

(1963) 08 KL CK 0029

In the High Court Of Kerala

Case No : O.P. No's. 713 and 884 of 1962

K. Seshagiri Maller and Others

APPELLANT

Vs

Special Tehsildar for Land Acquisition, Kozhikode and Another

RESPONDENT

Date of Decision : 27-08-1963

Acts Referred:

Land Acquisition Act, 1894 — Section 17, 17(1), 17(2), 17(4), 4(1)

Citation : AIR 1965 Ker 92

Hon'ble Judges : P. Govindan Nair, J

Bench : Single Bench

Advocate : V.R. Krishna Iyer and V.M. Nayanar, for the Appellant; Govt. Pleader, for the Respondent

Judgement

P. Govindan Nair, J.—The short question arising for decision in these cases is whether the two notifications, Exts. P-1 and P-2 in each of these writ applications, are liable to be quashed as not being in conformity with Section 17(4) of the Land Acquisition Act, 1894. Before I refer to this section, it is necessary to state a few facts and extract the relevant parts of these notifications. Ext. P-1 is dated 4th December 1961 and was published in the Kerala Gazette dated 30th January, 1962. In relation to Sub-section (4) of Section 17, what is stated in Ext, P-1 is as follows :

"Under Sub-section (4) of Section 17 of the Act, the Government of Kerala direct that in view of the urgency of the case, the provisions of Section 5A of the Act shall not apply to this case."

Ext. P-2 is also dated 4th December, 1961. This was published in the Kerala Gazette dated 13th February, 1952 and the relevant part of that notification is in these terms :

"Under Sub-section (2) of Section 17 of the Act the Govern ment of Kerala further direct that the possession of the said lands may be taken immediately after the publication of the notice mentioned in Section 9(1) of the Act."

2. I am really concerned in this case about that part of Ext. P-1 which is extracted above and which contains the direction of the Government that the provisions of Section 5A of the Act shall not apply.

3. Various contentions have been raised by counsel for the petitioners. But emphasis was laid on the contention stated in ground (4) of paragraph 2 of the affidavit in support of O. P. No. 713 of 1962. The relevant part of that paragraph is in these terms :

"I can be deprived of my right to property only if the conditions for the exercise of such power vested in Government are strictly complied with. In this case that has not happened and so the declaration u/s 6 is violative of my fundamental right to property and unconstitutional. I submit that u/s 17(2)(d), the purposes are limited and one of the purposes is for the construction, extension or improvement of any road. But before the Government can exercise its power there must be already the opinion of the Collector about the necessity of acquiring the immediate possession) of the land. for the said purpose. In this case the Collector has not expressed his opinion about this land being Immediately necessary to be taken possession of and I submit that the stage for the Government's order therefore has not arisen. For this reason also the order, Ext. P-2 and Ext. P-` are illegal."

The answer to this is contained in paragraph 7 of the counter-affidavit filed on behalf of the second respondent, the State Of Kerala, in O.;P. No. 713 of 1962, which reads as follows:

"The Collector as a matter of fact, on his being satisfied that immediate possession of the property should be taken, invoked that provision of Section 17 and; approved Section 4(1) notification as per his communication R. Dis. 3201/61 dated 10th November 1961."

The Government Pleader appearing on behalf of the second respondent placed before me the communication dated 10th November 1961 and the relevant portion of that communication is in paragraph 3 thereof, which reads :

"I submit herewith a draft notification u/s 4(1) and draft declaration u/s 6 of the L. A. Act (both in duplicate) Inserting the urgency provisions of Section 17(2) of the L. A. Act as the acquisition is for the purpose of a road, for approval by the Govt. and for publication in the Kerala Gazette."

4. The proposed acquisition stemmed from a request made by the Municipal Council, Kozhikode. The council passed a resolution on 26th October 1960. More than a year afterwards, the Collector, in November 1961, forwarded draft notification under Sections 4 and 6 of the Land Acquisition Act in that communication, part of which I have extracted above, the Collector has stated that in the draft notifications, the urgency provisions of Section 17(2) of the Land Acquisition Act have been Inserted as the acquisition is for the purpose of a road. The Collector seems to be under the impression that if the acquisition is for the

purpose of a road, automatically the urgency provisions contained in that section will apply. This, I think, is a complete misreading of the section. The urgency provisions can apply only if the acquisition is for one of" the purposes mentioned in Section 17(1) or 17(2). But it does not necessarily follow that if, the acquisition is for one of the purposes mentioned therein, there will also be a need to take immediate possession of the land. The section starts by saying that

"If in the opinion of the Collector it is necessary to take immediate possession".

This is an additional ground that must be satisfied and the Collector will have to form an opinion about the need for taking immediate possession. He is certainly not entitled to assume in all cases where the acquisition is for the purpose of a road that immediate possession should be taken. I am also of the view that this opinion can be formed only in cases of emergency. It may be that this Court cannot sit in judgment on the grounds on which the Collector forms the opinion that immediate possession has to be taken. Counsel for the State is well-supported by authority on this aspect. I may refer to the decision in *A. Natesa Asari Vs. State of Madras and Another*, which was followed in *V. Harihara Prasad Vs. K. Jaganna Dhan and Another*, . Both these cases were referred to with approval in the decision in *Iftikhar Ahmed Vs. State of Madhya Pradesh and Others*, . Notwithstanding these pronouncements I am clearly of the view that when there is no opinion formed by the Collector, there cannot be a notification u/s 17(4). Section 17(4) by its very wording insists that it is only in cases where Section 17(1) or 17(2) is attracted that there can be dispensation with the provisions of Section 5A of the Act. And in order that Section 17(2) may apply there must be an opinion formed by the Collector about the need for immediate possession. These are conditions precedent it is not enough if there is some urgency relating to a matter foreign to the object of the Act and foreign to the purpose of the acquisition. This is so is clear from the decision of the Madras High Court in *G. Radhakrishna Chettiar and Others Vs. The State of Madras and Others*, , in this case, reference has been made to the earlier decision of the Madras High Court in *A. Natesa Asari Vs. State of Madras and Another*, *Rajagopal Ayyangar, J.* said :

"But this is far from authority for the proposition that the urgency that is referred to in Section 17(2) and which is the basis for the order to take immediate possession of the land before the award of the acquiring officer, might be an urgency which does not arise from the) necessity to enter on the land, the necessity for having a road immediately which might not brook delay, but might arise out of the necessity to prevent the expiry of the three year period specified at the end of Section 34 of the Town Planning Act. If a power is conferred which requires to be used only for a particular purpose the use of that power for any other purpose cannot be justified. The form and the nature of the power in, the pre-sent case itself imposes a limitation based upon the purpose for which the power is to be used. If that purpose is not pursued the power is not available; and when it is made clear to the court that the power has been utilised for a

purpose not contemplated by Section 17 in my Judgment it is the duty of the court to hold that the power has not been properly exercised and therefore to set aside the exercise of that power."

5. I consider the above expression of opinion as apposite and applicable to the facts of this case.

6. Apart from the above, it is seen from the dates of the notifications, Exts. P-1 and P-2, that the Government have made up their mind about the urgency as early as 4th December 1961. The notifications are dated 4th December 1961. But it has taken the Government nearly two months to publish (this was published on 30th January 1962) and more than two months to publish Ext. P-2 which was published on 13th February 1962, u/s 17(4) of the Act, the Government have to form an opinion about the applicability of Section 17(1) or 17(2). And when they so form an opinion and decide to dispense with the provisions of Section 5A, they must be fully aware that a very valuable right statutory conferred on a citizen to object to the acquisition proposed is taken away.

Section 5A gives only 30 days" time to a person affected or interested to file his objections to the proposed acquisition by a notification u/s 4(1). It appears to me, therefore, that any urgency that demands a dispensation with Section 5A must necessarily be an urgency which will not brook a delay of 30 days. In other words, the statute itself impliedly speaks about the circumstances under which the dispensation can be made. The conduct of the Government here indicates that they have waited nearly for two months to publish this and at the same time have taken away a valuable right conferred on the citizens. An urgency to suit the convenience of the Government and at the same time depriving the citizen of a very valuable right, is not the one contemplated by the Act. I think the exercise of power in such circumstances is an abuse of the powers conferred by Section 17(4), at any rate, a colourable exercise of such power.

7. Since Ext. P-1 notification, the one u/s 4(1), also contains a direction for dispensing with Section 5A and since Section 5A only gives to the interested parties a right to object to the notification u/s 4(1) within 30 days from the date of its publication, it has become necessary for me to quash Ext. P-1 notification in its entirety. If I strike down only the direction, the petitioners and others affected will be denied the opportunity to object to this notification as a long time has elapsed since the date of its publication. I therefore quash Ext. P-1, and necessarily, Ext. P-2 in each of these Writ applications.

8. In the circumstances of the case, I make no order as to costs.