
(2000) 06 KL CK 0024
In the High Court Of Kerala
Case No : W.A. No. 105 of 2000

Mrs. Krishnamma Somanatha Panicker	APPELLANT
Vs	
Special Tahsildar and Others	RESPONDENT

Date of Decision : 26-06-2000

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 4(1), 5A, 5A(2), 6

Citation : (2000) 2 KLJ 31

Hon'ble Judges : M.R. Hariharan Nair, J;K.K. Usha, J

Bench : Division Bench

Advocate : K.R. Kurup, for the Appellant; K. Ramakumar, Sr. Central Government Standing Counsel for Respondent 3, for the Respondent

Judgement

M.R. Hariharan Nair, J.

1.The challenge herein is of the dismissal of O.P. No. 4741/91 and allowing continuance of the proceedings by the Land Acquisition Officer with regard to the acquisition of land which belongs to the Appellant for the purpose of a Post Office. It is pointed out that as against the mention in Ext. P-8 Notification issued u/s 4(1) of the Land Acquisition Act that the proposal is to acquire an area of 0.0131 hectare of land, the Government has issued Ext. P-11 declaration u/s 6(1) specifying that the acquisition is in respect of 0.0195 hectare of land. The learned Counsel for the Appellant submits that a declaration u/s 6(1) cannot be in deviation of the notification u/s 4(1) and that the entire proceedings have, therefore, to be struck down.

2. It is true that there is some variation in the extents mentioned in Exts. P-8 and P-11, as mentioned above. Nevertheless, we are not satisfied that the proceedings for acquisition can be struck down on this ground. The publication of notification u/s 4(1) is only a preliminary step. For a proper understanding of the purpose and scheme behind the notification, it is necessary to go into the section itself. Section 4 reads as follows:

4. Publication of preliminary notification and powers of officers thereupon.-(1) Whenever it appears to the appropriate Government or to the Board of Revenue or to the Collector that land in any locality in the State of Kerala or within the jurisdiction of the Collector is needed or is likely to be needed for any public purpose or for a company, a notification to that effect shall be published in the official Gazette and in two daily newspapers circulating in that locality of which at least one shall be in the regional language and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the notification.

(2) Thereupon it shall be lawful for any officer, either generally or specially authorised by such Government or the Board of Revenue or the Collector, as the case may be, in this behalf, and for his servants and workmen-

to enter upon and survey and take levels of any land in such locality;

to dig or bore in to the Sub-soil;

to do all other acts necessary to ascertain whether the land is adapted for such purpose;

to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon;

to mark such levels, boundaries and line by placing marks and cutting trenches; and,

where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle; * * *

(emphasis upplied)

3. As seen from the above, it is only after such a notification is made that the land acquisition authorities are expected even to enter upon and survey and take levels of the land concerned. The exact extent of the land to be acquired can be fixed only after such survey and measurements.

4. Section 6(1) of the Land Acquisition Act provides for a declaration which is to be issued after the Government is satisfied, on a consideration of the report prepared u/s 5A and Sub-section (2), that any particular land is needed for a public purpose. u/s 6(2) the declaration is to be published. But even there what is expected to be mentioned is only "the approximate area of the land." Section 6(3) provides that such declaration shall be conclusive evidence that the land is needed for a public purpose or for a company, as the case may be, and that after making such declaration, the appropriate Government or the Board of Revenue, as the case may be, may acquire the land in the manner contemplated in the subsequent provisions. It is, therefore, clear that declaration made u/s 6(2)

alone is the definite prelude to the acquisition and forms conclusive evidence with regard to the acquisition. If, even in such a declaration, only the approximate area is expected to be given, it goes without saying that the area mentioned in the notification u/s 4(1) also can be approximate only. In the circumstances merely because there is some variation in the extent of the land mentioned in the notification vis-a-vis that given in the declaration, the proceedings cannot be said to be illegal or liable to be struck down. It is to be mentioned here that there is absolutely no difference in the survey numbers mentioned in Ext. P-8 and P-11.

5. The object behind the notification u/s 4(1) is only to put the owner of the land on guard that his land is going to be acquired and to give him an opportunity to object to the acquisition. The initiation of acquisition proceedings for all practical purposes begins only after the declaration u/s 6. While the authority may act u/s 4 "when it appears" to it that land is needed, "satisfaction" based on consideration of report u/s 5A of the Act is necessary for issuing declaration u/s 6. Such being the case, only such information, as the land owner should have to identify the parcel of land concerned is necessary in a notification u/s 4. It is only after survey measurements are made and area for acquisition is fixed, that a declaration is made u/s 6 of the Act.

6. In the circumstances, the small variation between the extents mentioned in Exts. P-8 and P-11 is not at all sufficient to come to a finding that the proceedings for acquisition are illegal or invalid. We are of the view that the learned Single Judge was hence right in his conclusion that, there is no merit in the Original Petition.

7. Taking into consideration of the submission of the learned Counsel for the Appellant made to us, at this stage, that a little time may be allowed for surrendering possession, we feel it fit to grant a time of three weeks from today for surrendering vacant possession of the land acquired.

In the circumstances, the appeal is found to be devoid of merit and it is dismissed.