
(1964) 12 KL CK 0030
In the High Court Of Kerala
Case No : W. A. No. 1 of 1964

Markose

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 15-12-1964

Acts Referred:

Land Acquisition Act, 1894 — Section 49(1)

Citation : (1965) KLJ 186

Hon'ble Judges : M. S. Menon, C.J;P. Govindan Nair, J

Bench : Division Bench

Advocate : T. K. M. Unnithan for K. Velayudhan Nair, for the Appellant; V. Narayana Menon For 3rd Respondent, for the Respondent

Final Decision : Allowed

Judgement

Govindan Nair, J.—2 cents 60 sq. links of the appellant's land was proposed to be acquired. He then moved a petition, a copy of which has been produced along with O. P. 435 of 1963 and marked Ext. P. 7, purporting to be u/s 48(1) of the Land Acquisition Act (II of 1070) which was applicable to the Cochin area of the State and prayed that the Collector, the 2nd respondent to this writ application, be pleased to direct the acquisition of the entire land and the building of the petitioner or in the alternative be pleased to refer the question as to whether the land proposed to be acquired does or does not form part of the house of the appellant to the District Court for decision. This application was rejected by Ext. P. 8 order, and the attempt to get this order quashed before a single Judge of this Court failed. Hence this appeal. The only point raised before us in this appeal is that the Collector should have referred the dispute as to whether the land proposed to be acquired does or does not form part of the house of the appellant, for decision to the District Court. To answer this point a construction of Section 48(1) of the Land Acquisition Act (II of 1070) which corresponds to Section 53 of the Kerala Land Acquisition Act, 1961 is necessary. That section is in these terms :

48. (1) The provisions of this Act shall not be put in force for purpose of acquiring a part only of any house, manufactory or other building, if the owner desires that the whole of such house, manufactory or building shall be so acquired :

Provided that the owner may, at any time before the Peishkar has made is award u/s 10, by notice in writing, withdraw or modify his expressed, desire that the whole of such house, manufactory or building shall be so acquired:

provided also that, if any question, shall/arise as to whether any land proposed to be taken under this Act does or does not form part of a house, manufactory or building within the meaning of this section, the Peishkar shall refer the determination of such question to the Court and shall not take possession of such land until after the question has been determined.

In deciding on such a reference the Court shall have "regard to the question whether the land proposed to be taken is reasonably required for the full and unimpaired use of the "house, manufactory or building.

2. The question is whether the section is at all attracted when the proposal is only to acquire a piece of land, and no part of the structure which form part of the building or house is proposed to be acquired. The first paragraph of section 48(1) refers only to a house, manufactory or other building. The second proviso to the Sub-section however specifically states that "if any question shall arise as to whether any land proposed to be taken under this Act does or does not form part of a house" and the last paragraph of the Sub-section enacts that "in deciding on such a reference the Court shall have regard to the question whether the land proposed to be taken is reasonably required for the full and unimpaired use of the house, manufactory or building".

3. When we read the second proviso with the last paragraph of the subsection we feel no doubt in coming to the conclusion that when a land which is appurtenant to a building is sought to be acquired, the question whether the whole of the building to which the land forms a part should or should not be acquired will arise. It is therefore not possible to reject an application such as Ext. P7 merely on the ground that what was sought to be acquired is only land and no part of the house was intended to be taken.

4. In this case there have been two plans produced, one of them is Ext. P2, which is really a rough sketch (produced by the petitioner) and the other, Ext. R1 produced by the State along with the counter affidavit dated 4th July, 1963. This is a plan drawn to scale. On a perusal of these, we are satisfied that there is a bona fide dispute regarding the question as to whether the land proposed to be acquired is or is not reasonably required for the full and unimpaired use of the house of the appellant. This being so, the Collector was obliged to make the reference, as enjoined by the second proviso to Section 48(1). That such is the position is clear not only from the section but also from the judicial pronouncements which have considered its scope and ambit. We may refer to the

decision of the Supreme Court in *State of Bihar and Another Vs. Kundan Singh and Another*, . In paragraph 12 of the judgment, the three possibilities that can arise when an application is moved u/s 49 of the Land Acquisition Act, (1894), are detailed. It is said that the Collector may accept the request of the petitioner and the whole of the house or building may be acquired. He may decide that the acquisition proposed is not worthwhile and drop the proceedings altogether. And thirdly:

But cases may arise where the Collector may not accept the claim of the owner that what is being acquired is a part of the house; in that case, the matter in dispute has to be judicially determined, and that is provided for by the second proviso to S. 49(1). Under this proviso, the Collector is under an obligation to refer the matter to the Court and he shall not take possession of the land under acquisition until the question is determined by the Court.,.

5. To the same effect is the decision of the Allahabad High Court in *Mutsaddi Lal and Others v State and Others* reported in ILR 1957 I All. 30.

6. In the result, we quash Ext. P. 8 order rejecting the prayer of the appellant for reference under the second proviso to Section 48(1) of the Land Acquisition Act, (II of 1070), and direct the second respondent to make a reference as: enjoined by the relevant statute, the Kerala Land Acquisition Act, 1961. Till the question referred is determined by the Court no attempt will be made, to take possession of the land of the appellant, having an extent of 2 cents and 60 sq. links. This land, it is affirmed by counsel on behalf of the appellant, has not yet been taken up possession of. We allow this appeal as above. There will be no order as to costs.