
(1991) 10 KL CK 0011
In the High Court Of Kerala
Case No : W.A No. 799 of 1991

Kochuvarkey

APPELLANT

Vs

State and others

RESPONDENT

Date of Decision : 07-10-1991

Acts Referred:

Kerala Land Acquisition Act, 1961 — Section 3, 5A, 6

Citation : (1991) 2 KLJ 771

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

Bench : Division Bench

Advocate : N.P. Samuel, for the Appellant;

Final Decision : Dismissed

Judgement

Jagannadha Rao, C.J.—The writ petitioner is the appellant. In the Writ Petition, he questioned the validity of the land acquisition proceedings by which the premises which were being occupied by him as a tenant were acquired by the Panchayat alongwith some other property, for construction of a market complex. The Panchayat passed a resolution on 26-3-1983. That was a unanimous resolution supported by both the majority party as well as the opposition group. Pursuant to that, a notification u/s 3 of the Kerala Land Acquisition Act was issued on 10-4-1984 and a declaration u/s 6 was made on 5-5-1987. In the enquiry made u/s 5A, various contentions raised by the appellant and several others were rejected on 26-3-1987 as per Ext. P5. The allegation of mala fides made by the appellant was also rejected. Learned counsel for the writ petitioner raised two points before the learned Single Judge. The first point relates to the scope of S. 65 of the Kerala Panchayats Act, 1960. According to the appellant, the Panchayat is not entitled to ask the Government to initiate land acquisition proceeding under the Land Acquisition Act" unless the purpose related to the discharge of the functions "imposed" on the Panchayat by the Act. According to the appellant, establishment of the market complex might come under the non-mandatory functions stated in Section 57(2) of the " Act and not in relation to

the mandatory duties imposed u/s 57(1) of the Act. Appellant contends that in as much as the requisition for a market cannot be said to be a mandatory duty falling within Sec. 57(1) of the Act, the Panchayat should not have sought the use of provisions of the Land Acquisition Act u/s 65 of the Act. The second point raised before the learned single Judge relates to malafides on the part of the Panchayat.

2. The learned single Judge came to the conclusion that the Panchayat could invoke the provisions of the Land Acquisition Act u/s 65 even though the acquisition related to the function of establishment of a market falling within Section 57(2) of the Act. The learned single Judge also rejected the plea of malafides pointing out that the resolution of the Panchayat dated 26-3-1983 was also supported by the opposition group in the Panchayat and that so far as the rent control case between the parties is concerned, the said case was filed by the appellant on 13-4-1983, long subsequent to the resolution of the Panchayat regarding the land Acquisition. The learned Judge also disregarded the cancellation of the licence of the appellant and observed that the licence appears to have been cancelled because the appellant was slaughtering the animals not at the specified place, but in the shop itself. Thus there was no malafides. The learned Judge thus rejected both the contentions and dismissed the writ petition.

3. In this appeal, learned counsel for the appellant raised the same contentions once again. Learned counsel also placed reliance on Dr. Noor Mohammed v. District Collector (1981 KLT 816) in support of the first point. So far as the second point is concerned, learned counsel relied on the same contentions advanced before the learned single Judge.

4. Coming to the first point, we may state that Sec. 65 of the Act deals with acquisition of immovable property required, by Panchayats. Section 65 reads as follows:

Any immovable property which is required by a Panchayat for a public purpose connected with the discharge of the functions imposed on it under this Act, or rules or bye-laws thereunder, or any other law, may be acquired under the provisions of the Land Acquisition Act in force for the time being and on payment of the compensation awarded under the said Act, in respect of such property and. of any other charges incurred in acquiring it, the said property shall vest in the Panchayat:

Provided that nothing contained in this section shall be deemed to prevent any Panchayat from acquiring immovable property either through private purchase or by free surrender.

(emphasis supplied)

5. It may be noticed that Section 57(1) is contained in Chapter III of the Act which is described as a Chapter dealing with "functions, powers and property of Panchayats". u/s 57(1), it shall be the duty of a Panchayat, subject to the

provisions of the Act and the Rules, to make reasonable provision for carrying out the requirements of the Panchayat area, within the limit of its funds. The sub-section refers to various items referred to as the duty of the Panchayat in sub-clause (a) to (m). Section 57(2) states that subject to the provisions of the Act and the rules made thereunder, a Panchayat may also, within the limit of its funds and wherever possible with government aid, make reasonable provision for carrying out the requirements of the Panchayat area in respect of various matters. The matters are enumerated as dealing with (1) agriculture, (2) animal husbandry, (3) education and culture, (4) social welfare, (5) public health and sanitation) (6) public works and (7) general. Section 57(2) includes establishment of public markets among the functions of the Panchayat.

6. But the appellant's counsel submits that Section 65 enables acquisition of property under the Land Acquisition Act only in respect of the functions "imposed" by the Act and Section 57(2) deals only with functions (including establishment of markets) which may be performed by the Panchayat but not with functions "imposed". Functions imposed are, according to counsel, the duties referred to in Section 57(1). Sec. 57(1) does not relate to establishment of markets.

7. In our view, the word "imposed" in Section 65 of the Act has to be read alongwith the words "discharge of the functions" used in the same Section having regard to the fact that the word "functions" is used in the heading of Chapter III and also in Section 57(2) of the Act. We have to presume that the Legislature intended to give the same meaning to the said word in Section 57 as well as in Section 65 of the Act. The duties mentioned in Section 57(1) may have priority over the various functions mentioned in sub-section (2) of Sec. 57. In so long as the activities of the Panchayat are functions falling within Section 57(2), it cannot be said that they are not functions "imposed" on Panchayat by the Act. The word "imposed", in our view, cannot be strictly construed as being restricted to mandatory duties mentioned in sub-section (1) of Section 57. The duties mentioned in sub-section (1) would definitely have priority over the functions mentioned in sub-section (2). But that does not mean that for the purpose of Section 57(2) of the Act, the Panchayat will be precluded from invoking the provisions of the Land Acquisition Act u/s 65 of the Act-If the argument of the appellant is to be accepted the position would be that for the purpose of carrying out the various functions in Section 57(2) in relation to agriculture, animal husbandry, education and culture, social welfare, public health sanitation, public works and other general functions, the Panchayat would be compelled to acquire property only by private purchase or by free-surrender. That will make the position of the Panchayat very difficult. In our view, that would not have been the intention of the Legislature. Further, the provisions of the Land Acquisition Act enable the government to acquire land for the use of Panchayat provided the purpose is a public purpose. It will be noticed that the various functions mentioned in Section 57(2) are public purposes. Therefore, we cannot construe the word "imposed" in Section 65 as applicable only to the duties mentioned in

Section 57(1) only. In our view, the word "functions" in Section 65 could as well attract the various functions mentioned in Section 57.(2) of the Act.

8. Learned counsel for the appellant placed reliance on the decision in *Dr Noor Mohammed v. District Collector* (1981 KLT 816). That was a case in which a property was being acquired for the purpose of bus-stand and shopping centre. The learned Judge, no doubt, made a distinction between sub-sections (1) and (2) of Section 57. The learned Judge also pointed out that the use of the word imposed" in Section 65 cannot be over-looked. Having said all that, the learned Judge, however, made the following significant observations :

I may not be taken to decide that for purposes mentioned in Section 57(2) the Panchayat is disabled from requesting for initiation of acquisition proceedings. For such purposes acquisition proceedings can be initiated; but in the context of the express limits contained in Section 57(2) it has to be held that for such a purpose emergency provisions cannot be invoked."

(emphasis supplied)

In our view, the learned Judge in that case merely observed that Section 65 of the act will not permit the Panchayat. to acquire property for the purpose of Section 57(2) by invoking the emergency provisions of the Land Acquisition Act. The learned Judge nowhere observed that Section 65 cannot be invoked by the Panchayat for purposes mentioned in Section 57(2) at all. On the other hand, the learned Judge made a positive observation that for purposes mentioned in Section 57(2) the Panchayat could initiate Land Acquisition proceedings u/s 65 . Whether the learned Judge was right in restricting file powers u/s 65 to cases Where the land acquisition proceedings are initiated under the emergency provisions is. not a matter to be decided in this case. Admittedly, in the present case before us the emergency provisions u/s 17(4) of the Land Acquisition Act have not been invoked. If that be so, there can be no doubt that even according to the above said judgment, the Panchayat would be well within its power in invoking the provisions of Section 65 for initiating land acquisition proceedings for discharge of its functions mentioned in Section 57(2). So far as the construction of a market complex is concerned, it is not in dispute before us that it is a matter enumerated in Section 57(2) of the Act. We accordingly agree with learned single Judge and reject the first contention of the appellant.

Coming to the question of malafides, we are of the view that the appellant has not been able to establish malafides on the part of the Panchayat. As pointed out by the learned - single Judge, the resolution of the Panchayat dated 26-3-1983 was supported even by the opposite group in the Panchayat and further the said resolution was anterior to the commencement of the rent control proceedings between the parties. So far as the cancellation of licence is concerned, it was cancelled on the ground that the appellant was slaughtering animals not at the space" specified, but in the shop itself, We are, therefore, in agreement with the learned single Judge that there are no malafides in the land acquisition

proceedings.

For the aforesaid reasons the writ appeal is dismissed,