

(2013) 08 KL CK 0025

In the High Court Of Kerala

Case No : Writ Petition (C) No. 20034 of 2013

George Joseph

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 29-08-2013

Acts Referred:

Citation : (2013) 4 ILR (Ker) 362 : (2013) 3 KHC 880 : (2013) 4 KLJ 290 : (2013) 4 KLT 12

Hon'ble Judges : K. Surendra Mohan, J

Bench : Single Bench

Advocate : M.J. Thomas, for the Appellant; Renny Stephen Chamaparambil, Government Pleader, for the Respondent

Judgement

K. Surendra Mohan, J.—The petitioner is the owner of a parcel of land in Kidangoor village. Portions of the petitioner's property are sought to be acquired for the construction of an approach road for a proposed new bridge. According to the petitioner, the acquisition of his land is not necessary for the project. His property has been included with mala fide intentions, it is contended. It is contended that, pursuant to a notification under S. 4(1) of the Land Acquisition Act, 1894 ("the Act" for short), he had submitted his objections. An enquiry under S. 5A of the Act was conducted. However, no orders have been passed in the matter. The petitioner has therefore filed this Writ Petition seeking the issue of appropriate orders and directions to the respondents for the purpose of informing him as to what is the nature of the recommendation made by the Land Acquisition Officer on the basis of the enquiry conducted under S. 5A. It is contended that such information is necessary for the purpose of invoking his remedy under S. 15A of the Act. According to the learned Government Pleader, the hearing under S. 5A of the Act was conducted on 5.6.2013. However, no orders have been passed in the matter, till date. Since no orders have so far been passed, nothing prevents the petitioner from exercising his remedy under S. 15A of the Act. Since there is no provision requiring the recommendation of the Land Acquisition Officer to be intimated to the petitioner, it is contended that

such a procedure is not followed in any case.

2. Heard. A perusal of S. 5A of the Act does not offer any indication that the recommendation made by the Land Acquisition Officer pursuant to the enquiry conducted under S. 5A of the Act should be communicated to the petitioner.

3. Section 5A of the Act reads as follows:

5A. Hearing of objections.- (1) Any person interested in any land which has been notified u/s 4, sub-section (1), as being needed or likely to be needed for a public purpose or for a company may, within thirty days from the date of the publication of the notification, object to the acquisition of the land or of any land in the locality, as the case may be.

(2) Every objection under sub-section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard in person or by any person authorised by him in this behalf or by pleader and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, either make a report in respect of the land which has been notified u/s 4, sub-section (1), or make different reports in respect of different parcels of such land, to the appropriate Government, containing his recommendations on the objections, together with the record of the proceedings held by him, for the decision of that Government. The decision of the appropriate Government on the objections shall be final.

(3) For the purpose of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land were acquired under this Act.

The above provision does not provide that a copy of the order passed under S. 5A of the Act should be communicated to the petitioner. No other provision has been brought to my notice mandating that the recommendation of the Land Acquisition Officer should be communicated to the petitioner, as sought for. Therefore, no direction to communicate such recommendation can be issued.

4. Section 15A of the Act reads as follows:-

15A. Power to call for records, etc. - The appropriate Government may at any time before the award is made by the Collector u/s 11 call for any record of any proceedings (whether by way of enquiry or otherwise) for the purpose of satisfying itself as to the legality or propriety of any finding or order passed or as to the regularity of such proceedings and may pass such order or issue such direction in relation thereto as it may think fit:

Provided that the appropriate Government shall not pass or issue any order or direction, prejudicial to any person without affording such person a reasonable opportunity of being heard.

The power under this provision is for the purpose of satisfying the appropriate Government of the legality or propriety of any finding or order passed or as to

the regularity of the proceedings initiated for acquisition of any land. The appropriate Government is therefore conferred with power to call for the record of any proceedings at any time before the Award is passed by the Collector under S. 11 of the Act. If the petitioner is desirous of invoking the said power of the Government, the petitioner could very well do so, without waiting for the recommendation of the Land Acquisition Officer to be communicated to him.

It is not mandated by the above provision that for the purpose of invoking the power under S. 15A, a copy of the recommendation of the Land Acquisition Officer should be produced by the petitioner. There is absolutely no impediment for the petitioner to invoke the power of the appropriate Government under S. 15A of the Act, especially in view of the fact that no orders have been passed yet, on the basis of the enquiry under S. 5A conducted by the authorities.

The above being the position, this Writ Petition is disposed of recording the submission of the Government Pleader that no orders have been passed on the basis of the enquiry under S. 5A of the Act that was conducted and without prejudice to the rights of the petitioner to invoke the power of the appropriate Government under S. 15A of the Act.