
(2002) 08 KL CK 0036
In the High Court Of Kerala
Case No : S.A. No. 308 of 1992

Sreemanunni Nair

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 05-08-2002

Acts Referred:

Citation : (2002) 3 ILR (Ker) 383

Hon'ble Judges : R. Bhaskaran, J

Bench : Single Bench

Advocate : C.P. Damodaran, D. Krishna Prasad and P.G.K. Warriar, for the Appellant; T.P. Kelu Nambiar P.C. Sasidharan and Babu Varghese, for the Respondent

Final Decision : Dismissed

Judgement

R. Bhaskaran, J.—Plaintiffs 2 to 4 and 6 are the appellants in the second appeal. The suit was for a declaration to the effect that the land acquisition proceedings initiated by defendants 1 and 2 and the Award passed on 30.8.1978 in respect of the suit property are illegal and unenforceable and also for consequential injunction restraining the defendants from enforcing the award and taking possession of the suit property. The suit was dismissed by the trial court and the decree of the trial court was confirmed in appeal. In the second appeal, the substantial questions of law framed read as follows:

(a) Is not an acquisition proceedings under the Kerala Land Acquisition Act liable to be declared illegal by a civil court for the reason that such proceedings are vitiated by mala fides.

(b) Is not the acquisition proceedings liable to be declared illegal and mala fide by a competent civil court, if it is shown that the acquisition was made with oblique motives and for a extraneous considerations.

(c) Is not the Award in question liable to be declared illegal, unenforceable and arbitrary on the ground that it was passed to circumvent the orders passed by

the Civil Court.

(d) Even assuming without admitting that the acquisition was made for a public purpose, will it validate the action, if it is the result of a colourable exercise of power by the State.

The facts which are not in dispute in this case are as follows:

The plaintiff schedule property was acquired for the construction of houses under the Low Income Group Housing and Middle Income Group Housing Scheme. The land was acquired for the third defendant, Kozhikode Bhavana Nirmana Sahakarana Sangham Ltd. There is no case for the plaintiffs that any of the provisions under the Land Acquisition Act or Rules is not complied with while acquiring the property. The plaintiffs filed objection to the Section 3(1) Notification for land acquisition and considering the objection, 17 cents of land including a residential building occupied by the plaintiffs was exempted from the acquisition. Compensation has been awarded to the claimants. Since there was dispute with regard to the apportionment, the matter was referred to the civil court. The plaintiffs also participated in the proceedings. Therefore, there is no procedural irregularity in the acquisition of land. The only complaint of the plaintiffs is that though the land was sought to be acquired for the Low Income Group and after the acquisition persons who are in the High Income Group are also allotted plots and therefore the entire proceedings are to be set aside as fraudulent exercise of power.

2. The trial court framed necessary issues. The trial court found that the suit is not barred under the provisions of the Kerala Land Acquisition Act since it is not filed to obtain any relief against a person or authority for anything done in pursuance of the Act, but one instituted to challenge the very acquisition proceedings. The trial court also found that the land was acquired for a public purpose. Issue No. 6 related to the question whether the plaintiffs are entitled to the declaration as prayed for. It was found that the plaintiffs have no case that they were not given notice u/s 3(1) or u/s 9 of the Act. Objections were filed to the notification u/s 3(1) of the Act. The objection of the plaintiffs was that there is dispute with regard to title and that the house along with 1 acre of land should be exempted from acquisition. After the declaration u/s 6 of the Act is made, the question whether the acquisition is for a public purpose or not cannot be challenged by the person from whom the land is acquired. After taking into the objections of the plaintiffs, not only that 17 cents were exempted from acquisition but the pathway leading to the plaintiffs' house was also allowed to be used by the plaintiffs as well as others. The trial court also found that out of the 40 houses allotted, three were to the office bearers who were also connected with the land acquisition itself. The trial court found that that by itself does not mean that there was any colourable exercise of power.

3. In this case, the award was passed on 30.8.1978. Possession was taken on 7.9.1978 and handed over to the third defendant. There is no case that

possession was taken in violation of any of the Rules contained in the Land Acquisition Rules. On these findings the trial court dismissed the suit.

4. In appeal, the lower appellate court confirmed the findings of the trial court. The lower appellate court also considered the question whether the acquisition was for a public purpose or whether it was vitiated by mala fides.

5. In this second appeal, the learned counsel for the appellants has no case that the acquisition is not for a public purpose. He would submit that it is in colourable exercise of power that the land is acquired because after acquisition and handing over possession to the third defendant, person who were allotted plots included officers in the land acquisition office also and therefore the entire proceedings are vitiated. I do not find it possible to accept this contention. Plaintiffs have not produced the Notification u/s 3(1) showing the purpose for which the land is acquired. The Supreme Court has in *State Government Houseless Harijan Employees' Association v. State of Karnataka* (2001 (1) SCC 610) held that once Section 6 declaration is made the question whether the acquisition is for a public purpose or not cannot be challenged subsequently without challenging the declaration and after it becomes final. Moreover, u/s 12 of the Land Acquisition Act, an Award passed by the Collector becomes final and conclusive as between the Collector and the person interested whether they have appeared before the Collector or not of the true area and value of the land and the apportionment of the compensation among the persons interested. Once the land is vested in the Government by virtue of the acquisition the person from whom the land is acquired is divested of any interest in the property and thereafter the erstwhile owner has no locus standi to enquire whether the property is used for the purpose for which it is acquired. In this case as observed by the lower appellate court the property has not only been taken possession by the Sangham but houses have been constructed and allotted to various allottees. Even if some of the allottees were members in the land acquisition office that by itself will not make acquisition invalid. At the most, it may be a sufficient ground to set aside the allotment made to those persons. There is no such case in the plaint or considered by the courts below and it is unnecessary to consider that question in this second appeal. The question involved in this case is no longer res integra as the Supreme Court in *S.P. Subramanya Shetty and others Vs. Karnataka State of Road Transport Corporation and others*, has held as follows:

"In view of the settled legal position that the notification had become final and the proceedings had attained finality, the Civil Suit was not maintainable. This Court has repeatedly held that a Civil Suit relating to acquisition proceedings is not maintainable and by implication, cognizance u/s 9, CPC is barred."

6. The learned counsel for the appellants brought to my notice the decision of this Court in *Ramoo Ammal v. State of Kerala* (1991 (1) KLT 756) where this Court has held that the mere fact that the State exercised its prerogative of eminent domain, will not take the decision making process beyond the pale of judicial review. Irrationality would be a ground to exercise the power of judicial

review. Thus, arbitrary action, even when State privilege is claimed is amenable to the controlling jurisdiction of certiorari. It is clear from the judgment relied on by the counsel for the appellants that this Court was referred to the scope of exercise of jurisdiction under Article 226 of the Constitution for quashing a Notification u/s 3 of the Land Acquisition Act. It is not in dispute that if there is arbitrary exercise of power or where the power is not exercised reasonably and in good faith, this Court can interfere under Article 226 of the Constitution of India. But that decision is not authority for the proposition that a suit can be filed to nullify the acquisition proceedings long after the award is made and possession is handed over to the beneficiaries.

7. The learned counsel for the appellants also relied on the decision in *Varkey v. State of Kerala* (1968 KLT 613). There, this Court held that there were mala fides in the sense of non-application of the mind to the question involved though there is no evidence of any personal grudge, corrupt motive, or other improper purpose. That was also a case where the Notification was challenged under Article 226 of the Constitution of India and the validity of Section 3 was in question. That decision also will not help the appellant in this case as the challenge in this case is long after the property was acquired and the appellants were divested of any right in the property. The learned counsel then relied on the decision in *Padmavathi Amma v. State of Kerala* (1983 KLT 29 (FB)) wherein it is stated that "while making declaration u/s 6 the statutory authority (Government or Board) is to be satisfied that "any particular land is needed for a public purpose". It is not sufficient that the statutory authority is satisfied that "any land in a locality" or "land in any locality" is needed for a public purpose." The appellants have not produced Section 6 declaration or challenged it at the appropriate time. The consideration at the time of making a declaration u/s 6 is whether the particular land is required for the purpose for which the acquisition is made. If the affected party had pointed out some other property which was fit for the purpose the acquisition authority or the Government should have considered that proposal. In this case the appellants have no such case.

In view of the above, I do not find any substantial questions of law in the second appeal and the same is dismissed with costs.