

(2015) 07 KL CK 0052

In the High Court Of Kerala

Case No : Writ Petition (C). No. 1673 of 2015 (H)

Raveendran and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 06-07-2015

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 11A, 17, 4(1), 5A
Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Section 24(1)(a)

Citation : (2015) 3 KHC 749 : (2015) 3 KLJ 330 : (2015) 3 KLT 210

Hon'ble Judges : V. Chitambaresh, J

Bench : Single Bench

Advocate : Kaleeswaram Raj, for the Appellant

Final Decision : Dismissed

Judgement

V. Chitambaresh, J.—Proceedings have been initiated under the Land Acquisition Act, 1894 ("the Act" for short) for widening the Malaparamba - Vellimadukunnu road forming part of National Highway 766. The same falls under the Kozhikode City Road Improvement Project intended for widening the roads in order to ease traffic congestion in and around the Kozhikode City. The petitioners are owners of land on the side of the National Highway 766 and challenge the acquisition mainly on the ground of infraction of the time limit under the Act. The petitioners contend that the declaration under Section 6 was not made within one year from the date of notification under Section 4(1) of the Act. It is the further case of the petitioners that the Award under Section 11 of the Act was not passed within two years from the date of declaration under Section 6. The petitioners also point out that there is no necessity for acquisition since a parallel road (Kozhikode - Kunnamangalam) is nearing completion.

2. I heard Mr. Kaleeswaram Raj, Advocate on behalf of the petitioners, Mr. Gikku Jacob, Government Pleader on behalf of the State, Mr. B.S. Swathy Kumar, Advocate on behalf of the additional respondents and Mr. C.S. Dias, Advocate as

Amicus Curiae.

3. The Government Pleader made available the relevant files which reflect that Section 4(1) notification was published lastly in the site and village office on 26.05.2012. The files also reveal that the Commissioner for Land Revenue (who was duly authorised) had signed the Section 6 declaration on 20.04.2013 and 13.5.2013. A period of one year has not elapsed between Section 4(1) notification and Section 6 declaration in order to invalidate the entire land acquisition proceedings. It is not the requirement of law that Section 6 declaration should be published within one year of Section 4(1) notification as is attempted to be projected. It would suffice if the Officer authorised affixes his signature in the Section 6 declaration within the time limit of one year from Section 4(1) notification.

4. The Supreme Court in *Urban Improvement Trust, Udaipur Vs. Bheru Lal and Others*, AIR 2002 SC 3309 : (2003) 95 CLT 385 : (2002) 7 JT 310 : (2002) 6 SCALE 558 : (2002) 7 SCC 712 : (2002) 2 SCR 512 Supp : (2002) 2 UJ 1433 has in this regard observed as follows:-

"14. As against this, Section 6(1) provides that if the appropriate Government is satisfied that any particular land is needed for a public purpose or for a company, a declaration is to be made to that effect under the signature of the Secretary of such Government or of some officer duly authorised to certify its order. Further, such declaration is to be made within a period of one year from the date of publication of the notification under Section 4(1) of the Act. Hence, Section 6(1) does not require that such declaration could not be published in the official gazette after expiry of one year from the date of publication of the notification under Section 4(1). Time limit of one year is prescribed to a declaration to be made that land is needed for a public purpose under the signature of a Secretary or authorised officer to such Government."

(emphasis supplied)

The Supreme Court has also held in AIR 2002 SC 187 that a publication of Section 6 declaration is merely a ministerial Act which can take place at a later stage. Therefore the contention of the petitioners that the land acquisition proceedings have to be scrapped for non-adherence to the time limit under the Act has to fall to the ground.

5. The declaration under Section 6 was on 20.4.2013 and 13.5.2013 in respect of two portions of the land and there was time enough for an Award to be passed under Section 11 of the Act. The proceedings for the acquisition of the land would lapse under Section 11A of the Act only if no award is made within the period of two years from Section 6 declaration. But then the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ("the New Act" for short) came into force with effect from 1.1.2014. No Award could have been passed under Section 11 of the Act after 1.1.2014 when the provisions of the New Act would apply for determination of

compensation. An Award even if passed under the Act after 1.1.2014 can only depict a tentative assessment and subject to further determination under the New Act. This is evident from Section 24(1)(a) of the New Act which absolves the respondents from passing an Award under Section 11 of the Act after 1.1.2014. The contention of the petitioners that the proceedings for the land acquisition have lapsed under Section 11A of the Act cannot therefore be countenanced.

6. The proceedings of the Commissioner for Land Revenue invoking Section 17 of the Act itself refers to a letter dated 14.10.2011 of the District Collector, Kozhikode. The road in question goes right in front of the National Institute of Technology, Kozhikode and is the main access to reach Waynad which is a hot spot for Tourists. The widening of a road to such a place where there is heavy vehicular traffic cannot brook delay justifying the invocation of the urgency clause. The land acquisition proceedings have come to a final stage and about 555 land owners would be affected by the acquisition of the land on the side of this stretch of 8.4 kms. The Government Pleader submits that 420 persons out of 555 land owners have consented for the acquisition and that about 200 of them have already furnished copy of documents. It is reported that the State Government has also sanctioned Rs. 25 crores for payment of compensation to those who would be affected by the land acquisition. I do not feel that there is a tardy progress in the land acquisition proceedings which fatally affects the invocation of the urgency clause. No case has been made out to annul the land acquisition proceedings on the ground of invoking the urgency clause dispensing with the enquiry under Section 5A of the Act.

7. The contention of the petitioner that there is a parallel road and no public purpose is involved by the widening of the road in question has only to be stated for being repelled. Section 4(1) notification was published as early as on 26.5.2012 and the writ petition challenging the acquisition was filed as late as on 15.1.2015 after almost 2 1/2 years. The petitioners should have approached this Court soon after Section 4(1) notification and Section 6 declaration if really there was no public purpose. The Supreme Court has in Urban Improvement Trust's case afore quoted had occasion to observe in this regard as follows:-

"21. Further, learned counsel for the appellant rightly submitted that on the ground of delay and laches in filing the writ petitions, the Court ought to have dismissed the same. In the present case, as stated above, the Notification under section 6 was published in the Official Gazette on 24.5.1994. The writ petitions are virtually filed after two years. In a case where land is needed for a public purpose, that too for a scheme framed under the Urban Development Act, the Court ought to have taken care in not entertaining the same on the ground of delay as it is likely to cause serious prejudice to the persons for whose benefit the Housing Scheme is framed under the Urban Development Act and also is having planned development of the area. The law on this point is well settled. Reliance Petroleum Ltd. Vs. Zaver Chand Popatlal Sumaria and Others, (1996) 5 AD 77 : (1996) 5 JT 114 : (1996) 4 SCALE 340 : (1996) 4 SCC 579 : (1996) 2

UJ 148 and Hari Singh and Others Vs. State of U.P. and Others, AIR 1984 SC 1020 : (1984) 1 SCALE 625 : (1984) 2 SCC 624 : (1984) 3 SCR 417 : (1984) 16 UJ 648 .

It is too late in the day for the petitioners to contend that the land acquisition is vitiated by malafides or that there is no public purpose and the writ petition is highly belated.

8. I place on record the valuable assistance rendered by Mr. C.S. Dias, Advocate as Amicus Curiae in this case.

The Writ Petition is dismissed. No costs.