

(1991) 09 KL CK 0006

In the High Court Of Kerala

Case No : O.P. No. 9062 of 1991 D and W.A. No's. 842 and 845 of 1991

K. Bhaskara Panicker and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 24-09-1991

Acts Referred:

Kerala Land Acquisition Act, 1961 — Section 3(1)
Land Acquisition Act, 1894 — Section 11A, 4, 4(1), 5A(2), 6

Citation : (1991) 09 KL CK 0006

Hon'ble Judges : M. Jagannadha Rao, C.J;T.L. Viswanatha Iyer, J

Bench : Division Bench

Advocate : M.M. Abdul Aziz, for the Appellant; V. Bhaskara Menon, Government Pleader for Respondents 1 to 3 and Pirappancode V. Sreedharan Nair, for 4th Respondent, for the Respondent

Judgement

M. Jagannadha Rao, C.J.—The Writ Petition, O.P. 9062 of 1991-D, Writ Appeal 842 of 1991 (arising out of O.P. 2482 of 1990) and Writ Appeal 845 of 1991 (arising out of O.P. 4518 of 1990) raise the same question regarding the validity of certain land acquisition proceedings and can, therefore, be disposed of by a common judgment.

2. The facts of the case are as follows: The Petitioners in all the three writ petitions belong to the Vellala community living at Neyyattinkara. They have a temple called Melatheruv Sree Mutharaman Kovil and other subsidiary temples at that place. They have been under their management and administration. One Krishna Pillai was the Chairman of the Neyyattinkara Municipality. Considering himself entitled to constitute a trust, the said Krishna Pillai created a trust on 12th January 1976 consisting of himself and six councillors of the Municipality for the administration and management of the said temples. The President of the temples, one Balakrishna Pillai and Secretary, one Krishna Pillai Laxmana Pillai filed O.S. 106/76 before the Munsiffs Court, Neyyattinkara against the said Krishna Pillai and other councillors for a declaration of exclusive right of Vellala community over the said temples and the properties of the temples and for a

permanent injunction restraining the said trustees from interfering with the right of management and administration of the said temples and its properties. It is now revealed that in the year 1976 the Municipal Chairman, namely, Sri Krishna Pillai died and thereafter the remaining councillors and others passed a resolution dated 29th July 1976 to acquire 3 acres 90 cents in Survey Nos. 290/14 to 290/26 of the said village for the purpose of constructing a shopping complex for the Municipality. The suit was decreed in favour of the Vellala community on 4th February 1978 as per Ext. P-2. However, in the meantime, on the basis of the resolution of the Municipal Council, Government issued a notification in 1978 u/s 3(1) of the Kerala Land Acquisition Act for acquisition of the property. The Writ Petitioners and others submitted their objections to the Government. The notification of 1978 lapsed as no action was taken thereafter within the statutory period. However, in the year 1980 Government issued a fresh notification u/s 3(1) of the Land Acquisition Act and once again Petitioners and others submitted their objections. Government passed an order on 6th November 1982 directing that alternate lands and accommodations in the shopping complex should be provided to the Petitioners and others to rehabilitate them after the acquisition as per Ext. P-3. Government also passed an order on 25th March 1982 exempting 27 cents and 20 cents respectively belonging to Smt. S. Vijayalaxmi and Smt. S. Nirmalakumari from acquisition as per Ext. P-4. At that stage, two of the land owners Smt. M. Swarnamma Pillai and Shri Bhargavathi Perumal Pillai filed writ petitions, O.P. 8578 of 1982 and 10028 of 1982 challenging the notification of 1980. For some reason the notification u/s 3(1) was again allowed to be lapsed. The writ petitions were, therefore, disposed of on 11th July 1988 as per Ext. P-5 as having become infructuous. However, once again, a fresh notification was published u/s 4(1) in the Gazette on 15th September 1987, in two local newspapers on 24th August 1987 and 20th August 1987 and the substance of the notification was published in the locality on 12th October 1987. Petitioners and others filed objections. The Board of Revenue rejected their objections and passed a declaration u/s 6(1) on 7th October 1988. The Board of Revenue passed the said order at Thiruvananthapuram. Thereafter the substance of the Section 6(1) declaration is said to have been published on 7th October 1988 at Neyyattinkara which is said to be 15 kms. from Thiruvananthapuram, the decision was published in the local newspapers on 11th October 1988 and 12th October 1988 and in the Gazette on 11th October 1988. Questioning the said land acquisition proceedings, O.P. 10051 of 1988 was filed by one Bhaskara Panicker and Swarnamma Pillai. The decision in the said writ petition was challenged in W.A. 432 of 1989. A Division Bench of this Court consisting of Malimath, C. J. and Bhaskaran Nambiar, J. dismissed the appeal reported in Bhaskara Panicker v. State of Kerala 1989 (2) KLT 71. One of the contentions raised therein was that the notification u/s 6(1), dated 7th October 1988, published on 11th October 1988 was not made within the time prescribed by Clause (ii) of the proviso to Section 6(1) of the Act inasmuch as it is made beyond one year from the date of Section 4(1) notification. It was held that what is material is the declaration made by the Board of Revenue on 7th October 1988

and if it is within one year from the date of notification published u/s 4(1) it would be sufficient and that it is not necessary for the purpose of Section 6(1) to find out the date of publication of Section 6(1) notification as prescribed in Section 6(2). It is further stated that no other contention was raised by the Appellant in that Writ Appeal. Thereafter the Petitioners therein, filed the present Writ Petition. O.P. 9062 of 1991 along with certain others questioning the same land acquisition proceedings by raising additional grounds. This Writ Petition was filed on 6th September 1991.

3. O.P. 2482 of 1990 was filed by three Petitioners and O.P. 4518 of 1989 was filed by two Petitioners substantially raising the same points which are again reiterated in the latter O.P. 9062 of 1991 filed by six persons as stated above. The said O.Ps. came up before a learned Single Judge of this Court and were dismissed by judgment dated 1st August 1991 and they filed Writ Appeals 842 of 1991 and 845 of 1991 respectively.

4. The submissions of learned Counsel for the Appellant can be reduced to four points as follows:

(i) Whether the local publication of the substance of the Section 6(1) declaration under the Land Acquisition Act, 1894 could be made anterior to the Gazette notification of the said declaration u/s 6(2) and whether, if it is anterior, the Gazette notification of the Section 6(2) declaration is to be treated as illegal?

(ii) Whether, for purposes of the computation of the period of one year referred to in the second part of the proviso to Section 6(1), the material date is the publication of the declaration u/s 6(1) or the publication of the Gazette notification u/s 6(1)?

(iii) Whether there is factual proof of a local publication of the declaration u/s 6(1)?

(iv) Whether, on facts, the acquisition proceedings can be said to be mala fide?

5. Point No. I--In the present case, Section 4(1) notification was published in the Gazette on 15th September 1987; in the local newspapers on 24th August 1987 and on 28th August 1987 while the publication in the locality was on 12th October 1987. So far as the Section 6(1) declaration is concerned, the decision of the Board of Revenue confirming the acquisition is on 7th October 1988 and on the same day, that is, 7th October 1988 the substance thereof was said to be published in the locality, then followed the newspaper publications on 11th October 1988 and 12th October 1988 and the Gazette notification u/s 6 was on 11th October 1988.

6. The contention is that inasmuch as the substance of the declaration u/s 6 is said to be published on 7th October 1988 in the locality, anterior to the Gazette notification on 12th October 1988 u/s 6, the said local publication is to be ignored and if it is ignored, there being no further local publication after 12th October 1988, the Gazette notification u/s 6 also falls to the ground. The above

submission is based on the judgment of the Supreme Court in Collector (District Magistrate) Allahabad and Another Vs. Raja Ram Jaiswal, and the words "such declaration" in Section 6(2). It is pointed out that in Collector (District Magistrate) Allahabad and Another Vs. Raja Ram Jaiswal, , in the context of Section 4(1), the Supreme Court observed that the words in Section 4(1) "such notification" indicated that what should be published in the locality is the substance of the Section 4(1) Gazette notification and not the substance of any decision taken by the Government u/s 4(1). It is argued that on the same analogy, there could be no prior local publication of the Section 6 declaration before the Section 6 Gazette notification.

7. In our view, the above submission, though on its face attractive, does not stand scrutiny. We shall point out presently why Collector (District Magistrate) Allahabad and Another Vs. Raja Ram Jaiswal, rendered u/s 4 does not apply to Section 6 and shall show that this is because of a clear difference in the language of these two sections.

8. u/s 4(1), it is true that whenever it "appears" to the appropriate Government that land is need or likely to be needed for a public purpose, or for a company, a notification to that effect shall be published in the Official Gazette and in two daily newspapers as stated therein and the Collector shall cause public notice of the substance of "such notification" in the locality. It is also true that, in connection with Section 4(1), the Supreme Court in Collector (District Magistrate) Allahabad and Another Vs. Raja Ram Jaiswal, observed (at page 1630):

The expression "such notification in the latter part of Section 4(1) and sequence of events therein enumerated would clearly spell out that first the Government should reach a decision to acquire land, then publish a notification, u/s 4(1) and simultaneously or within a reasonable time from the date of the publication of the notification cause a notice to be published containing the substance of such notification, meaning thereby that notification which is published. Obviously, therefore, there cannot be a publication in the locality prior to the issuance of the notification.

(emphasis supplied)

But, in our view, this analogy of Section 4(1) does not supply to Section 6(1) on the plain language of the latter section. So far as Section 6(1) is concerned, the language is as follows:

Section 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 is satisfied, after considering the report, if any, made u/s 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 authorised to certify its orders, and different declarations may be made from time to time in respect of different

parcels of any land covered by the same notification u/s 4, Sub-section (1), irrespective of whether one report or, different reports has or have been made wherever required u/s 5A, Sub-section (2):

Provided that no declaration in respect of any particular land covered by a notification u/s 4, Sub-section (1),--

(i) published. after the commencement of the 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 proceeding to be taken in pursuance of the notification issued u/s 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) * * * * (Emphasis supplied)

It will, therefore, be noticed from the words "such declaration" in Section 6(2) that so far as Section 6(2) is concerned, what is to be given public notice in the locality is not the substance of the Section 6(2) Gazette notification, but is the substance of the "declaration" signed by the Secretary or other officer mentioned in Section 6(1). Therefore, for purpose of Section 6(2), merely because the publication of the substance of the declaration signed by the Secretary u/s 6(1), is anterior to the Gazette notification u/s 6(2), the said Gazette notification

cannot be treated as invalid. In other words, even assuming that, so far as Section 4(1) is concerned; the substance of the notification is to be published in the locality after the Section 4(1) Gazette notification, the position so far as Section 6(2) is concerned is that the substance of the Section 6(1) declaration by the Secretary or other officer could be published in the locality even before the Section 6(2) Gazette notification.

9. Our view is, in fact, supported by the observations in *Bhaskara Panicker v. State of Kerala* 1989 (2) KLT 71 already referred to. There, in the context of the period prescribed u/s 6(1), speaking for the Division Bench, Malimath C.J. observed:

The publication of the declaration contemplated by Sub-section (2) should not be confused with the making of the declaration contemplated by Sub-section (1) of Section 6. The declaration under Sub-section (1) of Section 6 is made when the declaration is duly signed by the authority competent to make the declaration. It is the date of signing such declaration that has to be regarded as the date on which the declaration is made. Though it is obligatory on the part of the authorities to publish such a declaration in the manner provided u/s 6(2) of the Act, none of the dates of such publication can be regarded as the date on which the declaration is made. The declaration contemplated by Sub-section (1) of Section 6 has to be regarded as having been made as on the date on which it is signed.

(Emphasis supplied)

The same view has been taken by the Madhya Pradesh High Court in *Sanjai Gandhi Grah Nirman Sahkari Sanstha Maryadit Vs. State of M.P. and Others*, , following the decision of the Allahabad High Court in *Umesh Aggarwal v. State of Uttar Pradesh* 1989 N.O.C. 160 (All.). In the latter case, it was observed:

The words "make a declaration" used in Section 6 of the Act are to be understood in the sense of "sign a declaration" as distinguished from publication of declaration.

In the present case, the authorised officer in the Board of Revenue signed the Section 6(1) declaration on 7th October 1988 and, according to the record, the same was published in the locality u/s 6(2) on 7th October 1988 itself though the Gazette notification u/s 6(2) was made much later, on 11th October 1988. For the reasons given above, there is no illegality in the local publication of the Section 6(1) declaration for purposes of Section 6(2) even though it is anterior to the Section 6(2) Gazette notification. *Collector (District Magistrate) Allahabad and Another Vs. Raja Ram Jaiswal*, rendered for purposes of Section 4(1) does not, therefore, apply for purposes of Section 6(2). Point 1 decided accordingly in favour of the Respondents.

10. Point No. 2.--So far as this point is concerned, in view of the judgment of the Division Bench in *Bhaskara Panicker's case* 1989 (2) KLT 71 above referred to,

the period of one year referred to in the second part of the proviso to Section 6(1) is to be counted from the "date of the publication of the notification" as defined in Section 4(1) upto the date of "making of the declaration u/s 6(1), that is, upto the date of signature of the Secretary to Government or of the duly authorised officer and even if dates of the three modes of publication of the Section 6(1) declaration, that is, in the Gazette, in the newspapers or in the locality are beyond one year from the "date of the publication of the notification" u/s 4(1), it does not matter. As pointed out in Bhaskara Panicker's case 1989 (2) KLT 71 above referred to and as recently held by us in Lt. K. Padmadas v. State of Kerala and Ors. W.A. 876 of 1991 the words "hereinafter referred to" in Section 6(2) show that the definition of the "date of publication of the declaration" as stated in Section 6(2) is not applicable for counting the period in Section 6(1) but would apply for purposes of the provisions, following after Section 6(2) such as Section 11A. On the facts here, the Section 4(1) notification is to be treated as having been made on 12th October 1987 (the last date of the three modes) and the "declaration" being signed by the authorised officer u/s 6(1) on 7th October 1988, the same is within one year, even though the last of the three modes for purposes of Section 6(2) is on 12th October 1988 (that is, the paper publication on 12th October 1988). We, therefore, hold that the declaration u/s 6(1) is within the time stipulated in the proviso to Section 6(1). Point 2 held in favour of the Respondents.

11. Point No. 3.--On the question, whether the substance of the declaration dated 7th October 1988 was published on the same date, we are of the view that the record of the Government amply proves that it was so published. It is true that the declaration was signed at Thiruvananthapuram on 7th October 1988 and is also said to have been published at Neyyattinkara on 7th October 1988. But, in our view, the distance between the two places being only about 15 kms. the argument that it is impossible to publish it locally on the same date is liable to be rejected. Further, when the one year period was fast elapsing, it is possible that steps were taken to publish it in the locality urgently. The record shows that the Tahsildar attached to the Collector's office got it published in the locality on the same day. Point 3 is also held in favour of the Respondents.

12. Point No. 4.--The contention is that the acquisition is meant to cause grievous loss to the landholders of the Vellala community. The reason is said to be that one Krishna Pillai and other Municipal councillors purported to execute a trust deed on 12th January 1976 and that the members of the Vellala community filed O.S. 106 of 1976 questioning the same and, therefore, the said Krishna Pillai, who was the Municipal Chairman got a resolution passed on 29th July 1976 for acquisition of the land. The suit was ultimately decreed in favour of the Vellala community people on 4th February 1978. The contention regarding mala fides, in our view, cannot be accepted. It is now revealed that the said Krishna Pillai died even before the resolution dated 29th July 1976 was passed. Further the notification for acquisition issued in 1978 was allowed to lapse and again another such notification of 1980 also lapsed. Government agreed to rehabilitate

the affected persons as per Ext. P-3. Thereafter, in 1978, the present Section 4(1) notification was issued. This shows that successive Municipal councils did not think of withdrawing the proceedings. Further the notification was issued by the Government and there is no material to say that the Government acted with any mala fides or allowed itself to be pressurised by the Municipality.

13. It is then argued that such a vast extent is not necessary for the shopping complex and that the Municipality does not have the three crores of rupees, the estimated cost, for the land and proposed buildings. However, it is pointed out for the Municipality that part of the land has been released in favour of some owners, that the land covered by the temple is excluded and only the rest is being acquired. It is also submitted that the money for the project is coming partly from the Government and partly from the Kerala Urban Development Financial Corporation. In view of all the above facts, we hold that the plea of mala fides is not established, Point 4 is also found for the Respondents.

In the result, the Original Petition and the two Writ Appeals are dismissed, but in the circumstances, without costs.

Learned Counsel for the Petitioners in the Original Petition and the Appellants in the Writ appeal has made an oral application for leave to appeal before the Supreme Court of India. We are unable to certify that the matters involve substantial questions of law of general importance which, in our opinion, need to be decided by the Supreme Court of India. The original application is accordingly rejected.

Learned Counsel, however, prays stay for a period of three weeks. In the circumstances of the case, there will be stay of eviction for a period of three weeks.