
(1988) 08 KL CK 0036
In the High Court Of Kerala
Case No : O.P. No. 8317 of 1987

S. Rajakumari

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 19-08-1988

Acts Referred:

Kerala Land Acquisition Act, 1961 — Section 18, 3(b), 3(b), 9(3)

Citation : (1988) 2 KLJ 801

Hon'ble Judges : T.L. Viswanatha Iyer, J

Bench : Single Bench

Advocate : S. Sivaraman, for the Appellant;

Final Decision : Allowed

Judgement

T.L. Viswanatha Iyer, J.—The original petition is filed on the following premises. Petitioner is the owner of 1.45 acres of land in Sy. No. 1127 of Ulloor Village, It forms part of an extent of 3.15 acres of land. The patta for the 1.45 acres had been granted in the name of the petitioner's younger sister Jayasree, the 5th respondent. The patta for the remaining area was in the names of the 5th respondent and another sister Sreekumari. The petitioner, became entitled to the 1.45 acres by subsequent family arrangements. This and the other lands are under acquisition. Proceedings started with the notification u/s 3 of the Kerala Land Acquisition Act dated 28-6-1980 and culminated in the award on 13-10-1982 Advance possession was taken-on 12-5-1982.

2. Petitioner was in the Gulf countries along with her husband. Her affairs in relation to the property were being looked after by the 5th respondent and her husband. The petitioner had had no notice of the acquisition proceedings. The property of Sreekumari was also being acquired for the same purpose namely for the purpose of the Nalamchira Housing Scheme of the 4th respondent Kerala State Housing Board. After the (Central) Land Acquisition Act 1894 was extended to Kerala by Act 68 of 1984, the 5th respondent and Sreekumari attempted to get the award reopened to obtain the benefits of the said amendment. They filed

O.P. Nos. 8520 of and 8508 of 1985 in this court to direct the Land Acquisition Officer to reopen the awards and to grant them the benefits of the amendment. The original petitions were allowed and orders granting the benefits were passed on 14th and 26th August 1987.

3. According to the petitioner the 5th respondent had fraudulently suppressed the fact that she was entitled to the 1.45 acres. She came to know of the award only in May 1987. Immediately she filed an application on 7-5-1987 before the 3rd respondent pointing out that she alone was entitled to the 1.45 acres and praying for a reference of the question as to who was entitled to the compensation. Another application requesting that the compensation may not be paid to the 5th respondent was also filed. Copies of these representations are Exts. P1 and P2. The 3rd respondent replied by Ext. P4 dated 17th August 1987 stating that the awards had been passed on 13-10-1982, that as per records, the petitioner was not seen to have any right in the property and therefore, no action could be taken on the applications Exts. P1 and P2. Petitioner alleges that Ext. P4 is violative of section 18 of the (Central) Land Acquisition Act and that the 3rd respondent was bound to make a reference as prayed for in Ext. P1.

4. The counter affidavit filed on behalf of respondents 1 to 3 justifies Ext. P4 on the ground that the statement of claim in response to the notice u/s 9 (3) of the Land Acquisition Act was made only by the 5th respondent, that the purchase certificate as well as all records in respect of the property stood in her name and therefore, the petitioner was not entitled to the reliefs prayed for.

5. The 5th respondent in her counter affidavit refutes the petitioner's claim of being entitled to the property. The petitioner has no, right over any portion of the land in this area. The lands belonged only to the 5th respondent, her sister Sreekumari and their mother Sathiyabhama Amma and therefore, the petitioner was not entitled to any relief.

6. The 5th respondent has also pointed out that the mahazar prepared at the time of taking possession of the land namely Ext.R5(c) shows that she alone was in possession, the petitioner returned to India in 1984 and even earlier she had come on two occasions in 1977 and 1983. The petitioner had no title to the property. In any case the application for reference was time barred.

7. The question arising for decision is whether the 3rd respondent Land Acquisition Officer was bound to make a reference of the question as to who is entitled to the compensation for the land. Section 18 of the Act under which the application was made enables any person interested who has not accepted the award, to require the Collector to make a reference to the Land Acquisition Court for determination of the persons to whom the compensation is payable or the apportionment of the same among the persons interested. Section 3(b) defines a person interested as including all persons claiming an interest in the compensation to be paid on account of acquisition of land under the Act. The Supreme Court has in the decision in Sunder Lal Vs. Paramsukhdas, held that a

person becomes a person interested if he claims an interest in the compensation to be awarded. The petitioner claims that she is a person interested in the 1.45 acres of land and in the compensation awarded for the acquisition and that she alone is entitled to it, and not the 5th respondent. On the other hand, the 5th respondent claims that the petitioner has no title to the property and that she is not entitled to the whole or any portion of the same. Counsel for the 5th respondent very vehemently argued that the petitioner has not produced any material before this court to prove even prima facie that she had any sight or title over the land and that therefore, she was not entitled to insist on a reference.

8. In other words the contention is that the Land Acquisition Officer is not obliged to make a reference unless he is satisfied that the person making the application had prima facie title to the property.

9. I am unable to accept this contention. The Land Acquisition Officer does not, in passing the award, make any adjudication on the rights of parties, in fact it is the accepted position now that he only makes an offer of the compensation which may or may not be accepted by the parties concerned. The adjudication of rights is left to the court if any of the persons interested applies for the purpose. Section 3 (b) defines a person interested as including a person who claims an interest in the compensation. It was held in *Parameswara Iyer v. Land Acquisition Collector*, ILR 42 Madras 231 as follows:-

Section 18 enables "any person interested, who has not accepted the award" to "require" a reference; and S. 3 (b) defines "person interested" as including all persons claiming an interest in the compensation. As long as the application sets out a claim to an interest in the compensation, it is no part of the Collector's duty to decide whether the claim is well founded; and he is not authorised to refuse to make the reference merely because he may think it is not.

A Division Bench of this court consisting of M.S. Menon and Raman Nayar, JJ. had occasion to deal with the question in *K.S. Govinda Pillai Vs. District Collector, Quilon and Another*, , That was also a case where an application for reference was rejected on the ground that the applicant had no interest in the land "according to the revenue records". The Bench observed:-

There can be no doubt that the first respondent has completely misunderstood the statutory provisions bearing on the subject. A "person interested" who had not accepted the award has the right to insist on a reference to the District Court, if he had complied with the provisions of sub-s. (2) of S. 18. A "person interested" does not mean a person whose interest the Collector is prepared to admit.

IN *Kako Bai v. Land Acquisition Collector*, AIR 1956 Pun. 231 B. shan Narain, J. stated:-

It is not open to the Collector to decide an application u/s 18 on merits of the

objections raised herein and then refuse to refer the matter to civil court. All that the Collector can do is to decide whether the formalities laid down in section 18 have been complied with or not.

In other words, the Land Acquisition Officer is not concerned with the validity of otherwise of the claim made by the applicant. It is the requirement of a person claiming an interest in the land or in the compensation that obliges the Land Acquisition Officer to make the reference without anything more. The word "required" implies, compulsion. Therefore, and if a person makes written application for making a reference claiming interest in the land or in the compensation, the Land Acquisition Officer is obliged to make the reference.

10. That is the position in this case - Petitioner claims the 1.45 acres of land as belonging to her. The question as to whether her claim is justified or not is a matter for decision by the court and not for the Collector. It is not open to the Collector to reject the application on the ground that he was not satisfied about the petitioner's claim or that her name did not figure in the revenue records. When once a person comes forward claiming an interest in the land or in the compensation, the Collector is bound to make the reference. In this view of the matter the order Ext. P4 is not sustainable. It is liable to be quashed. The question still remains Whether the petitioner's application has been made within the time stipulated in section 18 of the Land Acquisition Act. Petitioner places reliance on the decisions in Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another, , and in State of Punjab Vs. Mst. Qaisar Jehan Begum and Another, . This aspect requires examination by the 3rd respondent. Therefore, and while quashing Ext. P4, the 3rd respondent is directed to examine whether the application made by the petitioner is within time. If it is found that the application is not time barred, the 3rd respondent shall make the reference as prayed for in Ext. P1. without any further delay.

The original petition is allowed. No costs.