

(2001) 02 KL CK 0042

In the High Court Of Kerala

Case No : W.A. No. 1965 and 2032 of 1999

Greater Cochin Development Authority

APPELLANT

Vs

Victoria Xavier

RESPONDENT

Date of Decision : 20-02-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Land Acquisition Act, 1894 — Section 11, 18, 23(1A), 3, 3(1)

Citation : (2001) 2 ILR (Ker) 256

Hon'ble Judges : S. Sankarasubban, J; Kum. A. Lekshmikut, J

Bench : Division Bench

Advocate : K. Jayakumar, Government Pleader and M.V. Joseph, for the Appellant; V.N. Achutha Kurup and M.V. Joseph, for the Respondent

Final Decision : Allowed

Judgement

S. Sankarasubban, J.—Both these appeals are preferred against the judgment of the learned Single Judge in OP No. 2895 of 1994. WA No. 1965 of 1999 is preferred by the second respondent in the Original Petition, the Greater Cochin Development Authority (hereinafter referred to as "G.C.D.A.") while the other appeal is preferred by the State of Kerala and District Collector, Ernakulam. The Original Petition was filed for a writ of certiorari to quash Exts. P10, P11 and P12 awards to the extent of lands covered in L.A.R. No. 274/90 and 275/90 on the file of the Subordinate Judge's Court, Cochin or in the alternative seeking the issue of a writ of mandamus directing the respondents to initiate and complete fresh acquisition proceedings and further to direct the respondent 1 and 2 to adjust the amount already paid towards part of compensation that may become payable.

2. The facts of the case are as follows: The Government sanctioned the erstwhile Cochin Town Planning Trust for the implementation of the Elamkulam Road Scheme in the 1975 and to acquire the lands in Elamkulam Village in Kanayannur Taluk. Requisition was made to the Government for acquiring 24.0035 hectares

of land in Elamkulam Village. The are included in the acquisition was split into three phases as North End, Middle Portion and South End. The middle portion having an extent of 13.5556 hectares of land were in Sy. Nos. 186, 187, 250, 270, 310, 311, 330, 414, 415 and 416 of Elamkulam Village. S. 3(1) notification under the Kerala Land Acquisition Act was published in the Gazette on 17.7.1978. The declaration under S.6 was published on 6.7.1981. An extent of 0.9227 hectares of land (2.28 acres) in Sy. No. 330/3 and 330/4 of Elamkulam Village owned by one A.A. Xavier was included in the acquisition proceedings. After S.3 notification was published and before the declaration the said Xavier wanted the land to be taken possession of immediately and accordingly the above 2.28 acres was taken possession on 25.4.1979 on the basis of a Kaichit dated 25.4.1979. An amount of Rs. 75,000/- was paid to A.A. Xavier on 26.4.1979 as part of compensation. Thereafter S.6 declaration was made in respect of the lands on 1.7.1981. Then it would appear that, later Xavier raised a claim before the G.C.D.A. that he had surrendered only 1.14 acre and not 2.28 acres. He therefore demanded return of 1.14 acres of lands and he obtained an order to that effect from the Government. But, subsequently, the Government was convinced that earlier order was a mistake and cancelled the order. After taking possession of the land on 17.7.1979, the G.C.D.A. reclaimed the wet land and converted it into garden land, constructed roads, drains and culverts spending large amounts. Due to delay in taking further proceedings after the coming into force of the Land Acquisition (Amendment) Act, 1984, the entire proceedings lapsed in 1986. Thereafter on 25.8.1987 a fresh S.4(1) notification was published and the proceedings under the new Act was followed. There was no objection in response to the notice and hence, there was no scope for an enquiry under S.5A. S.6 declaration was published in the Kerala Gazette on 16.8.1988. S.9 enquiry was conducted on 2.3.1989 and the basis for the draft valuation statement was approved on 26.4.1989 by the District Collector. At that time, petitioners filed Contempt Case No. 36 of 1989 for non completion of the acquisition proceedings as ordered by the High Court. During the pendency of the contempt proceedings, awards were passed. The Awards are 6 and 7 of 1989. The G.C.D.A. had placed an amount of Rs. 57,71,000/- by order dated 22.9.1986. When the amount was sought to be deposited before the Court, the petitioner filed O.P. No. 4245 of 1989 for a direction to the respondents not to deposit the amount, but to pay the same to the petitioners. Thereafter, cheques were handed over to the petitioners representing the award amount, which was encashed by the petitioners on 12.6.1989. Not satisfied with the amount granted by the District Collector, they made an application for reference to the Sub Court, Ernakulam. Accordingly, reference under S.18 was made to Sub Court, Ernakulam. We are told that, subsequently the awards were passed by the Sub Court, and that is pending in appeal before this Court. After the two awards were passed on 16.5.1989, petitioners preferred O.P. No. 6737 of 1989 before this Court. During the pendency of the earlier notification, Xavier died and petitioners are the legal representatives. Petitioners challenged the award before this Court in O.P. No. 6737 of 1989. That Original Petition was disposed by K.A. Nair, J. by

judgment dated 28th November, 1989. A perusal of the judgment shows that petitioners had no objection against the acquisition of the land. They had no objection regarding the notifications. The validity of the notifications had not been challenged. It is stated in paragraph 5 of the judgment that, petitioners wanted acquisition proceedings to be completed in accordance with S.4 notification. S.6 declaration was also not challenged. The case of the petitioners in O.P. 6737/89 is that Ext. P4 and P5 awards are passed without application of mind, namely relating to the nature of the land, the extent of the land taken possession of, the applicability of S.23(1A), and the provisions of S.34 of the Act. The learned Judge after hearing both sides, disposed of the Original Petition as follows:

"The petitioners in this case surrendered possession to GCDA voluntarily subject to the right to claim enhanced compensation. When S.4 notification was published on 25.8.1987, they wanted the acquisition proceedings completed immediately. Then the awards were passed on 16.5.1989, the petitioners filed O.P. 4245 of 1989 for a direction to the respondents to pay the amount directly to the petitioners by cheque and received the amount on 12.6.1989 under protest with a request to refer the matter to the Sub Court, Ernakulam for enhanced compensation. Reference was made on 26.8.1989 and 3.9.1989. The petitioners availed of the statutory remedy available under S.18. Therefore, they cannot now turn back and say that Exts. P4 and P5 are illegal, arbitrary and liable to be quashed under Art. 226 of the Constitution of India".

Against this judgment, petitioners preferred an appeal before the Division Bench as W.A. No. 24 of 1990. The copy of the judgment in the above appeal is produced as Ext. P1 along with O.P. 2895/1994. In Ext. P1, the judgment in W.A. 24 of 1990, it is stated as follows:

"As the learned Single Judge has not expressed himself in one way or the other on the question as to whether these contentions can be gone into a reference under S.18, fairness requires that we should make it clear that in the event of it being held that some of the matters cannot be agitated in a reference under S.18, the appellants would be free to approach this Court for appropriate relief at that stage". Reserving liberty as aforesaid, the appeal was disposed of by judgment dated 8th February, 1990. The awards were passed on 8.11.1990. Thereafter, the present writ petition was filed on 28th February, 1994."

3. The main grounds taken in the Writ Petition was as follows:

(1) There is no specific mention of survey sub-division of land under Sy. No. 330 of Elamkulam Village belonging to the petitioners intended for the acquisition for implementation of the Town Planning Scheme for Elamkulam Road. Therefore there exists no justification in including the properties of the petitioners in the acquisition proceedings for the purpose of implementing the town planning scheme for Elamkulam Road.

(2) No public purpose is involved to justify the acquisition of the properties of the

petitioners.

(3) The scheme sanctioned by the first respondent is vague and uncertain.

(4) While publishing the notification under S.4(1) of the Land Acquisition Act and in publishing Ext. P9, the properties of the petitioners are mentioned on the assumption that the properties of the petitioners are covered under Sy. No. 330/11 and 330/14.

(5) While passing Ext. P10 award, awarding Officer has put the Survey Sub Division as 330/12-Part and in the case of Ext. P11, the Survey Sub Division is shown as 330/14, which is wrong.

(6) The awards are passed with respect to properties about which no proper declaration under S.6 of the Land Acquisition Act are published, which fact has been incorporated by the Taluk Surveyor, Kanayannur while submitting the report and sketch on 6.10.1987, after publication of S.4(1) notification on 25.8.1987. The notification published under S.4(1) of the Act on 11.8.1987 ceased to operate as S.6 declaration was made after one year.

(7) The G.C.D.A. executive took a decision on 28.6.1986 that Elamkulam Road is to be formed by P.W.D., the acquisition proceeding is illegal and unauthorised.

(8) The respondents have not challenged Ext. P1 judgment and it is binding on them. It is further stated that the right under S.5A was not given to the petitioners and that there no enquiry under S.9 of the Act.

4. A counter affidavit has been filed on behalf of the State. In the counter, it is stated that the Subordinate Judge's Court, Kochi allowed enhancement of compensation by a common judgment dated 8.11.1993. The enhanced compensation totally over Rs. 47 lakhs has already been deposited in Sub Court, Kochi. As per G.O.MS. No.116/75 of Local Administration and Social Welfare (G) Department, Government accorded sanction to the erstwhile Town Planning Trust, Ernakulam for the implementation of Elamkulam Road Scheme including Sy. No. 330. Thereafter, the G.C.D.A. requisition for acquisition of 24.055 acres of land. This included the land in Sy. No. 186, 187 and other numbers as well. S.3(1) notification was published on 17.7.1978 and the declaration under S.6 was published on 6.7.1981. An extent of 0.9227 hectares of land in Sy. No. 330/3 and 330/4 of Elamkulam Village owned by the petitioners was included in the land acquisition proceedings. The land was handed over possession to GCDA in advance on 25.4.1979 as per Kaichit submitted by the petitioners and an amount of Rs. 75,000/- was paid as advance compensation. The land acquisition proceedings were not finalised due to various reasons and the proceedings lapsed on 24.9.1986 on the commencement of the Land Acquisition (Amendment) Act, 1984. Therefore, fresh notification was published on 11.8.1987. Notification under S.4(1) was published in the Kerala Gazette dated 11.8.1987, and in the Kerala Times daily and in Veekshanam Daily on 25.8.1987. Notices were served on all interested parties and published at Taluk Office,

Kanayannur and Village Office, Elamkulam. In response to the notice, no objection was raised within the stipulated time. Since no objection was raised, no enquiry under S.5A was made. The declaration under S.6 was published in the Kerala Gazette on 16.8.1988, in the Veekshanam Daily on 1.8.1998. Enquiry under S.9 was conducted on 2.3.1989. The High Court of Kerala as per judgment in O.P. No. 7977/88 and common judgment in O.P. No.748/87 and 9345/87 directed that awards should be passed on or before 31.3.1989. The awards were passed on 16.5.1989.

5. The G.C.D.A. filed a separate counter affidavit. In the counter, they mentioned about taking possession of the land belonging to the petitioners and payment of Rs.75,000/- as part payment. It is stated that after taking possession, the land was reclaimed investing huge amounts. The counter affidavit refers to O.P. Nos. 7485 and 7485 of 1987 wherein this Court directed to complete the proceedings of acquisition before March 1989. A reply affidavit was filed by the petitioners. Learned Single Judge accepted the contentions of the petitioners, instead of quashing the acquisition proceedings, granted the alternative prayer directing the respondents to publish a fresh S.4 notification and to adjust the amount already paid to the petitioners towards part compensation. The points that found favour to the learned Single Judge are-

(i) Because of the direction in W.A. No. 24/90, the Original Petition is maintainable;

(ii) Notice under S. 4 of the Land Acquisition (Amendment) Act was not served on the petitioners. Hence, they did not get an opportunity to object to the land acquisition proceedings and so, no enquiry under S.5A was conducted. Therefore, the acquisition is irregular.

(iii) No previous sanction was obtained from the Government as contemplated under first proviso to S.11 of the Act.

(iv) The award was passed in respect of properties about which there was no declaration. S.6 declaration relates to Sy. Nos. 330/11 and 330/14. Ext. P10 award relates to Sy. No. 330/12 and Ext. P11 award relates to Sy. No. 330/14. The acquisition proceedings are not proper and legal and hence, Exts. P10 and P11 are liable to be quashed.

Instead of ordering reconveyance, the court has ordered fresh publication of the notification. It is against the above judgment, the present appeals are preferred.

6. The learned Senior Government Pleader who appeared for the State and Sri. M.V. Joseph, appearing for G.C.D.A submitted that the judgments of the learned Single Judge is wrong. They submitted that the petitioners themselves wanted the acquisition, the land was given in advance and part payment was received. According to them, it is not correct to say that they were not aware of the land acquisition proceedings. In S.4 notification, the name of the petitioner's father was shown because that was the name shown in the records. Mere absence of

service of notice under S.4 will not vitiate the proceedings. Further, after S.4 notification and S.6 declaration, petitioners approached this Court and wanted the acquisition proceedings to be expedited. After that, they cannot turn round and say that the acquisition proceedings are illegal. They also approached this Court challenging the award by filing O.P. No. 6737/89. It could be seen from the judgment in that cases that there was no challenge to S.4 notification or S.6 declaration. Petitioners cannot take advantage of the judgment in the Writ Appeal. The Writ Appeal judgment only stated that petitioners can take grounds which could not be taken in the reference. That does not mean that after Ext. P10 judgment, petitioners can take any contention. It is further submitted that there was no delay in publishing S.6 declaration and that the petitioners have participated in S.9 enquiry and the award was passed after hearing them. It is also not correct to say that the proviso to S.11 was not complied with. It is further stated that the District Collector as per Order No. R.Dis. 11810/88/C2 dated 11.5.1989 approved the draft award in accordance with R.12 of the Land Acquisition Rules. It is not correct to say that petitioners' land was not included in S.4 notification or S.6 declaration and that the award was invalid. It is also contended that S.6 declaration was filed in time.

7. So far as the maintainability of the petition is concerned, according to us, petitioners are not entitled to take the grounds challenging S.4 notification and S.6 declaration. As we have already stated, in the judgment which gave rise to Ext. P1 it has been clearly stated that petitioners did not challenge S.4 notification or S.6 declaration. Their main challenge was regarding the award. Hence, according to us, Ext. P1 does not enable them to challenge the notification under S.4 or declaration under S.6 of the Act. The contention under S.4 is that notice was not issued to the petitioners whereas only notice issued was to the father of the petitioners, who was by that time dead. According to us, on the ground that notices not served on the petitioners, acquisition cannot be said to be illegal. Firstly, the notice can only be served on the person whose name appears in the record. Further the notices were published in newspapers, in the Gazette and in the property itself. In spite of all these things, petitioners did not file objection in time. They filed it only belatedly. No prejudice is caused because petitioner's father surrendered the property for the purpose of acquisition and also received part payment. Normally, the petitioners cannot have any objection to the acquisition. In the decision reported in *State of Gujarat Vs. Panch of Nani Hamam's Pole and Others*, the question came up for consideration was whether non-service of notice on the interested parties will make a notification illegal. In that case, the Honourable Supreme Court was interpreting S.4(1) of the Land Acquisition Act 1984 along with R.1 of the Gujarat Rules, the Supreme Court held as follows:-

"S.4(1) read with R.1 of the Gujarat Rules cannot be interpreted to mean that the personal notice to each and every interested person is the requirement of S.4 and in absence of such a notice, the proceedings of acquisition will be invalidated. R.1 by using the words "Collector has under the provisions of S.4(1)

issued notices to the parties interested" contemplates a notice to the interested parties as required under S.4(1) and S.4(1) requires the notice to be notified at a convenient place in the said locality for information of the interested parties. It is not in dispute that such a procedure was followed in the present case and therefore, it could not be said that the notice as contemplated under S.4(1) read with R.1 was not given to parties interested. The proceedings of acquisitions were thus valid."

In our case also, there is no dispute that the procedure under S.4 was not followed. Hence, we do not agree with the learned Single Judge that because notice was not served individually on the petitioners, the proceedings are bad.

8. So far as the next question is concerned, it is regarding the objection that no previous sanction was obtained from the Government, as contemplated under first proviso to S.11. The first proviso to S.11 reads as follows:

"provided that, no award shall be made by the Collector under this sub-section without the previous approval of the appropriate Government or such officer as the appropriate Government may authorise in this behalf."

It is now brought to our notice that the District Collector as per Order No. R.Dis.11810/88/C2 dated 11.5.1989 approved the draft award in accordance with R.12 of the Land Acquisition Rules and hence the first proviso to S.11 has been complied with.

9. The next contention is that S.6 declaration takes in sub-division 11 and 14 of Sy. No. 330, but Ext. P10 award relates to Sy. No. 330812 and Ext. P11 relates to Sy. No. 330/14 and thus it is clear that S.6 declaration does not relate to the property in respect of which the award is passed. We do not find any reason to show that properties are different. In the counter affidavit, this point is clarified. In paragraph 17 of the counter, it is stated as follows:

"While publishing S.4 notification, the Sy. No. shown was as 330 before Sub Division. The new Sy. Nos. 330/12 and 330/14 was arrived at after sub division and preparation of sub division records."

The award in this case was passed in respect of Sy. Nos. 330/12 and 330/14. It is submitted that it is accordance with the Rules. Thus, there appears to be no ambiguity regarding the property, because, the survey sub division were given in the award.

10. The learned Single Judge then went on to hold that S.6 declaration in this case is barred by time. According to the learned Single Judge, the notification under S.4 was published on 11.8.1987 and the declaration was published on 16.8.1988 and hence, the award passed on 16.5.1989 is ab initio void. According to us, this is factually not correct. The last publication of notification under S.4(1) is 25.8.1987, i.e., the date of publication in the newspapers. The declaration has been published in the Gazette dated 16.8.1988 that is one year from the date of publication of S.4 notification. The expression "publication of notification" in

S.6(2) has been interpreted to mean last publication. S.4 deals with three kinds of publication - publication in the Gazette, publication in the newspaper, and publication by giving notice in the locality. In this case, it is stated that one of the publication of notification was on 25.8.1987 and hence, the declaration is within time. The award has been passed on 16.5.1989. Under S.11A of the Act, the Collector shall make an award within two years from the date of publication of the declaration. Here it has been published within time. Hence, it cannot be said that there is any invalidity in the publication of the award. We are also not impressed by the arguments of the learned counsel for the petitioners that the property declared is not included in the property for which the award was passed. As already stated, since the survey number is divided, some confusion has been created and this clearly explained in the counter. According to us, there is no scope for illegality in the acquisition. Petitioners had handed over possession of the properties. They wanted the acquisition to be done immediately. It is thereafter, they come and say that proceedings are illegal.

11. Lastly, as already stated, in the decision reported in *The Municipal Council, Ahmednagar and Another Vs. Shah Hyder Beig and Others*, , the Hon'ble Supreme Court has held that, "in any event, after the award is passed no Writ Petition can be filed challenging acquisition notice or against any proceedings thereunder. The Supreme Court referred to the view taken in *C. Padma and Others Vs. Dy. Secretary to the Govt. of T.N. and Others*, . Further, we wish to point out that the petitioners approached this Court only in 1994, whereas the award was passed in 1989. The possession of the property was taken in 1979. According to us, petitioners are guilty of laches. We rely on the following observation of the Supreme Court at paragraph 14 in the decision reported in *Municipal Council, Ahmednagar (supra)*, which reads as follows:

".....It is now a well settled principle of law and we need not dilate on this score to the effect that while no period of limitation is fixed but in the normal course of events, the period the party is required for filing a civil proceeding ought to be the guiding factor. While it is true that this extraordinary jurisdiction is available to mitigate the sufferings of people in general, but it is not out of place to mention that this extraordinary jurisdiction has been conferred on to the law courts under Art. 226 of the Constitution on a very sound equitable principle. Hence, the equitable doctrine, namely, "delay defeats equity" has its fullest application in the matter of grant of relief under Art. 226 of the Constitution. The discretionary relief can be had provided one has not by his act or conduct given a go-by to his rights. Equity favours a vigilant rather than an indolent litigant and this being the basic tenet of law, the question of grant of an order as has been passed in the matter as regards restoration of possession upon cancellation of the notification does not and cannot arise".

In any event, after the award is passed, no Writ Petition can be filed challenging the acquisition notice or against any proceedings thereunder. This has been the consistent view taken by the Supreme Court.

12. Considering all the above aspects, we are of the view that petitioners has not proved any illegality in the award or the proceedings prior to it. Hence, we set aside the judgment of the learned Single Judge and dismiss the Original Petition.

The Writ Appeals are allowed.