

(1962) 06 KL CK 0023
In the High Court Of Kerala
Case No : A.S. 496/60

Revenue Divisional Officer, Kozhikode

APPELLANT

Vs

Madhavi Amma and Others

RESPONDENT

Date of Decision : 18-06-1962

Acts Referred:

Land Acquisition Act, 1894 — Section 17, 17(4), 4, 4(1), 4(2)

Citation : (1964) KLJ 847

Hon'ble Judges : M.S. Menon, C.J;T.K. Joseph, J

Bench : Division Bench

Advocate : A. Achuthan Nambiar and T.P. Kelu Nambiar, for the Respondent

Final Decision : Allowed

Judgement

M. S. Menon, C.J.—This is an appeal by the State against the decision in O.P. No. 739 of 1959. The decision relates to two notifications issued by the Government Exts. A and D, under the Land Acquisition Act, 1894. It ordered that Ext. A should be quashed in so far as it directed that the provisions of section 5A shall not apply, and Ext. D in its entirety. Ext. A, omitting the schedule thereto, reads as follows:

Whereas it appears to the Government of Kerala that the land specified in the schedule below is needed for a public purpose, to wit for the construction of a Rural dispensary, notice to that effect is hereby given to all whom it may concern in accordance with the provisions of S. 4(1) of the Land Acquisition Act of 1894 (Central Act 1 of 1894) and the Government of Kerala hereby authorise the Revenue Divisional Officer, Kozhikode, his staff and workmen to exercise the powers conferred by S. 4 (2) of the said Act. Under sub-sec. (4) of S. 17 of the Act the Government of Kerala direct that in view of the urgency of the case the provisions of S. 5A of the Act shall not apply to this case.

The contention which has been accepted in the judgment under appeal is that Ext. A does not show whether the Government was of the opinion that the

provisions of sub-section (1) or of sub-section (2) of Section 17 were applicable, and that as a result the notification in so far as it directed that the provisions of section 5A shall not apply was not in order and cannot be sustained.

2. The learned Judge said:

The objection taken as to the validity of Ext. A was, that the Government had formed no opinion under S. 17 (4) of the Act, as to whether the provisions of sub-section (1) or of sub-section (2) are applicable to the present case. It is imperative that Government must hold a definite opinion within the meaning of S. 17 (4) as to whether it is the provisions of subsection (1) or of sub-section (2) which are applicable to a given case.

And added:

It is not enough if the Government has formed an opinion that any one of the provisions in sub-sections (1) and (2) of S. 17, which after the amendment are many, is applicable; the opinion must be specific and must under the two sub-sections including the clauses and sub-clauses in sub-section (2), be related either to the specific nature of the land contemplated by the sub-sections or to the purpose of the acquisition under clauses (a) and (b) of sub-section (2).

The amendment referred to is the amendment effected by Madras Act XXI of 1948.

3. Ext. A shows, quite clearly, that the Government was of the opinion that the land was needed for a public purpose, and that the public purpose was the construction of a rural dispensary. The construction of a rural dispensary will come within the ambit of sub-section (2) (b) (ii) (a) of Section 17 and we see no reason to hold that the mere non-mention of the said provision in the notification is in any way fatal to its validity.

4. In *Babu Barkya Thakur Vs. The State of Bombay and Others*, a notification u/s 4 which did not state that the land sought to be acquired was needed for a public purpose came up for consideration. All that the notification said was:

Whereas it appears to the Government of Bombay that the lands specified in the Schedule hereto are likely to be needed for the purposes of the company, viz., for factory buildings etc. of M/s. Mukund Iron and Steel Works Limited, Bombay; it is hereby notified under the provisions of S. 4 of the Land Acquisition Act, 1894 (1 of 1894), that the said lands are likely to be needed for the purpose specified above.

The Supreme Court said :

In our opinion, it is not absolutely necessary to the validity of the land acquisition proceedings that that statement should find a place in the notification actually issued. The requirements of the law will be satisfied if, in substance, it is found on investigation, and the appropriate Government is satisfied as a result of the investigation that the land was needed for the purposes of the Company which

would amount to a public purpose under Part VII, as already indicated.

5. It follows that Ext. A suffers from no infirmity and that it has to be upheld in its entirety.

6. The conclusion of the learned judge that Ext. D cannot be sustained was a conclusion based on his view of the validity of Ext. A. The further contention of the petitioner that it cannot be sustained even if Ext. A was valid was not considered, by him.

7. Sub-section (4) of Section 17 says:

In the case of any land to which, in the opinion of the appropriate Government, the provisions of sub-section (1) or sub-section (2) are applicable, the appropriate Government may direct that the provisions of section 5A shall not apply, and, if it does so direct, a declaration may be made under S. 6 in respect of the land at any time after the publication of the notification under S. 4, sub-section (i).

The sub-section shows that the making of the declaration u/s 6 should be after the publication of the notification under sub-section (1) of Section 4. The contention is that the date of the making of a declaration u/s 6 is the date when it is signed under sub-section (1) of that section and not the date on which it is published in the Official Gazette under sub-section (2) of that section. And if that is the correct position, Ext. D, the declaration u/s 6, is defective in that it was signed on the 6th January 1959, that is, prior to the publication of the notification u/s 4 in the Kerala Gazette on the 27th January 1959. Ext. D was published in the Kerala Gazette dated the 3rd February 1959.

8. Section 6 of the Land Acquisition Act, 1894, reads as follows:

(1) Subject to the provisions of Part VII of this Act, when the appropriate Government is satisfied, after considering the report, if any, made u/s 5A, sub-section (2), that any particular land is needed for a public purpose, or for a company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorised to certify its orders :

Provided that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, or wholly, or partly out of public revenues or some fund controlled or managed by a local authority.

(2) The declaration shall be published in the Official Gazette, and shall state the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected.

(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a Company, as the case may be; and after making such declaration, the appropriate Government may acquire the land in manner

hereinafter appearing.

In *Nalamaty Venkata Durga Prakasa Rao and Others Vs. The State of Andhra Pradesh*, the court quoted the section and said:

It will be seen that sub-section (1) of S. 6 comprises of two parts--firstly, the satisfaction of the Government that a particular land is needed for a public purpose and secondly, the making of a declaration to that effect under the signature of a Secretary to such Government or of a duly authorised officer.

Sub-sec. (2) provides for the publication of the declaration so made under sub-sec. (1), while sub-sec. (3) states the effect of such a declaration.

and:

Sub-sec. (4) of S. 17 speaks of the making of a declaration under S. 6 and not of the publication thereof. Thus, the making of a declaration is something distinct from and different to its publication; the former is governed by sub-section (1) and the latter by sub-sec. (2) of sec- 6.

9. A different view is expressed in 1960 K.L.J. 1337.3 In that case Velu Pillai J., said:

True S. 17 (4) employs the word "made" in the expression "a declaration may be made" and S. 6 refers to "making" and "publication." In my opinion, the distinction cannot be considered to be vital the declaration being conclusive only upon the publication thereof. In the context in which the word "made" is employed in S. 17 (4), it seems to me, that it must be interpreted as to include the publication of the declaration also.

10. We consider it unnecessary to pursue the controversy in view of a recent decision of the Supreme Court, the decision in Writ Petitions Nos. 246 to 248 of 1961 (*Srimati Somawanti & Ors. v. The State of Punjab & Ors.*). That also was a case where the appropriate Government had directed that the provisions of section 5A shall not apply. The notification u/s 4 and the declaration u/s 6 were both published on the 25th August 1961. The declaration u/s 6 was signed not after the publication of the notification u/s 4 but prior to it, on the 19th August 1961. None-the-less the Supreme Court upheld the validity of the declaration u/s 6. In the light of what is stated above this appeal has to be allowed and both Exts. A and D sustained in their entirety. We do so, though in the circumstances of the case, without any order as to costs.