purpose and the Government frames a policy not only to rehabilitate Tsunami victims but also Ors. and the same cannot be described as illegal. It is definitely a public purpose. However, Petitioner would like to have his property spared and neighbours property acquired. So, the contention of the Petitioner that there are other suitable sites, cannot be accepted. The further contention of the Petitioner that there are no more Tsunami affected to be rehabilitated in Kollam area cannot be accepted in view of the averments of the Respondent in the additional counter-affidavit to which reference was made earlier. It was however held that, even if certain persons, who are ineligible, are included in the list of beneficiaries, the said defect will not have the effect of affecting the validity of the acquisition proceedings. Reference was also made to the decision of the Apex Court in Delhi Administration and Others Vs. Madan Lal Nangia and Others, .

11. The learned Single Judge, while considering the contentions advanced by the Petitioners with reference to the purpose of acquisition, held that the purpose of the acquisition, which has to be stated for public information, need not be so specific that, all the clauses of a scheme, which would be operational, will have to be disclosed. The larger impression that the public gather is that the land is acquired for the purpose of providing relief in connection with Tsunami. Preventive action in management of Tsunami is always the first preference, having regard to the devastating effect that Tsunami has proved worldwide. Therefore, the mere description using the term --rehabilitation of those affected by the Tsunami--does not, in any manner, conclude that, the purpose, as

notified, did not include the preventive rehabilitation, having regard to future anticipated calamities. But, to our mind, even in Ext. P-2 notification, the purpose stated is not only for rehabilitation of Tsunami victims, but also, who are likely to be affected. Thus the measure taken is to acquire the land for rehabilitation of the affected and also likely to be affected in future and it cannot be said that the purpose of acquisition is not for any public purpose. As a matter of fact, this being the first time that the State has to meet such exigencies as a result of Tsunami, which happened for the first time as far as our State is concerned, if the State thought it fit that instead of searching for land for rehabilitation in future, it is necessary to provide land taking into account of the future contingencies, this Court cannot say that the wisdom of the Government in acquiring the land to meet such exigencies is not for any public purpose. As regards the notification of the emergency clause is concerned, it has been shown by the Government that the fund is provided by the Central Government and unless the fund is expended before the expiry of the financial year, the Scheme itself may fail without adequacy of the fund. When this Court upheld the similar notification issued proposing to acquire land for rehabilitation of Tsunami victims, who are likely to be affected invoking the emergency provision and dispensing an enquiry u/s 5A and having upheld the same, a different yardstick cannot be followed, merely because, the area where the land is situated happened to be different from the area to which earlier notification was issued and upheld. Since Tsunami has affected people of the coastal line, mostly fishermen community in different parts of the State, different notifications were issued. Since the land sought to be acquired are different, definitely the notification by the respective authority would have some minor difference. But over all, the whole purpose of the acquisition in connection with the Tsunami is to rehabilitate the persons who fell a victim of the same or likely to be affected and the same is implemented by framing a scheme in a phased manner. When there is a challenge made against an acquisition by the State, the Court can grant relief, if only it is found that either the notification is not for any public purpose or that it was issued with any mala fide intention. But, in this case, the averments regarding alleged mala fide is too vague. Merely because the Appellants' land is acquired is no reason to hold, in the absence of further reasoning, that proposed land is acquired with any mala fide intention or motivation. Which is the land most suited for the purpose of acquisition is always for the Government to decide and not for the court to say. We may, in this connection, refer to the decision in *Union of India and others Vs. Andnd Singh Bisht*, . Paragraph 3 of the decision reads as follows:

Obviously therefore, the Petitioners have contended that the acquisition is not for a public purpose; it is a mala fide acquisition and a vague public purpose of defence and so acquisition is not valid in law. Precedents have been copiously cited in the High Court in that behalf. The learned Single Judge and the Division Bench elaborately considered them and held that acquisition for defence purpose is a public purpose. *Arnold Rodricks and Another Vs. State of Maharashtra and Others*, to *State of Tamil Nadu and others etc. Vs. L. Krishnan and others etc.*,

settled the controversy holding that acquisition for housing development is not a vague purpose. Expansion of dockyard for defence purpose is a public purpose. Publication of declaration u/s 6 accords conclusiveness to public purpose. It is for the appropriate Government to take a decision whether a particular land is needed for a public purpose or not and the court cannot substitute its opinion on the public purpose to that of the appropriate Government. We wholly agree with the view taken by the High Court in that behalf. As regards person interested, this Court dealt with the controversy from Himalaya Tiles and Marble (P) Ltd. Vs. Francis Victor Coutinho (dead) by LR's., to M/s. Neyvely Lignite Corpn. Ltd. Vs. Special Tahsildar (Land Acquisition), Neyvely and others, , and the Constitution Bench decision, per majority. The Petitioner, therefore, is not a person interested. Notice and hearing of it u/s 5A(2) is not mandatory.

12. There is thus no merit in the contention that merely because an alternate site offered by the Petitioner is not accepted, the acquisition of the proposed site is, in any way, actuated by mala fides. As a matter of fact, it is pointed out that the alternate land proposed was rejected on the ground that the land was Nanja III, whereas the land in question is a Punja III land. That apart, it is always not necessary nor is the requirement of law that some alternate land proposed ought to be accepted in preference to the land now proposed to be acquired. So long as the land proposed to be acquired is found suitable for the purpose for which the acquisition is made, that too on the reason shown in the counter-affidavit, namely that this land has got a better access to the road, electricity connection etc., the judicial review of such action is beyond the scope of enquiry u/s 226 of the Constitution.

13. Though it is true that while invoking the emergency provision dispensing an enquiry u/s 5A, it affects the right of a person whose land is sought to be acquired, the length of time is not a relevant criteria in deciding as to whether at the time of invoking of the provision, there exists any emergency. However, invoking the very emergency clause for the same purpose has been upheld by the decision referred to earlier. The contention that earlier the land, which was proposed to be acquired has been dropped but the said land belonging to the Petitioner was again proposed to be acquired by the authority is arbitrary, is factually incorrect. The learned Government Pleader rightly points out, referring to paragraph 10 of the counter-affidavit and reiterated the submission that, the land, which was subsequently dropped was found to be not suitable for the purpose, since there was a 11 K.V. line drawn above the land. There are other reasons stated in paragraph 10. As we had already stated, the consideration as to which land is better suited for the purpose of acquisition is not for the Court to substitute the opinion of the public authority. The State, when thought fit to acquire the land, which is admittedly situated in the coastal line and the purpose for which the acquisition is being made is to rehabilitate the persons affected by Tsunami, most of whom were fishermen community, who are living on the coastal line, it cannot be said that there is any mala fide intention in acquiring the Appellants' land.

14. One other contention, which is also to be considered is as to whether there is any substance in the contention of the Appellants" that, when there is a proposal as per the third priority of the Scheme that, where two persons living within 500 metres from the High Tide Line are ultimately to be rehabilitated and if the land belonging to the Petitioners/Appellants is situated within 500 metres, it is contended that, the same will not be suited for the purpose of acquisition. Whether or not the State is going to implement the third and fourth phase, is not a matter for consideration at this stage. Further when there is no prohibition of construction of residential buildings for the fishermen community and the coastal zone regulation did not affect such construction, the mere fact that the land acquired is situated within 500 metres by itself is not a reason to hold that the land is not suitable for the purpose for which the acquisition is made.

15. In State of U.P. Vs. Smt. Pista Devi and Others, , the emergency clause was invoked for providing housing accommodation. Considering the national urgency, it was held by the Apex Court that the Court should take judicial notice of such urgency and the delay of one year is not by itself sufficient to hold that the decision taken by the State Government would vitiate the action taken u/s 17(1) and (4) of the Act at the time of the publication of the notification u/s 4(1) of the Act.

In the result, we find no merit in these appeals. They are accordingly dismissed. No costs.