**(1989) 07 KL CK 0057**

**In the High Court Of Kerala**

**Case No :** O.P. No. 704 of 1982-G

Ramapriya Hotels (P) Ltd. APPELLANT

Vs

State of Kerala and Others RESPONDENT

**Date of Decision :** 26-07-1989

**Acts Referred:**

Constitution of India, 1950 — Article 14
Kerala Land Acquisition (Amendment) Act, 1980 — Section 16
Kerala Land Acquisition Act, 1961 — Section 11(1), 16, 16(1), 2(2), 20
Transfer of Property Act, 1882 — Section 73(2)

**Citation :** (1989) 2 KLJ 240

**Hon'ble Judges :** V.S. Malimath, C.J;V. Bhaskaran Nambiar, J

**Bench :** Division Bench

**Advocate :** Esawar and Mani, for the Appellant; V. Jayakumar, Government Pleader, for the Respondent

**Final Decision :** Allowed

## Judgement

Malimath, C.J.—The Petitioner in this case was the owner of an extent of 2.41.79 hectares of land comprised in Sy. No. 1759/1 and 1127/2 of Madathuvilakem Village, Trivandrum Taluk. The 4th Respondent, the Kerala State Housing Board, was interested in acquiring the said land for its purposes. It appears that the District Collector, Trivandrum, negotiated with the Petitioner which resulted in execution of an agreement, Ext. P-1, dated 13th May 1977 between the Petitioner on the one hand and the District Collector, Trivandrum on the other. The Petitioner under the said agreement has declared that he is the absolute owner of the property and that he is executing the agreement as the person having full ownership over the land and that he has no interest hostile to any one else. It is stated in the agreement that the property is proposed to be acquired for a public purpose by the Government of Kerala for the purpose of housing accommodation scheme of the Kerala State Housing Board. The Petitioner has agreed to receive at the rate of Rs. 1,100 per cent including all improvements situated in the land as the fair and proper price for the property. The agreement further states that u/s 16 of the Kerala Land Acquisition Act, 1961, herein after referred to as the Act, the Collector is empowered to make an award if all persons interested agreed as to the amount of compensation to be allowed. There is a further stipulation that the Petitioner will accept without protest on their behalf value/compensation at Rs. 1,100 per cent inclusive of solatium and the value for all structures and improvements on the property to be acquired. There is also a stipulation that the Collector shall make an award fixing the compensation for the property at the rate of Rs. 1,100 per cent including solatium and value for all structures and improvements in and upon the said land. This was followed by a preliminary notification u/s 3 of the Kerala Land Acquisition Act issued on 12th June 1979. A declaration u/s 6 of the Act was made, whereupon the Collector took steps to pass the award. He has passed the award on 24th August 1981 as per Ext. P-6. The land value has been fixed at the rate of Rs. 1,100 per cent in accordance ''with the agreement, Ext. P-1. Interest at the rate of 4 per cent has been awarded from 1st February 1978 to 25th August 1981. The total amount awarded under the said award is Rs. 7,60,259-50.

2. The Petitioner made a request as per Ext. P-7, dated 19th September 1981 u/s 20 of the Act seeking a reference to the Civil Court for enhancement of the compensation. The Collector not having acceded to that request the Petitioner has approached this Court. The Petitioner has prayed for striking down the amendment to Section 16 of the Act made by the Kerala Land Acquisition (Amendment) Act, 1980 with retrospective effect from 1st May 1977. He has further prayed for the quashing of the award, Ext. P-6, and for the issue of a writ in the nature of mandamus directing the District Collector, the 2nd Respondent, to refer the application of the Petitioner, Ext. P-7, made u/s 20 of the Act to the Civil Court for the purpose of enhancement of the compensation.

3. After a final declaration is made u/s 6 of the Act, the Collector is required to take steps for determining the compensation payable in respect of the land acquired. Section 9 requires notice being issued to persons interested. Section 11(1) contemplates enquiry and passing of the award by the Collector in regard to the true area of the land acquired, the compensation which in his opinion shall be allowed for the land and the apportionment of the said compensation among all the persons known or said to be interested in the land. Though this is the normal procedure to be followed in the matter of determination of the compensation in respect of the land acquired, an alternative method of awarding compensation in accordance with the agreement of parties has been provided u/s 16 of the Act.

4. Section 16 of the Act as amended and which was in force on the date on which the Collector made the award reads as follows:

16(1) If the Collector and all the persons interested agree, whether before or after the date of publication of the notification under Sub-section (1) of Section 3, as to the amount of compensation to be allowed, the Collector shall make an award under his hand for the same:

 

Provided that an agrcomontt executed before the dale of publication of the notification under Sub-section (1) of Section 3 shall not be binding on the persons interested after the expiry of four years from such date.

(2) Such award shall be filed in the Collector''s office and shall, subject to the proviso to Sub-section (1), be conclusive evidence, as between the Government and all persons interested, of the value of the land and the amount of compensation allowed for the same.

The main condition to be satisfied for the purpose of making an award as can be seen from Section 16, is that there should be an agreement between the Collector arid all persons interested in regard to the amount of compensation to be paid for the land acquired. Agreement between the Collector and all the persons interested in regard to the amount of compensation to be awarded is the condition precedent for making an award u/s 16 of the Act. As the agreement contemplated is with all the persons interested, it is necessary to ascertain the meaning of the expression''persons interested''. The said expression has been defined in Section 2(2) of the Act to include "all persons claiming or entitled to claim an interest in compensation payable on account of the acquisition of land under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land". It is clear from this provision that every person who claims or is entitled to claim an interest in compensation is a person interested. Therefore an agreement can be the foundation for an award under Sub-section (1) of Section 16 only when it is entered into between the Collecter on the one hand and all persons interested as defined in Section 2(2) of the Act.

5. The principal submission of Sri Subramoni the learned Counsel for the Petitioner in this case is that though the agreement, Ext. P-1, has been entered into between himself as the full owner of the land acquired and the Collector, it is not an agreement with all persons interested. It was pointed out that the land was mortgaged to the Indian Bank, Trivandrum Branch, by deposit of title deeds. On the basis of the said equitable mortgage, the Indian Bank instituted O.S. No. 127 of 1977 before the Principal Sub Court, Trivandrum and obtained a decree. These facts are not disputed. The Indian Bank had also made an application seeking a reference for enhancement of compensation as well as apportionment. Though the application for enhancement made u/s 20 was rejected; the Indian Bank did not pursue the matter further. The Indian Bank, as the mortgagee, was entitled to claim the amount due to it from the mortgagor out of the compensation amount payable to him. This is clear from Section 73(2) of the Transfer of Property Act which reads:

(2) Where the mortgaged property or any part thereof or any interest therein is acquired under the Land Acquisition Act, 1894 (1 of 1894) or any other enactment for the time being in force providing for the compulsory acquisition of immovable property, the mortgagee shall be entitled to claim payment of the mortgage money, in whole or in part, out of the amount due to the mortgagor as

 

compensation.

The Indian Bank, as a mortgagee, was thus entitled to claim an interest in compensation payable to the mortgagor. As the Indian Bank had thus an interest in the compensation payable to the Petitioner in respect of the land acquired, it was a person interested as defined u/s 2(2) of the Act. The agreement, Ext. P-1, as already stated has been entered into between the Collector on the one hand and the Petitioner on the other. The Indian Bank, the mortgagee, is admittedly not a party to the said agreement. As the Indian Bank was one of the persons interested in the compensation payable to the Petitioner, it is clear that the agreement has not been entered into with all the persons interested as required by Section 16(1) of the Act. As all persons interested are not parties to the agreement, Ext. P-1, the Collector could not proceed to make the award on the basis of the said agreement, Ext. P-1.

6. It was however contended by the learned Counsel for the Respondents that an award could be made against the Petitioner at least as he is a party to the agreement. The object of Section 16 is to provide an alternate machanism for the purpose of making an award with a view to achieve finality and to avoid further litigation, based on the agreement with all the persons interested in the compensation. As the agreement in this case is not with all the persons interested in the compensation, no award can be made u/s 16 only in regard to the Petitioner. It was next contended that the Petitioner who is a party to the agreement is estopped from challenging the award based on the agreement. There is no estoppel against law. As the making of an award on the basis of an agreement which is not entered into with all the persons interested in the compensation is prohibited by Section 16(1) of the Actg the question of estoppel does not arise. However, we find it unnecessary to quash the award in this case, as the Petitioner has made an application seeking a reference u/s 20 of the Act. The rights of the Petitioner will be adequately safeguarded if we direct a reference being made to the civil Court. This would also obviate further protraction of the litigation. Having regard to the circumstances of the case we consider it more appropriate to direct the Collector to refer the dispute regarding the enhancement of compensation in respect of which the Petitioner has made an application within time as per Ext. P-7.

7. Before concluding we would like to advert to Anr. contention of Sri Subramoni based on the proviso to Sub-section (1) of Section 16, which reads:

Provided that an agreement executed before the date of publication of the notification under Sub-section (1) of Section 3 shall not be binding on the persons interested after the expiry of four years from such date.

The agreement lapses after the expiry of four years from the date described as ''such date''. It is submitted that the agreement in this case having been executed on 13th May 1977 lapsed after four years from that date, i.e., after 13th May 1981. The award in this case having been made on 24th August 1981 it is submitted that the same is illegal and void, it having been made on the basis of an agreement which had statutorily lapsed. It was however contended by the learned High Court Government Pleader that the period of four years prescribed by the proviso will commence from the date of the preliminary notification issued under Sub-section (1) of Section 3 and not from the date of the agreement. It was submitted that the expression ''such date'' occurring at the end of the proviso refers to the date of publication of the preliminary notification and not the agreement. If the contention of the High Court Government Pleader is accepted it would mean that the agreement could be made the basis of an award under Sub-section (1) of Section 16 at any time within four years after the date of publication of the preliminary notification under Sub-section (1) of Section 3. There is no statutory period prescribed under the Act for making and publishing the preliminary notification. Sub-section (1) of Section 16 contemplates an agreement being entered into either before or after the publication of the notification under Sub-section (1) of Section 3. If the expression ''such date'' is not understood as having the reference to the date of the agreement it would result in manifestly unjust results enabling the Collector to publish the notification under Sub-section (1) of Section 3 at any time after the agreement and then make that as the basis of the award. If that is so, a preliminary notification u/s 3(1) could be published, say twenty years after the agreement, in which event he can make an award within four years after the notification awarding compensation at the rate agreed upon more than two decades before. The legislature could not have intended such manifestly unreasonable consequences. The legislature would normally fix the date or provide for a date which can be ascertained with reasonable certainty. It is not reasonable to understand ''such date'' to depend upon the unilateral Will of one of the parties, thus conferring unfair advantage to the Collector by delaying the publication of the preliminary notification. The object of entering into an agreement is to speed up the process of awarding compensation. The making of the award should not be unduly delayed. The interpretation put forward by the Government Pleader would result in conferment of arbitrary power on the Collector to deny just compensation and would therefore violate Article 14 of the constitution. When two interpretations are possible, one which renders the statutory provision void as offending the fundamental rights and the other sustaining the statutory provision, it is well settled that that interpretation which does not invalidate the statutory provision should be preferred. Though the statement of objects and reasons supports the stand taken by the Government Pleader, it is not conclusive in regard to the interpretation of the expression in question. As such an interpretation would render the statutory provision void as offending Article 14 of the Constitution, we have no hesitation in, holding that the expression ''such date'' in the proviso to Sub-section (1) of Section 16 of the Act means the date of the agreement and not the date of the publication of the notification u/s 3(1). We have therefore no hesitation in taking the view that the agreement, Ext. P-1, lapsed after 13th May 1981 and that therefore the Collector could not have made the award on 24th August 1981 u/s 16 of the Act.

 

For the reasons stated above, we allow this Writ Petition and issue a writ in the nature of mandamus directing the District Collector, Trivandrum, the 2nd Respondent, to refer the application of the Petitioner for enhancement of compensation, Ext. P-7, to the civil Court immediately. It is made clear that the civil Court shall not be bound by the terms of the agreement Ext. P-1, in the matter of determining the compensation and that the 4th Respondent, the Kerala State Housing Board, may participate in the proceedings before the civil Court as it is vitally interested m the matter of determination of the compensation. No costs.

 