

(1965) 11 KL CK 0016
In the High Court Of Kerala
Case No : Writ Appeal No. 70 of 1964

Mrs. Ambujam Menon and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 22-11-1965

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 6

Citation : AIR 1966 Ker 187

Hon'ble Judges : T.C. Raghavan, J;K.K. Mathew, J

Bench : Division Bench

Advocate : V. Rama Shenoj, for the Appellant; A.G. for Respondents 1 to 3, K.P. Abraham, K.P. Pathrose, E.M. Jacob and M. Pathrose Mathai, for the Respondent

Final Decision : Allowed

Judgement

Raghavan, J.—The appellants filed a writ petition to quash a declaration by the State of Kerata evidenced by Ex. P-5 u/s 6 of the Travancore Land Acquisition Act of 1089 and also four notices evidenced by Exs. P-1 to P-4; and the writ petition has been dismissed by our learned brother, Madhavan Nair, J. The appeal is directed against that order.

2. The relevant averments in the several affidavits filed in the writ petition, which are necessary for the disposal of this appeal, may now be adverted to.

3. The affidavit filed on 18th June 1962 in support of the writ petition avers that the land sought to be acquired has an extent of 4.78 acres abutting the National Highway at Kalamassery with jack trees, mango trees, etc and a substantial electrified residential building built on up-to-date lines filled with modern sanitary fittings, garrage, cow-shed, water tank, etc.; that the buildings were leased to the fourth respondent. the Premier Tyres, Ltd., on a rent of Rs. 175 per mensem; that the appellants demanded a higher rent of Rs. 250 per month: that the Project Engineer of the company approached the first appellant to find mil whether the appellants were willing to sell the property to the company: that the

first appellant expressed her willingness to sell at a reasonable price; that the Project Engineer offered Rs. 75,000 and told the first appellant that in case the appellants were not willing to sell for that price, the directors of the company would move the State to acquire the property; that on 11th June 1962 Exts. P-1 to P-4 were served on the appellants; and that thereafter the appellants made enquiries and came to know of the declaration. Ex P-5.

The further averments in the same affidavit are that there was no public purpose for the acquisition, the purpose being only a private one. the use of the company; that the Travancore Land Acquisition Act does not contain provisions corresponding to Sections 38 to 43 of the Indian Land Acquisition Act and Sections 37 to 42 of the Cochin Land Acquisition Act authorising the State to acquire lands for purposes of companies; that "the declaration evidenced by Ex. P-5 is a colourable exercise of the power conferred upon" the State u/s 0 of the Travancore Act; and that the declaration is "an abuse of the powers of the State" Again, it is averred that the Travancore Act does not contain provisions similar to Section 5A of the Indian Act or Section 4A of the Cochin Act; that the absence of such provisions in the Travancore Act has resulted in discrimination against owners of lands like the appellants; that the appellants are denied equality before the law and the equal protection of the law guaranteed by Article 14 of the Constitution, and that the provisions of the Travancore Act are violative of Articles 14, 19(1)(f) and 31 of the Constitution. Lastly, it is averred that "the declaration evidenced by Ex. P-5 has not been made in good faith and evidences a colourable exercise of the power conferred upon the State under the Travancore Land Acquisition Act"; and that "the declaration has not been made with due care and attention"

4. The State and the company filed counter-affidavits, the former on 11th September and the latter on 9th September, 1963. The counter-affidavit of the State avers, inter alia, that the appellants' averment that the acquisition was not for a public purpose was wrong and unfounded; that in spite of the absence of provisions in the Travancore Act similar to Sections 38 to 43 of the Indian Act and the corresponding sections of the Cochin Act, the acquisition for a company still remained an aspect of acquisition for a public purpose; that there had not been any colourable exercise of the power of land acquisition by the State; that the State was satisfied that the functioning of the company was in the general interest of the public; that the question whether there was a public purpose or not was not justiciable; and that the motive of the company could not have vitiated the acquisition at the instance of the State. The State has further averred that the difference in provisions between the Travancore Act on the one hand and the Indian and Cochin Acts on the other can be justified on geographical considerations based on historical reasons; and that in the circumstances, there could not have been any discrimination.

5. The relevant averments in the counter affidavit of the company of 9th September 1967. are that the company found during the construction of the

building and structures on the land handed over to them by the State that the land already acquired was not sufficient to put up necessary buildings and structures; that there was no land available other than that of the appellants that could be used for the purpose of pulling up the necessary buildings and structures for the factory, that the company therefore had to negotiate with the first appellant to purchase the appellants' land: that the negotiations did not prove successful, since the appellants demanded a very high price, though they were willing to sell the land, that the programme of construction of the factory project could be carried out only with additional space necessary for erection of subsidiary buildings and structures; that the State was therefore moved for fresh acquisition that there was no demand by the appellants for a higher rent; that the price offered by the company was more than the market price; and that the company never held out any threat to the appellants to coerce them to part with their land on the company's terms.

6. The petition then came up for hearing: and the learned Judge appears to have directed the appellants to file a supplementary affidavit. In the supplementary affidavit the appellants have, *inter alia*, averred that the statement in the counter affidavit of the company that they were in need of more land for the purpose of construction of necessary additional structures for the factory was not correct: that the state-men I that there was no land available other than that of the appellants was equally untrue: that out of the 30 acres of land originally acquired by the State, about ten acres were still lying vacant unutilised by the company for any purpose, that the factory buildings were completed in 1961 and the factory commenced production on 27th May 1962; that the Vacant land above-mentioned was still available for location of the buildings or structures necessary for the purpose of the factory; that the alleged need of the company for the appellants' land was a mere pretext to acquire their land; and that the company's averment that the programme of construction of the factory project could only be carried out with additional space necessary for erection of subsidiary buildings and structures was untrue and lacked in good faith.

7. Thereafter, both the company and the State have filed rejoinders. In the rejoinder of the company they have averred that except on a small portion of the land already acquired, different buildings and structures had already been constructed; that the entire buildings and allied structures required for the factory establishment have not been constructed and that can only be done in stages according to priority; that the preliminary stages of construction requisite for commencement of production at a less than normal capacity has alone been completed so far; that various other buildings and structures are necessary to put the factory to its full productive capacity: that the said purpose can be achieved only with additional land space; that the small portion of land that remains with the company is much less than ten acres and is meant for the construction of buildings including quarters for members of technical and administrative staff, whose services and constant presence at the spot are essential for the normal working of the factory; that the said land has already

been levelled up and the construction work is to be commenced shortly; and that the said land cannot be utilised for putting up the subsidiary structures and buildings for the factory.

8. In the rejoinder filed by the State they aver that they were not aware of the existence of the ten acres of land still remaining unutilised out of the original acquisition; that the State sanctioned the additional acquisition fully believing the facts stated in the letter evidenced by R-1 R-1 produced along with their rejoinder and in the light of the enquiries made and the report submitted by the Collector: and that the State was satisfied of the need for the additional acquisition on the basis of Ex. R-1 and the report of the Collector.

9. The appellants have filed a reply affidavit in which they have pointed out that the rejoinder filed by the State, at any rate, showed that the declaration notified by the State was without a proper and bona fide enquiry as to whether the appellants' land was really "needed" for a public purpose, and that it was evident that the company's rejoinder showed that the land acquired under the original acquisition had not been used for factory purposes for which it was acquired

10. Madhavan Nair, J. has held that a public purpose need not be a State purpose: that acquisition for the purpose of a company will also be a public purpose, if the company functions in the interest of the public, that the proposed acquisition does not violate Articles 14, 19(1)(f) and 31 of the Constitution for the reason that there are no provisions in the Travancore Act similar to Sections 38 to 43 and 5A of the Indian Act and Sections 37 to 42 and 4A of the Cochin Act; that the position is justifiable by geographical and historical reasons; and that the State was not biased against the appellants in the exercise of their powers under the Travancore Act. In the result, our learned brother dismissed the writ petition with costs including advocate's fee of Rs. 300, one set to the State and another to the company.

11. Shri V. Kama Shenoji, the counsel of the appellants, has raised three contentions before us: (1) that the acquisition is not for a public purpose, but is only for a private purpose, the purpose of the company; (2) that the absence of provisions in the Travancore Act similar to Sections 38 to 43 and 5A of the Indian Act and Sections 37 to 42 and 4A of the Cochin Act has resulted in discrimination against owners of lands like the appellants, and thus Articles 14, 19(1)(f) and 31 of the Constitution have been violated; and (3) that, at any rate, the State was not apprised of the true facts, so that they did not apply their mind to the true facts before the acquisition was ordered.

12. The judgment under appeal proceeds on the basis that the company "needed" the land of the appellants for the extension or the expansion of their factory. The letter of the company, on which the State took action and decided to acquire the appellants' land, is Ex. R-1 dated 21st February 1961. which recites that about 7 1/2 acres of land belonging to the appellants will also be required

immediately to enable the company to complete the first stage of their project, which was programmed for completion in October 1961. The case of expansion appears only in the rejoinder filed by the company, and this appears in the rejoinder filed by the State as well. Therefore, we have to proceed on the basis that the land was "needed" by the company for the completion of the first stage of their project, which was programmed for completion in October, 1961.

13. At this stage it will be interesting to advert to some facts emerging from the averments of the parties. The appellants have averred in their supplementary affidavit that of the 30 acres of land originally acquired by the State for the purpose of establishing a tyre factory and handed over to the company in 1960, ten acres still remained unutilised. To this the company's reply in their rejoinder is very vague. They have stated that the unutilised land is much less than ten acres in extent and they have not disclosed what the extent of that unutilised land is. They have stated that the small portion of land is meant for constructing certain buildings including quarters for members of technical and administrative staff, whose services and constant presence on the spot are essential for the normal working of the factory. The State has averred in their rejoinder that they were not aware of the fact that some land comprised in the first acquisition was still lying vacant; and that they sanctioned the additional acquisition fully believing the facts stated in the letter of the company evidenced by Ex. R-1, and in the light of the enquiries made and the report submitted by the Collector after receipt of Ex. R-1.

This averment of the State clearly shows that they proceeded under the belief that all the lands originally acquired, had been fully utilised; and that the appellants' land mentioned in Ex. P-1 having an extent of 7 1/2 acres would also be required immediately to enable the company to complete the first stage of their project. The other factor considered by the State appears to be the report of the Collector. From the files produced before us, the only report of the Collector, to which our attention has been drawn, does not disclose that the Collector was apprised of the existence of any unutilised land from the land already acquired and handed over to the company. The report only discloses that the Collector made enquiries as to whether the land of the appellants available for acquisition was 7 1/2 acres or less. In fact, the Collector has reported that the land was only 4 acres and odd. Thus, it is clear that when the State made the impugned declaration, Ex. P-5, they did not apply their mind to all the relevant facts. Therefore, their conclusion, that the appellants' land sought to be acquired under Ex. P-5 was "needed" for the completion of the first stage of the project of the company programmed for completion in October 1961, was reached without having been apprised of the true facts.

14. Our learned brother has relied on the decision of B. N. Banerjee, J. of the Calcutta High Court in *Pramatha Nath Talukdar Vs. State of West Bengal and Others*, . That decision was reversed by a Division Bench of the same High Court, and the decision of the Division Bench has been confirmed by the Supreme Court

in State of West Bengal and Others and Ramakrishna Mission, Howrah Vs. P.N. Talukdar and Others and Abdul Kadar Laskar and Others, .

15. It is argued that there have not been sufficient averments in the affidavit filed by the appellants that the State did not apply their mind in passing the impugned declaration. We do not agree. The averments extracted rather in exlcnso al the beginning of our judgment show otherwise. There are allegations that "the declaration evidenced by Ex. P-5 is a colourable exercise of the power conferred upon" the State; that the declaration is "an abuse of the powers of the State", that the declaration "has not been made in good faith and evidences a colourable exercise of the power conferred upon the State"; and that "the declaration has not been made with due care and attention". We think these allegations are sufficient allegations of mala fides and non-application of the mind. We would only add that "an order is vitiated by mala fides if it is passed by an authority without applying its mind at all, even though there is no evidence of any personal ill-will, corrupt motive, or other improper pur-"pose" (vide Mammu v. Tahsildar and Land Acquisition Officer, Tellicherry 1965 KLJ 744).

16. Before we close, we have to refer to one argument advanced by Shri K. P. Abraham on behalf of the company. He argues that the appellants were willing to sell their land; that they will get proper market price and "solatium for compulsory expropriation"; and that there fore, no prejudice will be caused to them by the proposed acquisition. We are afraid that this argument is not quite happy. An owner of property can claim even a higher than market price for his property; and simply because he is willing to sell his property and because he will get proper price for his pro perty if acquired, his property cannot be compulsorily acquired. Compulsory acquisition can be effected only in accordance with the acquisi-tion law, because it is an inroad into a citizen's right to own property. Such inroad can be made only in strict compliance with the law authorising it.

17. In view of this conclusion, we do not think it necessary to consider the other ques-tions raised by the appellants' counsel.

18. The appeal is allowed, the judg- ment under appeal is reversed and the declara tion and notices impugned in the writ petition are quashed. The fourth respondent (the Pre mier Tyres, Ltd.) will pay the costs of the appellants with counsel's fee of Rs. 150 in the appeal and in the writ petition.