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**(1973) 01 KL CK 0041**  
**In the High Court Of Kerala**  
**Case No : O.P. No. 2090 of 1970**

K.N. Appu

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

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**Date of Decision :** 25-01-1973

**Acts Referred:**

Kerala Land Acquisition Act, 1961 — Section 2(3), 3, 4, 5, 5(2)

**Citation :** AIR 1974 Ker 2 : (1973) KLJ 249

**Hon'ble Judges :** V.P. Gopalan Nambiyar, J

**Bench :** Single Bench

**Advocate :** A.P. Chandrasekharan, for the Appellant;

**Final Decision :** Allowed

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## Judgement

V.P. Gopalan Nambiyar, J.—The petitioner seeks to quash Section 3(1) Notification dated 29th July 1967 issued under the Kerala Land

Acquisition Act (Ext. P-3) and the Section 6 Declaration dated 26th April 1969 (Ext. P-6), issued in respect of one acre and 19 cents in Sy. No.

457/1 of Ollukkara Village, belonging jointly to the petitioner and his mother and sisters.

2. Two main grounds are urged to quash the notification and the declaration, namely, first that the Section 5, enquiry has not been conducted in the manner provided by the statute and the petitioner has not been afforded an opportunity of being heard on the objections; and second that the acquisition was not really for a public purpose.

3. As far as the first of these objections is concerned. Section 5 (3) of the Act requires the Collector to publish a notification in the gazette and also cause public notice of the substance of such notification to be given at various places in the locality. Section 5 (1) enables any person interested in

the land acquired to object to the acquisition of the land within thirty days of the issue of the notification. Section 5 (2) enjoins the Collector to give

the objector an opportunity of being heard either in person or by Counsel. The Kerala Land Acquisition Rules 1963 have been framed under the

Act. Rule 5(b) states that if objections are received within time, the Collector shall fix the date for hearing the objections and give notice thereof to

the objector. The form in which the notice is to be issued has been prescribed as Form IV (B). The petitioner has alleged in paragraph 10 of the

petition that after preferring Ext. P2 objections he did not receive any notice of enquiry enjoined by Section 5 of the Act, nor was he heard in

support of the objections. To this, the answer made in paragraph 6 of the counter-affidavit is in very vague and general terms, namely, that the

Section 5 notice was served on all interested parties by registered Post and the enquiry was conducted by the Tahsildar on 26-2-1967 (the date

26-2-1967 is an obvious mistake, and the learned Government Pleader who appeared stated at the hearing that the correct date was 26-10-

1967). The learned Government Pleader stated with reference to the files that he was unable to say that notice of the enquiry on the objections had

actually been served on the petitioner. This one ground is sufficient to vitiate the proceedings.

4. There is yet another illegality in regard to the enquiry into the objections u/s 5 of the Act. Ex. P-3 notification shows that the Tahsildar was

constituted the Collector for purpose of land acquisition as defined by Section 2 (3) of the Act. The petitioner has alleged in paragraph 5 of the

petition, that the Tahsildar who made the enquiry reported that the acquisition is not necessary. In paragraph 4 of the counter-affidavit it is admitted

that the Tahsildar was of the opinion that the acquisition may be withdrawn. The said paragraph proceeds to state that further enquiries were made

by the Revenue Divisional Officer and the District Collector and that these reveal that the acquisition was necessary. It is also stated therein that

after the service of notice u/s 5 of the Land Acquisition Act, on all the interested persons, the Section 5 enquiry was conducted by the Revenue

Divisional Officer in the presence of the petitioner, and that the Tahsildar has also conducted enquiries on 26-2-1967 (26-10-1967?). The

Tahsildar having been constituted expressly by the notification as the ""Collector"" for purpose of the land acquisition, I do not think that

simultaneously the Collector and Revenue Divisional Officer can also exercise concurrent jurisdiction and functions in respect of the acquisition

proceedings. The Government Pleader contended that the definition in Section 2 (3) of "Collector" takes in the "Collector" primarily, and only

includes the "Officer appointed to perform the functions of the Collector." But to hold that both can function simultaneously would be to introduce

chaos and confusion in the land acquisition proceedings. The reasonable inference from Sections 3, 4 and 5 is that one and the same authority

should function for the purposes of these sections, and not that two separate sets of Officers can function concurrently. Whatever that be, the

association of the Revenue Divisional Officer who does not figure as a Collector either in the primary sense or in the inclusive sense of the definition

is certainly unwarranted and unjustified and that is sufficient to introduce a second vitiating element in these proceedings.

5. The petitioner's Counsel also contended that the acquisition was not for a "public purpose" as the object was only to cut a canal from the

eastern side of the petitioner's property, where it is bounded by the Peechi Canal and take the waters to the western boundary of his property,

and no more. The purpose, it was said, was really to benefit the lands of one Kaipulli Krishnan situated on the west of the petitioner's property, at

whose instance, according to the petitioner, the land acquisition proceedings have been set afoot. It was contended by the petitioner's Counsel that

the proposed canal being confined only to the petitioner's property and intended to benefit only Krishnan's property, the underlying purpose of the

acquisition cannot be regarded as public. The Government Pleader contended and the counter-affidavit has stated that the canal is meant to irrigate

not only the lands of Krishnan. but also Sy. Nos. 456, 448 etc. of Ollukara Village. On the averments and materials placed, I am not satisfied that

the acquisition is for a public purpose. The Section 3 notification is therefore liable to be quashed.

6. I allow this writ petition and quash Ex. P-3 notification and Ex. P-6 declaration. I make no order as to costs.