

(1987) 12 KL CK 0014
In the High Court Of Kerala
Case No : O.P. No. 1770 of 1987

Kurian and 3 Others

APPELLANT

Vs

Dy Collector (L.A.) and Another

RESPONDENT

Date of Decision : 11-12-1987

Acts Referred:

General Clauses Act, 1897 — Section 17(3), 21

Land Acquisition Act, 1894 — Section 1, 11, 16, 17, 17(1)

Citation : (1989) 1 KLJ 107

Hon'ble Judges : T.L. Viswanatha Iyer, J

Bench : Single Bench

Advocate : M.M. Abdul Aziz, for the Appellant; A.N. Rajan Babu, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

T.L. Viswanatha Iyer J.

1. Land belonging to the petitioners were notified for acquisition for purposes of the Government Polytechnic at Palai. Notification u/s 4(1) of the Land Acquisition Act, I of 1894 (for brevity, the Act), was published in the Kerala Gazette dated 7-1-1986. The declaration u/s 6 dated 26-4-1956 was published in due course in the Kerala Gazeite and two Malayalam dailies The basis of valuation of the land was approved by the District Collector on 21-1-1987 alter necessary discussions and plot verification. The detailed valuation statement was approved on 6-2-1987. There seems to have been urgent necessity for the land as evident from a letter dated 24-11-1986 sent by the Principal of the Polytechnic to the second petitioner, a copy of which is Ext. P-4. By that letter the Principal requested the second petitioner to hand over the land and the building under acquisition well in advance. Based on the report of the Director of Technical Education Government accorded sanction for taking advance possession of the land by their proceedings Ext. P-2 dated 27-1-1987. Advance possession of land having an extent of 3.0343 hectares, including the lands belonging to the

petitioners, was accordingly taken on 10-2-1987, The mahazar prepared in that regard is Ext. P-2A.

2. The award enquiry was conducted on 21-2-1987, but the award was never passed. Sub sections (3) and (3A) of section 1-7 of the Act oblige the Collector to offer to the landowners compensation for the standing crops and trees on the land, as also 80% of the compensation for the land, before taking advance possession. These amounts were not paid to any of the petitioners. The petitioners made representations for payment of these amounts as also for making the awards which did not find any response from the respondents. The Original Petition was therefore filed to direct the respondents to pay the petitioners the amount due to them under sub-sections (3) and (3A) of Section 17 of the Act.

3. The two counter affidavits filed on behalf of respondents 1 and 2 do not dispute the fact that the amounts due to the petitioners have not been paid. The curious fact however is that this default is used as a defence to have very prayer made in the Original Petition as pointed out in paragraph 5 below It is stated that it has been decided to drop the acquisition proceedings in view of the huge outlay that has to be incurred in the acquisition The acquisition had to be made within the of the budgetary sanction, which was Rs. 10 lakhs for the year 1986-87 against an estimated total cost of acquisition of about 30 lakhs. The amount of compensation payable for the acquisition of the petitioners land and others as per the valuation statement prepared by the Collector came to about Rs. 160 lakhs, which was very much in excess of the budgetary provision. The Higher Education Department was not in a position to pay the compensation with their limited resources, and therefore Collector was directed to withdraw the proceedings by Government letter dated 22-2-1987. It is stated that on 31-3-1987, the Principal of the Government Polytechnic, Palai surrendered the land received by way of advance possession on 10-2-1987, for being returned to the landowners. Notices were issued to the landowners intimating that land was not required for Government purposes and that "they can continue to enjoy the possession of the land and the buildings."

4. The counter affidavit filed on behalf of the second respondent State, then proceeds to make a virtue of the default on the part of the Collector in not complying with the provisions of sub sections (1), (3) and (3A) of Section 17, (as indicated already). This is what is stated;

The proceedings taken by the Land Acquisition Officer are vitiated by procedural lacuna in that he has no offered or deposited 80% of the compensation of the land before taking advance possession as required u/s 17-Sub Section 3A of the Land Acquisition Act. Advance possession could be taken only after a notice to the land owners u/s 9(1) of the Land Acquisition Act, and a 15 days notice is mandatory before taking advance possession from the date of issue/publication of the said notice. In this case the notice having been issued only on 6-2-1987, advance possession could not be taken before 21-2-1987 but it has been effected

on 10-2-1987. So, the advance possession said to have been made by the land acquisition officer and the Principal are legally not in order and an absolute vesting u/s 17(1) of the Land Acquisition Act, has not taken place. From the circumstances of the case, the 2nd respondent has come to the conclusion that the land owners having pressurized and managed to fix the compensation at an exorbitant rate of Rs. 8 lakhs per acre agreed to dispense with the statutory requirements viz. without the offer or deposit of 80% compensation or 15 days notice, have now come up for the compensation which the 2nd respondent is not liable to make. Immediately on receipt of the report that the land acquisition charges for the 19 73 acres of land would cost Rs. 160 lakhs which they have not provided in the budget the District Collector was directed to drop further proceedings. Accordingly the Land Acquisition Officer has issued notice to the petitioners that the land is not required for Government purpose and they can continue to enjoy their land and buildings. The respondents are therefore not liable to pay the 80% of the compensation demanded by the petitioners.

For these reasons, it is contended that the petitioners are not entitled to any relief in the Original petition.

5. Petitioners have filed reply affidavits in which they affirm, inter alia that they have not taken back possession of the land.

6. Counsel for the petitioners submits that after having taken advance possession of the properties on 10-2-1987, it was not open to the Government to withdraw the acquisition proceedings. For that matter, it is pointed out that Government has not issued any notification withdrawing the proceedings for acquisition. Section 48 of the Act enables the Government to withdraw the acquisition proceedings only in cases where possession of the land has not been taken.

7. This submission is refuted by the Government Pleader Sri. Rajan Babu for the respondents, with the contention that Government has power u/s 21 of the (Central) General Clauses Act to cancel the notification for acquisition issued by them. This power is not whittled down in any manner by the provisions of Section 48 of the Act and is available irrespective of the latter provision. The Government was therefore entitled to withdraw the acquisition proceedings, after canceling the notification, resting on the powers vested in them u/s 21.

8. Before discussing the matter, it will be advantageous to read the relevant provisions Section 48(1) of the Act reads as under:

48.Completion of acquisition not compulsory but compensation to be awarded when not completed:-

(1) Except in the case provided for in section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken."

Section 21 of the General Clauses Act, 10 of 1897 reads:-

21, Where, by any Central Act or Regulation, a power to issue notifications, orders; rules, or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued.

9. The Collector has taken possession of the land in advance in exercise of the power u/s 17 of the Act pursuant to direction issued by Government on 27-1-1987 as per Ext. P-2. The Act by its Section 16 provides for possession being taken after the award is passed. Section 17 (1) deals with cases of urgency where possession can be assumed fifteen days after the issue of the notice u/s 9 (3). In the former case, the compensation determined in the award as payable to the parties interested, shall be tendered to them, or deposited in court, as the case may be," (vide Section 31). In the latter case, the award is yet to be made, and the compensation payable yet to be ascertained. The Act therefore provides for payment of the compensation for the standing crops and trees by sub-section (3) of Section 17 as also payment of 80% of the compensation for the land as estimated by the Collector before taking possession, by sub section (3A). When once possession is taken whether u/s 16 or Section 17, the land vests absolutely in the Government, free from all encumbrances. The landowner is deprived of his property, and he becomes entitled to payment of the compensation when possession of the land is taken, from him, as per the provisions of Sections 11, 16, 17 and 31. This right of the landowner for compensation for land of which he has been dispossessed and which has vested in Government cannot be defeated - by any subsequently action of the Government u/s 21 of the General Clauses Act or otherwise. No such right inheres in the Government. The Act does not provide for any re-vesting of the land on the original landowner, once it has vested in the Government u/s 16 or 17. If the Government had a right to cancel the notification issued under the Act, by resort to the provisions of Section 21 of the General Clauses Act, there should have been consequential provisions by which the title to the property reverts back to the landowner. Re-vesting of title to property can only be by some positive action recognised by law, and not by a negative cancellation of a notification. The very absence of any such provision is proof positive that the Government is not vested with any such power of cancellation of a notification issued under the Land Acquisition Act, in exercise of the powers u/s 21 of the General Clauses Act. Section 48 of the Act is exhaustive of the powers of withdrawal from acquisition and that power is available only so long as possession has not been taken. There is and there could be, no other power which could be resorted to by the Government to withdraw from an acquisition.

10. The Land Acquisition Act is a special law and is a complete code so far as acquisitions under that Act are concerned. When that Act prescribes the mode of withdrawal from acquisition, it has to be presumed that every other mode of withdrawal is barred. If any such power is recognised in Government u/s 21 of the General Clauses Act or otherwise, it may render nugatory the provisions of

Section 48. Government will be enabled to overcome their obligations in relation to such cases where possession has been taken, by resorting to the General Clauses Act. The safeguards provided to the landowners by the Land Acquisition Act by providing specified limited periods u/s II can be nullified if resort to the General Clauses Act is permitted. I am therefore of the opinion that the power of withdrawal has to be gathered completely from Section 48, and if the power does not exist in that provision, it cannot be found elsewhere.

11. In *Lt. Governor of Himachal Pradesh and Another Vs. Avinash Sharma*, , possession of the land was taken pursuant to a composite notification under Sections 6 and 17(1) and the land became vested in the Government. Thereafter the Government cancelled the notifications issued for acquisition of the land. This was challenged, and the Judicial Commissioner held that Government had no power to withdraw the acquisition proceedings after possession had been taken. On appeal, reliance was placed by the State on Section 21 of the General Clauses Act, as also on certain observations in *State of Madhya Pradesh and Others Vs. Vishnu Prasad Sharma and Others*, . Overruling the contention, it was held:

But these observations do not assist the case of the appellant. It is clearly implicit, in the observations that after possession has been taken pursuant to a notification under S. 17(1), the land is vested in the Government, and the notification cannot be cancelled under S. 21 of the General Clauses Act, nor can the notification be withdrawn in exercise of the powers under S. 48 of the Land Acquisition Act. Any other view would enable the State Government to circumvent the specific provision by relying upon a general power. When possession of the land is taken under S. 17 (1), the land vests in the Government. There is no provision by which land statutorily vested in the Government reverts to the original owner by mere cancellation of the notification.

This decision was followed in *Balwant Narayan Bhagde Vs. M.D. Bhagwat and Others*, , though the availability of Section 21 of the General Clauses Act was not considered therein.

12. I had also had occasion to consider a similar question in *Ittan v. State of Kerala* 1987 (2) K. L. T. Page 23 where it was held that the Government's right to withdraw from the acquisition remained only so long as, possession had not been taken. When once possession is taken, pursuant to the proceedings for acquisition, Government cannot thereafter withdraw the acquisition and was bound to complete the proceedings and pay the compensation due to the landowners.

13. I therefore overrule the respondents contention that they had the right to withdraw the acquisition proceedings despite the taking of possession of the land.,

14. Compensation becomes payable immediately on possession being taken, and the land vests in Government. In *Joginder Singh v. State of Punjab* 1985 (1) S. C. W. R. 110, the Supreme Court observed that the right of compensation arises

when the land vests in the State while its quantification may be concluded much later. Although the process of acquisition may pass through several stages.....the right to the compensation so quantified refers back to the date of acquisition..... The owner of the land is entitled to be paid the true value of the land on the date of taking over of possession, since, however, the true valuation is usually determined only after it is computed through a multi-tiered process passing through different levels of a hierarchical judicial structure, by the very nature of things, it takes some time before the true value can be finally determined. The fact that it is determined later does not mean that the right to the amount comes into existence at a later date.

15. A Full Bench of this court in the decision reported in *Peter John v. Commissioner of Income Tax* 1985 K. L. T. 687 was dealing with the question as to when the interest awarded as additional compensation payable pursuant to the decision on reference could be said to accrue. In that context, it was observed that the right to receive compensation was a statutory right, which comes into existence the moment the Government takes possession of the property. The right arises immediately on dispossession. The landowner has only one right, which is to receive compensation for the land at the market value on the date of the relevant notification. This right accrued to him when he was dispossessed of the land.

16. The petitioners therefore became entitled to compensation under Sections 17 (3) and (3A) on the date on which possession of the land was taken from them, namely on 10-2-1987. Since there is no question of the Government withdrawing from the acquisition after assuming possession, the petitioners are entitled to have the proceedings for acquisition completed and to be paid the compensation due to them under the award, as also the advance compensation envisaged by Section 17.

17. The learned Government Pleader raises the further contention that the assumption of possession in this case was not referable to Section 17 of the Act in as much as the conditions prescribed by sub sections (1), (3) and (3A) had not been complied with. He submits that the assumption of possession was illegal and that the petitioners, remedy lay in damage in a Civil Court. Such a contention comes with ill grace from the Government whose power to take advance possession is only u/s 17. There is no case that Government or its officers trespassed into the land. The necessary direction for taking advance possession as required by Section 17 (1) was given as per Ext. P-2. If the Collector is opposed or impeded in taking possession, Section 47 of the Act provides that he can enforce surrender through a Magistrate. When such compulsive processes are available for enforcing surrender, noncompliance with the provisions of Section 17 (which are intended for the benefit of the landowner) cannot be set up against him to defeat his rights under the Act. Such non-compliance does not nullify the proceedings, any more than the non-

payment of compensation pursuant to an award render the anterior proceedings a nullity. When the landowners have a statutory right under the Act to have the proceedings completed and to have the compensation paid, any non-compliance on the part of the Government with the provisions of Section 17 cannot vitiate those proceedings. It is the factual taking of possession that entitles the landowners to payment of the compensation. The decision is Balwant Narayan Bhagde Vs. M.D. Bhagwat and Others, incidentally supports this view when it was held that non-service of notice before taking possession did not vitiate the proceedings u/s 17. The respondent's contentions on this score therefore entail rejection.

18. The counter affidavit speaks of the landowners having pressurized and "managed" to fix the compensation at an exorbitant rate. I am unable to understand the institution. If Government is the victim of a collusive fraud played upon it by its officers and the landowners, the plea should have been explicit and should not have stopped short with an innuendo. I do not however propose to deal with this plea as no material has been placed before me in support thereof.

19. I must note here that the mischief, if any in this case, is of the Government's own making. Nothing required them to come forward with a direction for taking advance possession by Ext. P-2. The proceedings had started with the notification u/s 4 dated 20-11-1985. One is unable to comprehend what was the sudden spurt of urgency which required Government to rush in with a direction for taking advance possession when the proceedings could have been concluded with the award enquiry, and the award itself within a few days. If Government precipitated matters by their own haste and hurry, without application of the mind, they have to thank themselves. That will not absolve them from their obligations under the Act. I therefore allow the Original Petition by granting the prayers made by the petitioners. The respondents are directed to pay the compensation due to the petitioners in respect of their lands as per sub-sections (3) and (3A) of Section 17. The respondents shall make payment of the compensation so due to the petitioners within a period of three months from the date of receipt of a copy of this judgment.