
(1992) 07 KL CK 0053
In the High Court Of Kerala
Case No : O.P. No. 10380 of 1990

Mrs. Mary Philip

APPELLANT

Vs

Kerala State Housing Board and Others

RESPONDENT

Date of Decision : 03-07-1992

Acts Referred:

Constitution of India, 1950 — Article 14
Land Acquisition Act, 1894 — Section 11A, 17, 4, 4(1), 48

Citation : (1992) 2 KLJ 202

Hon'ble Judges : P.K. Shamsuddin, J

Bench : Single Bench

Advocate : Mathews P. Mathew, for the Appellant; N. Nandakumara Menon and Smt. M. Hemalatha, Govt. Pleader, for the Respondent

Judgement

P.K. Shamsuddin, J.—In these Original Petitions, petitioners pray for issue of a writ of mandamus, directing respondents to pass the award in respect of acquisition of petitioners land covered by Ext.. P1 and P2 Immediately and disburse the compensation with solatium and Interest due to petitioners forthwith. For convenient sake I will be referring to the documents as they are marked in O.P. 10380/90. In order to appreciate the contentions raised by the parties, it is necessary to state briefly the facts leading to the filing of these Original Petitions 1st respondent, Kerala State Housing Board, Thiruvananthapuram published a notification Ext. P1 dated 15-3-1982 u/s 50 of Kerala State Housing Board Act, stating that the lands mentioned therein are included in a housing accommodation scheme and directing the persons effected thereby to file objection, if any, within a period of 30 days. Petitioners filed objection. It is the case of petitioners that the ancestral properties belonging to the petitioners were included in Ext. P1 notification. One of the owners, A.J. Joseph, who is predecessor-in-interest of the petitioners in O.P. 11058/90 made an offer that he would offer 4 acres of land belonging to him, provided the Housing Board was willing to release the balance of the property belonging to him. It is his case that it was done as a threat was held out by the Housing Board

that all the ancestral properties belonging to him would be acquired. 1st respondent accepted the offer. Thereupon, petitioners in O.P. 10380/90 also volunteered to surrender an extent of 6 acres on conditions enumerated in Ext. P9 offer. The conditions are (1) out of 6 acres agreed to be surrendered, 4 acres will be surrendered by John Abraham and 2 acres by John Philip at mutually agreeable locality within the notified area, (2) offer is made without prejudice to the right of the petitioners to get maximum compensation under the Land Acquisition Act, (3) the remaining extent included in the notification will be released from acquisition proceedings; and (4) the 1st respondent would grant a permanent right of way sufficiently wide enough for truck traffic to the remaining lands belonging to the petitioners. 1st respondent sent a reply Ext. P10 accepting the offer. Pursuant to this, 1st respondent requisitioned to the Collector on 15-3-1982 to acquire the lands agreed to be surrendered. This will be seen from Ext. R1(b) produced by 1st respondent along with the counter affidavit. By Ext. P2, Executive Engineer, K.S.H. Board Division II, Thiruvalla intimated one of the petitioners that The Secretary has directed to take advance possession of 10 acres of land from A.J. Joseph, John Abraham and John Philip, and the Revenue Surveyor had demarcated the land at site and the Revenue Divisional Officer, Thiruvalla has been requested to take necessary arrangements to take advance possession of the above land. He was requested to hand over possession of the land at an early convenient date. Ext. P3 is another letter sent by Executive Engineer to 4th petitioner stating that it was decided to take over advance possession of land on or before 15-3-1985 and requesting him to make necessary arrangements in the matter. On 15-3-1985, under Exts. P4(a) and P4(b) Mabazars advance possession was taken. It is stated in the mahazars that the properties are under Land acquisition proceedings. It is the case of the petitioners that-they had planted the lands with rubber and it is after cutting and removing the trees possession was given. However, notification under Sec. 4(1) was published only on 2-7-1985. Since there was delay in completing the acquisition, fresh notifications were issued from time to time. Advance payment of Rs. 5 lakhs was made to petitioners, on 18-4-1987 representing approximately 80% of the value of the properties. Ext. P5 is the proceedings of the Land Acquisition Officer relating to this. It is stated in Ext. P5 that it was an advance payment made as per Clause 3A (a) of Section 17 of Land Acquisition Act, 1894 as amended in 1984.

2. The petitioners appear to have addressed to the District Collector requesting for balance payment. Ext. P6 is the reply given by the District Collector stating that the funds required for passing the award in the case have not been placed at the disposal of the Special Tahsilder, Land Acquisition, Pathanamthitta by the Board and the compensation could be paid only on receipt of the required funds. Thereafter, Ext. P7 communication was issued to the 2nd petitioner stating that on sanctioning the funds, petitioners would be given the compensation amount. Finding that no effective steps were taken by the authorities to disburse the compensation, Ext. P8 notice was sent by the petitioners through a lawyer

highlighting their difficulties and calling upon the authorities to pay the compensation amount at the earliest, at any rate, within 10 days of receipt of the notice.

3. In spite of all these communications sent by the petitioners and their repeated requests for passing the award and payment of balance of compensation, the authorities did not either pass the award or pay the balance compensation. It is in those circumstances, petitioners filed these Original Petitions.

4. Separate counter affidavits have been filed by 1st respondent and respondents 4 to 6. An additional counter affidavit has also been filed by the 1st respondent. The main contention taken in the counter affidavit filed by the 1st respondent is that it is a case of voluntary surrender of possession by the land owners under a private arrangement between the land owners and the Board and that it was not a case of taking possession as contemplated under the provisions of Land Acquisition Act. It is further averred that the advance payment as demanded by the petitioners was made by the Board, but subsequently due to various reasons, the Board has found that the housing scheme is not at all economically viable and proceedings are under way for withdrawing from the acquisition of land belonging to the petitioners and the other land owners involved in the scheme. It is also stated that a decision to that effect has been taken by the Board in its meeting held on 1-12-90 and a request for permission for cancelling the scheme has been made to the Government so that the withdrawal proceedings may be initiated. In para 6 of the counter affidavit it is stated that Section 4 notification was to expire on 21-12-1990 and that the title to the land would not pass to the Board.

5. Along with the additional counter affidavit on behalf of the 1st respondent, the Housing Board has produced Ext. R1(a), which is the Minutes of the meeting of the Board held on 1-12-1990 requesting the Government to withdraw from acquisition of the properties for the scheme. It is stated in the additional counter affidavit that pursuant to Ext. R1(a) the Secretary of the Housing Board has written to the Government requesting, the Government to withdraw from the acquisition. The said letter is marked as Ext. R1(b).

6. In para 3 of the counter affidavit filed on behalf of the respondents 4 to 6, it is averred that District Collector, Pathanamthitta requested the Board to place an amount of Rs. 35,35,866/- at his disposal for passing the award, that in the meanwhile the Board has taken a decision not to go ahead with the implementation of the scheme, that according to the Board, sufficient allottees are not coming forward for accepting the plots and therefore the Board has to incur heavy financial loss, if the scheme is to be implemented. It is also stated that the Board was given instructions for settlement of the issues with the land owners.

7. A reply affidavit has been filed by the petitioners, wherein it is stated that 1st respondent requisitioned to the authorities to acquire the entire property covered

by Ext. P1 under the Land Acquisition Act and it is in the negotiation that followed between the parties that the petitioners were compelled to agree to surrender approximately 10 acres under threat of compulsory acquisition of the entire property, if they were not agreeable to the suggestion to surrender at least 10 acres. It is stated that the only reason why the respondents are trying to wriggle out of the acquisition proceedings is the enhancement in the amount payable to the land owners consequent on the accrual of the Interest payable on the amount of compensation since respondents took possession of the land in 1985. It is further averred that petitioners cannot be penalized for the delay in implementing the scheme by the 1st respondent.

8. It has also been pointed out that after taking possession, plots were demarcated and some of the plots were allotted to willing purchasers and the allottees also constructed buildings thereon and in those circumstances, the doctrine of promissory estoppel will operate and respondents will be precluded from contending that it is legally possible for them to withdraw from the acquisition contending for the reason that the scheme was not viable.

9. Learned counsel for petitioners raised the following points: (1) Pursuant to the notification Ext. P1. 1st respondent took possession of the property of petitioners as early as 15-3-1985. After taking possession, it is not legally permissible to withdraw from acquisition. (2) By operation of doctrine of promissory estoppel, It is not possible for the 1st respondent to contend that they can withdraw from acquisition. Petitioners surrendered possession of their properties, after cutting and removing the yielding rubber plantations, acting upon the promise held out by 1st respondent that there would be acquisition of petitioners' property and payment of compensation. It is not open to the 1st respondent thereafter to take a position to the disadvantage of the petitioners that they do not require the land and they have addressed to the Government to cancel the same and to withdraw the acquisition proceedings. (3) Being a public authority, the respondents are expected to act fairly and reasonably and they cannot decide arbitrarily to withdraw from an acquisition after taking possession of the lands and distributing parts of the lands to strangers on collecting the price of the property. Such an act would amount to violation of the equality clause enshrined in Article 14 of the Constitution of India.

10. The doctrine of promissory estoppel has been well established in a catena of decisions of the Supreme Court on the subject. In Gujarat State Financial Corporation Vs. Lotus Hotels Pvt. Ltd., the Supreme Court quoted with approval the following passage from an earlier decision in Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, :

The true principle of promissory estoppel, therefore seems to be that where one party has by his words or conduct made to the other a clear and unequivocal promise which is intended to create legal relations or affect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is in fact so acted upon by the other

party, the promise would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so having regard to the dealings which have taken place between the parties, and this would be so irrespective whether there is any pre-existing relationship between the parties or not.

The principle has been followed in *Sanadan Gauda v. Berhampur University and others* (AIR 1990 SC 5075), where Berhampur University permitted the petitioner therein to appear in Pre-Law and Intermediate Law examinations but while passing the results, withdrew it saying that the petitioner was ineligible for appearance in the examinations. In *Rathi Alloys and Steel Ltd., Alwar Vs. Collector, Central Excise, Jaipur*, the question related to exemption granted under the Central Excise and Salt Act. The Government granted exemption to manufacture of a particular item, though the same on strict and literal interpretation was not covered by the exemption notification. The Supreme Court held that rule of fairness precludes the department from reopening such matter which was taken to be settled by its own action. The court observed that in administrative law, matters already taken to have been settled by government's own action in favour of a class of persons cannot be reopened by government even though such action was not strictly in terms of statutory provision and that in such cases even if rule of promissory estoppel is not attracted natural justice required that such matters should not be permitted to be opened. I do not want to add more cases on the subject. Suffice it to say that the doctrine of promissory estoppel is an equitable principle evolved by the courts for doing Justice. Even in areas where the doctrine is not strictly applicable, natural justice, fair play and equality clause contained in Article 14 of the Constitution would come to the rescue of affected parties where matters settled in their favour by the action of the authorities is attempted to be re-opened.

11. In the instant case, 1st respondent issued Ext. P1 notification as early as 15-3-1982 covering the properties belonging to petitioners and the petitioners, finding that the properties covered all the ancestral properties belonging to them, gave an offer to give possession of part of the properties covered by Ext. P1 on certain terms. Ext. P9 is the offer made by them. That offer was accepted by 1st respondent under Ext. P 10 and pursuant to that, instead of issuing notification u/s 4 (1) covering the entire area included in the scheme and taking possession of such lands, 1st respondent took into possession part of the properties covered by Ext. P1 as early as 15-3-1982. It can be seen from Ext. R1(b) that 1st respondent had requisitioned the acquisition of the entire land on 15-3-1982 itself. It has come out in evidence that there were rubber trees in the property and after removing those rubber plantations, petitioners gave possession of the property to 1st respondent. Approximately 80% of the compensation, to which they are entitled, was also paid to them. They not only took possession of the property, but divided the property into different plots and allotted such plots to some strangers on receipt of value, and such allottees constructed buildings thereon. After undertaking to acquire the land offered and taking possession by

the petitioners and allotting some of the plots of land to strangers, it is not open to the 1st respondent to contend that the project is not economically viable and therefore they are withdrawing from the acquisition. In my view, this is a case where the doctrine of promissory estoppel would squarely apply. It will be totally unfair, unjust and arbitrary on the part of 1st respondent to back out from the undertaking that they would acquire the land after making the petitioners to surrender the lands after removing and cutting rubber plantations acting upon the promise held out by the 1st respondent.

12. Learned counsel for petitioners also contended that since possession was taken, it is not open to the authorities to withdraw from acquisition in view of the provisions contained in Section 48. Learned counsel for 1st respondent however would contend that possession was not taken under the Land Acquisition Act. This argument stems from the fact that notification under Sec. 4(1) was issued only later. I am unable to accept this contention also. It can be seen from the mahazar Exts. P4(a) & P4(b) that possession was taken because of contemplated acquisition. Sec. 48 does not lay down that the said provision will operate only if possession is taken after issue of notification under Sec 4 (1). In the instant case, though not on the same day, section 4 (1) notification was issued soon thereafter possession was taken. The circumstance that the notification was later will not make possession as one other than what is contemplated under Sec. 48 of the Act. To interpret differently would only defeat object of provision contained in Section 48. Therefore, I am unable to sustain the contention of learned counsel for 1st respondent.

13. Learned counsel for 1st respondent then contended that the project has become economically non - viable and in circumstances, If the 1st respondent is not permitted to cancel the project and persuade the Government to withdraw from the acquisition,- 1st respondent will, be put to great hardship and financial loss. This contention also does" not appear to me sound. Supposing that award was passed and the entire payment was made to the owners of land, would it be possible to raise a contention that as project was not economically viable, the authority can abandon the project and recover the amounts of compensation paid and resume the land to the owners? I do not think that anybody will countenance such contention. In the instant case, it cannot be forgotten that 80% of the approximate value estimated was paid to the petitioners.

14. It is lastly contended by learned counsel for 1st respondent that since award was not passed within the statutory period, the acquisition proceedings lapsed. This is based on Section 11A of Land Acquisition Act, 1984 as amended by Act 68/84. It is not due to any fault of petitioners that the award could not be passed within the stipulated period. In the counter affidavit filed by respondents 4 to 6, it has been clearly stated that the award enquiry was over and the amount of compensation to be paid was fixed, but it was only because that 1st respondent did not make the funds available, the award could not be passed, and compensation could not be disbursed to the land owners. In such a situation, it

would work great hardship to the petitioners, if it is held that by virtue of operation of Section 11A, acquisition proceedings lapsed. The identical question was considered by a learned single Judge of this Court in *Ittan v. State of Kerala* (1987 (2) KLT 23) and in *Thomas v. State of Kerala* 1983 (1) KLT 498). My Learned brother Viswanatha Iyer, J. pointed out that the provisions contained in Sec. 11A was intended for the benefit of land owners and to relieve them from oppressive and long drawn out proceedings, and there is no reason however not to compel Government to complete the proceedings for acquisition, when the land owners are prepared to have the same continued and completed. I am in respectful agreement with the view expressed in the above decisions. Accordingly I hold that it is not open to the Government or the 1st respondent to contend that proceedings lapsed by operation of Section 11A of the Act. Foregoing discussion would show that it is not open to the 1st respondent to withdraw from acquisition at this stage and the 2nd respondent to persuade the 1st respondent to withdraw from acquisition. Petitioners are entitled to a writ of mandamus, directing the respondents to complete land acquisition proceedings within a period of 3 months and pass an award and disburse the compensation awarded to the petitioners within another 3 months from the date of receipt of a copy of this judgment. 1st respondent will make available necessary funds for the purpose within a period of two months from the date of receipt of this judgment.

Original Petitions are disposed of as above.