

(1983) 07 KL CK 0012

In the High Court Of Kerala

Case No : Original Petition No. 1544 of 1981-K

Malankara Rubber and Produce Co. Ltd.

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 05-07-1983

Acts Referred:

Kerala Land Acquisition Act, 1961 — Section 11, 6
Land Acquisition Act, 1894 — Section 11, 6

Citation : AIR 1983 Ker 248 : (1984) 1 ILR (Ker) 139

Hon'ble Judges : T. Kochu Thommen, J

Bench : Single Bench

Advocate : M. Pathrose Mathai, Joseph Vellapally, S. Siri Jagan and Koshy, for the Appellant; Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

T. Kochu Thommen, J.—The petitioner is a company owning rubber estates. Lands belonging to the petitioner had been notified for acquisition u/s 3 of the Kerala Land Acquisition Act, 1961 (the "Act"). Different notifications were made in respect of different plots of land belonging to the petitioner. Exts. P1, P2 and P3 are notifications issued wider Section 3 of the Act covering 17 hectares. 52 acres, 8.8 sq. metres; 27 hectares, 85 acres, 86 sq. metres; and 62 hectares, 25 acres, 28 sq. metres, respectively. Exts. P1, and P2 are dated 31-10-1977 and Ext. P3 is dated 5-12-1977. Declarations u/s 6 had been made by Exts. P4, P5 and P6 dated 21-1-1979, 2-11-1978, and 4-12-1978, respectively in relation to plots notified under Exts. P1, P2, and P3. In respect of these plots notices u/s 9 (3) & (5) were issued by Exts. P7 and P10 dated 30-1-1979 and 8-2-1979 respectively in regard to Ex. P1 plot; by Exts. P8 and P11 dated 20-12-1978 and 4-1-1979 respectively in regard to Ext. P2 plot; and, by Exts. P9 and P12 dated 4-1-1979 and 28-1-1979 respectively in regard to Ext. P3 plot. In respect of all these lands Ext. P13 award dated 28-3-1979, Ext. P14 award dated 23-3-1979 and Ext. P15 award dated 23-3-1979 respectively had been made. So far so good. The petitioner had no complaint either as regards the public purpose

stated in Exts. P1 to P3 or the declarations made u/s 6 or the notices issued under Section, 9 or the awards made, subject to the disputes concerning compensation, etc., which are matters now pending in the Civil Court. The complaint of the petitioner is that in spite of the awards, Exts. P13 to P15 further acquisitions were subsequently made in respect of the properties covered by Section 3 notifications. Section 5 declarations and Section 9 notices, but left out by Exts, P13 to P15 awards. Further acquisitions have been made as per Exts. P17, P19 and P21 awards dated 21-2-1981 relating to 7 hectares, 36 acres; 1 hectare 14 acres, 52 sq. metres; and, 2 hectares, 12 acres, 78 sq. metres respectively. Although, these additional plots had been covered by the earlier proceedings preceding the first set of awards, the contention of the petitioner is that the additional acquisitions cannot be permitted under the Act. Referring to a decision of the Calcutta High Court in Corporation of Calcutta Vs. Omeda Khatun Bewa,), the petitioner's counsel Shri. Joseph Vellapally submits that the power to make an award pursuant to Section 3 notification and Section 6 declaration can be exercised only once; and once an award has been made, that power is completely and finally exhausted. The Act does not postulate piecemeal awards. An award once made is final and conclusive as regards the land declared. Both the persons interested in the land and the maker of the award are bound by the award, subject to the right of the interested parties to challenge it in terms of Section 20.

2. An identical question arose for the consideration of the Calcutta High Court in the decision mentioned above. Referring to the contention of the persons interested in the land to the effect that the Act contemplated "one notice, one declaration, one proceeding and one award and that the declaration u/s 6 exhausts itself as soon as it has terminated in one award", the Court pointed out that such extreme contention could not be accepted, for in certain cases separate awards would be warranted in relation to lands notified and declared for acquisition. Then the Court proceeded to specify those special cases warranting separate awards, those are:

"(a) Where the land in respect of which the declaration u/s 6 has been made is under the ownership of different individuals and (b) where the acquisition proceeding in respect of the declared land (whether under the ownership of a single or different individuals) is held up by circumstances over which the acquiring authority has no control, e. g. by an injunction or the decision of a superior court and that injunction is subsequently dissolved or the decision overruled."

The Court then said:

"Subject to these two exceptions, the ordinary rule is that there can be no piecemeal acquisition in respect of land for which a declaration has been made u/s 6 of the Land Acquisition Act.

It is this principle that Shri Vellapally relies upon.

3. Although the Calcutta High Court was not willing to accept the extreme contention that in no case could piecemeal awards be made, the Court was willing to make an exception in two specified cases, apparently because the Court was of the view that it was warranted by the rules of justice, equity and good conscience. If that was the position in those special cases, I fail to see, in the absence of legislation on the point, why in different, but equally relevant, sets of circumstances further exceptions cannot be contemplated.

4. I shall now consider the effect of some of the sections leading to an award. Section 3 is the beginning of the proceedings which ultimately result in an award. Section 3 is the point of time with reference to which compensation is computed (See Section 25). Long delay in the progress of the proceedings can cause immense damage to the persons interested, particularly in times of inflation when money rapidly loses value. It is to prevent delay in these proceedings that the legislature has provided that declaration u/s 6 shall not be delayed beyond three years. Once a declaration has been made, it is no longer open to the persons interested in the land to challenge the public purpose, stated in the notification u/s 3. A declaration in regard to public purpose u/s 6 is final and conclusive and, subject to questions concerning compensation, measurements and apportionments, as specified under. Section 11, all other questions are concluded. This shows that, with a declaration u/s 6, the person interested in the land has, in substance, lost all his rights in regard to the land except in respect of the matters mentioned u/s 11.

5. A declaration u/s 6 remains in full force until an award has been made. Whether indefinite or unreasonable delay in passing the award would invalidate proceedings pursuant to Section 6 declaration is a question of fundamental importance which does not arise for consideration in the present case. Shri. Vellapally is, however, justified in pointing out, as an illustration, the injustice "that could result in indefinite delay being caused in the making of an award subsequent to a declaration u/s 6. But that is not the question which requires to be answered in the present case. The petitioner has no case that the subsequent awards were made unduly late. The only complaint is about the fact that subsequent awards had been made.

6. My observation on the merits of the petitioner's contention would, not, therefore, touch on the more fundamental question as to whether or not an undue delay in making the award subsequent to Section 6 declaration will vitiate the award.

7. Section 6 declaration is not exhausted until it has resulted in an award. An award means an award acquiring the land declared. The land declared may be acquired by one single award, which may generally be the case, except in the special cases where multiple awards are made either simultaneously or at different times, dependent upon the circumstances governing each case. The very fact that that principle, albeit as an exception, has been recognised by the Calcutta High Court shows that a declaration u/s 6 does not exhaust itself by one

single award unless the whole area declared has been exhausted by that award. It different awards can be made in the two exceptional cases mentioned by the Calcutta High Court in respect of the properties mentioned under one declaration. I fail to see, with great respect, why the exception should be limited to these two cases

8. From the scheme of the Act it does not appear to me that a declaration u/s g has exhausted itself until it has led to an award or awards covering the total area declared. Subject to questions arising from delay, the intent of the legislature is to keep the declaration in full force arm vigour until the land declared under it has been acquired in full. To say that once an award has been made the declaration is no longer valid is, in my view, to ignore the legislative intent.

9. It is net clear to me from the pleadings on either side why the land was not acquired by one award under each declaration. Whatever be the reasons which prompted the authorities to make piecemeal awards, the Act having empowered the Government to acquire the total area declared, and the scheme of the Act not indicating that different awards at different times are prohibited, I presume that, in the absence of any allegation to the contrary, the authorities acted bona fide and for good reasons. In the circumstances, I see no reason why the impugned awards Exts. P17, P19 and P21 should fee interfered with. The Original Petition is accordingly dismissed. No costs.