

(1988) 11 KL CK 0002

In the High Court Of Kerala

Case No : O.P. No's. 621, 77, 30 and 8649 of 1984

P.S. N. Motors (P) Ltd. and another

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 15-11-1988

Acts Referred:

Kerala Land Acquisition Act, 1961 — Section 10, 11, 20, 3, 3(1)
Land Acquisition Act, 1894 — Section 4

Citation : (1988) 2 KLJ 893

Hon'ble Judges : K. Sreedharan, J

Bench : Single Bench

**Advocate : P.K. Balasubramonyan and P.B Mohan Kumar, for the Appellant;
Vanaja Madhavan and Mathews P. Mathews, for the Respondent**

Final Decision : Dismissed

Judgement

K. Sreedharan, J.—The Municipal Council, Irinjalakuda, by Resolution No. 14 dated 1-11-1976 resolved to acquire 82 1/5 cents of land for extension of Municipal Bus-stand and construction of shopping centre. This decision was communicated to the District Collector, Trichur, through the Director of Municipalities, Trivandrum. The Director of Municipalities recommended the acquisition of the properties. There-upon the Land Acquisition Officer, 3rd respondent, initiated proceedings for acquiring the land. While preparing the notification u/s. 3 of the Kerala Land Acquisition Act, 1961, hereinafter referred to as "the Act", the public purpose for which the acquisition is resorted to was mentioned as "for the extension of Municipal Bus stand" only. (The entire files relating to the acquisition proceedings have been placed before court by the learned Government Pleader). The notification u/s. 3(1) of the Act was published in the Kerala Gazette dated 26-7-1977. Notices under Rule 3 of the Kerala Land Acquisition Rules, 1943, hereinafter referred to as "the Rules", were served on the owners of the land on 8-8-1977. All persons interested in the land sought to be acquired filed objections within the time prescribed for the said purpose. Those objections were over-ruled and a declaration u/s. 6 of the Act was

published on 2-6-1978. Notice u/s.9 (3) and 10 of the Act were served on the owners in April, 1981. They filed their statements. The 3rd respondent then passed an Award u/s. 11 of the Act on 25-8-82. The owners of the land preferred applications before the 3rd respondent for referring the matter to the Civil Court u/s. 20 of the Act for fixation of the correct amount of compensation. Since the tenants who were occupying the buildings situated in the land raised certain objections to their eviction there occurred some delay in taking possession of the land. Negotiations were held between the Collector and the tenants of the buildings. The tenants were assured accommodation in the shopping centre to be constructed. There-upon the petitioners have approached this court challenging the acquisition proceedings on various grounds. During the pendency of these petitions the properties belonging to the petitioners in O.P. Nos. 7730 of 1984 and 8649 of 1984 were taken possession of by the Land Acquisition Officer in pursuance to the award. Thus, those lands have become vested in the Irinjalakuda Municipality free from all encumbrances as per the provisions of the Act. The result, therefore is, the petitioners in O.P. Nos. 7730 and 8649 of 1984 are not entitled to challenge the acquisition proceedings now. Accordingly these two Original petitions fail and they are dismissed.

2. Along with O.P. 621/1984 the petitioners moved C.M.P. 2146/1984 for stay of all proceedings initiated for acquisition of their land including the dispossession of the petitioners from the properties. This court on 6-2-1984 ordered:

The possession of the petitioners property will not be disturbed until further orders.

Consequent to this order the petitioners in O. P. 621/1984 have not been dispossessed and they are still continuing in possession of the land.

3. The contentions raised by the petitioners in O.P. 621/84 are that the acquisition proceedings are invalid because in the course of the proceedings for acquisition of the land the purpose for which it is acquired has been changed, that the establishment of a shopping centre by the Municipality is not a public purpose for which the land can be acquired under the provisions of the Act, that the delay between the notification u/s. 3 and notice under rule-3 made the entire proceedings illegal and that the in-ordinate delay between the dates of notification and the award vitiated the entire land acquisition proceedings. On these basis the petitioners contend that the Award, Ext. P3, must be quashed. I shall proceed to deal with these arguments in detail.

4. Ext. P3 Award is dated 25-8-1982. The petitioners were given notice of the Award immediately there-after. On receipt of the notice the petitioners have preferred applications before the 3rd respondent for reference of the matter of Civil court u/s 20 of the Act. This Original Petition challenging the Award was Tiled on 23-11-1984. This long delay in approaching this court challenging the acquisition proceedings initiated in August, 1977, and the Award passed in August, 1982, is fatal to the petitioners' contentions. On this short ground these

petitions are bound to fail.

5. The Municipal Council, Irinjalakuda passed Resolution No. 14 on 1-11-1976 resolving to acquire 82 1/5 cents of land comprised in Survey Nos. 143/3 and 146 for extension of the Municipal bus stand and construction of shopping centre. The Municipality then took up the matter with the Director of Municipalities. The Director after complying with the legal requirements, requested the District Collector, Trichur, to initiate steps for the acquisition of the land. By letter dated 5-2-1977 the Director of Municipalities informed the Collector that the acquisition is for the purpose of extension of the bus stand and construction of shopping centre. From the Notes File of the 3rd respondent, Land Acquisition Officer, it is seen that the purpose was noted as "for the extension of Municipal Bus stand, Irinjalakuda" While making the said noting, omission was made in mentioning the words "and construction of shopping centre". Notifications u/ss. 3 (1) and 6 of the Act mentioned the public, purpose only as "for the extension of Municipal Bus stand, Irinjalakuda". The Award, Ext. P3, also mentioned the purpose as "for the extension of Municipal Bus stand". A note was added to the Award to the following effect:

The Municipal Commissioner, Irinjalakuda Municipality through the Director of Municipalities, Trivandrum, has requested for the acquisition of 82 1/5 cents of land in Ss. Nos. 145/3 and 146 of Irinjalakuda Village, in Mukundapuram Taluk of Trichur District for the extension of Municipal Bus Stand and Construction of Shopping Centre.

According to the petitioners, by the above quoted note, the public purpose which was mentioned in the notification u/s. 3 of the Act has been varied. The Land Acquisition authorities have no power to vary the purpose once the notification u/s. 3 (1) is issued. It is their further case that if the property was required for a public purpose other than the one mentioned in the notification u/s. 3(1) the officer ought to have dropped the first proceedings and started proceedings afresh under the Act for the acquisition for the second public purpose. This having not been done, it is contended that the entire proceedings are liable to be set at naught.

6. The issue that is to be looked into is whether there was infact any change in the public purpose during the acquisition proceedings. The public purpose for which the Municipality wanted the properties to be acquired is "extension of Municipal Bus stand and construction of shopping centre". The Resolution passed by the Municipality specifically mentioned that purpose. They took up the matter with the Director of Municipalities for acquiring the land for the same purpose. The Director of Municipalities requested the District Collector, Trichur to initiate proceedings under the Act for acquiring the land for the same purpose. The Land Acquisition Officer took action under the Act for acquiring the land for that purpose only But while issuing the notification the purpose was mentioned as "extension of Bus stand". In the award, Ext. P3, the entire purpose was made mentioned of. Can this lead to the conclusion that there was a change in the

public purpose in the course of the proceedings initiated for its acquisition under the Act The answer can necessarily be only in the negative.

7. The learned counsel appearing for the petitioners brought to my notice the decision in *Union of India v. Nand Kishor & ors.* (A.I.R. 1982 Del. 462) to contend that the Government have no right to change the public purpose in mid-stream. The Division Bench of the Delhi High Court held that the Government, cannot change the original purpose till the acquisition is completed. After the land has become vested in the Government it has got a right to change the use to which the land is to be put. The Government must adhere to the original purpose till the completion of the acquisition. The Court went on to state that if the Government want to depart from the original purpose the only course is to start the acquisition proceedings. In that case, invoking the emergency provision, proceedings were initiated for the acquisition of the land for establishing a Fire Station. Since those proceedings were stayed by the court for some-time, the proceedings were thereafter continued for the purpose of setting up staff quarters. In the meantime Fire Station was set up at some other place. The change in public purpose for acquiring the land was taken as a ground to challenge the acquisition. Before the court, the purpose of acquisition was stated as widening the road in connection with Asiad-82, Dealing with the changes in the purpose of acquisition. Their Lordships held that the emergency power invoked for acquiring the land for construction of Fire Station cannot be extended to the purpose of setting up staff quarters or widening the road in connection with Asiad-82. Therefore, Their Lordships quashed the proceedings According to me, that decision cannot apply to the facts before me. The very purpose for which the Municipality wanted the land to be acquired still continues and it is only for that purpose the Award has been passed. There is no change in the purpose of acquisition.

8. Setting up of shopping centre along with the bus stand can never be considered to be anything other than public purpose. Income that may accrue to the Municipality from the shopping centre can be made use of by the Municipality for discharging the statutory obligations cast on it under the Municipalities Act. That income will be utilised for public purpose. So the construction of shopping complex along with the extension of the bus stand is nothing but public purpose. In the instant case there was no change of public purpose in mid-stream. Extension of bus stand and construction of shopping complex was the public purpose for which the proceedings were initiated. The same public purpose is mentioned in the Award as well.

9. Section 3 of the Act provides that a notification shall be published in the Gazette or in two daily newspapers having wide circulation in the locality and that the Collector should cause public notice of the substance of such notification to be given at convenient places in the locality regarding the decision that the land is needed or is likely to be needed for a public purpose. Rule 3 of the Rules provides that immediately after the publication of the notification u/s. 3. the

Collector shall issue notice stating that the land is needed for public purpose. As per that notice all persons interested should be required to launch their statements in writing within 30 days of the notification u/s. 3 of the Act. According to counsel, notice under Rule 3 should be simultaneous with the notification u/s. 3 of the Act. If there is delay in issuing the notice under Rule-3, it is contended that, that delay is fatal In the instant case Section 3 notification was published on 26-7-1977. Notice under Rule 3 was issued to the petitioners only on 8-8-1977. Since there is a delay of 13 days from the date of notification, it is argued that the entire proceedings must be declared as invalid.

10. On getting notice under Rule 3 the petitioners filed their objections to the acquisition as required by law. They could file the same within 30 days of the notification. Their objections were properly considered by the Land Acquisition Officer. Section 6 notification was published only after disposing of the objections raised by the petitioners. Before Notification u/s. 6 dated 2-6-1978 was issued the petitioners had no case that they were not given sufficient time to file their objections to the notification u/s 3(1) of the Act. Till they approached this court in January, 1984, the petitioners had no case that their right to object to the acquisition was in any way interfered with on account of this delay. The word "immediately" in Rule-3 of the Rules is not to be taken as indicating that the notice under it should be simultaneously issued with the notification u/s. 3 of the Act. According to me, it only means that notice under Rule 3 should be issued without undue delay. In the counter affidavit it has been stated that the Gazette containing the notification u/s. 3 of the Act was received in the office of the 3rd respondent late and that immediately on receipt of that Gazette, notice under Rule 3 was issued. The petitioners got more than 13 days" time for filing objection"s and they filed the objections within the time. Their objections were properly considered. No prejudice whatsoever, was caused to the petitioners. So the delay caused in the issue of notice under Rule 3 can by no stretch of imagination be termed as fatal to the acquisition proceedings.

11. The learned Counsel appearing for the petitioners brought to my notice the decision reported in Rattan Singh and Another Vs. The State of Punjab and Others, and Satish Kapur and Another Vs. State of Haryana and Another, in support of the contention that the delay between the notification and the notice under Rule-3 is fatal to the acquisition proceedings. In the full Bench decision the notice was published on the 29th day after the publication of the notification u/s 4 of the Central Land Acquisition Act. Since the parties interested in the property had less than a day"s time to file their objections the Full Bench quashed the notification. This decision cannot be pressed into service for attacking the land acquisition proceedings in the instant case because the petitioners had sufficient time to object to the proposed acquisition. No prejudice had been caused to them on account of the delay of 13 days. Further that delay has been properly explained by the authorities. In the 2nd decision referred to above a learned Single Judge of the Punjab and Haryana High Court quashed the notification u/s 4 of the Central Land Acquisition Act on account of the delay of five days in

issuing the notice. With due respect to the learned Judge I find it difficult to agree with the above view. The aspect to be looked into in cases where there occurs delay in issuing notice under Rule-3 is whether the person interested in the land was given sufficient opportunity to put forward his objections in writing within the time allowed by law. If he was in-fact given such an opportunity and he has not been prejudiced in any view of the matter, the delay by itself cannot go to vitiate the Land Acquisition proceedings.

12. Notification u/s. 3 of the Act was issued on 26-7-1977. The Award was passed on 25-8-1982 There is a delay of nearly 5 years in passing the Award. This delay is again stated to be fatal to the proceedings. I find it difficult to accept this contention either. The Kerala Land acquisition Act did not prescribe any time limit for completing the proceedings initiated under it. The petitioners had no case that the proceedings were being delayed on account of extraneous considerations, at any time prior to the filing of this Original Petition. After the award they applied for reference to Civil Court u/s 20 of the Act. Therefore, it is not open to the petitioners to contend that the delay in passing the award should invalidate the entire proceedings.

13. From the evidence now before court, it is seen that a total extent of 82 1/5 cents are covered by the Award. All land except the portions owned by the petitioners have been taken possession of by the Municipality. The extent of the land in possession of the petitioners is 0.0294 hectares in Survey No 146/6 and 0.0809 plus 0.0208 hectares in Survey No. 145/3 and 146/3 (b) of Irinjalakuda village. These lands are at the entrance to the bus stand, without this land the scheme cannot be implemented. Any interference with the proceedings for the acquisition of these lands will go to defeat the entire purpose for which the lands were acquired. In view of what has been stated above, I find no merit in O.P. 621 of 1984. It is also dismissed.