

(1960) 02 KL CK 0039

In the High Court Of Kerala

Case No : O. P. No. 739 of 1959 & O.P. No. 739 of 1959

Madhavi Amma

APPELLANT

Vs

Revenue Divisional Officer, Kozhikode and Others

RESPONDENT

Date of Decision : 15-02-1960

Acts Referred:

Land Acquisition (Amendment) Act, 1894 — Section 17(1), 17(2), 17(4), 4(1), 5A

Citation : AIR 1961 Ker 116

Hon'ble Judges : S. Velu Pillai, J

Bench : Single Bench

Advocate : A. Achuthan Nambiar and T.P. Kelu Nambiar, for the Appellant;
Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

S. Velu Pillai, J.—The petition is under Article 226 of the Constitution to quash certain proceedings taken under the Land Acquisition Act, 1894, which may be referred to hereafter as the Act. The notification Ext. A u/s 4(1) of the Act. was dated January 6, 1959, and published in the Government Gazette on January 27, 1959. Ext. A provided that:

"Under Sub-section (4) of Section 17 of the Act the Government of Kerala direct that in view of the urgency of the case the provisions of Section 5A of the Act shall not apply to this case."

The operation of Section 5-A thus having been dispensed with by the exercise of the power conferred u/s 17(4) of the Act, Ext. D, the declaration u/s 6 of the Act, dated January 6, 1959 was published in the Government Gazette on February 3, 1959. In my opinion, this petition has to be disposed of on the objection raised by the petitioner, that in making Exts. A and D, the provision in Section 17(4) of the Act has not been strictly complied with.

2. Section 17(4) is in the following terms:

"In the case of any land to which, in the opinion of the appropriate Government, the provisions of Sub-section (1) or Sub-section (2) are applicable, the appropriate Government may direct that the provisions of Section 5-A shall not apply, and, if it does so direct, a declaration may be made u/s 6 in respect of the land at any time after the publication of the notification u/s 4, Sub-section (1)."

Section 17(1) provides, that in cases of urgency, on the conditions specified being fulfilled, the possession of any waste or arable land needed for public purposes or for a company may be taken by the Collector even before the passing of an award under the Act. Section 17(2) as originally passed, has been amended by the Madras Legislature, by which the earlier part of that sub-section relating to the acquisition of immediate possession of land for a railway administration was separated into Clause (a) and a new clause introduced as Clause (b) of that subsection, which provided that:

(b) "whenever in the opinion of the Collector it becomes necessary to acquire the immediate possession of any land--"

(i) "for the purpose of any library or educational institution, or"

(ii) "for the construction, extension or improvement of--"

(a) "any building or other structure in any village for the common use of the inhabitants of such village, or"

(b) "any godown for any society registered or deemed to be registered under the Madras Cooperative Societies Act, 1932, or"

(c) "any dwelling house of the poor, or"

(d) "any irrigation tank, irrigation or drainage channel or any well, or"

(e) "any road."

The objection taken to the validity of Ext. A was that the Government had formed no opinion u/s 17(4) of the Act, as to whether the provisions of Sub-section (1) or of Sub-section (2) are applicable to the present case. The learned Government pleader contended that the opinion held by Government on this matter is not a justiciable issue but as to this, I entertain no doubt whatever. It is, however, imperative, that Government must hold a definite opinion within the meaning of Section 17(4) as to whether it is provisions of Sub-section (1) or of Sub-section (2) which are applicable to a given case.

It is not enough if the Government has formed an opinion that any one of the provisions in Subsections (1) and (2) of Section 17, which after the amendment are many, is applicable; the opinion must be specific and must, under the two sub-sections, including the clauses and Sub-clauses in Sub-section (2), be related either to the specific nature of the land contemplated by the sub-sections, or to the purpose of the acquisition under Clauses (a) and (b) of Sub-section (2). Where, on the terms of Section 17(4) of the Act, it is possible that

different opinions may be held by Government, the mere statement in Ext. A, as extracted above, is not sufficient compliance with the requirement, which is implicit, that a definite opinion must be held by Government, in order that the provision in Section 5-A may be dispensed with.

This, in my judgment, is a matter affecting the validity or the legality of the notification u/s 6 of the Act. For example, in a case u/s 17(1) only waste or arable land can be taken possession of, but not a homestead, and the provisions of Section 5A cannot be dispensed with in the case of the latter, unless it is "land" of any of the categories in Sub-section (2); similarly, only "land" satisfying the specifications in Section 17(2)(a) and "land" which in the Collector's opinion is needed for one or other of the purposes specified in the sub-clauses of Clause (b) of Section 17(2), can be taken possession of immediately.

3. The learned Government Pleader objected, that the point has not been taken by the petitioner in the affidavit, that the Government had not formed an opinion u/s 17(4) of the Act. No doubt, the point raised is not as specified as could be desired, but in paragraph 5 of the affidavit, the point has been taken, that the direction u/s 17(4) has not been made in compliance with the conditions prescribed therein. It does not therefore seem proper to overrule this contention on this preliminary ground. On these grounds, Ext. A notification, in so far as it dispenses with the provisions of Section 5-A, has to be quashed. In this view, Ext. D notification u/s 6 of the Act also, has to be quashed. This petition is therefore allowed in these terms, but there will be no order as to costs.