

(1963) 12 KL CK 0021
In the High Court Of Kerala
Case No : O. P. No. 1602 of 1962

Mrs. Ambujam N. Menon and Others

APPELLANT

Vs

State of Karala and Others

RESPONDENT

Date of Decision : 18-12-1963

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1), 19(1)(f), 31(2), 31(5)

Citation : (1964) KLJ 85

Hon'ble Judges : M. Madhavan Nair, J

Bench : Single Bench

Advocate : V. Rama Shenoi and R. Raya Shenoi, for the Appellant; V.P.G. Nambiar Advocate-General for Respondents 1 to 3 and K.P. Abraham, George Kurien, K.K. Poullose, K.P. Pathrose for 4th Respondent, for the Respondent

Judgement

Madhavan Nair, J.—The Premier Tyres Limited" is a public limited Company incorporated in India, having its registered office in Bombay and the factory for the manufacture of tyres and other rubber goods at Kalamassery on land acquired by the State of Kerala and given to it in 1960. It has commenced production of tyres on May 27, 1962. For expansion of the factory, the Company needs more land to put up additional buildings and structures and the only land found suitable is the petitioners" land adjoining its premises. Attempts to purchase the same by direct negotiations with the 1st petitioner, who is the mother of the other petitioners having failed, it moved the State Government for compulsory acquisition thereof under the Travancore Land Acquisition Act that was in force in the area concerned. Notification u/s 4(1) of the Act has been published in the Gazette dated October 17, 1961 and declaration u/s 6(1) in the Gazette dated April 3, 1962. The latter, after declaring that the land specified therein, 4.78 acres in extent, is "needed for a public purpose, to wit, for the use of Messrs. Premier Tyres Limited" and empowering the 3rd respondent, Deputy Collector (Land Acquisition), Ernakulam, to perform the functions of a Collector under the Act, directed, possession of the land to be taken on the expiry of 15 days from the date of publication of the notice u/s 9(1) of the Act as the need

was urgent. A copy of that declaration is Ext. P. 5 here. On May 30, 1962 notices u/s 9(1) of the Act were issued to the petitioners being persons interested in the land calling them to state their claims to compensation for the land on or before June 20, 1962. Those notices are Exts. P. 1 to P. 4 here. It is now admitted that the petitioners have filed their statements of claim on June 19, 1962. Before that, on June 18, 1962, they have filed this O. P. to quash Exts. P. 1 to P. 5 by a writ of certiorari and to restrain the respondents by a writ of mandamus from proceeding with the acquisition of the land. Respondents 1 to 3 are the State of Kerala, the Secretary to the Government of Kerala, Industries Department, and the Deputy Collector (L. A), Ernakulam. The 4th respondent is the Premier Tyres Limited. After hearing counsel for the petitioners, a Rule nisi has been issued by Vaidialingam J. on June 25, 1962. According to the petitioners the price offered by the 4th respondent for the land was too low, the move for the acquisition of the land is a colourable exercise of the power of the State for a private purpose, the allegation of urgency lacks all good faith, and the Travancore Land Acquisition Act is discriminatory and violative of the fundamental rights guaranteed to citizens under Articles 19(1)(f) and 31(2) of the Constitution.

The 3rd respondent and subsequently the 2nd respondent also have filed counter affidavits on behalf of the 1st respondent, stating that "acquisition for a public company is only one aspect of an acquisition for a public purpose", that the declaration made by the Government u/s 6 of the Act is not justiciable in view of the provision in sub-section (3) thereof, that the Travancore Land Acquisition Act, 1089 (1914), is not affected by any constitutional infirmity mentioned by the petitioners, that the Government is the sole judge of urgency of a need for acquisition which may not therefore be justiciable, and that the acquisition has been made after due enquiry of the need and the purpose for which it is stated to be.

The 4th respondent-Company, in its counter affidavit, has submitted that the establishments of a Tyre Factory is an essential public utility, that its products meet the necessities of essential services of the country, inclusive of the requirements of the defence forces, and that the land sought to be acquired is urgently needed for putting up buildings and structures for expansion of the Factory project.

In a reply affidavit filed by the petitioners on October 7, 1963, it was pointed out that on the other side of the Factory the Company has 10 acres of vacant land and therefore the move to acquire the petitioners' 4 odd acres of land is not actuated by bona fides.

The 4th respondent then filed a rejoinder affidavit stating that the vacant land is much less than 10 acres in extent and is reserved for putting up quarters for its technical and administrative staff.

2. The Travancore Land Acquisition Act, XI of 1089 (1914), under which the impugned notices are issued, does not contain any provision for acquisition of

land for Companies. It authorises acquisition for public purposes only. But a public purpose need not be a State purpose. As has been held by Venkatarama Aiyar J., with the concurrence of Rajamannar C. J., in *A. Natesa Asari v. State of Madras* (A. I. R. 1954 Madras 481),

...where there is a public purpose, the powers of the Government to acquire land are not excluded because the acquisition is for the benefit of a company.... whenever there is a public purpose an acquisition can be made by the Government whether it is for a company or not.

It then follows that an acquisition on behalf of a Company is justified if it is to serve a public purpose.

3. The expression "public purpose" is of wide import. It must be wider than "public use". Commenting on the latter expression, Professor Willis, in his book on the Constitutional Law of the United States, observes:

According to the older view point, in order to have a public use, there must be a use by the public... According to the newer viewpoint there is a public use if the thing taken is useful to the public." (See pages 817 and 818 of the book).

This change of view is justified by Cooley as necessitated "by complex conditions due to recent developments of civilization and the increasing density of population.

Corpus Juris Secundum, Vol. XXIX, page 824, refers to "public use" as being treated by certain American courts as synonymous with "public benefit", "public utility" or "public advantage" so as to "authorise the exercise of the power of eminent domain to promote such public benefit, etc. especially where the interests involved are of considerable magnitude and it is sought to use the power in order that the natural resources and advantages of a locality may receive the fullest development in view of the general welfare

4. In *Hamabai Framjee v. Secretary of State* (XLII Ind. App. 44) the Judicial Committee has observed,

the phrase (public purpose), whatever else it may mean, must include a purpose, that is, an object or aim, in which the general interest of the community, as opposed to the particular interest of individuals, is directly and vitally concerned.

Adverting to the above observation, S. R. Das J. (as he then was) observed in *The State of Bihar Vs. Sir Kameshwar Singh*, :

And it is well that no hard and fast definition was laid down, for the concept of "public purpose" has been rapidly changing in all countries of the world. The reference in the above quotation to the general interest of the community, however, clearly indicates that it is the presence of this element in an object or aim which transforms such object or aim into a public purpose.

From what I have stated so far, it follows that whatever furthers the general

interests of the community as opposed to the particular interest of the individual must be regarded as a public purpose. With the onward march of civilization our notions as to the scope of the general interest of the community are fast changing and widening with the result that our old and narrower notions as to the sanctity of the private interest of the individual can no longer stem the forward flowing tide of time and must necessarily give way to the broader notions of the general interest of the community.

In *The State of Bombay Vs. R.S. Nanji*, the requisition was on behalf of the State Road Transport Corporation to house one of its officers. In holding the same to be for a public purpose it is observed:

It may be assumed, therefore, that the Corporation appoints only such officers as are needed for the efficient discharge of its functions and that the State Government was requested to requisition some premises as living accommodation for one of them whose posting at Bombay was necessary..... It would not be sufficient to merely establish the Corporation.

It has to have an adequate and efficient staff, living accommodation for whom would be an absolute need of the Corporation. Its Officers have to be efficient in the discharge of their duties, for upon them depends the successful working of the road transport system upon which the public must rely and thus it would be directly and vitally concerned with the efficiency of the employees of the Corporation.

5. It is clear then that the expression "public purpose" used in Article 31 (2) of our Constitution and in the allied provisions of the Land Acquisition Act has to be given a wider construction in order to strengthen the hands of the Government to utilise the Act in the development of projects designed to advance the general welfare of the State and social welfare of the people. The test to see whether a purpose is public or not is whether it is apt to serve the general interest of the community, and by that test we have to judge the validity of the impugned notices. Paragraph 5 of the 3rd respondent's counter affidavit on behalf of the State reads:

The functioning of the company is in the general interests of the public. The company is directly engaged in the manufacture of tyres and other products which are highly beneficial and necessary for various public utility and other essential services of the country. The functioning of the company is bound to relieve the problem of unemployment in the State to a great extent. It is also meant to serve the purpose of industrialising the State.

It is pertinent to note here that in December, 1959, the State acquired 30 odd acres "for the establishment of a Tyre Factory at Kalamassery." Nobody ever objected to that acquisition as not been for a public purpose. It cannot be that the owners of those lands were all unconscious of their rights or of the limits of the powers of the Government under the Land Acquisition Act.

As the Company is to produce goods which are essential for the needs of the modern society, even for the requirements of our defence services, it must be found to be serving or advancing a public purpose and therefore the acquisition of land for its expansion must be held a public purpose. The fact that there is no special provision in the Travancore Land Acquisition Act for acquisition for Companies is therefore immaterial as the impugned acquisition comes well within the provisions for acquisition of land for public purposes.

6. The question then is whether the proposed acquisition is "needed" for a public purpose, It is averred by the petitioners that the Company has in its possession 10 acres of vacant land out of the land originally acquired and given to it by the State which may be utilised for its present expansion scheme. It may be noted here that this averment was not in the original petition, but is introduced by a supplemental affidavit after the respondents have put in their counter-affidavits in defence. However, the 4th respondent-Company has met it by affirming:

The small portion of land that is available is much less than 10 acres in extent and is meant to be built upon with certain 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. The land has already been levelled up and the construction work is to commence shortly.

The citation above from *The State of Bombay Vs. R.S. Nanji*, shows that a provision for housing officers of the Company is essential for the efficient working of the factory, especially when it works, as the 4th respondent is stated at the Bar to do, round the clock. The acquisition in question here is for the construction of additional buildings and structures for purposes of expansion of the Factory itself and is therefore for a purpose different from that for which the 10 acres is reserved by the Company. As observed in *Pramatha Nath Talukdar v. State of West Bengal* (A. I. R. 1963 Calcutta 554) ".....the existence of some unutilised land, which is part of a large scheme, may not necessarily be a complete answer to the necessity of acquisition of further land in furtherance of the scheme." The counter affidavit on behalf of the State shows that on receipt of the application for more lands to be acquired for the Company, an enquiry was made by the Government through the concerned District Collector and that the Government was satisfied that the land proposed to be acquired was needed for the expansion of the Company's projects. I have therefore to find that the land proposed to be acquired is needed for a public purpose.

7. The averment in the petitioners' reply affidavit filed on October 7, 1963, "The alleged need of the petitioners' land for purposes of additional structures for the factory is a pretext to knock off for a song, the petitioners' properties" is a vain allegation. I have already found that the land proposed to be acquired is needed by the Company for a public purpose. The fear of the petitioners that the acquisition will result in a pecuniary loss to them is absolutely out of place. The land Acquisition Act assures proprietors of the lands acquired under it of being paid not only the market value of the land at the time of the acquisition but also

an additional 15 per cent thereof as solatium for compulsory expropriation. It follows that the compensation that the petitioners would be receiving on acquisition by the State must be something more than what they would get on a sale by private treaty.

8. Counsel contended that the Travancore Land Acquisition Act is discriminatory and therefore void. The contention is that the procedure for acquisition laid in the Cochin Land Acquisition Act and the Indian Land Acquisition Act in force in two different parts of the State, differs widely from the procedure laid in the Travancore Land Acquisition Act in force in another area inclusive of the locality where the petitioners' land is. While the former Acts, by their Section 5A, do invite objections to every proposal to acquire land, the Travancore Act provides for every such proposal to be notified in the Gazette and at the locality but does not call for objections thereto, and is therefore impugned as discriminatory. To me the notification of the proposal appears to carry, by obvious implication, an invitation to submit objections, if any, by persons feeling aggrieved by such proposal. In this case, the notification u/s 4 was on October 17, 1961; and the declaration u/s 6 was on April 3, 1962. The time-lag between the two is significant. Admittedly the petitioners had not put forth any objection to the proposed acquisition, and the petitioners were prepared to sell the land to the Company but for the disagreement on the value of the land.

The complaint in *Bhaiyalal Shukla Vs. State of Madhya Pradesh*, was a much graver one. It was that after the reorganisation of States, Madhya Pradesh had as many as four Sales Tax Acts with the result that persons belonging to one area in the State were not liable to sales tax on building materials used in works contracts while persons in the remaining area of the State were liable to sales tax on such materials. Meeting the contention that the same was "patently contrary to the spirit of the equal protection clause in Article 14" of the Constitution, the Supreme Court has held:

The laws in different portions of the new State of Madhya Pradesh were enacted by different Legislatures, and under S. 119 of the States Reorganisation Act, all laws in force are to continue until repealed or altered by the appropriate Legislature. We have already held that the sales tax law in Vindhya Pradesh was validly enacted, and it brought its validity with it under S. 119 of the States Reorganisation Act, when it became a part of the State of Madhya Pradesh. Thereafter, the different laws in different parts of Madhya Pradesh can be sustained on the ground that the differentiation arises from historical reasons, and a geographical classification based on historical reasons has been upheld by this Court in *M.K. Prithi Rajji v. The State of Rajasthan* and again in *The State of Madhya Pradesh v. The Gwalior Sugar Co. Ltd*,

The above observations apply well to the facts of the present case, with the difference that references to, the States Reorganisation Act, must be read here as "the Covenant for integration of the States of Travancore and Cochin and the States Reorganisation Act". There is no case that in the pre-Constitution (lays

when the Travancore Land Acquisition Act was enacted it was affected by any element of invalidity.

Further, what is guaranteed under Article 14 of the Constitution is equality before the law or the equal protection of the laws. The law here means the statute, and the equality that is assured is under the same law enacted by the State, and not under different laws where they come to stay on account of a merger of different States.

9. It was next contended that the provisions of the Land Acquisition Act offend the fundamental rights guaranteed by Article 19(1) of the Constitution. The following observation of the Supreme Court in *Smt. Somavanti and Others Vs. The State of Punjab and Others*, would be a complete answer to that contention, viz.,

As we understand the decision in *The State of Bombay Vs. Bhanji Munji and Another*, what this Court has held is that for a right under Article 19 (I) (f) to hold property to be available to a person, he must have the property with respect to which he can assert such right. If the right to the possession of the property is taken away by a law protected by Article 31 (5) (a), Article 19 (1) (f) is not attracted.

The Travancore Land Acquisition Act, enacted in 1914, is obviously an "existing law" within the protection of Article 31 (5) (a).

10. The Company has, by its letter dated February 21, 1961, intimated the Government that the land is "required immediately to enable us to complete the first stage of our Project which is programmed for completion in October, 1961"; and the Government, on enquiry, was satisfied that its need for the land was urgent. The direction in Ext. P. 5 to take possession of the land u/s 17 of the Travancore Land Acquisition Act cannot therefore be impugned as biased on the part of the Government. As has been observed in *A. Natesa Asari v. State of Madras* (cited supra), "whether an urgency exists or not is a matter solely for the determination of the Government and it is not a matter for judicial review". The fact that, as events turned, particularly on account of the Rule nisi issued by this Court, the Company had to get on till now without the land proposed to be acquired does not indicate that the land was not needed urgently for its expansion scheme. There is no merit in this O. P., which is therefore dismissed with costs including Advocate's fee Rs. 300/-, one set to respondents 1 to 3 and another to the 4th respondent.