

(1998) 04 KL CK 0008
In the High Court Of Kerala
Case No : W.A. No. 1299 of 1997-E

K. Raveendranathan Pillai	Vs	APPELLANT
State of Kerala and Others		RESPONDENT

Date of Decision : 06-04-1998

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 6

Citation : AIR 1999 Ker 19

Hon'ble Judges : K.V. Sankaranarayanan, J;Ar. Lakshmanan, J

Bench : Division Bench

Advocate : N. Dharmadan and Renu D.P, for the Appellant; Yousuff, Addl. A.G.T.M. and V. Giri, Addl., for the Respondent

Final Decision : Dismissed

Judgement

Ar. Lakshmanan, J.—The Writ Appeal is directed against the order dated 24-3-1997 dismissing the writ petition in limine. The appellant filed O.P. 5314/97 to quash Ext. P6 and for a mandamus directing the respondents to drop Ext. P1 acquisition proceedings in respect of 5.65 ares of the property comprised in survey No. 211/18 of Paravoor Taluk, Kollam District. Ext. P6 is the proceedings of the Board of Revenue, Trivandrum dated 15-2-1997 passed by the member of the Board overruling the objection and approving the declaration for proceeding further in the matter. The appellant-temple is represented by its secretary. According to him it is a temple managed by the committee elected by the local public and the temple is being worshipped by the public for more than 100 years. The temple is situated in survey No. 211/14. The other item in survey No. 211/18 lying little away from the temple was included in the notification issued u/s 4 of the Land Acquisition Act on 6-2-1996 for acquiring the land for Munsiff-Magistrate Court, Paravur. Copy of the notification is produced as Annexure I and the translation as Annexure 1(a). Annexure I is the 4(1) notification issued by the Special Tahsildar (LA)-II, Kollam requiring various survey numbers including survey No. 211/18 for a public purpose viz., for the construction of Munsiff-

Magistrate Court and office headquarters at Paravoor. The appellant produced Ext. P1 Partition deed and also some documents in proof of paying land tax etc. A rough sketch showing the temple property and the properties sought to be acquired is produced and marked as Annexure IV. The appellant filed objections to the acquisition proceedings. Annexure V is the objection in Malayalam and Annexure V(a) is its English translation. In the objection the appellant has stated that the temple in question is an ancient temple and that the same should be exempted from the proceedings initiated for acquiring the said property. According to the appellant there are many sites available for the construction of the Court at Paravoor other than the temple property and that the land is acquired then the temple will be left with an extent of only 6.8 cents and that would create a lot of inconvenience to the devotees of the temple from doing their rituals. The appellant's objection was neither considered by the District Collector nor by the Board of Revenue. The Special Tahsildar, Kollam who heard the objection on 25-11-1996 has submitted his proposals to the Government for acquisition of the lands in question. The Board of Revenue passed an order under Ext. P6 dated 15-2-1997 approving the proposal for the construction of the Munsiff's Court. The learned single Judge dismissed the Original Petition in limine on 24-3-1997, upholding the impugned proceedings. Aggrieved by the order the appellant has preferred the above writ appeal- Learned counsel for the appellant reiterated the contentions raised by the appellant in his Original Petition and argued on the same line. According to the learned counsel none of the objections raised by the appellant was considered by any of the authorities below and the approach made by all the authorities is perverse and therefore he contended that the judgment under appeal is liable to be set aside. He would further contend that the proposed acquisition of the temple property would deprive the temple of the practise of conducting daily pooja, monthly and annual festivals in accordance with the accepted norms and traditions in terms of the Vedas and Upanishads and that the District Collector did not appreciate the difficulties and inconvenience that may be caused to the temple on account of the acquisition. Learned counsel also further contended that the impugned proceedings could interfere with the religious rites of the public to worship in the temple.

2. During the pendency of the appeal the President of the Paravoor Bar Association filed C.M.P. 5726/97 to implead the Paravoor Bar Association as the fifth respondent in the Writ Appeal. According to them the property was sought to be acquired for the public purpose and the property which is sought to be acquired is the most convenient and suitable site for the purpose of housing the Court complex, and that the Bar Association are very much interested in the acquisition proceedings and to have the Court complex established at the earliest. The delay in completion of the proceedings will naturally result in the delay of establishment of the Court's own building and the members of the Bar Association and the public are much affected parties by such delay. The said C.M.P. was allowed by a Division Bench of this Court on 13-1 -1998.

3. The fourth respondent filed a counter-affidavit in the Writ Appeal. It is contended that the grievances expressed by the appellant are absolutely incorrect and unfounded and that the acquisition proceedings was started as per the requisition dated 8-12-1994 from the District Judge, Kollam and that after the issuance of Section 4(1) notification in the local newspapers as well as in the gazette. Notices under Rule 7(1) of the Land Acquisition Rules were served on all interested parties involved in the acquisition for filing objections and in response to the notice the appellant and another person filed objection to the same, and that the authorities have considered the objection in depth and overruled the same. A report was forwarded through the second respondent to the third respondent and a draft declaration was also forwarded to the Board of Revenue for approval and the Board again considered all the aspects of the case in view of the objections raised against the land acquisition and passed a detailed order under Ext. P6 overruling the objections of the petitioner. Thus it is contended that the objection raised were without merit and since the acquisition is for public purpose the objections were overruled. The appellant filed a reply to the counter-affidavit filed by the fifth respondent and also filed another reply affidavit to the counter-affidavit filed by the fourth respondent reiterating the same contentions.

4. We have heard the arguments of Mr. N. Dharmadan, counsel for the appellant. Government Pleader for respondents 1 to 4 and Mr. V. Giri for respondent No. 5. u/s 4(1) notification the land belonging to the appellant and others are sought to be acquired for the construction of a Munsiff-Magistrate Court in Paravoor. The proposals were initiated pursuant to the request made by the members of the Bar Association at Paravoor. The District Judge, Kollam has recommended the proposal for acquisition. The Tahsildar thereafter issued Section 4(1) notification and published the same in the newspapers as well as in the official gazette. It is seen from the records that the authorities on enquiry found that the land on which acquisition is under challenge is away from the temple and its premises and it is in no way formed part of the temple in the matter of pooja and other festivals of the temple. As already noticed the temple is the owner of survey No. 211/14 where the temple is actually situated and survey No. 211/18 which is also the property of the temple which is a vacant site and now sought to be acquired for public purpose viz., for the construction of a building to house the Munsiff-Magistrate Court. It is seen from Annexure IV rough sketch filed by the appellant himself that in between survey No. 211/ 14 and 211/18 there are three other survey Nos. viz., 211/15, 211/16 and 211/17 owned by different persons and all of them are vacant sites. The only objection raised by the appellant is that it will cause inconvenience to the public who come to the temple to worship during festival seasons and also during daily pooja. We are unable to appreciate or accept the said contention. As already noticed the vacant site in survey No. 211/18 which is now sought to be acquired is situated away from the temple. The temple has sufficient space for the daily activities and the festivals even after the proposed land was taken by the Government under acquisition. Before taking final decision to acquire the lands in question, the objections raised by the

objectors to the acquisition as well as the representatives of the requisitioning authority were heard on 25-11-1996 as directed under the Land Acquisition Act and the Rules. In fact the mutation of the land involved in the acquisition which is on the southernmost side of the plot which has no direct access to the property was made too long after the notification for acquisition. The mutation was effected only on 26-6-1996 at a survey adalath. This will clearly show that this document was created to defeat the acquisition proceedings. The Tahsildar after rendering the findings forwarded his report through the second respondent to the third respondent. The draft declaration was also forwarded to the Secretary, Board of Revenue for approval and the Board considered all the aspects of the case in view of the objections raised against the land acquisition and thereafter passed a considered order under Ext. P6 overruling the objections of the appellant. Thus the declaration has been approved for proceeding further in the matter. In the meanwhile the appellant has filed the writ petition and obtained stay in this Court. There cannot be any dispute with regard to the public purpose for which the property is sought to be acquired. The suitability of the plot for the construction of building and locating the Court is the most important factor came into consideration as a material factor for acquisition. Respondents 3 and 4 have considered all objections and other aspects as per the Acts and Rules and overruled the objections. We are of the view that the religious rites of the devotees or the temple authorities or the general public are not affected by the proposed acquisition in any manner. The learned single Judge after considering Ext. P6 has passed the order rejecting the writ petition in limine. We are of the view that there is no error or want of jurisdiction on the part of the respondents in passing the impugned order overruling the objection. In this case the appellant has filed the Original Petition to quash Ext. P6 order passed by the Board of Revenue. He has not filed the writ petition to quash Section 4(1) notification and other consequential proceedings. Be that as it may, we are of the view that since lands are sought to be acquired for a public purpose, there cannot be any objection on the part of the owner of the land to object to such acquisition.

5. Courts have held that so long as public purpose subsists, the exercise of the power of eminent domain cannot be questioned. In this case the draft declaration was approved by the Board of Revenue and that the same could not be published because of the pendency of the Original Petition in this Court.

6. A Division Bench of the Madras High Court comprising of (Justice AR. Lakshmanan and M. Karpagavinayagam, J.) in an identical cases reported in Senior Superintendent of Post Offices. Coimbatore Division v. The Coimbatore Diocese Society, Coimbatore 1997 Writ Law Report 777 : (1998) 1 Mad LJ 314 : 1998 AIHC 3623 held as follows :--

"In this case, the appellant (Postal Department) is in possession of the building in question and using the same as post office for the past 70 years and is rendering postal service on behalf of the Govt. of India. There cannot be any difficulty with reference to the public purpose for which the land is now sought to be acquired.

In the instant case, all the procedural formalities have been strictly complied with. After completion of the enquiry u/s 5-A, the Govt. of Tamil Nadu issued declaration u/s 6.

So long as the public purpose subsists, the exercise of the power of eminent domain cannot be questioned. Publication of declaration u/s 6 is conclusive evidence of public purpose. As pointed out by the learned Senior Counsel for the appellant, the Government have exercised the power of eminent domain and had published the notification u/s 4(1) and after conducting enquiry u/s 5-A, declaration u/s 6 has been made, which is conclusive evidence of public purpose."

The Supreme Court also in *Scindia Employees' Union Vs. State of Maharashtra and Others*, held that the publication of declaration u/s 6 accords conclusiveness to the public purpose. The Supreme Court also held that whether a particular land is needed for public purpose or not is to be decided by the appropriate Government and that Court cannot substitute its opinion on public purpose to that of the appropriate Government. In the instant case we have already noticed that the Government have followed the procedure prescribed under the provisions of the Land Acquisition Act and the recommendation of the Tahsildar to the Board of Revenue has also been considered and accepted by the Board and this declaration has also been approved by the Board. Under such circumstances as pointed out by the Supreme Court, this Court cannot substitute its opinion on public purpose to that of the appropriate Government. For the foregoing reasons there are absolutely no merits in this Writ Appeal. Writ Appeal therefore fails and is dismissed. C.M.P. No. 3862/97 also stands dismissed.