
(2006) 02 KL CK 0006
In the High Court Of Kerala
Case No : W.A. No. 2238 of 2005

K. Syamalamma and Another	Vs	APPELLANT
State of Kerala and others		RESPONDENT

Date of Decision : 08-02-2006

Acts Referred:

Land Acquisition Act, 1894 — Section 17(1), 17(4), 5A

Citation : (2006) 1 KLJ 528

Hon'ble Judges : V.K. Bali, C.J.;Siri Jagan, J

Bench : Division Bench

Advocate : Pirappancode V.S. Sudhir, for the Appellant; K. Lakshmi Narayanan, Poovally M. Ramchandran Nair and R.V. Abrishek, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Bali, CJ.

1. By this common judgment, we dispose of two connected appeals, W.A. Nos. 2184 of 2005 and 2238 of 2005, as the same emanate from a common impugned judgment passed by the learned Single Judge. The challenge posed by the appellants, who were petitioners in the original writs, is to the land acquisition proceedings initiated by the State. As the writs filed for the said purpose were dismissed by the learned Single Judge by judgment dated 1-7-2005, the petitioners have challenged the judgment aforesaid by filing the present Writ Appeals. The land acquisition proceedings were challenged on two grounds, namely that, there was no justification to invoke the emergency provisions as it deprived the petitioners of their valuable right to file objections u/s 5A of the Land Acquisition Act, 1894 and that the compensation to be paid to the land owners-petitioners was not going to be paid out of public funds, the same was rather to be raised from private individuals. If the requisite funds for payment of compensation were not to come out of public fund or public revenue, the acquisition proceedings would be void. In so far as the first point with regard to the issuance of a notification invoking the emergency provisions is concerned,

the appellants have no more subsisting complaint. The learned Single Judge has already held that the Government would reconsider the question of permitting the Panchayat to invoke the emergency provisions under Sections 17(1) and 17(4) of the Act for the proposed acquisition with notice to the petitioners also. Learned counsel for the appellants concedes that pursuant to the observations or directions given by the learned Single Judge as mentioned above, a notice indeed has been given to the petitioners and their objections are under consideration.

2. The surviving ground thus pertains to funds having been collected from individuals for payment of compensation to land owners. Before we may, however, take into consideration the contention of the learned counsel on that count, it would be appropriate to mention that the public purpose mentioned was widening of a road. The proposal to have the existing road widened was made by the Panchayat and accepted by the Government for the paramount welfare of the public. A large number of people including the appellants, who visit the Thrippallyoor Mahavishnu Temple situated nearby which, according to the Panchayat, is a very famous temple attracting large number of pilgrims, will be benefitted if the road was widened. It was a long cherished desire of not only the ordinary public, but also of the managing committee of Thrippallyoor Mahavishnu Temple and several other social organisations in the locality to widen the existing Venniyoor-Thrippallyoor road into a vehicular traffic road. On the basis of the resolution and the requisition made by the Panchayat, Government issued Exhibit P4 order permitting acquisition of 400 square metres of land belonging to the petitioners. It was in view of the extreme urgency of the matter that the Panchayat resolved further to request the Government to invoke the emergency provisions of the land Acquisition Act. The Panchayat funds could not be utilised for this purpose and, thus, money was raised by donation from the public. A sum of Rs. 40,000/- had already been collected and remitted as per law. It is settled law, for which reference may be made to the Five Judges Bench decision of the Honourable Supreme Court cited by the counsel for the appellants himself in *Smt. Somavanti and Others Vs. The State of Punjab and Others*, that the acquisition would be lawful if the requisite funds may come out of public funds or public revenue. In the present case, the requisitioning authority is the local Grama Panchayat. Section 177 of the Kerala Panchayat Raj Act, 1994 does enable the Panchayat to accept donations or trusts relating exclusively to the furtherance of any purpose to which its funds may be applied. The money necessary for paying compensation to the owners of the properties has been raised by the Panchayat or with the consent of the Panchayat through donations from the public. The money collected in the manner aforesaid, if, may not be a public revenue, would certainly assume the character of public fund. Thus, there is no merit in the surviving contention urged above. There is no merit in these appeals and the same are accordingly dismissed leaving, however, the parties to bear their own costs.