
(2021) 10 KL CK 0097

In the High Court Of Kerala

Case No : Writ Petition (C) No. 26189 Of 2013

E.S.Namboodiri And Others

APPELLANT

Vs

State Of Kerala And Others

RESPONDENT

Date of Decision : 20-10-2021

Acts Referred:

Land Acquisition Act, 1894 — Section 4(1), 5A, 6, 6(1), 6(2), 9(3), 11, 11A, 17(4)

Citation : (2021) 10 KL CK 0097

Hon'ble Judges : Murali Purushothaman, J

Bench : Single Bench

Advocate : A.N.Rajan Babu, P.Gopalakrishnan, Jafar Khan

Final Decision : Dismissed

Judgement

Murali Purushothaman, J

1. Since the issues involved in all these writ petitions are the same, they are disposed of by this common judgment.

W.P. (C) No.30071/2011

2. Messrs. S. Easwaran Namboodiri, E.S. Namboodiri and E. Easwaran Namboodiri were the owners of 2.7 acres of dry land in Survey Nos.40/7 and 40/7-10 of new sub division and 34 cents of wet land in Survey No.40/6 of Chennithala Village, Mavelikkara Taluk. The property belonged to a family consisting of 17 members. The property comprised in Survey No.40/4 owned by the family was acquired for the purpose of Central Reserve Police Camp. When the camp was shifted elsewhere, that land was used for the purpose of setting up of 'Jawahar Navodaya Vidyalaya'. The family had also surrendered one acre of land by negotiated sale for the purpose of expansion of Jawahar Navodaya Vidyalaya, based on the request made by local M.L.A and the District Collector. The family was given the impression that no more land would be required and acquired for the purpose of the School.

3. Meanwhile, Government of Kerala, the 1st respondent, issued Ext.P1 notification dated 26.11.1997 under Section 4(1) of the Land Acquisition Act ('the Act', for short) read with Section 17(4) of the Act, for acquisition of 13.6 ares of land in Re-survey No.40/6 and 11.5 ares of land in Re-survey No.40/7 owned by the petitioners for the use of Navodaya Vidyalaya. Later, Ext.P6 declaration dated 21.06.1999 under Section 6 of the Act was issued by the 1st respondent. Challenging Ext.P1 notification under Section 4(1) and Ext.P6 declaration under Section 6, Sri. S. Easwaran Namboodiri and his sons Sri. E.S. Namboodiri and Sri.E. Easwaran Namboodiri filed O.P. No.26573/1999 before this Court. In the said Original Petition, it was averred that the property sought to be acquired is a serpent grove (Sarpa kavu), which was in existence from time immemorial and the trees standing in the area are considered as very sacred and no trees in the area were being cut and the Navodaya Vidyalaya had already been established and is functioning and the petitioners have already surrendered enough land for the same. Though the Government once informed that they have withdrawn the said land from acquisition proceedings, that decision was later withdrawn. It was alleged that Section 17(4) of the Act was invoked only to see that right given to the petitioners under Section 5(A) of the Act shall not be invoked.

4. During the pendency of the said Original Petition, the first petitioner therein, Sri. S. Easwaran Namboodiri, the father of the other two petitioners died and Smt. Subadra Antharjanam, the legatee under the will of S. Easwaran Namboodiri was impleaded as additional 4th petitioner. In the Original Petition, this Court, by order dated 28.10.1999, stayed dispossession of the petitioners. The Original Petition was dismissed for default on 13.9.2006 and was later restored to file on 3.10.2007 and was disposed of by Ext.P7 judgment dated 30.10.2007 and the relevant portion thereof reads thus:

"5.....I am of the view that in view of the contentions raised by the petitioners and subsequent developments, it is only just and proper to quash that part of the notification invoking Sections 17(4) and 6(1) declaration, so far as petitioners alone is concerned, and direct the first respondent to conduct and enquiry under Section 5(a) of the Act, so far as the petitioners alone are concerned.

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7. So, it is only just and proper that the first respondent conduct an enquiry under Section 5-A of the Act in this case. For that purpose, petitioners shall file their objections to the notification raising all their contentions including their argument that the entire land acquisition proceedings have lapsed on account of the withdrawal of the same, and also in view of the provisions contained under Section 11-A of the Act. Such objection shall be filed within three weeks from the date of receipt of a copy of this judgment. If such an objection is filed, the Land Acquisition Officer shall conduct an enquiry under Section 5-A of the Act and take a decision, with due notice to the petitioners and requisitioning authority, as expeditiously as possible. Until such a decision is taken, petitioners shall not be

dispossessed from the land in their possession.

In the result, writ petition is disposed of in the following manner. The notification under Section 17(4) of the Act and Ext.P10 declaration under Section 6(1) of the Act, so far as it relates to the petitioners are quashed. Petitioners shall file their objection to Ext.P1 notification before the Land Acquisition Officer within three weeks from the date of receipt of a copy of this judgment. The Land Acquisition Officer shall consider and dispose of the application, with due notice to the petitioners and the requisitioning authority, in accordance with law. Until such a decision is taken, petitioners shall not be dispossessed. It is also made clear that this is a concession given to the petitioners alone, and no other person whose lands were included in Ext.P1 notification or Ext.P10 declaration can claim the same benefit, on the strength of this judgment."

(emphasis supplied)

5. Though pursuant to Section 6 declaration, Ext.P8 notice dated 16.11.2007 under Section 9 (3) of the Act was issued by the Land Acquisition officer, when Ext.P6 judgment was brought to his notice, the same was withdrawn by Ext.P9 communication and the petitioners in Ext.P7 judgment were directed to file their objection to Ext.P1 notification as directed in the judgment. About 2 months after Ext.P7 judgment, Sri. E. Easwaran Namboodiri filed Ext.P10 objection dated 23.12.2007 to Ext.P1 notification before the Revenue Divisional Officer (RDO), Alappuzha. During the 1st week of October, 2011, when Sri. E. Easwaran Namboodiri went to village office, Chennithala for remittance of basic tax of their properties in Re-survey No. 40/6 and 40/7, tax was not accepted as the property was proposed to be acquired and on enquiry came to know that the 1st respondent has issued Ext.P11 fresh declaration dated 28.03.2011 under Section 6 of the Act in respect of their property for the use of Jawahar Navodaya Vidyalaya, Chennithala. Ext. P11 is impugned in this writ petition by Sri. E.S. Namboodiri, Sri. E. Easwaran Namboodiri and Subadra Antharjanam, the petitioners in Ext. P7 judgment, on the ground that, the same is issued 13 years after Section 4 (1) notification and more than 3 years after Ext.P7 judgment whereby the initial declaration under section 6 (1) was quashed and hence, illegal and unenforceable. This writ petition was admitted by this Court on 11.11.11, but no interim relief was granted.

W.P. (C) No.26187/2013

6. This writ petition is filed by E. Narayanan Namboodiri who owns 37 ares of land in Sy. No. 40/6-3 and 29.03 ares in Sy. No. 40/7-3 in Chennithala Village, Mavelikkara Taluk. The petitioner was not a party to the judgment dated 30.10.2007 in O.P. No.26573/1999 where, the relief was confined to the petitioners therein alone. The grievance of the petitioner is that, though the earlier Section 6 (1) declaration dated 21.06.1999 has become final as far as the petitioner is concerned, no award was passed pursuant to the said declaration within the stipulated time and the land was included in Ext.P4 fresh declaration

issued on 18.03.2011 along with the land of the petitioners in O.P. No. 26573/1999. Later, Ext.P5 notice under Section 9 (3) dated 02.08.2013 was issued on the petitioner along with the petitioners in O.P. No. 26573/1999. After the award was passed on 19.09.2013, Ext. P6 letter was issued to the petitioner to vacate and deliver possession of the land. The petitioner contends that the entire acquisition proceedings initiated on the basis of Ext. P1 notification dated 26.11.1997 under Section 4 (1) and Ext. P4 declaration dated 28.03.2011 under Section 6(1) are lapsed and the Award No.1/2013 dated 19.09.2013 is illegal and void. This writ petition was admitted by this Court on 25.10.2013 and an interim order was passed not to commit any waste or cut trees or destroy other improvements standing in the property of the petitioner. However, the interim order expired on 20.02.2014 and was not extended thereafter.

W.P. (C) No.26189/2013

7. Sri. E.S. Namboodiri, Sri. E. Easwaran Namboodiri and Subadra Antharjanam, the petitioners in O.P. No.26573/1999 and W. P. (C). No.30071/2011, have filed this writ petition challenging Ext.P1 notification under Section 4(1), Ext. P4 declaration under Section 6 (1) dated 28.03.2011, Ext. P5 notice under Section 9(3) and Ext. P6 notice to vacate and deliver possession of land. This writ petition has been filed on the same ground and cause of action for which W. P. (C). No.30071/2011 is filed. The only difference is that Ext.P5 notice under Section 9(3) and Ext.P6 notice to vacate and deliver possession of land were issued after filing of W. P. (C). No.30071/2011. Nothing is mentioned in this writ petition about W. P. (C). No.30071/2011 filed by them. This writ petition was filed on the same day on which W.P. (C) No. 26187/2013 was filed by E. Narayanan Namboodiri and the same interim order in W.P. (C) No. 26187/2013 was passed in this case also. However, the interim order expired on 20.02.2014 and was not extended thereafter.

8. A counter affidavit dated 12.04.2012 is filed on behalf of the Land Acquisition officer in W. P. (C). No.30071/2011 wherein it is stated that though this Court in the judgment dated 30.10.2007 in O.P. No. 26573/1999 directed the petitioners therein to file their objection to Ext.P1 notification before the Land Acquisition Officer within three weeks from the date of receipt of a copy of the judgment, no objections were filed by them and therefore the Land Acquisition officer initiated further steps pursuant to Section 4(1) notification and issued draft declaration which was published in the gazette on 28.03.2011. It is stated that, for the smooth functioning of Navodaya Vidyalaya, the land notified for acquisition is indispensable. It is further stated that there is no serpent grove or no idol worship either by the public or the petitioners in the said land.

9. A counter Affidavit is filed by the Land Acquisition officer in W. P. (C). No.26187/2013 and since the issues involved in all the writ petitions are the same, a memo is filed by the learned Government Pleader to adopt the said counter affidavit in the other two cases. In the counter affidavit, it is urged that the writ petitions filed in 2013 to impugn Section 6 declaration dated 28.03.2011

are belated and are liable to be dismissed on ground of delay and laches. It is reiterated that, though this Court in the judgment dated 30.10.2007 in O.P. No. 26573/1999 directed the petitioners to file their objection to Section 4 (1) notification before the Land Acquisition Officer within three weeks from the date of receipt of a copy of the judgment, no objections were filed. The petitioners having not filed any objection as directed by this Court cannot take advantage of their fault and blame the authorities for delay in acquisition proceedings. Since Section 4(1) notification was not interfered with by this Court and only Section 6(1) declaration was quashed, fresh steps were initiated and the declarations were published in the official gazette and in two daily newspapers as evident from Ext. R4 (a) & (b). The last publication of Section 6 declaration appeared in Mathrubhumi daily on 24.09.2011. Notice under Section 9 (3) of the Act was issued to the petitioners and they appeared on 05.01.2013 and 17.08.2013 and award was passed on 19.09.2013 and notice to vacate and deliver possession of land was issued. It is further stated that direction was given to Additional Tahsildar, Mavelikkara as per proceedings No.J/1502/97 dated 22.10.2013 to take possession of the land and possession was taken on 25.10.2013. It is stated that the award was passed within 2 years from the date of publication of Section 6 (1) declaration. It is further averred that there is no serpent grove or no idol worship either by the public or the petitioners in the land and the land is in an abandoned stage. A detailed chart showing the stages of acquisition, movement of files with dates is also provided in the counter affidavit.

10. To deal with the issues raised in these writ petitions, I will refer to the exhibits as they appear in W.P. (C) No.30071/2011.

11. The first contention raised by the petitioners in these writ petitions is that, Ext.P1 notification under Section 4(1) is dated 16.12.1997 whereas Ext. P11 declaration under Section 6 (1) is dated 28.03.2011, which is issued after a gap of more than 13 years and hence lapsed under clause (ii) of the proviso under Section 6. The other contention is that, the award having been passed beyond the period provided under Section 11A, the entire proceedings for acquisition have lapsed. They have also raised factual issues that the land sought to be acquired is a serpent grove and the Government have the responsibility to protect place of worship.

12. The following dates are relevant to deal with the issues.

Section 4(1) notification

26-11-1997

Previous Section 6 declaration

21-06-1999

Date of Judgment in OP.No.

26573/1999

30-10-2007

Fresh Section 6 declaration

published in official Gazette

28-03-2011

Fresh Section 6 declaration

published in Kerala Kaumudi daily

23-09-2011

Fresh Section 6 declaration

published in Mathrubhumi daily

24-09-2011

Award

19-09-2013

Possession taken

25-10-2013

13. To consider the question whether the declaration under Section 6 was barred by clause (ii) of the proviso thereto, it is apposite to extract Section 6 of the Act which reads as under:

"6. Declaration that land is required for a public purpose.- (1) Subject to the provisions of Part VII of this Act, when the appropriate Government or the Board of Revenue is satisfied, after considering the report, if any, made under Section 5A, sub-section(2), that any particular land is needed for a public purpose, or for a Company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorized to certify its orders or of the Secretary of the Board of Revenue, as the case may be, and different declarations may be made from time to time in respect of different parcels of any land covered by the same notifications under Section 4, sub-section (1), irrespective of whether one report or different reports has or have been made (wherever required) under Section 5A, sub-section (2):

Provided that no declaration in respect of any particular land covered by a notification under Section 4, sub-section (1),-

(i) Published after the commencement of Land Acquisition (Amendment and Validation) Ordinance, 1967 (1 of 1967), but before the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of three years from the date of the publication of the notification; or

(ii) Published after the commencement of the Land Acquisition (Amendment) Act,

1984, shall be made after the expiry of one year from the date of the publication of the notification:

Provided further that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

Explanation 1.- In computing any of the periods referred to in the first proviso, the period during which any action or proceedings to be taken in pursuance of the notification issued under Section 4, sub-section (1), is stayed by an order of a Court shall be excluded.

Explanation 2.- Where the compensation to be awarded for such property is to be paid out of the funds of a corporation owned or controlled by the State, such compensation shall be deemed to be compensation paid out of public revenues.

(2) Every declaration shall be published in the Official Gazette, and in two daily newspapers circulating in the locality in which the land is situate of which at least one shall be in the regional language, and the Collector shall cause public notice of the substance of such declaration to be given at convenient places in the said locality (the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the declaration), and such declaration shall state the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected.

(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a Company, as the case may be, and, after making such declaration, the appropriate Government or the Board of Revenue, as the case may be, may acquire the land in manner hereinafter appearing."

(emphasis supplied)

14. When this Court passed Ext. P7 judgment on 30.10.2007 quashing that part of Ext. P1 notification invoking Section 17 (4) and also Section 6 (1) declaration so far as it relates to the petitioners therein, almost 10 years had elapsed from the date of publication of Section 4 (1) notification. In Ext. P7 judgment, the petitioners therein were directed to file their objection to Section 4 (1) notification within three weeks from the date of receipt of a copy of the judgment and further directed that if such objection is filed, the Land Acquisition Officer shall consider and dispose of the application, with due notice to the petitioners and the requisitioning authority, in accordance with law and until such decision is taken, the petitioners shall not be dispossessed. Admittedly, the petitioners did not file any objection before the Land Acquisition Officer as directed in Ext.P7 judgment. Ext. P10 dated 23.12.2007 produced in the writ petition, purported to be the objection, is addressed to the Revenue Divisional Officer, Alappuzha, who is not the concerned Land Acquisition Officer. The Land Acquisition Officer in

respect of the land of the petitioners under acquisition is RDO, Chengannur. No reason whatsoever is forthcoming for not submitting the objection to the Land Acquisition Officer as directed in Ext.P7 judgment and within the stipulated time. From the documents produced by the petitioners themselves, it can be seen that all communications relating to acquisition are issued by RDO, Chengannur and it cannot be believed for even one moment that addressing the objection to wrong officer was innocuously innocent. They avoided dispossession from the land till the land was taken possession of after the award was passed.

15. Though the Act provides that the declaration shall be made after the expiry of one year from the date of the publication of the notification, since this Court quashed the declaration and permitted the petitioners to file their objections to the notification and since no objection has been filed, the petitioners cannot be heard to contend that the declaration is barred by clause (ii) of the proviso to Section 6. Accordingly, the contention of the petitioners that Ext. P11 declaration is unenforceable cannot be sustained.

16. The contention in W.P. (C) No.26187/2013 and W.P. (C) No.26189/2013 is that the award having been passed beyond the period provided under Section 11A, the entire proceedings for acquisition have lapsed is also not sustainable. Section 11A provides that, the Collector shall make an award under Section 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse. Section 6 (2) provides for various modes of publication of declaration viz., publication in official Gazette, two daily newspapers and by public notice. As it is trite law that, the last of any of these three modes in the series can be taken to be the date of publication of declaration for the purposes of making the award as laid down in Section 11A, the award passed on 19.09.2013 after 1 year 11 months and 26 days after Ext. R4 (a) publication of declaration in Mathrubhumi daily is well within the period mandated under Section 11A.

17. The petitioner in W.P. (C) No. 26187/2013 has a case that, though the previous Section 6 (1) declaration dated 21.06.1999 became final as far as he is concerned, as he was not a party to Ext. P7 judgment, no award was passed pursuant to the said declaration within stipulated time and the land was included in fresh Section 6 declaration issued on 18.03.2011 along with the land of the petitioners in Ext.P7 judgment. It is to be noted that the petitioner in W.P. (C) No.26187/2013 did not challenge the fresh Section 6 declaration and has come to this Court after the award was passed. He was given notice under Section 9 (3) and was represented in the award enquiry and the award was passed on 19.09.2013. The petitioner in this writ petition being an indolent litigant cannot now challenge Section 6 declaration or the award. It is also trite law that after an award is passed, no writ petition can be entertained questioning the acquisition proceedings. So I decline jurisdiction.

18. There is no merit in these writ petitions and accordingly, they are dismissed.