
(2010) 03 KL CK 0102

In the High Court Of Kerala

Case No : Writ Petition (C) No. 24031 of 2008

Sulaiman

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 15-03-2010

Acts Referred:

Constitution of India, 1950 — Article 30, 30(1A)

Land Acquisition Act, 1894 — Section 17(4), 3, 4(1), 5A, 6

Citation : (2010) 2 KLT 49

Hon'ble Judges : Antony Dominic, J

Bench : Single Bench

Advocate : George Cherian and Thiruvalla, for the Appellant; Ranjith Thampan, A.A.G. and N. Anilkumar, for the Respondent

Final Decision : Dismissed

Judgement

Antony Dominic, J.—Prayers sought in this Writ Petition are to quash Ext.P1 notification issued u/s 4(1) of the Land Acquisition Act and require respondents 1 to 3 not to acquire or take possession of land in Sy. No. 1/8 of Thekkumbhagam Village, Kanayannur Taluk owned by the petitioners. Petitioners own 0.2307 hectares (56.98 cents) of land. By Ext.P1, notification issued u/s 4(1) of the Land Acquisition Act, the land is sought to be acquired for the purpose of handing it over to the 6th respondent in exchange of the land acquired from them.

2. Facts of the case are that, in order to widen the access road to a bridge that was proposed to be constructed across the Thattapillikattu river, part of the land belonging to the 6th respondent was proposed to be acquired and Ext.P2 notification u/s 4(1) of the Land Acquisition Act was issued on 5.5.2004. The 6th respondent challenged the acquisition proceedings by filing W.P.(C). No. 21716/2005 before this Court. That Writ Petition was disposed of by Ext.P4 Judgment dated 7.11.2005 quashing Ext.P2 notification and the declaration u/s 6 of the Act, with liberty to the respondents to issue a fresh notification.

3. Accordingly, a fresh notification u/s 4(1) was issued on 9 6.2006. That

notification was again challenged by the 6th respondent by filing W.P.(C). No. 18503/2006, a copy of which is Ext.P3. Ext.P10 is the counter affidavit filed by the respondents. Subsequent to the filing of the Writ Petition, the 6th respondent got the Writ Petition amended and contended that the school was a linguistic minority educational institution and therefore in view of the Apex Court judgment in *Society of St. Joseph's College v. Union of India* 2002 (1) KLT 438 (SC), the acquisition proceedings are illegal. Ext.P6 is the counter affidavit filed by the State disputing the minority status claimed by the 6th respondent. It would appear that during the pendency of the Writ Petition, realizing the difficulty in acquiring the land of the 6th respondent in the light of the Apex Court judgment relied on by them, it was decided by the respondents to arrive at a consensus on the issue. Accordingly a consensus was arrived at and Exts.P7 and P8 statements were filed before this Court. In Ext.P7 statement it was stated that, the acquisition proceedings were initiated to acquire an extent of 15.58 ares of property of the 6th respondent and that the respondents were willing to acquire and hand over to the 6th respondent, an equal extent of property, on the western side of the compound wall of the school, situated in Sy. No. 1.8 of Thekkumbhagam Village, if the 6th respondent surrenders 15.58 ares of property situated in Sy. No. 1/21 and 1/23 of Thekkumbhagam Village. It was further stated that if the 6th respondent was amenable to the above suggestion, the respondents were ready to proceed with the acquisition invoking Section 4(1) of the Land Acquisition Act and compensate the 6th respondent. Ext.P8 is a further statement incorporating more details of the proposal referred to above.

4. Based on the above developments, this Court passed an interim order in W.P. (C). No. 18503/2006, recording the statements filed by the parties as also the submission of the Government Pleader that steps will be taken to acquire 23.07 ares without any delay. A copy of the order is Ext.P9. It was pursuant to the above that Ext.P1 notification u/s 4(1) of the land Acquisition Act was issued on 19.5.2007 dispensing with Section 5A enquiry and notification was to acquire 0.2307 hectares of land of the petitioners and 2 others. Ext.P1 notification was challenged by the affected land owners in W.P.(C). Nos. 19893/2007 and 23656/2007.

5. Those two Writ Petitions filed by affected land owners and W.P.(C). No. 18503/06 filed by the 6th respondent were disposed of by Ext.P13 common judgment rendered on 26.2.2008. In that judgment it was held that it is only proper that respondents therein should conduct an enquiry u/s 5A of the Act because the land of the petitioners in W.P.(C). Nos. 19893/07 & 23656/07 were to be acquired to compensate the land acquired from the 6th respondent and that considering the importance of the contentions raised, it is only appropriate that an enquiry should be conducted by the District Collector himself. Accordingly the Writ Petitions were disposed of directing the land owners to file their objections before the Land Acquisition Officer and the Land Acquisition Officer was directed to hand over the files to the District Collector for conducting enquiry u/s 5A of the Act. It was clarified that this Court did not express any opinion on

the merits of the contentions and that until decision is taken in the matter, status quo which was already ordered to be maintained, shall continue.

6. Accordingly the petitioners therein, the affected land owners, submitted Ext.P14 representation to the Land Acquisition Officer, the files were handed over to the District Collector and finally the District Collector issued Ext.P15 order excluding the land of Smt. Annamma Thomas and Smt. Leesa Prasad from the acquisition proceedings and holding that the request of others, viz., the petitioners herein, is rejected, since the acquisition of their land was inevitable for the purpose of the bridge across the Thattapallikattu river. It was accordingly that seeking to quash Exts.P1 and P15 that this Writ Petition was filed on 17.8.2008 and while admitting the Writ Petition on 11.8.2008, this Court directed that status quo be maintained and the position continues even as on date.

7. Learned Counsel for the petitioners contended that the land acquisition proceedings are illegal. According to the learned counsel, though the purpose of acquisition of the land, viz., the construction of the bridge and its access, are public purposes that is achieved with the property of the school. The proceedings for acquisition were challenged by the school claiming minority status and that though the minority status claimed was disputed by respondents, they entered into a private agreement with the school, agreeing to compensate them by acquiring the land belonging to the petitioners, it was contended that the purpose of acquisition therefore was only to compensate for the land acquired from the 6th respondent and that such a purpose, is not a public purpose and in such circumstances, the exercise of power under the Land Acquisition Act is a colourable exercise, which is illegal and unconstitutional. It was further contended that the 6th respondent is not a linguistic minority and Exts.P5 and P6, apart from the counter affidavit filed by the respondent themselves, were relied on. On this basis, counsel argued that Apex Court judgment in St. Joseph's College case (supra) is relevant, in so far as the 6th respondent is concerned and that therefore, the acquisition was illegal for that reason as well.

8. The learned Additional Advocate General who appeared on behalf of the State contended that the 6th respondent is a linguistic minority. He referred me to Exts.R6(2) and R6(3) and also the Apex Court judgment in Ammad v. Emjay High School 1998 (2) KLT 828 (SC). According to him, there is no provision in the K.E.R. providing for declaration that a particular school is a minority school and that any declaration on minority status is only a recognition of an existing fact. He therefore contended that the status of the 6th respondent as a linguistic minority educational institution is one which has to be accepted by all concerned.

9. According to him, in view of the Supreme Court judgment in St. Joseph's College case (supra) and as the Central or the State Legislatures have not legislated any special law for acquisition of the property of a minority educational institution, as required under Article 30(1-A) of the Constitution of India, it was impossible for the State to acquire the school property. Referring to the sketch annexed to the Writ Petition and also to one produced during the course of the

submissions, he contended that for the purpose of the bridge which has already been constructed, the land of the 6th respondent school was inevitable. According to him since the acquisition of the property of the 6th respondent is not possible and as the land belonging to the 6th respondent was inevitable for the public purpose, the only course open to the State was to have arrived at a consensus with the 6th respondent.

10. Accordingly, an attempt was made and the 6th respondent agreed to make available the required extent of land, but however insisted that they should be compensated with equal extent of land either adjacent to their existing property or elsewhere. It is stated that it was in these circumstances that the land of the petitioners was identified for acquisition and Exts.P7 and P8 statements were filed before this court. It is stated that though the purpose for which the land is acquired from the petitioners is to compensate the 6th respondent, in the context in which it is so done, the said purpose is a public purpose under the Land Acquisition Act. It is also stated that the Government was willing for a negotiated purchase of the petitioners' property and that pursuant to the order dated 6th December, 2009 passed in this case, the petitioners appeared before the District Collector. However, they were unwilling even to negotiate with the District Collector, which has been reported to this Court in the District Collector's report dated 4.1.2010 and that it was therefore that it has become necessary for the State to proceed with the acquisition proceedings. He contended that the fact that there is absence of law enabling the State to acquire land from a minority educational institution cannot defeat a public purpose and therefore the State is justified in invoicing the proceedings for acquisition of land belonging to the petitioners.

11. On behalf of the 6th respondent it was contended that being a linguistic minority educational institution, their property cannot be acquired in view of Article 30(1-A) of the Constitution of India and the law laid down by the Apex Court in *Society of St. Joseph's College v. Union of India* 2002 (1) KLT 438. According to them, they cannot part with any extent of their land, as they are having only the minimum required land in their possession and any reduction in the extent of their land will affect the future expansion of their school. It was therefore that according to them, they insisted on being compensated with equal extent of land, either adjacent to the existing school property or elsewhere.

12. I have considered the submissions made by both sides.

13. The question to be considered is whether the purpose for which the petitioner's land is proposed to be acquired is a public purpose. This necessarily calls for an examination whether the 6th respondent is a minority educational institution. The 6th respondent, Sree Venkadeswara English Medium High School has been established by the Thrippunithura Thulu Brahmana Yogam, the bye-law of which is Ext. R6(1). Ext. R6(2) is the application submitted by the 6th respondent for recognition of their school, in which they have described themselves as a linguistic minority. In Ext. R6(3) is a representation submitted

by them to the then Minister for Education, where they have reiterated their plea that they are a religious and linguistic minority. As against this, in Ext.P5, the Deputy Director of Education has stated that there are only two recognized linguistic minority schools in Ernakulam District and this does not include the 6th respondent's school. In Ext.P6 counter affidavit filed against the application made by the 6th respondent in W.P.(C). No. 18503/06, the respondents herein had disputed the status of the 6th respondent as a minority educational institution. Ext.P5 does not show that on what basis, the Public Information Officer has stated that there are only two linguistic minority schools in the District. Similarly, Ext.P6 counter affidavit also does not state on what basis the minority status of the 6th respondent has been disputed. On the other hand, the minority is a status which a linguistic minority or a religious minority is entitled to enjoy and the Kerala Education Act or the Rules do not contain any provision providing for conferment of such status. As held by the Apex Court in *Ammad v. Emjay High School* 1998 (2) KLT 828 (SC), even if a declaration is made either by Government or by some other authority, such a declaration is only an open acceptance of a legal character which has already existed antecedent to such a declaration. Therefore it will be incorrect for this Court to assume that the status of an educational institution as a minority institution, entitled to the protection of Article 30 of the Constitution of India, is dependent upon any declaration of it as a minority educational institution. If the 6th respondent is otherwise a minority educational institution, it will remain as such and will continue to enjoy the protection of Article 30. Apart from these facts, the learned Additional Advocate General was also categorical that the 6th respondent is a linguistic minority educational institution. Further in Ext.P13 judgment, this Court has proceeded on the basis that the school a linguistic minority educational institution. In the light of these, I am inclined to accept the case of the respondents that the 6th respondent is a linguistic minority educational institution.

14. Once the status of the 6th respondent as a minority educational institution is accepted, it is entitled to the benefit of Article 30 of the Constitution of India, which provides that for compulsory acquisition of any property of an educational institution established and administered by a minority, the State shall make a law ensuring that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under Article 30(1A) of the Constitution of India. It is in the context of this provision of the Constitution, that the Apex Court in its judgment in *Society of St. Joseph's College v. Union of India* (supra) held that Article 30(1-A) was introduced by the Parliament as a safeguard to obviate the violation of the right conferred by Article 30 of the Constitution and that Clause (1-A) clearly states that after the date of its introduction, if property of a minority educational institution is to be compulsorily acquired, there must be a law specifically providing for such acquisition and that such law must make provisions that ensure that the amounts that are fixed or determined there under for the acquisitions do not restrict or abrogate the right guaranteed under Article 30.

Proceeding further, taking note of the absence of any legislation in this behalf the Apex Court held that it is appropriate that Parliament and the State Legislatures should have time up to 31st May 2002 to make such laws, if they so choose and that all uncompleted acquisitions of the properties of minority educational institutions shall lapse at the end of such period, provided the Statutes under which the acquisitions have been commenced have not been duly amended and that if they are duly amended, the amounts payable for such acquisitions shall be determined thereunder.

15. Even as on date, a law as contemplated under Article 30(1-A) and as held by the Apex Court has not been legislated either by the Central or the State Legislature. Therefore it would not have been possible for the State to acquire the property of any minority educational institution. If that be so, the notification dated 9.6.2006, issued by the State for acquiring the property of the 6th respondent School was illegal and W.P.(C). No. 18503/2006 challenging the Section 4(1) notification would certainly have been allowed on that ground. It was on account of this difficulty and as the land belonging to the school was essential for the project, that a consensus was arrived at between the State and the 6th respondent. However, the school authorities agreed to part with their property on condition that they shall be duly compensated by providing an equal extent of land, in fact they had even generously agreed to be satisfied if an equal extent of land elsewhere is given to them it was in this background that the land of the petitioners situated on the western side of the school property was identified and Ext. P1 notification was issued u/s 4(1) of the Land Acquisition Act, invoking the urgency clause and dispensing with Section 5A enquiry.

16. Ext. P1 notification is challenged mainly on the ground that it was a colourable exercise of power, in as much as the acquisition is not for a public purpose. Where power is conferred to achieve a purpose, it must be exercised reasonably and in good faith to carry out the purpose. In this context, "in good faith" means "for legitimate reasons" and where power is exercised for extraneous or irrelevant considerations or reasons, it is a colourable exercise of power or fraud on power and that exercise of power is vitiated.

Therefore, if power to acquire land is exercised, for an extraneous or irrelevant considerations, the authority can be charged with legal mala fides. In such situation, there is no question of any personal ill will or motive. It has been held by the Apex Court in *State of Punjab and Another Vs. Gurdial Singh and Others*, , that the action of a statutory authority is bad, where the true object is to reach an end different from the one for which power is entrusted, goaded by extraneous considerations, good or bad, but irrelevant to the entrustment. It was also held that when the custodian of power is influenced in its exercise by considerations outside those for the promotion, of which the power is vested, the court calls it a colourable exercise and is undeceived by illusion.

17. Applying these principles, in *Collector (District Magistrate) Allahabad and Another Vs. Raja Ram Jaiswal*, , the Apex Court interfered with the land

acquisition proceeding which were initiated for the acquisition of a plot of land as being needed for a public purpose mainly for extension of Hindi Sangrahalaya of the Hindi Sahteya Sammellan, Prayag. It was found that the acquisition proceedings were initiated only for the reason that the authorities of the Sammelan could not tolerate the existence of a cinema theater in its vicinity. It was held that the Sammelan was actuated by irrelevant and extraneous considerations in seeking acquisition of land and the statutory authority having known this fact, yet proceeded to exercise statutory power and initiated the process of acquisition which was held to be illegal.

18. In this context, reference was also made to the judgment in *Devinder Singh and Ors. v. State of Punjab and Ors.* (2008) 1 SCC 728, where it was held that if the acquisition made is not relatable to public purpose, then a question may well arise whether in making declaration, on the part of the Government there has been a fraud on the power conferred on it under the Land Acquisition Act. According to the learned Counsel for the petitioners, Ext.P1 notification is a colourable exercise of power and by entering into a private agreement with the 6th respondent, the State was seeking to achieve something which it could not otherwise do. However I do not find any substance in this argument. As I have already noticed petitioners have no case that the purpose for which the school property was sought to be acquired is not a public purpose. Once it is accepted that the acquisition of school property was for a public purpose, taking into account the fact that the acquisition of the school property was inevitable for the implementation of the project, one must recognize that in the given circumstances, the only option available to the State was to enter into an agreement with the school authorities for taking over the land. It was during such a negotiation that the school authorities expressed their willingness to part with their property on condition that they should be compensated with equal extent of land for the reason that what they now hold is only the minimum required land and that any reduction in the land will adversely affect their future expansion programmes. Therefore, it is in this factual background of the matter, that one should evaluate whether the purpose for which the land is sought to be acquired by Ext. P1 notification, is a public purpose or not.

19. Public purpose has been given an inclusive definition in Section 3(f) of the Land Acquisition Act. This means the Legislature wanted to ensure maximum flexibility while incorporating the said provision. The concept of public purpose is bound to vary with time and prevailing conditions in the community and locality and it was therefore that the legislature has left it to the State to decide what is a public purpose and the sole and absolute discretion in the matter is vested with the Government. It has been held that the expression public purpose is not capable of a precise definition and does not have a rigid meaning and that it can be defined by a process of judicial inclusion and exclusion and that the definition of the expression is logistic and takes its colour from the statute in which it occurs. It has been repeatedly held that public purpose will include a purpose in which the general interest of the community as opposed to the interest of an

individual is directly or indirectly involved and in such a situation the interest of the individual must give way to public interest.

20. The point to be determined in each case is whether acquisition is in the general interest of the community as distinguished from the private interest of the individuals and the facts and circumstances of each case will require to be closely examined in order to determine whether a public purpose has been established. The Government is the best judge to decide whether public purpose is served by issuing a requisition, but is not the sole judge and that courts have the jurisdiction and it is their duty to determine the matter. I do not think it necessary to burden this judgment with all the precedents judgments that were cited, except to mention the judgments of the Apex Court in *Daulat Singh Surana and Others Vs. First Land Acquisition Collector and Others*, and in *Suraram Krishna Reddy v. District Collector* 2008 (4) KLT 33 (C. No. 31) SC. Once meaning of the expression "public purpose" has been understood as above, I should mention certain other judgments which were cited at bar. *Varkey Devassy v. State of Kerala and Ors.* 1966 KLT 805, is a case were following the earlier judgment in *A.P. Mohammed Nooho v. State and Ors.* 1952 KLT 498, this Court upheld a notification for the acquisition of property for the purpose of a temple. Similar acquisition was upheld by the Apex Court in *Bajirao T. Kote (Dead) by Lrs. and Another Vs. State of Maharashtra and Others*, and also by this Court in *Gopakwnar v. State of Kerala* 2009 (1) KLT 551 : 2009 (3) KHC 361. In *The Forane Church, Chalakudy v. State of Kerala and Ors.* 1971 KLT 733, a Division Bench of this Court upheld land acquisition proceedings for acquiring land for the expansion of a school. Reference was also made to the Apex Court judgment in *Mrinalini Roy Ratna Prova Mondal and anothers Vs. State of West Bengal and others*, , where acquisition for rehabilitation of evictees was held to be for a public, purpose. There cannot be an argument that land needed for a school is not for the general interest of the community. Having regard to he inclusive definition of purpose and in the fight of the other facts noticed, the acquisition of the school property has to be held as one for a public purpose. As already held it was inevitable to acquire school property and this could not have been done except by an agreement with the 6th respondent. In such a case, if land is acquired under the Land Acquisition Act for compensating the school, applying the principles laid down in the judgments noticed above, such acquisition cannot be said to be a colourable exercise of power.

21. In the result I do not find any merit in the contentions raised. It is well known that the iron bridge at Trippunithura is a narrow, antique one, which cannot meet the present day traffic requirements and there has to be another bridge, it is with this purpose that a new bridge has been constructed. However due to successive litigations, even today the project remains incomplete and the agony of the general public continues. I hope and trust that with this Judgment, the disputes will be given a quietus and that the authorities will be able to proceed with the commissioning of the project.

Writ Petition only to be dismissed and I do so.