

(1966) 11 KL CK 0011
In the High Court Of Kerala
Case No : O.P. No. 2900 of 1966

Raman

APPELLANT

Vs

The District Collector, Ernakulam and Others

RESPONDENT

Date of Decision : 02-11-1966

Acts Referred:

Land Acquisition Act, 1894 — Section 19(4), 3, 4, 6, 9

Citation : (1967) KLJ 175

Hon'ble Judges : V.P. Gopalan Nambiyar, J

Bench : Single Bench

Advocate : C.K. Viswanatha Iyer and M.A. Thrivikrama Pai, for the Appellant; S. Narayaman Potti For 3rd Respondent, for the Respondent

Judgement

V.P. Gopalan Nambiyar, J.—This writ petition is to quash the land acquisition proceedings in L.A. No. 15 of 1965 of the 1st respondent, relating to acquisition of lands for the formation of a 50 feet-wide road, connecting the St. John Pattom and Rampart Road. The Section 3 notification under the Land Acquisition Act 1894 (Central Act 1 of 1894) was originally issued on 23.3.1962. Ex. P. 2 is a copy thereof, and it is seen from it that the urgency provisions of the Act were invoked the same day, and enquiry into the objections was dispensed with. An Erratum notification dated 27th March 1963 was issued deleting items from the first notification and adding certain others thereto. At that stage O. P No. 1102 of 1963 was filed in this Court by one of the persons affected challenging the land acquisition proceedings. By order dated 10th July 1964, the writ petition was dismissed, as infructuous on representation made by the Government Pleader on behalf of the State, that the Government proposes to issue a fresh notification. In the counter-affidavit of the 3rd respondent, it is stated that the fresh notification was issued on legal advice that it might not be proper correct a notification under the Land Acquisition Act by an Erratum notification. A fresh notification dated 26-10-1965 followed under the provisions of the Kerala Land Acquisition Act 1961 (Act 21 of 1962). Ex. P.4 is a copy thereof. The same was published in the gazette on 14.12.1965. Ex. P.5 is a copy of the declaration u/s 6

of the Act and it is seen from the same that the urgency provisions had been invoked by the Collector by his proceedings (dated 8.1.1966, and enquiry into the objections had been dispensed with. Two ground were relied on to quash the land acquisition proceedings First that the invocation of the urgency provision was not justified, and second that the original notifications under the Central Act 1 of 1894, had not lapsed, as there was no withdrawal from the land acquisition proceedings and the fresh notification issued under the kerala Act were not valid and proper.

2. In O.P. 935 of 1966 filed by another person affected to quash these land acquisition proceedings, I held that the principle of the decision in Kunhammad Koyi v The Tahsildar and Land Acquisition Officer, Tellicherry(1965 K.L. J.744:1965 KLT 1021) was not attracted to this case, and that the invocation of the urgency provisions was valid and proper, I stated my reasons thus:

In the present case, the dates stand thus : The section 3 notification was dated 26.10.1965 and published on 14.12.1965; the urgency provisions were invoked by the Collector on 8.1.1966; the petitioner filed his objections on 12-1-1966; he was intimated of the Collector's action on 20.1.1966. The Governmental delay between the issue and the publication of the notification u/s 3 has been explained in paragraph 5 of the counter-affidavit of the 3rd respondent. After the publication of the notification, action has been prompt. The notice u/s 9, could not be issued in view of the order of interim stay issued this Court. The declaration u/s 6 was published in the gazette dated 17.5.1966, (see paragraph 8 of the counter-affidavit of the 3rd respondent).

Writ Appeal No. 160 of 1966 preferred against the Judgment was dismissed in admission. In O.P. No. 2047 of 1966 Raman Nayar J. also took the view that the invocation of the urgency provision to the acquisition in question was unassailable. I see no ground to take a different, view in the present case.

3. But the petitioner's counsel contended relying on the decision of Govindan Nair J. in Seshagiri. Mallet v Special Tahsildar for Land Acquisition (1964 K.L. J. 126 : 1964 K.L. T. 54) that the urgency justifying resort to section 19 (4) of the Act must be such as cannot brook a delay of more than 30 days and that in any event, the urgency for the acquisition must be judged from the belate nature of its progress since the date of the first notification under the Central Act 1 of 1894, i.e., 23-3-1962, and not from the date of the fresh notification, under the Kerala Act, namely 26-10-1965. I cannot, with respect, agree with the proposition that a delay of more than thirty days in proceeding with the land acquisition must necessarily spell a negation of urgency for the acquisition. Delay after the issuance of the notifications under the Kerala Act 21 of 1962, was considered and found against by me in O.P. No. 935 of 1966. Besides, it seems to me that if the first notifications were to be the terminus quo with respect to which the foundation for a urgency must be tested, the petitioner in the present case, must fail the ground of delay and laches. These were issued on 23.3.1962 and 24.4.1963 and this writ petition has been filed on 8-8-1966. Besides, I am

not satisfied that the urgency is to be tested from the date of the original notification. After the judgment in O.P. No 1102 of 1963, the Government proceeded on a clean slate to issue the fresh notification, (Ex. P-4).

4. In support of the second contention, the petitioner's counsel stressed that the original proceedings started under the Central Act 1 of 1894 were not withdrawn by the issuance of a notification as required by Rule 5 of the Madras Rules under the Land Acquisition Act, applicable to the area in question. The said rule reads:

5. Further procedure on Government's decision for or against the acquisition-On a consideration of the objections and the Collector's report thereon, if Government decide that the land should be acquired, the declaration required u/s 6 of the Act should be submitted by the Collector of the District or Collectors of the Districts concerned to Government for approval and publication in the official Gazette. If, on the other hand, Government decide to give up the acquisition, a notification cancelling the notification issued u/s 4 shall be published by them.

Reliance was placed on the decision in Khan Bhahadur Chowkaran Keloth Mammad Koyi Vs. Province of Madras and Another, for the position that Rule 5 extracted earlier made it compulsory for the Government to notify a withdrawal if it decides on this course. In the present case, the absence of a notification as required By Rule 5 was not expressly pleaded by the petitioner.

The only averment was that subsequent to Ex. P. 3 notification, there was no withdrawal of the first one and as such the second notification is invalid. That apart. Rule 5 seems to me to contemplate only a voluntary withdrawal after consideration of the objections preferred. On its terms, it has no application where enquiry into objections had been dispensed with. In Mammad Keyi's case, objections had been preferred to the acquisition, and it was held that so long as there was no notification cancelling the section 4 notification, a withdrawal from the land acquisition cannot be inferred, and the Government was justified in proceeding with the acquisition notwithstanding the change of mind manifested by it by an intermediate Government order. For these reasons, I am unable to uphold the petitioner's contention based on Rule 5.