

(1960) 01 KL CK 0056
In the High Court Of Kerala
Case No : O.P. No. 350 of 1959

Ouseph Martha

APPELLANT

Vs

State of Kerala and Another

RESPONDENT

Date of Decision : 07-01-1960

Acts Referred:

Travancore-Cochin Requisitioning and Acquisition of Property Act, 1956 — Section 4, 5

Citation : (1960) KLJ 224

Hon'ble Judges : S. Velu Pillai, J

Bench : Single Bench

Advocate : K. S. Sebastian, for the Appellant; C. M. Kuruvilla Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Velu Pillai, J.—This is a petition to quash the proceedings which were taken under the Cochin Land Acquisition Act, II of 1070, which may be referred to hereafter, as the Cochin Act. The property of the petitioner was acquired by Government under the Cochin Act, for providing accommodation for government servants. The chief question which arises for determination is, whether the Cochin Act, or any of its provisions relating to acquisition of property, stands repealed, by the passing of the Travancore-Cochin Requisitioning and Acquisition of Property Act, 1956, which may be referred to hereafter as Act I of 1956. In express terms, by Section 24 (1) Act I of 1956 purported to repeal only "the provisions of the Travancore-Cochin Public Safety Measures Act, 1950 (Act V of 1950) in so far as they relate to any matter for which provision has been made" in Act I of 1956; but the contention was, that there has been an implied repeal of the Cochin Act, or its material provisions. The presumption is against such repeal by implication for, as pointed out by Crawford in his book on Statutory Construction, courts will seek to avoid a construction which leads to an inference of repeal by implication, "by resorting to any reasonable construction or hypothesis." The court will, as far as possible, see by any fair interpretation, that the two statutes or provisions

stand together. I therefore take it, that an interpretation in favour of repeal is not to be adopted, unless it is inevitable to do so. When there are two statutes upon the same subject, the attempt must be to see, whether effect cannot be given to both of them. The attempt can fail only if the repugnancy or inconsistency between them is so pronounced, that they can never stand together. The principle underlying this has been stated thus, in Maxwell on The Interpretation of Statutes, 10th Edition, page 170:-

It is a reasonable presumption that the legislature did not intend to keep really contradictory enactment; on the Statute-book, or, on the other hand, to effect so important a measure as the repeal of a law without expressing an intention to do so.

2. The Cochin Act provides for the acquisition of any property, but Act I of 1956 provides for the requisitioning of property, and in certain cases, for the acquisition of requisitioned property. Requisitioning and acquisition are different concepts in law, requisitioning implying only a temporary deprivation of the owner, of the use and possession of a property, acquisition implying a transference of the property or all the rights thereto. In *Chiranjit Lal Chowdhuri v. The Union of India and Others*, 1950 Supreme Court Reports 860, the court held, that in requisitioning, the title remains with the owner but he is excluded by the State from the right to the possession or enjoyment of the property, but acquisition was defined as the "acquiring of the entire title of the expropriated owner whatever the nature or extent of that title may be." It is expedient that Government must have a power of requisitioning, as distinguished from a power of acquisition of property. During The period of the war, Government derived this power under the Defence of India Act, 1939, and the Rules thereunder. That Act which expired on the 31st March, 1952, was superseded by the Central Act, "Requisitioning and Acquisition of Immovable Property Act," Act XXX of 1952 which made provisions for requisitioning and acquisition of immovable property for Union purposes. Some of the States passed similar enactments for non-Union purposes. In the Madras State, Act XLII of 1956 was passed for the requisitioning and acquisition of immovable property for State purposes, and in the former Travancore-Cochin State too, there was an enactment in force called "The Travancore-Cochin Public Safety Measures Act, 1950," which provided for requisitioning of property in certain circumstances. The object of these enactments, both Central and State, was to clothe the Government concerned, with the power of requisitioning property in case of need, and also with the power, which in circumstances specified, may well be construed to be a duty or a liability, to acquire such property. Thus, acquisition under Act I of 1956 is limited only to the property requisitioned, and can be made, only on the fulfilment of certain conditions. This is not the object of the statutes like the Cochin Act relating to the acquisition of land, under which, any land may be acquired, without the need for requisitioning. The objects of the two Acts are thus different, as also their respective fields of operation.

3. It may be, that the power of requisitioning will be exercised, but sparingly, and in cases of pressing need or emergency, and this probably accounts for the fact, that the requisitioning statutes are, for the most part, of temporary duration. The Central Act XXX of 1952 was in force for a period of six years, till by an amendment Act, its operation was extended to cover a period of twelve years; the duration of the Madras Act is ten years, and that of Act I of 1956 is six years. A comparative study of the provisions of the two Acts, now in question, reveals no such repugnancy or inconsistency, that they cannot stand together. Section 4 of Act I of 1956 provides, that upon requisitioning, Government may take possession of the property on issuing a notice to the person in possession, but under the Cochin Act, normally possession can be taken only u/s 15, after the award, and only exceptionally u/s 16, in cases of emergency, before the award is passed. Section 5 of Act I of 1956 provides, that on requisitioning, Government may even compel the landlord to execute repairs, and if he fails to do so, charge him with the expenses of such repairs. This is an indication that the landlord continues to be the owner; such a situation can never present itself on acquisition of property. Section 6 of Act I of 1956 sets out of the different modes in which the property may be released from requisitioning, and section 7 prescribes, that compensation shall be payable whenever requisitioned property is acquired. Section 8 of Act I of 1956 creates the machinery for assessing compensation, which, it has to be noted, is made payable for requisitioning, and for acquisition separately. The fact that, as contended, more elaborate or beneficial provisions find a place in Act I of 1956, means nothing, as the element of compulsion is stronger in requisitioning in depriving the owner of property of his possession and enjoyment immediately, than in acquisition, where normally compensation has to be paid, before dispossession. I feel no difficulty whatever in coming to the conclusion, that the two Acts are intended to serve different purposes, and to apply to different situations, and can well stand together. There is therefore no repeal of the Cochin Act or any of its provisions, by Act I of 1956. The situation in the present case is governed by the Cochin Act and the proceedings taken under it must be maintained. The learned counsel for the petitioner contended that there is no public purpose to be served by the acquisition. The factual existence or otherwise of a public purpose does not arise, and cannot be considered now. But under the rule in *State of Bombay v. R. S. Nanji*, A. J. R. 1956 S.C. 294, the purpose, adverted to earlier, for which the acquisition was made, does constitute a public purpose. There is nothing to suggest, beyond the allegation of the petitioner, that the acquisition of the property in this case was mala fide. The petitioner did make a representation to Government, but the award was made long afterwards, and it is not for me in the present proceedings to make any observation concerning it. This petition is groundless and is dismissed with costs.