

(1966) 11 KL CK 0026
In the High Court Of Kerala
Case No : O.P. No. 3156 of 1965

Kozhiparambath Raman and Others

APPELLANT

Vs

Special Tahsildar for Land Acquisition, Kozhikode and Another

RESPONDENT

Date of Decision : 18-11-1966

Acts Referred:

Kerala Land Acquisition Act, 1961 — Section 11, 31, 32, 33(2)
Land Acquisition Act, 1894 — Section 14, 18, 29, 30

Citation : AIR 1967 Ker 205

Hon'ble Judges : M.S. Menon, C.J;T.S. Krishnamoorthy Iyer, J;S. Velu Pillai, J

Bench : Full Bench

Advocate : P.C. Balakrishna Menon and V.P. Mohankumar, for the Appellant;
Govt. Pleader, for No. 1, K.V. Surianarayana Iyer, C.M. Devan and T.L.
Viswanatha Iyer for No. 2, for the Respondent

Final Decision : Dismissed

Judgement

Krishnamoorthy Iyer J.

1. The Original Petition filed under Article 226 of the Constitution of India is for the issue of a writ of certiorari or any other appropriate writ or direction and to quash Ext. P-3 notice issued to the petitioners by the first respondent under Sub-section (2) of Section 12 of the Kerala Land Acquisition Act, 1961 (Act 21 of 1962) hereinafter referred to as the Act, about the passing of an award u/s 11 of the Act. The petitioners claim to be the tenants of the shop buildings in the property comprised in T. S. No. 323/1, Ward IX, Block 10, of the Calicut City. A portion of the property along with the shop buildings has been acquired by the State under the Act. The dispute raised in the Original Petition relates to the interpretation of Section 11 of the Act, which is in these terms:

"On the day so fixed, or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections, if any, which any person interested has stated pursuant to a notice given u/s 9 to the measurements made u/s 8, and into the value of the land at the date of the

publication of the notification under Sub-section (1) of Section 3, and into the respective interests of the persons claiming the compensation, and shall make an award under his hand of-

(i) the true area of the land;

(ii) the compensation which in his opinion shall be allowed for the land; and

(iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him."

Sub-section (2) of Section 12 of the Act provides that "the Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made. In pursuance to the notices issued under Sections 9 (3) and 10 of the Act the petitioners filed statements showing the nature of their interests in the land acquired and the amount of compensation for such interests. Exhibit P-4 is the award passed by the Collector u/s 11 of the Act on a perusal of the statements filed by the petitioners. It was admitted by the petitioners that Ext. P-4 satisfies the requirements of Sub-sections (i) and (ii) of Section 11 of the Act. Regarding the apportionment of compensation required by Sub-section (iii) of Section 11 of the Act Ext, P-4 stated as follows:

"The Mathrubhumi Printing and Publishing Co. Ltd,, Kozhikode has claimed the entire land value and improvements (value of shop buildings) in the land being the property exclusively held by them. The rental occupants (1) Kozhiparambath Raman (2) K. Sreedharan (3) P. Madhavan (4) Arekkara Ayyappan (5) P. Achuthan (6) K. P. Kunhandi (7) K. K. Moidu Hajee (8) A. K. Bava (9) B. C. Mammu have claimed portion of the value of buildings occupied by them on rent on the ground that improvements were effected by them: Thus the claimants have not come to an amicable settlement among them in the matter of apportionment of compensation. Hence the land value with 15 per cent solatium amounting to Rs. 893-86 and the value of improvements with 15 per cent solatium amounting to Rs. 8681-35 in all Rs. 9575-21 will therefore be deposited in the Sub Court, Kozhikode, u/s 33 (1) of the Kerala Land Acquisition Act in the names of (1) Managing Director Mathrubhumi Printing and Publishing Co., Ltd., Kozhikode (2) Kozhiparambath Raman, Vegetable Merchant, Court Road, Kozhikode (3) K, Sreedharan, Vegetable Merchant, Court Road, Kozhikode (4) P. Madhavan, Vegetable Merchant Court Road, Kozhikode (5) Arekkara Ayyappan Vegetable Merchant, Court Road, Kozhikode (6) K. P. Kunhandi, Vegetable Merchant, Court Road Kozhikode (7) K. K. Moiduhaji, Haji K. K. Moidu and Co., Robinson Road, Kozhikode (8) A. K. Bava, Stationery Merchant, Court Road, Kozhikode (9) B. C. Mammu, Stationery Merchant, Court Road, Kozhikode (10) P. Achuthan, Oil Merchant, Court Road, Kozhikode and a reference issued to that court u/s 32 of the same Act."

Rental occupants 1 to 9 mentioned in Ext. P-4 are the petitioners before us. It

was submitted on behalf of the petitioners that the above extract contained in Ext. P-4 does not satisfy the requirement of Sub-section (iii) of Section 11 of the Act and therefore Ext. P-4 is not an award under the said provision. In support of this contention reliance was made on the decision of Joseph, J. in *Kesava Pillai v. Uzhuthiraru* 1964 KLJ 907. The question that was considered in the decision was whether the decision of a Court made on a reference u/s 27 of the Travancore Land Acquisition Act corresponding to Section 32 of the Act is an award within the meaning of Section 25 of the Travancore Land Acquisition Act corresponding to Section 28 of the Act, and whether an appeal will lie against such decision. In holding that the decision of a Court on a reference made under Section 27 of the Travancore Land Acquisition Act is not an award under Section 25 of the Travancore Act and an appeal is not maintainable against such a decision, Joseph, J. agreed with the following observations of the Travancore-Cochin High Court in *State of Travancore-Cochin v. Kuma-anallore Devaswom* ILR (1955) Tra 368

"The Land Acquisition Officer in making an award had to decide (1) the area of the land. (2) the compensation allowed for the land and (3) the apportionment of the compensation and that it was only in cases in which all the three points had been decided that the award could be deemed a final one u/s 11. ... In the case of a reference u/s 27, the answer necessarily had to be communicated to the Land Acquisition Officer to enable him to make a final award".

Section 11 of the Travancore Land Acquisition Act corresponds to Section 11 of the Act. Though a bench of this Court in *Mathai Thomas v. Vasudevan Pillai*, 1965 Ker LT 616 agreed with the dictum of Joseph, J. that a decision made on a reference u/s 27 of the Travancore Land Acquisition Act is not an award it was held that the said decision is a decree which is appealable and to that extent did not follow the decision of Joseph, J. The view of Joseph, J. that the Collector has to pass a final award after the receipt of the decision of the Court made on a reference u/s 27 of the Travancore Act was also not accepted in 1965 KLT 616. Vaidialingam, J. observed thus at page 619:

"Nor do we with respect, agree with the learned Judge when he holds that after a decision is rendered by the Court, the answer will have to be communicated to the Land Acquisition Officer to pass a final award. We do not see any provision in the Travancore Act or in the Central Act to that effect".

The question in the form in which it is raised before us, did not arise in the two decisions of this Court cited above. Both sides relied on the observations in these decisions in support of their respective contentions.

2. Section 11 of the Act requires that the award of the Collector shall be made of (i) the true area of the land; (ii) the compensation which in his opinion shall be allowed for the land; and (iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land.

3. Section 20 contained in Part III of the Act enables any person interested, who

has not accepted the award to require the Collector to refer his objection to the measurement of the land, the amount of the compensation, the persons to whom it is payable or the apportionment of the compensation among the persons interested, for the decision of the court. Part III of the Act deals with the reference to Court and procedure thereon. Part IV of the Act which deals with apportionment of compensation consists only of two sections Sections 31 and 32. Sections 31 and 32 of the Act are in these terms :

Section 31. "Where there are several persons interested, if such persons agree in the apportionment of the compensation, the particulars of such apportionment shall be specified in the award, and as between such persons the award shall be conclusive evidence of the correctness of the apportionment".

Section 32. "When the amount of compensation has been settled u/s 11 or Section 16, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof is payable, the Collector may refer such dispute to the decision of the Court".

These two provisions prescribe only the procedure to be followed by the Collector before the passing of the award u/s 11 of the Act. According to the learned counsel for the petitioners, if after the determination of compensation there are disputes as to apportionment of the said amount and the Collector makes a reference u/s 32, he is passing no award until the final decision of the Civil Court is incorporated by him as part of the award. We are of the view, that the contention of the learned counsel, is without merit. According to. Section 11 of the Act, the Collector shall proceed to enquire inter alia into the respective interests of the persons claiming the compensation and he shall make an award dealing also with the question of the apportionment of the amounts awarded.

As was observed by Venkatasubba Rao J. in (Janapareddi) Venkata Reddi Vs. (Janapareddi) Adhinarayana, . the Legislature seems to have overlooked that the word used in Section 11 of the Act is "shall" and assumes in Section 30 (Section 32 of the Act) that the Collector has the option either to decide that question himself or to refer it to the decision of the Court A combined reading therefore of Sections 11. 31 and 32 of the Act brings out the following conclusions. Firstly it is open to the Collector himself to make an apportionment of the compensation amount among all the persons known or believed to be interested in the land and if he does so he should incorporate the same in the award to be passed u/s 11 of the Act.

Secondly when there is an agreement among the several persons interested in the land in the apportionment the particulars of such apportionment should be specified in the award to be passed u/s 11 of the Act. Thirdly in case of dispute as to the apportionment of the compensation or any part thereof the Collector may refer such dispute to the decision of the Court. Section 32 of the Act leaves the Collector with a discretionary power that in case of dispute as to the apportionment lit is open to him to decide the dispute for himself or to refer the

dispute to the decision of the Court. When the apportionment is decided by the Collector it is beyond doubt that it has to be incorporated in the award under Sub-section (iii) of Section 11 of the Act.

In such a case any person interested who has not accepted the award may require the Collector to refer the apportionment of compensation u/s 20 of the Act for the determination of the Court. The short question to be decided by us in the original petition is whether a Collector can pass a valid award under Section 11 of the Act when he decides to make a reference u/s 32 of the Act. It is the duty of the Collector to deposit the compensation amount in Court u/s 38 Sub-section (2) of the Act even when he makes a reference u/s 32 of the Act. In *Ramchandra v. Ramchandra* AIR 1922 PC 80 the question arose whether a decision u/s 31 of the Land Acquisition Act, 1894, will operate as *res judicata* in a subsequent litigation between the same parties on the same point. In dealing with the question their Lordships of the Privy Council observed thus :

"When once the award as to the amount has become final, all questions as to fixing of compensation are then at an end. The duty of the Collector in case of disputes as to the relative rights of the persons, together entitled to the money, is to place the money under the control of the Court, and the parties then can proceed to litigate in the ordinary way to determine what their right and title to the property may be, That is exactly what occurred in the present case. Now the proceedings were commenced is a matter that is not material, provided that they were instituted in the manner that gave the Court jurisdiction, for they ended in a decree made by the High Court and appealable to this Board.

It is true that in the case of *Smt. Trinayani Dassi v. Krishna Lal* (1918) 17 Gal WN 935 and following an earlier case, *Balaram Bhramaratar v. Sham Sunder Narendra* ILR (1896) Cal 526 it was decided that an order u/s 32 may appropriately be deemed as an integral part of the award made by the Court, but their Lordships regard this as a misapprehension as to the meaning of the award. The award as constituted by statute is nothing, but an award which states the area of the land, the compensation to be allowed and the apportionment among the persons interested in the land of whose claims the Collector has information meaning thereby people whose interests are not in dispute but from the moment when the sum has been deposited in Court u/s 31(2) the functions of the award have ceased; and all that is left is a dispute between interested people as to the extent of their interest".

Though the facts in the above decision do not disclose the contents of the award passed u/s 11 of the Land Acquisition Act, 1894, or whether there was a reference u/s 30 of the said Act, it is seen that the Land Acquisition Officer deposited the money in Court u/s 31(2) of that Act. The above decision is interpreted by the learned additional Government Pleader to support his contention that an award passed u/s 11 of the Act need only state the true area of the land, the compensation to be allowed and the apportionment among the persons interested in the land only when their interests were not in dispute. We do

not agree with the contention of the learned Additional Government Pleader that the decision in AIR 1922 PC 80, supports the extreme plea raised by the learned counsel.

Reading Sections 11, 31 and 32 of the Act together it follows that when the apportionment of compensation is either decided by the Collector or is agreed to by the persons interested in the land it will have to be incorporated in the award. On the other hand, when the Collector decides to refer the dispute to a Court u/s 32 of the Act and passes a joint award in favour of all the persons interested in the land regarding the compensation amount and deposits the compensation money in Court u/s 33(2) of the Act, we are of the view, it is a valid award u/s 11 of the Act and the award is complete. The Collector also becomes functus officio with the deposit of the compensation money in Court u/s 33(2) of the Act and it is no longer open to him to modify the award on the basis of the decision of the Court or complete the award if it is considered incomplete.

The decision in K. Kankarathnamma and Others Vs. State of Andhra Pradesh and Others, , cited before us on behalf of the State is not directly applicable as the point decided by their Lordships of the Supreme Court was that in a reference u/s 30 of the Land Acquisition Act 1894, for the apportionment of the compensation amount among the claimants, the Court has no jurisdiction to go behind the award of the Land Acquisition Officer and re-determine the question of compensation. In the case before the Supreme Court, the Land Acquisition Officer made a reference to the Court u/s 30 of the Land Acquisition Act, 1894 for the apportionment of the compensation amount among the various claimants and passed an award. Some of the claimants who did not accept the award of the Land Acquisition Officer made applications in writing to him within the time allowed for referring the question of compensation to the Court.

No reference was made by the Land Acquisition Officer in pursuance to these applications. But the reference made u/s 30 of the Land Acquisition Act 1894 proceeded on the basis that the reference was not merely for the apportionment of compensation but also with respect to the amount of compensation. In holding that the Subordinate Judge has no jurisdiction to go into the question of compensation in a reference u/s 30 of the Land Acquisition Act 1894, their Lordships observed at page 305 :

"When the matter went up before the High Court by way of an appeal from the judgment of the Subordinate Judge, the Government Pleader raised the question that in the absence of a reference on the question of quantum of compensation by the Land Acquisition Officer, the Court had no jurisdiction to consider that matter at all. The High Court, though it ultimately reversed the finding of the Court as to the amount of compensation unfortunately allowed the plea to be raised before it but ultimately upon a consideration of certain decisions, negatived it. We say unfortunately because this is not a kind of plea which the State ought at all to have taken. Quite clearly applications objecting to the rates at which compensation was allowed were taken in time by persons interested in

the lands which were under acquisition and it was no fault of theirs that a reference was not made by the Land Acquisition Officer. Indeed, whenever applications are made u/s 18 of the Land Acquisition Act, it is the duty of the Land Acquisition Officer to make a reference unless there is a valid ground for rejecting the applications such as for instance that the applications were barred by time. Where an officer of the State is remiss in the performance of his duties in fairness the State ought not to take advantage of this fact. We are further of the opinion that the High Court, after the plea had been raised, would have been well-advised to adjourn the matter for enabling the appellants before us, who were respondents in the High Court, to take appropriate steps for compelling the Land Acquisition Officer to make a reference".

4. From the above passage it is clear that in the view of their Lordships of the Supreme Court, there was a valid award, even though the reference u/s 30 of the Land Acquisition Act, 1894 was pending and that even an application for reference u/s 18 of the said Act need not wait for the decision of the Court based on reference u/s 32 of the Act. These observations support the view we are taking.

5. In the decision of the Supreme Court in *Dr. G.H. Grant Vs. State of Bihar*, in the awards passed by the Collector the compensation money was apportioned among all the persons known or believed to be interested in the land and the only question which engaged the attention of their Lordships was whether it is open to the Collector to make a reference u/s 30 of the Land Acquisition Act, 1894, even after the passing of an award u/s 11 of the said Act, at the instance of a party on whom the title devolved since the date of the award. This decision also has no direct bearing on the question raised before us. But the following observation of Shah J. at page 243 shows that the contentions of the petitioners cannot stand.

"Whereas u/s 18 an application made to the Collector must be made within the period prescribed by Sub-section (2) Clause (b), there is no such period prescribed, u/s 30. Again u/s 18 the Collector is bound to make a reference on a petition filed by a person interested. The Collector if u/s 30 not enjoined to make a reference; he may relegate the person raising a dispute as to apportionment, or as to the person to whom compensation is payable, to agitate the dispute in a suit and pay the compensation in the manner declared by his award".

The decision of the Full Bench of this Court in *O. P. No. 1245 of 1965 (Ker)* turned on the concession made therein that the third requirement of Section 11 of the Act was not complied with and the said decision is therefore not an authority for the decision of the question raised before us.

6. The view that we have taken gains strength because of the absence of any provision in the Act for communicating the decision of the Court on a reference u/s 31 to the Collector and a provision to incorporate the same in the award under the hand of the Collector. When a decision made by a Court on a reference u/s

32 of the Act has to be incorporated in the award u/s 11 of the Act and the award becomes complete only then as is contended for the petitioners even the party against whom the decision was rendered can compel the Collector to make it reference u/s 20 of the Act, on the question of apportionment of compensation. The award made by the Collector is in law no more than an offer made on behalf of the State and is liable to be questioned under the provisions of Section 20 of the Act.

The law is now well settled that the decision of a Court given on a reference u/s 32 of the Act though not an award u/s 28 of the Act is a decree and will operate as *res judicata* in a subsequent proceeding between the same parties on the same question. If such is the effect of a decision of a Court made on a reference u/s 32 of the Act, is it unlikely that the Legislature would have intended that such a decision should be incorporated in the award under the hand of the Collector to be questioned again by the parties to the same by an application u/s 20 of the Act. Thereby conclusiveness will attach itself to the award passed u/s 11 of the Act which is not contemplated by the Act.

A reasonable way of interpreting the several provisions of the Act is only to hold that when a Collector refers to the Court, after compensation is settled u/s 11 of the Act, any dispute arising as to apportionment of the same or any part thereof or as to the person to whom the same or any part thereof is payable and passes a joint award, the said award is valid and complete u/s 11 of the Act. We are therefore of the view, that Ext. P-4 is a valid and complete award u/s 11 of the Act. If so, the prayer to quash Ext. P-3 cannot be sustained. This being the only main prayer the petition has to fall.

7. In the result, the Original Petition is dismissed but in the circumstances without costs.