
(2014) 09 KL CK 0194

In the High Court Of Kerala

Case No : W.P. (C) Nos. 4387 of 2008 and 18317 of 2010

Radhakrishnan, P. and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 02-09-2014

Acts Referred:

Land Acquisition Act, 1894 — Section 4(1), 5A, 6, 6(3)

Citation : (2015) 1 ILR 304

Hon'ble Judges : P.B. Suresh Kumar, J

Bench : Single Bench

Advocate : N.N. Sugunapalan, T. Krishnanunni, Senior Advocates, T.C. Suresh Menon and M. Harisharma, Advocates for the Appellant; P. Ravindran, P.G. Parameswara Panicker, Senior Advocates, V.G. Arun, T.R. Harikumar, C.S. Manilal, Government Pleader, D. Sreekumar, P. Gopal and K.N. Venugopala Panicker, Advocates for the Respondent

Judgement

P.B. Suresh Kumar, J.—Ext. P-10 notification issued under Section 4(1) of the Land Acquisition Act, 1894 (the Act), for acquisition of land for the purpose of the Travancore Devaswom Board (the Board) and the proceedings initiated consequent thereto, are under challenge in W.P. (C) No. 4387 of 2008. Petitioners therein are some of the owners of the land under acquisition. W.P. (C) No. 18317 of 2010 is by the remaining owners of the land under acquisition, claiming the market value of the land.

2. The facts relevant for decision, as revealed from the pleadings in the Writ Petitions are the following: On 17-7-2000, the Board, having felt the need for additional land for the purposes of Thuravoor Temple under its administration ("the temple"), decided to initiate steps for acquisition of 117 cents of land, lying contiguous to the temple. As it was a decision involving substantial expenditure, the Board has also decided to move this Court for permission to initiate action for the said purpose. On 16-8-2000, this Court permitted the Board to initiate steps for acquisition of the proposed land. Though the Board moved the Government thereafter, the Government did not grant sanction to initiate proceedings under

the Act. Ext. P-1 is the order issued by the Government in this connection. Ext. P-1 decision was challenged by the fifth respondent, an association of the devotees the temple before this Court in DBA No. 1 of 2001. During the pendency of the said matter, as ordered by the Chief Commissioner of the Board, the Devaswom Commissioner and the Secretary of the Board, inspected the temple and its premises to evaluate once again the need for acquisition and submitted a report to the Board, recommending initiation of proceedings under the Act, for acquisition of the proposed land. Ext. P-8 is the report submitted to the Board by the Devaswom Commissioner. On the basis of the said report, the Board has again taken a decision to initiate steps for acquisition of the land referred to above. Ext. P-4 is the decision taken by the Board based on Ext. P-8 report. Later, by Ext. P-5 order, this Court quashed Ext. P-1 order and directed the Government to reconsider the matter afresh, holding that the reasons stated by the Government in Ext. P-1 order for rejecting the proposal for acquisition of land are unsustainable. While passing Ext. P-5 order, this Court has taken note of Ext. P-4 decision taken by the Board also. Though Ext. P-5 was challenged before the Supreme Court in SLP (Civil) No. 1255 of 2008 by the owners of the land, there was no interim order in the matter. Consequently, in compliance with the directions contained in Ext. P-5 order, the Government as per Ext. P-9 order, accorded sanction for acquisition of the proposed land. Ext. P-10 notification, which is impugned in W.P. (C) No. 4387 of 2008 was issued thereafter, on 14-1-2008, pursuant to Ext. P-9 order of the Government.

3. After the institution of the writ petition, SLP (Civil) No. 1255 of 2008 referred to above was dismissed as withdrawn. Thereafter, the enquiry provided for under Section 5A of the Act was conducted and the declaration under Section 6 of the Act was published. The value of the land was deposited thereafter by the Board, with the authorities under the Act and on deposit of the land value, awards were passed under the Act in favour of the owners of the land. After passing the awards, a part of the land was taken possession by the authorities under the Act and entrusted to the Board for the purposes of the temple. The petitioners in W.P. (C) No. 4387 of 2008, who are the owners of the remaining property under acquisition, were not dispossessed in view of the interim order passed in this Writ Petition.

4. The case of the petitioners in W.P. (C) No. 4387 of 2008 is that the proceedings under the Act are initiated by the Board, without satisfying the need of the land for public purpose, at the instance of the President of the fifth respondent association and therefore, the proceedings are vitiated by malice. It is also their case that an extent of 104 cents of land is lying contiguous to the temple under its ownership and the said land can be made use of for the purpose of the temple, if at all additional land is required and therefore, the proceedings initiated at the instance of the Board for acquisition of additional land is arbitrary and unreasonable. It is the further case of the petitioners that on 29-3-2006, the Board has decided that the financial burden involved in the acquisition cannot be undertaken by the Board and there was no reason for the Board to deviate from

the said stand.

5. The Board has filed a counter-affidavit, stating that the land under acquisition is needed for erecting a few structures in the temple premises, in accordance with the "Thanthric" principles and the said structures are to be constructed in the temple premises to maintain the sanctity and purity of the temple. It is also stated in the counter-affidavit that as per the custom, the priest of the temple, who is known as "Purappada Santhi" has to live in the temple premises itself during his tenure and one of the structures proposed in the land under acquisition, is a structure for the residence of the priest and the construction of the said structure is an absolute necessity to maintain the sanctity of the temple. The opinion obtained by the Board from Kanipayyoor Krishnan Nampoothiripadu, an expert in the field of temple construction in the State, as to the requirement of additional land for the construction of the structures required for the temple in accordance with the "Thanthric" principles, is produced along with the counter-affidavit of the Board.

6. A counter-affidavit has been filed by the State, narrating the various actions taken under the Act, pursuant to Ext. P-10 notification.

7. A counter-affidavit has been filed by the fifth respondent reiterating the need of the temple for the land under acquisition. It is also stated in the counter-affidavit that the 104 cents of land referred to by the petitioners in W.P. (C) No. 4387 of 2008 is a land purchased by the fifth respondent for the future developments of the temple and the said land is located outside the temple compound and the same cannot, therefore, be used for the construction of the structures required for the temple.

8. I have heard senior counsel Sri T. Krishnan Unni, for the petitioners in the Writ Petitions, Sri P. Gopal for the Board, the Special Government Pleader Sri C.S. Manilal for the State and senior counsel Sri P. Ravindran for the fifth respondent in W.P. (C) No. 4387 of 2008.

9. The learned senior counsel for the petitioners contended that the temple is in possession of land sufficient for its development and therefore, initiation of proceedings for acquisition of private land was unwarranted. According to him, the Board itself has decided twice to drop the actions initiated for acquisition of the subject land and Ext. P-4 decision was taken thereafter, without disclosing the reasons for deviating from the stand already taken in the matter. It was also contended by the counsel that Ext. P-4 decision was taken at the instance of the fifth respondent. The absence of the President of the Board in the meeting in which Ext. P-4 decision was taken was also highlighted by the learned senior counsel to buttress his argument that Ext. P-4 was a decision vitiated by malice. The learned senior counsel for the petitioners has relied on Ext. P-11 letter written by one Parameswaran Narayanan Namboothirippadu and contended further that the opinion obtained by the Board as to the requirement of the land under acquisition for the development of the temple is not a correct opinion and

the land under acquisition is not necessary to construct the proposed structures in accordance with the "Thanthric" principles. He has further relied on the decision of the Apex Court in *Jnanedaya Yogam and Another Vs. K.K. Pankajakshy and Others*, and argued that the land cannot be acquired under the Act, based on expert opinions as done in the instant case.

10. The learned counsel for the Board submitted that temples in Kerala are established in accordance with the "Thanthric" principles and the opinion obtained by the Board in connection with the requirements of additional structures in the temple premises was in accordance with "Thantra Samuccaya", the reference text for the temple constructions in the State. According to him, the land required for the construction of the structures in accordance with the "Thanthric" principles alone are acquired. He has also submitted that the properties owned by the temple as referred to by the petitioners are not lying contiguous to the temple and the same cannot, therefore, be used for the purpose of the temple. He has further pointed out that the amount payable by the Board towards market value of the land under acquisition has already been deposited with the land acquisition authorities, during April, 2010 itself and the Board is unable to obtain the land, in view of the interim order passed in W.P. (C) No. 4387 of 2008, against dispossession.

11. The learned Special Government Pleader pointed out that pursuant to Ext. P-10 notification, the enquiry contemplated under Section 5A of the Act was conducted, giving full and fair opportunity to the owners of the land to raise objections against the acquisition and thereafter, the declaration provided for under Section 6 of the Act was published. According to him, in view of Section 6(3) of the Act, disputes cannot be raised now as to the genuineness of the public purpose.

12. The learned senior counsel for the fifth respondent argued that the issue whether the land under acquisition is required for the purposes of the temple has been concluded in various proceedings of this Court in which the petitioners are parties and therefore, they cannot re-agitate the said issue again in these Writ Petitions. He has relied on Ext. R-5(k) order in W.P. (C) No. 4387 of 2008 passed by this Court, in exercise of the jurisdiction under the Travancore Cochin Religious Institutions Act.

13. Petitioners are not challenging the proceedings initiated under the Act on the ground that there is infraction of any of the provisions of the Act. On the other hand, they challenge the proceedings on the grounds that the same are arbitrary, unreasonable and malicious. It is settled that when the State Government initiate proceedings under the Act for acquisition of land for a public purpose, the exercise of power cannot be invalidated on grounds of mala fides or colourable exercise of power, so long as the public purpose exists and it is primarily for the State Government to decide whether there exists a public purpose or not and it is not for this Court to evaluate the evidence and come to its conclusion as to whether there exists a public purpose or not, unless it comes to the conclusion

that it is a mala fide or colourable exercise of power, which serves no public purpose, but serves only a private purpose. [See *Bajirao T. Kote (Dead) by Lrs. and Another Vs. State of Maharashtra and Others*, . In the light of the aforesaid principles, the short question arises for consideration is whether the acquisition in question is intended to serve a public purpose or not.

14. The pleadings of the petitioners in these Writ Petitions do not indicate that the petitioners maintain a stand that the proceedings are not intended to serve any public purpose, but intended only to serve a private purpose or purposes. In *A. Neelakanda Iyer v. State of Travancore-Cochin and others* A.I.R. 1955 TRA-CO. 46, on identical facts, the Travancore Cochin High Court held that a need of the instant nature of the Devaswom is certainly a public purpose for the purpose of initiating action under the Act. The relevant passage of the said judgment reads thus:

"The further question for consideration is whether the acquisition of the property by Government under the provisions of the Cochin Land Acquisition Act was illegal. The petitioner's case is that the property was not acquired for a public purpose. The acquisition was stated to be for "Devaswom purposes" and the counter-affidavit of the second respondent shows what exactly was the purpose for which the property was acquired. As stated already, the Nambudiri of the 3rd respondent--mana is the high priest of Vadakkumnathan temple. He is to live a life of celibacy and is not even permitted to go out of the Sankedam. He is known as the "purappeda santhi". The property acquired formed part of the purayidom which was being occupied by the "purappeda santhi" from time immemorial. For the proper conduct of services in the Devaswom temple it was thought necessary to secure for the high priest of the temple undisturbed possession of the property which he used to enjoy from time immemorial. It was, therefore, a purpose in which the Devaswom was interested and in this sense, was a public purpose."

It cannot, therefore, be contended that the purpose for which the proceedings are initiated, is not a public purpose. Then the question is whether that purpose can be served otherwise than by acquisition of the land in question.

15. It is recited in the counter-affidavits filed by Board and the fifth respondent that the 104 cents of land owned by the temple as referred to in the Writ Petitions, is lying outside the temple compound. The averments in the said counter-affidavits pertaining to the location of the said land are not seen controverted by the petitioners. It is beyond dispute that the temples in Kerala are constructed in accordance with "Thanthric" principles. Ext. R-2(j) is the opinion obtained by the Board in connection with the construction of the structures proposed in the temple compound. Ext. R-2(j) is seen issued in accordance with "Thantra Samuccaya", the reference text for the temple constructions in Kerala. The sites where the proposed structures are permissible in accordance with the "Thanthric" principles are shown in the plan appended to Ext. R-2(j) opinion. The said plan indicates beyond doubt the requirement of additional land for the construction of the structures proposed in the temple. It is

evident from the counter-affidavit filed by the Board that the proceedings are initiated to acquire only the land indicated as required in the plan appended to Ext. R-2(j), even though the said plan was obtained after the initial decision to acquire land, by way of satisfying the genuineness of the need of the temple. The case of the petitioners is that the opinion obtained by the Board as referred to above is not a correct one and that there is no prohibition in erecting the proposed structures in the available land in the compound of the temple. They rely on Ext. P-11 opinion given by another expert, in support of the said contention. In Ext. P-11 itself, it is stated that the same is not a conclusive opinion and for the purpose of giving a conclusive opinion on the subject, additional information are required. It is indicated by the Apex Court in *Bajirao T. Kote (dead) by Lrs. and another v. State of Maharashtra and others* (supra), that the correctness of the subjective satisfaction of the Government as to the public purpose cannot be examined by this Court. In this context, it is apposite to refer to the decision of the Apex Court in *Ramji Veerji Patel and Others Vs. Revenue Divisional Officer and Others*, . It is held in the said case that even in a case where the land proposed to be acquired and the alternative land suggested by the owners interested are equally suitable for the purpose for which the land is being acquired, the satisfaction of the Government, if not actuated with ulterior motive, must get primacy and that in judicial review, it is not open to the Court to examine the aspect of suitability as a court of appeal and substitute its opinion. As such, there is no substance in the argument that the purpose of the temple can be fructified by making use of the land available in the temple compound.

16. Coming to the argument of the learned senior counsel for the petitioners as to the decisions taken by the Board, it is relevant to point out that as early as on 17-7-2000 itself, the Board, having felt the need for additional land for the purposes of the temple, had decided to initiate steps for acquisition of the land in question. Ext. P-2 decision of the Board relied on by the learned counsel does not say that the land is not required for the purpose of the temple. Instead, the said decision was only to the effect that in view of the financial implications involved, the steps need not be taken for the present. Likewise, the decision taken by the Board on 29-3-2006 also indicates that the Board has decided to hold the acquisition proceedings in view of the financial implications involved. Ext. P-4 is the subsequent decision taken by the Board to initiate steps for acquisition of the land in question. Ext. P-4 decision was taken based on Ext. P-8 report of the Devaswom Commissioner of the Board. Probably, it is in view of the inconsistent decisions taken in the matter by the Board, the matter was again examined by the Board after conducting an enquiry through the Devaswom Commissioner and the Secretary of the Board. The attack on Ext. P-4 decision is on the ground that the then President of the Board was not a party to the said decision. The learned senior counsel for the petitioners does not contend that Ext. P-4 is invalid on account of the absence of the President of the Board in the meeting. The contention of the counsel is only that the absence of the President of the Board from the meeting probalises the case of malice. I am unable to agree with the

inference made by the learned senior counsel. In view of the provisions contained in Sections 13(3) and 13(4) of the Travancore Cochin Hindu Religious Institutions Act, Ext. P-4 cannot be held to be an invalid decision on any ground whatsoever.

17. In *Jnanedaya Yogam and another v. K.K. Pankajakshy and others* (supra), the Apex Court observed that the decision taken to acquire a land for moving the procession of a temple solely depending upon the astrologer's information, cannot be held to be a public need. A close reading of the said decision would indicate that the same was rendered essentially on the facts of that case. The said decision may not have any application to the facts of the present case in so far as it is not disputed that the temples in Kerala are constructed only in accordance with "Thanthric" principles and the requirement of the land in question has been arrived at in accordance with the said principles. W.P. (C) No. 4387 of 2008, in the circumstances, is liable to be dismissed.

18. As pointed out earlier, W.P. (C) No. 18317 of 2010 is filed by the remaining owners of the land under acquisition, seeking directions to the Board to fix the land value in accordance with the present market value. The petitioners in this case do not challenge the proceedings under the Act. They also do not allege any infraction of the provisions of the Act in the matter of acquiring the land owned by them. In so far as the proceedings initiated under the Act are not under challenge, the petitioners can claim compensation only in accordance with the provisions of the Act. There is, therefore, no merit in the contentions raised by the petitioners. W.P. (C) No. 18317 of 2010 is also, in the circumstances, liable to be dismissed.

In the result, the Writ Petitions are dismissed, preserving the rights of the petitioners under the Land Acquisition Act, 1894.

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