

(1995) 01 KL CK 0001

In the High Court Of Kerala

Case No : W.A. No's. 377 and 400 of 1990

Sree Jnanodaya Yogam

APPELLANT

Vs

Pankajakshi, K.K. and Others

RESPONDENT

Date of Decision : 27-01-1995

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala Land Acquisition Act, 1961 — Section 3, 39
Land Acquisition Act, 1894 — Section 10, 11, 12, 13, 14

Citation : (1995) 01 KL CK 0001

Hon'ble Judges : K. Sreedharan, J;B.N. Patnaik, J

Bench : Division Bench

Advocate : N. Dharmadan and Renu, in W.A. No. 377 of 1990 and Lal George, Government Pleader in W.A. 400 of 1990, for the Appellant; Govind K. Bharathan, for Respondent 1 and P.V. Madhavan Nambiar in W.A. 400 of 1990 for Respondent 3, for the Respondent

Final Decision : Dismissed

Judgement

B.N. Patnaik, J.—Both the appeals arise out of the same judgment in O.P. No. 2984 of 1988. They were heard together and are being disposed of by this common judgment. Respondent No. 4 in the Original Petition is the Appellant in W.A. No. 377 of 1990 and Respondents 1, 2, 3 and 6 in the Original Petition are the Appellants in W.A. No. 400 of 1990.

2. Appellants in both the cases have challenged the finding in the Original Petition by which Ext. P-15 notification dated 22nd March 1988 u/s 4 read with Section 17(4) of the Land Acquisition Act, 1894 has been quashed.

3. The case of the Petitioner in the Original Petition, who is Respondent No. 1 in both the appeals, in brief is as follows:

Petitioner purchased a piece of paddy land in R.S. No. 38/1 of Kodiyeeri Village, in 1978. She reclaimed the land and started the construction of residential buildings. Sree Jagannath Temple, which was established by Sree Narayana Guru

in 1906, is situated at a distance of about a kilometre away from the Petitioner's property.

The above temple is managed by the 4th Respondent and the 5th Respondent is the President of Sree Jnanodaya Yogam. The Petitioner in the O.P. on the one side and the 4th Respondent and the 5th Respondent on the other are on inimical terms on account of business rivalry.

As part of the festival in the Jagannath Temple, a Pallivetta (Royal Hunt) is performed on the penultimate day of the festival every year. It is performed at a place situate to the south of the Petitioner's property. The deity is taken out on an elephant in procession to the place where the Pallivetta is performed. This religious function lasts only for an hour. There is no fixed route as such through which the procession is to be taken from the main road to the Thara where the Pallivetta is performed. After purchasing the property, the Petitioner left a passage of 10 feet in width on the eastern side for access to the place to the south of her property where Pallivetta is usually performed. But the 5th Respondent in order to harass the Petitioner insisted that the procession should be taken out through the western side of the Petitioner's property and according to him it is through that portion that the procession has been passing from time immemorial. A number of civil suits and cases were filed to have the passage for the procession. During the pendency of the civil cases, proceedings were initiated for acquiring a portion of the Petitioner's property over which Respondents 4 and 5 claimed a right of easement for the benefit of Sree Jagannath Temple. On 11th May 1983, the 5th Respondent submitted a requisition to the District Collector for acquisition of land measuring about two cents belonging to the Petitioner for providing passage to the place of Pallivetta. A joint inspection was conducted by the Tahsildar and the temple authorities. It was found that the exact area necessary for the purpose is 6.25 cents. Accordingly, a revised requisition was sent by the 4th Respondent on 2nd March 1984. The Petitioner objected to the same by filing a petition dated 2nd June 1983 stating that it is unnecessary to acquire the land as there is an alternate pathway for the procession to pass to the place of Pallivetta. Subsequently, a notification u/s 3 of the Kerala Land Acquisition Act was published on 24th April 1984 to which the Petitioner filed objections on 22nd May 1984. An enquiry was conducted on 24th September 1984. Thereafter, the Petitioner challenged the validity of the land acquisition proceedings by filing O.P. No. 9879 of 1986 before this Court. In the counter-affidavit filed in that case, it was stated that the Government had accorded sanction u/s 39 of the Kerala Land Acquisition Act by order dated 23rd October 1986. An interim stay order was passed by this Court in that writ petition prohibiting dispossession of the Petitioner with a clarification that the Petitioner is entitled to raise whatever objections she wanted to make after the Land Acquisition Officer. But, no further steps were taken pursuant to the notification. The land acquisition proceedings lapsed since no declaration u/s 6 of the Central Act was made within the period provided in the proviso thereto and as such O.P. No. 9879/86 had become infructuous. Thereafter, the Petitioner was served with

a notice dated 22nd March 1988 u/s 4 of the Central Land Acquisition Act. It is stated in that notice that 0-0288 hectares of land in Sy. No. 38/1 of Kodiyeri Village belonging to the Petitioner is needed or likely to be needed for a "public purpose", for providing passage to Pallivetta procession of Sree Jagannath Temple, Tellicherry. It is also mentioned in the notice that the Board of Revenue in their order No. 4193/881/LRC, dated 14th February 1988 directed u/s 17(4) of the Act that in view of the urgency of the case, the provisions of Section 5A shall not apply. The said notice is Ext. P-15, dated 22nd March 1988, which was challenged in the Original Petition.

4. Sree Jagannath Temple is a society registered under the Societies Registration Act and therefore a "company" as defined in Section 3(e) of the Land Acquisition Act. The Petitioner contended in the O.P. that Ext. P-15 was issued with mala fide intention to vindicate the nimosity and vengeance of the 5th Respondent against the Petitioner and not for any public purpose. It is admitted in the counter-affidavit that in entire compensation is to be paid by the company and no portion of the compensation is paid out of public revenue or some fund controlled or managed by a local authority. In these circumstances, the acquisition is not for a public purpose, but for a company. The acquisition being for a company, it must be for one of the purposes mentioned in Section 40 of the Land Acquisition Act. The purpose mentioned in Ext. P-15 does not satisfy any of the requirements mentioned in that section. The invocation of the urgency provisions as provided in Section 17(4) of the Land Acquisition Act is without jurisdiction and hence Ext. P-15 which is a composite notification u/s 4 read with Section 17(4) of the Act is liable to be quashed.

5. The case of the Respondents is that the earlier acquisition proceedings have lapsed and the whole compensation for the acquisition is to be paid by Sree Jagannath Temple which is a company as defined in the Land Acquisition Act. In the previous acquisition proceedings, the Government had accorded sanction to proceed with the acquisition which is sufficient compliance with Section 39 of the Central Land Acquisition Act. In the enquiry conducted by the Tahsildar in the previous proceedings u/s 5A of the Land Acquisition Act, all the objections of the Petitioner were considered and overruled. In order to provide a pathway for the Pallivetta procession, the land proposed to be acquired is absolutely necessary. The impugned notification was issued by the State Government after being satisfied that it is necessary for a bona fide public purpose. The alternate route suggested by the Petitioner cannot be made use of since it is only through the land proposed to be acquired that the procession passes traditionally. The urgency provision was invoked in order to make available the land to the temple authorities when the Pallivetta procession was to take place in March, 1988. Now that the land could not be taken possession of within the time, any objection filed by the Petitioner shall be considered by the Land Acquisition Officer. If, it is contended, that the traditional route of the Pallivetta procession is changed to suit the convenience of the Petitioner, the religious feelings of thousands of devotees of the temple will be wounded. Hence, the alternate pathway will not

serve any purpose. The alternate pathway has only a width of three feet and not 10 feet as stated by the Petitioner Respondents 4 and 5 also denied the allegation of any mala fide intention on their part.

6. Learned Single Judge quashed the impugned notification(Ext. P-15) by holding that the issue of a composite notification in the absence of any urgency is not sustainable and the acquisition of land sought for is not for a public purpose as envisaged in Section 40 of the Land Acquisition Act. The Appellants have challenged both the findings.

7. The main question for consideration is whether the purpose for which the land is needed and sought to be acquired can be considered as one for a public purpose.

8. It is admitted that the temple and the 4th Respondent in the O.P. is a company within the meaning of Section 3(e) of the Land Acquisition Act inasmuch as it has been registered as a society under the Societies Registration Act, 1960. Ext. P-15 notification issued u/s 4 read with Section 17(4) of the Land Acquisition Act, 1894 states that the land is needed or is likely to be needed for a public purpose, to wit, for providing passage to Pallivetta procession of Sree Jagannath Temple, Tellicherry. The expression "public purpose" in the Land Acquisition Act has been used in a generic sense of including any purpose in which even a fraction of the community may be interested or by which it may be benefitted. Therefore, when the proposed acquisition is intended to serve a public purpose in its generic sense, the fact that the acquisition is primarily for a company will not affect the validity of its acquisition.

Part VII of the Land Acquisition Act deals with acquisition of lands for companies. By Section 39 it is provided that the provisions of Sections 6 to 16 and 18 to 37 shall not be put in force in order to acquire land for any company under this part, unless with the previous consent of the appropriate Government, nor unless the company shall have executed the agreement hereinafter mentioned. But the expression "public purpose" in Section 6 of the Act has to be read in a restricted sense when the acquisition is for a company. u/s 6 of the Act, the Government may, subject to Part VII, if it is satisfied after considering the report, if any, made u/s 5A, that any particular land is needed for a public purpose or for a company, make a declaration to that effect and upon publication the declaration is conclusive evidence that the land is needed for the public purpose or for the company, as the case may be. Whereas u/s 4 of the Act, notification may be issued for land being needed for a public purpose, which would include certain purposes referred to in Section 40(1) of the Act, the declaration of acquisition u/s 6 must specify whether it is for a public purpose or for a company, and it is this declaration which is declared to be conclusive by Section 6(3) of the Act.

9. Section 40 of the Land Acquisition Act, 1894 reads as follows:

40. Previous enquiry.- (1) Such consent shall not be given unless the appropriate Government be satisfied, either on the report of the Collector u/s 5A, Sub-

section (2), or by an enquiry held as hereinafter provided,-

(a) that the purpose of the acquisition is to obtain land for the erection of dwelling houses for workmen employed by the company or for the provision of amenities directly connected therewith, or

(aa) that such acquisition is needed for the construction of some building or work for a company which is engaged or is taking steps for engaging itself in any industry or work which is for a public purpose, or

(b) that such acquisition is needed for the construction of some work, and that such work is likely to prove useful to the public.

(2) Such enquiry shall be held by such officer and at such time and place as the appropriate Government shall appoint.

(3) Such officer may summon and enforce the attendance of witnesses and compel the production of documents by the same means and, as far as possible, in the same manner as is provided by the Code of Civil Procedure, 1908 in the case of a Civil Court.

10. Learned Counsel for the Appellants drew our attention to the decision of this Court in *Varkey Devassy v. State of Kerala* 1966 KLT 805 and a decision of the Andhra Pradesh High Court in *Harihara Prasad v. Jagannadham* AIR 1955 Anth 184 and contended that the land sought to be acquired is meant for the benefit of the members of a particular community. The land is intended to be used for a religious procession where in large number of people participate. It has been observed in *Varkey's* case 1966 KLT 805 that if a section of the general public is benefitted by the acquisition the purpose must be a public purpose. Public temples are meant to serve the general public. So the acquisition for the establishment of temple or a church or a mosque must normally be for a public purpose.

11. The contention of the learned Counsel for the first Respondent that the compensation amount is being wholly paid by the company and no part of public revenue is being utilised for the purpose would mean that it is not for a public purpose, is not tenable in view of the observation in *Varkey's* case 1966 KLT 805 and a number of decisions of other High Courts as well. It is pointed out in that case that it cannot be said that when public revenues have not been utilised the acquisition is not for any "public purpose". The question as to whether the acquisition is for a public purpose must depend largely on other considerations such as whether the public are benefitted by such acquisitions. Persons interested in promoting or maintaining any parti-cular religion may make funds available for the purpose of acquiring land for a temple.

12. The use of the words "public purpose" and "a company" in the disjunctive in Section 6 does not exclude and is not inconsistent with the view that the purpose, even in the case of acquisitions for a company should be a public purpose. Nevertheless it appears from a combined reading of Sections 6 and 40

of the Land Acquisition Act, 1894 that the declaration of intended acquisition for a company is subject to the provisions of Part VII of the Act, that is to say that the land is needed for any of the purposes mentioned in Section 40.

In Varkey's case 1966 KLT 805 it was mentioned that the acquisition is for the construction of a temple compound. In Hariharct Prasad's case AIR 1955 Anth 184 the relevant notification stated that the land in question is needed for a public purpose, to wit, for the construction of temples on behalf of the Sahasralingeswara Swami Sangham. In both the cases, the land was needed for making certain structures. It is no where spelt out in the counter-affidavits filed by the Respondents in the O.P. that the purpose of the acquisition is either for the erection of dwelling houses or for providing amenities directly connected therewith or that the land is needed for the construction of some building or a road or work for the temple. On the other hand, it is stated in the counter-affidavit filed by the 4th Respondent in the O.P. (Appellant in W.A. No. 377/90) that it is because of the genuine belief of the worshipping public in the religious requirements to take the procession through the traditional passage that the temple authorities requested the Government to exercise its powers under the L.A. Act for acquiring land of sufficient width for the purpose. Respondents 1 and 3 in the O.P. (Appellants 1 and 3 in W.A. No. 400/90) have also stated in their counter-affidavit that the land acquisition proceedings were initiated for the purpose of providing passage to the place of Pallivetta of Jagannath Temple, Tellicherry.

12. In R.L. Arora Vs. State of U.P., the majority view of the Supreme Court is to the following effect:

Though it is not for the court to enter upon a consideration of the question how far the provision made by the Government in the terms of the agreement sufficiently safeguards the interests of the public, that being a matter entirely for the satisfaction of the Government, the interpretation of the material terms in Section 40(I)(b) and the fifth term of the agreement provided in Section 41 read together is and must always be within the jurisdiction of the court. It is for the court to say what the words in Sections 40 and 41 mean though it is for the Government to decide whether the work is useful to the public and whether the terms contain provisions for the manner in which the public shall be entitled to use the work. It is only in this latter part that the Government's satisfaction comes in and if the Government is satisfied, that satisfaction may not be open to challenge; but the satisfaction of the Government must be based on the meaning given to the relevant words in Sections 40 and 41 by the court. The Government cannot both give meaning to the words and also say that they are satisfied on the meaning given by them. The argument therefore that it is the Government's satisfaction which is required both by Sections 40 and 41 is of no help.

It is also laid down that, "what the provisions of Sections 40 and 41 require is that the work should be directly useful to the public. It seems that under the relevant words in Sections 40 and 41 it is works like a hospital, a public reading

room or a library or an educational institution open to the public or such other work as the public may directly use that are contemplated and it is only for such works, which are useful to the public in this way and can be directly used by it, that land can be acquired for a company under the Act." Section 40 of the Act does not contemplate that the land for the passage of a religious procession like Pullivetta can be acquired for a company. The fact that the company (Yogam) has been using the pathway over the land proposed to be acquired traditionally and that it enjoys prescriptive rights to use the land is not a relevant consideration for acquisition of land for a company. Whether or not a prescriptive right has accrued to the Appellant in W.A. No. 377/90 is a question to be decided by a civil court in a properly constituted suit. Such a question cannot be decided in a summary proceeding under Article 226 of the Constitution. Moreover, the mere existence of a prescriptive right, if any, cannot be a ground to acquire the land for a company, if it does not satisfy the requirement of Section 40 of the Act. In this view of the matter, we are of the opinion that the purpose mentioned in Ext. P-15 notification cannot be said to be a "public purpose".

14. Since we hold that the land cannot be acquired for the company, on the ground that it is not needed for a public purpose as envisaged in Section 40 of the Act, it is unnecessary to decide the question as to whether or not a composite notification u/s 4 read with Section 17 of the Land Acquisition Act is valid.

15. For the reasons stated above, we find that the appeals are devoid of any merit and they are dismissed. There shall be no order as to costs.