
(2008) 01 KL CK 0003

In the High Court Of Kerala

Case No : Writ Petition (C) No. 21227 of 2007 (B)

Koothur Veettil Sarojini Amma

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 21-01-2008

Acts Referred:

Land Acquisition Act, 1894 — Section 28A

Citation : (2008) 1 KLJ 881

Hon'ble Judges : K. Padmanabhan Nair, J

Bench : Single Bench

Advocate : Muralikrishnan Payyanur, for the Appellant; Basant Balaji (GP), for the Respondent

Judgement

K. Padmanabhan Nair

1. Petitioner's land was acquired for a public purpose. She did not file any application for enhancement. But some of the land owners whose lands were also acquired for the very same purpose under the very same notification claimed enhancement. Those cases were referred to the Land Acquisition Court, and the Land Acquisition Court awarded enhancement, and a judgment was rendered as per L.A.R. No. 37/1990. Petitioner filed Ext. P2 application u/s 28A of the Land Acquisition Act (for short "the Act") before the Land Acquisition Officer claiming the same benefit. It was specifically averred that properties involved in L.A.R. No. 37/1990 and that of the petitioner are same category and included in the same notification. That application was filed on 16-10-1993. But the same was rejected by the Special Tahsildar, Land Acquisition (NH), as per order dated 8-2-2007, by a single line order, stating that the application was rejected. No reasons were also stated. It is submitted that the Land Acquisition Officer rejected the claim for enhancement based on a demi-official letter No. 10297/Exp. A 1/2006/Fin., dated 10-8-2006, written by the Principal Secretary, Finance, to the District Collector, Kannur, with copy to all District Collectors in the State. The Principal Secretary, Finance, has laid down five guidelines to be followed by

the Land Acquisition Officers, while considering an application filed u/s 28A of the Act application. Copy of that letter is produced by the petitioner, which is marked as Ext. P4. The guidelines state as follows;-

(1) 28A application can be extended only to those persons, who prefer written application within 3 months from the date of award of the reference Court.

(ii) Application under 28A can be considered, if the basis land and the acquired land are identical, falls within the same classification and were notified as per the same 4(1) notification.

(iii) In all the requests under 28A application, originally assessed value of the land in question and the land value for which Court has now fixed a higher value should be the same.

(iv) The interest may be sanctioned only from the date on which Section 28A application is furnished.

(v) The land Acquisition Officer/District Collector has to fight in all cases, in order to avoid payment of interest on the Land Acquisition Award, as otherwise. Government will have to pay huge amount as compensation.

Petitioner is challenging the directions contained in the letter. When there are specific provisions in the statute and further the Government had framed Rules under the Sections, the Executive cannot issue circulars or orders which run counter to the provisions in the statute or Rules. Executive directions issued are unsustainable and liable to be quashed. The directions contained in clause 2, 3 and 4 in Ext. P4 are against the statutory provisions. Hence, those directions are illegal, ultravires and liable to be quashed.

2. In Pudukunnathu Raghava Poduval Vs. The Special Tahsildar, , a learned Single Judge of this Court had considered the directions contained in clause 2 and 3, and found that those directions are illegal. It was held that it is not mandatory that both the lands should have been included in the same category. It was further held that land acquisition officer can award reasonable proportionate enhancement or reduction upon the land value given to the parties in the judgment relied on through the redetermination which is directed to be done u/s 28A of the Act. Hence, the rejection of the application relying on Ext. P4 is illegal. In the result, the directions issued by the Principal Secretary, Finance, in his letter No. 10297/Exp. A1/2006/Fin., dated 10-8-2006, to the District Collector, Kannur, is hereby quashed. Ext. P3 order passed by the Land Acquisition Officer rejecting the application filed by the petitioner u/s 28A is also quashed. The Land Acquisition Officer is directed to re-consider the applications, in accordance with law, and pass appropriate orders, as expeditiously as possible, at any rate, within two months from the date of receipt of a copy of this judgment.

Officer is directed to forward a copy of this judgment to the Land Revenue Commissioner and also to the Principal Secretary, Finance, to issue appropriate circulars withdrawing the directions contained in his letter, dated 10-8-2006.

The writ petition is disposed of as above.