

(1989) 11 KL CK 0028
In the High Court Of Kerala
Case No : O.P. No. 3931 of 1985-D

M. Bhaskaran Pillai

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 13-11-1989

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1990 Ker 210 : (1990) 2 ILR (Ker) 322

Hon'ble Judges : K.A. Nayar, J

Bench : Single Bench

Advocate : V.V. Asokan, for the Appellant; Govt. Pleader and Kurian Joseph, for the Respondent

Final Decision : Dismissed

Judgement

K.A. Nayar, J.—The original petition is filed for a writ of certiorari to quash the proceedings for reconveyance of land in Survey No. 299/12 A & B of Alwaye village to the additional 4th respondent and also for a writ of mandamus to consider the representation of the petitioner for assignment of land to him. The additional 4th respondent was the owner of property situated in Survey No. 299/12 A & B of Alwaye village. The Central Government acquired in 1952 two acres of land comprised in Survey No. 299/12 A & B of Alwaye village from the 4th respondent for the purpose of construction of National Highway. The construction of the National Highway was over in 1954 and the Government utilised only about one acre for the actual construction of the road. There was 1.10 acres of land remaining unutilised for the public purpose. The land was not needed for other public purposes of the Government or other local authorities. Therefore on 10-7-1962 the petitioner was given 50 cents of land on kuthakapattom lease for a period of 12 years from 1-4-1961 to 31-3-1973 as per G.O.Ms. 595/Rev. dated 10-7-1962. Long after the expiry of the lease period, on 31-12-1979 the petitioner was directed to surrender 50 cents of land given to him on kuthakapattom lease. It would appear from Ext. P2 notice issued to him

in this regard by the Tahasildar that there had been an application by him for assignment of the land which was rejected and it is thereafter the petitioner was directed to surrender the land in question, viz. 50 cents of land. Even thereafter surrender was not given. Therefore the third respondent took possession of the land from the petitioner on 2-5-1980. The land was not required for public purpose and that has been given to other persons on lease. Therefore the additional 4th respondent filed representation dated 26-11-1983 for reconveyance of the land compulsorily acquired from the institution, viz. St. Dominic's Church, Alwaye. Acting upon such a representation, the Govt. passed Ext. P7 order to reconvey the land to the original owner realising the value as laid down in the Govt. Order dated 30-10-1967 which is produced by the petitioner as Ext. P7 along with reply affidavit. The contention of the petitioner is that once the land is acquired for the public purpose it will become a Government land for the purpose of Land Assignment Act and therefore the land should be dealt with only as mentioned in the Land Assignment Act. Hence it is submitted that the Government has no power to reconvey the land to the additional 4th respondent from whom the land has been acquired. It is also mentioned that the petitioner is a person owning land in the neighbouring area and for the beneficial enjoyment of his property the land is required for him and therefore going by the Land Assignment Act and Rules he gets preferential right for assignment or lease.

2. On behalf of the Government, the Govt. Pleader submitted that the enquiry has revealed that the petitioner did not hold any property adjacent to the land in question. The Govt. Pleader also submitted that the Government have issued orders regarding the disposal of unutilised portion of acquired land as early as on 30-10-1967 by G.O.MS. 530/67 dated 30-10-1967 and the reconveyance of the unutilised acquired land is governed by the said G.O. The Government have received a petition from the original owner from whom the land was acquired. The Government considered the case and decided to reconvey the land in question to the original owner. The land was acquired in 1952 and only a portion was required for the purpose for which the same was acquired. It was also not required for any other public purpose. Therefore a portion of it was leased temporarily to the petitioner. The original owner got every right to get the unutilised area reconveyed to him. The said 1.10 acres of land was remaining vacant for a good number of years, neither the Government Departments nor the local bodies make any request at any time for the land for their occupation. Even when 50 cents was leased out to the petitioner there was no request by the Government Departments or local bodies. It is in that context the Government decided to re-convey the land after realising the value as laid down by the Govt. Order aforementioned, viz. G.O.MS No. 530/67 dated 30-10-1967. The petitioner has no claim over the land in question and only after considering all this aspect the Government passed order on 29-11-1984 to reconvey the land. On behalf of the addl. 4th respondent it was submitted that the petitioner has no locus standi to file the original petition. The petitioner held no property adjacent to the land in question. The petitioner also has not made any proper application for assignment

or lease. His request for assignment has been rejected as early as on 17-6-1979 and he has not filed an appeal or revision against the said order as required under Rule 21 of the Kerala Land Assignment Rules, 1964. The petitioner made representation on 23-11-1982 before the Minister for Revenue, Government of Kerala which he wants to get disposed of. The action of the petitioner it is submitted is only to delay the proceedings and is vitiated by mala fide.

2.A I heard counsel

3. In support of the contention of the petitioner counsel referred to the decision reported in *Parameswaran Pillai v. State of Kerala* 1961 K LJ 1192. In that case assignment of Government land by Government without notification and inviting claims u/s 4 was challenged. It was held that Section 4 and the procedure under the section are mandatory and therefore the Government has to comply with Section 4. The Division Bench held that--

"The position then is that under the Act any assignment by the prescribed authority must be after the stages under Sections 4 and 5 been gone through, and there is no dispensing power in the Government."

The next decision referred to by counsel on behalf of the petitioner is *Ernakulam Mills Ltd. v. State of Kerala* 1971 K LT 318. In that case the land was acquired for the formation of Foreshore Road, Ernakulam. During the course of the acquisition the Government of Cochin sent a communication to the petitioner informing that portions of the high level parambas not required for the road will be returned to the present owner. The petitioner thereafter requested the Government for reconveyance of the land and the Government rejected the request. It is that order which was challenged. The Division Bench of this Court observed-

"The petitioner then contended that a similar land acquired from another person had been returned to him and that it is discriminatory if the petitioner is denied similar treatment. There is no constitutional guarantee of uniformity of judicial or executive decisions. The fact that a decision has been taken or made by Government to return the land acquired from another person to him is not a ground for compelling the Government to make the same decision in the petitioner's case even if the facts and circum stances of both the cases might be similar. It might be that the decision to return the land in that case was wrong or gratuitous. Does Article 14 render it necessary to perpetuate the error or indulgence by its application in a similar case, for the reason that Article 14 requires equality of treatment before the law? We think not. In this case we are only concerned with the question whether there is any statutory duty or a duty arising out of estoppel on the part of the Government to return the land to the petitioner, and whether a writ of mandamus can be issued to enforce that duty. If we find there is none, can a decision made by the Government to return the land acquired from another person situate, let us assume, in similar circum stances", to him be a ground to prevent the disposal of this case in accordance with law? We think that no such argument can be countenanced.

10. The learned Advocate General submitted that the title to the land acquired from the petitioner vested in government absolutely and that it can be disposed of only under Rule 5 of the Rules made under the Cochin Land Acquisition Act which provides for disposal of land not required for the purpose for which it was acquired, or in the alternative, he submitted that if for any reason the rule is not available to the Government, the land can be disposed of only under the provisions of the Kerala Land Assignment Act, Act 30 of 1960, as that Act provides for the exclusive mode for assignment of Government lands, and therefore, the land cannot be returned to the petitioner on the basis of the promissory estoppel. He argued that when there is a statutory duty to dispose of the land in a particular manner either under Rule 5 or under the provisions of the Kerala Land; Assignment Act, there is no question of the Government being estopped by a promise to return the land. He relied on the Full Bench ruling" in O. P. Nos. 791, 986 and 996 of it 1967, [1970 Ker LT 838 : Achuthan Pillai and Others Vs. State of Kerala and Others, in support of the contention. Although we see considerable force in the submission, we do not think it necessary to pronounce upon it in view of our conclusion that Ext.PI" does riot contain a specific promise intended to be acted upon or which could have been acted upon by the petitioner as a reasonable person in the manner alleged by him."

As against this decision counsel on behalf of the additional 4th respondent referred to Rule 24 of the Kerala Land Assignment Rules, 1964 which reads as under :

"24. Powers of Government -- Notwithstanding anything contained in these rules the Government may if they consider it necessary so to do in public interest, assign land dispensing with any of the provisions contained in these rules and subject to such conditions, if any, as they may impose."

In order to avoid any arbitrariness in any particular case the Government has issued executive orders in this regard as early as on 13-2-1957 in which it is laid down that the land compulsorily acquired can be re-conveyed to the original owner. This was further clarified by G.O.MS. No. 530/67/RD dated 30-10-1967 reads as under:

"In the Government orders read above instructions have been issued with regard to the procedure to be adopted in the disposal of lands acquired by Government, but no longer required for the purposes for which they were acquired. The Officers who are competent to order reconveyance of such lands to the original owners or to their legal heirs arid the extent that can be ordered to be reconveyed by each officer have also been detailed therein.

The question as to whether any modifications to the existing procedure are necessary, was engaging the attention of Government for some time past. After carefully considering the matter in all its aspects, Government are pleased to issue the following standardised instructions with regard to the procedure to be adopted for reconveyance of acquired lands.

1. When any piece of land acquired by Government for a public purpose, is not required for that purpose or for any other dispart mental purpose the land will be immediately transferred to the control of the Revenue Department if it is in the possession of any Department other than Revenue Department.
2. After such taking possession or after getting intimation about the lack of need of that lands for that specific purpose the District Collector should make a reference to all Departments in the District asking them to inform him whether any other Departments need that piece of lands for its use.
3. The local body of that area must also be consulted as to whether it needs the land for its use.
4. If the land is required by any of the Departments or Local Body the land will be transferred to its possession after getting the land value as given in the Land Acquisition award and crediting to the Department for which that land was acquired. One of the terms of such transfer shall be that the land must be utilised only for the specific purpose it had been asked for.
5. If the Local Body or the Departments do not require the land for any use, the District Collector may make an offer to the original owner and if the land acquired had formed only a part of the property of an owner to the original owner or his successor in interest to that part of the property acquired under the Act. If the original owner or the successor in interest accepts the offer, the land may be reconveyed after getting the money awarded on compensation including solatium.
6. If this offer is not accepted, Government will be free to dispose it off like any other Government lands. So even a time limit is necessary.

These instructions should be scrupulously followed, before ordering reconveyance of lands acquired by Government."

In exercise of such executive power in the public interest the Government though that it should reconvey the land to the additional 4th respondent from whom the land has been originally acquired. The 4th respondent is Vicar, St. Dominic's Church and the land is originally acquired from the Church. The portion of the land in question, viz. 1.10 acres, is not required for the public purpose for which the same is acquired, or for any other public purpose to be utilised by the Government or Public Authorities. The Government still retained about 20 cents out of the acquired land and 90 cents alone to be reconveyed to the original owner. The petitioner has not made any application under Rule 11(8) or under Rule 6. The assignments were applied by the petitioner, but the same was rejected twice. No appeal has been filed against that order. In the circumstances it is submitted that that petitioner has no locus standi to file the original petition. Counsel for the 4th respondent referred to the decision in *Fernandez v. State of Kerala* 1971 K LT 7 and submitted that the existence of the right is the foundation of the exercise of jurisdiction of the High Court under Article 226. The

relevant portion is as under :

"Though Article 226 in terms does not describe the classes of persons entitled to apply thereunder, it is implicit in the exercise of the extraordinary jurisdiction that the relief asked for must be one to enforce a legal right. The existence of the right is the foundation of the exercise of jurisdiction of the High Court under Article 226. The legal right that can be enforced under Article 226 must ordinarily be the right of the petitioner himself who complains about infraction of such right and approaches the court for relief, except in the case of some writs like habeas corpus or quo warranto in regard to which the said rule may have to be relaxed or modified."

He also referred to the decision reported in *The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others*, , the Supreme Court observed (at p. 1046 of AIR):

"Article 226 confers a very wide power on the High Court to issue directions and writs of the nature mentioned therein for the enforcement of any of the rights conferred by Part III or for any other purpose. It is, therefore, clear that persons other than those claiming fundamental rights can also approach the court seeking a relief thereunder. The Article in terms does not describe the classes of persons entitled to apply thereunder but it is implicit in the exercise of the extraordinary jurisdiction that the relief asked for must be one to enforce a legal right. In *The State of Orissa Vs. Madan Gopal Rungta*, , this Court has ruled that the existence of the right is the foundation of the exercise of jurisdiction of the Court under Art, 226 of the Constitution. In *Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others*, , it has been held by this Court that the legal right that can be enforced under Article 32 must ordinarily be the right of the petitioner himself who complains of infraction of such right and approaches the Court for relief. We do not see any reason why a different principle should apply in the case of a petitioner under Article 226 of the Constitution. The right that can be enforced under Article 226 also shall ordinarily be the personal or individual right of the petitioner himself, though in the case of some of the writs like habeas corpus or quo warranto this rule may have to be relaxed or modified. The question, therefore, is whether in the present case the petitioner has a legal right and whether it has been infringed by the contesting respondents."

This position it is submitted has not been altered by any subsequent decision of the Supreme Court including the decision reported in *S.P. Gupta Vs. President of India and Others*, , which it generally though has widened the scope of locus standi. In *S.P. Gupta Vs. President of India and Others*, , the Supreme Court held that--

"But the individual who moves the court for judicial redress in cases of this kind must be acting bona fide with a view to vindicating the cause of justice and if he is acting for personal gain or private profit or out of political motivation or other oblique consideration, the court should not allow itself to be activated at the

instance of such person and must reject his application at the threshold, whether it be in the form of a letter addressed to the court or even in the form of a regular writ petition filed in court."

In other words only in cases social action litigations the Court will enlarge the principles of locus standi.

In this case, admittedly the land has been acquired from additional 4th respondent for public purposes. In the counter affidavit it is stated that out of the remaining 1.10 acres of land, 90 cents cannot be used for public purposes. Since the land has been acquired for public purposes and the Government agrees that there is no public purposes involved in respect of 90 cents of land, in the sense 90 cents cannot be utilised for any public purposes the Government took policy decision to return the land to the original owner after receiving the compensation for the said land sought to be returned. To avoid arbitrariness the Government laid down the procedure for fixing the amount of compensation to be received. If in compliance with the order based on sound policy the Government is reconveying the land to the original owner the petitioner cannot be aggrieved. The decisions reported in *Parameswaran Pillai v. State of Kerala* 1961 K LJ 1192 and *Ernakulam Mills Ltd. v. State of Kerala* 1971 K LT 318 referred to by counsel for the petitioner considered the question as to whether the petitioner, from whom the land was acquired, has a legal and enforceable right against the Government to get back the land. Here the Government itself after considering the entire aspects of the case decided to reconvey the portion of the land which is not required for any public purpose. There is no justice on the part of the petitioner in attempting to prevent such action by the Government. Petitioner is not an aggrieved party and he has no locus standi to file this writ petition. Decisions referred to above against the petitioner apply in this case.

The Original Petition is dismissed. No costs.