
(1965) 09 KL CK 0014
In the High Court Of Kerala
Case No : O.P. No. 1980 of 1964

Skaria Francis

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 24-09-1965

Acts Referred:

Land Acquisition Act, 1894 — Section 30, 9(3)

Citation : AIR 1967 Ker 128

Hon'ble Judges : K.K. Mathew, J

Bench : Single Bench

Advocate : Joseph Augustine, for the Appellant; Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

K.K. Mathew, J.—This is an application for a writ of certiorari quashing Ext. P-2 notice. The notice directed the petitioner to surrender possession of the property in S. No. 654/11/D1 of the Lalom Village and the building thereon to the 3rd respondent, the Tahsildar. Petitioner says that he has been occupying the building for the last 26 years as a lessee and has effected considerable improvements on it and is conducting a cloth shop there. And his contention is that u/s 9(3) of the Kerala Land Acquisition Act it was necessary that the concerned Land Acquisition Officer should have issued notices to the occupier and other persons interested in the land sought to be acquired intimating them that the Government intend to take possession of the land and calling for their claims for compensation, and as no notice under the sub-section was served on the petitioner the proceedings for acquisition are vitiated and that Ext. P. 2 notice must be quashed.

2. The only question therefore, which I need consider in this petition is whether Ext. P-2 notice is without jurisdiction because no notice u/s 9(3) was issued to the petitioner. Section 9(3) is as follows:

"The Collector shall also serve notice to the same effect on the occupier, if any. of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside or have agents authorised to receive service on their behalf, within the revenue district in which the land is situate."

It was argued on behalf of the petitioner that the sub-section is mandatory and that the non-issue of notice under the sub-section would render the proceedings void. But decided cases hold that the proceedings would not be void on that ground. See the rulings reported in *Ganga Ram Marwari v. Secy. of State for India*. (ILR 1903) Cal 576; *Rahimbux v. Secy. of State* AIR 1938 Sind 6; *Sri Sukdev Sarandev v. Raja Nripendra Narayan Chandradhvarjee* (1942) 76 Cal LJ 430 ; *Naba Kumar Seal Vs. State of West Bengal and Others*, and *Jhandu Lal Budh Ram and Others Vs. The State of Punjab and Another*, and *Hununikeri Bros. v. Asst Commr., Dharwar Division*, AIR 1962 Mys 169. The petitioner would not in any way be prejudiced as he has a remedy by way of a suit under the proviso to Section 33(2) of the Kerala Land Acquisition Act. It has been recently held by the Supreme Court in Civil Appeals Nos. 262 to 264 of 1964: (reported in *Dr. G.H. Grant Vs. State of Bihar*, that even after the Collector has made an award it is open to him to refer the question of apportionment u/s 30 of the Land Acquisition Act (Central) to the District Court. If that be so it is open to the petitioner to apply to the Collector to make a reference u/s 82 of the Kerala Land Acquisition Act or responding to Section 30 of the Central Act. Although it was argued by the learned Government Pleader that it is also open to the petitioner to apply for reference u/s 20 of the Act, I am not quite clear whether such an application can be filed as the period prescribed in Section 20(2) has expired. I do not wish to express any concluded opinion on that point in this case. However, as it is clear from the rulings cited above that the proceedings would not be invalid on account of the non-issue of the notice u/s 9(3). I dismiss this petition. No costs.