
(2004) 12 KL CK 0064
In the High Court Of Kerala
Case No : WP (C) No. 18908 of 2004 (A)

T.V. Nadeera

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 03-12-2004

Acts Referred:

Land Acquisition Act, 1894 — Section 12(2), 18, 4, 4(1), 5A

Citation : (2004) 1 KLJ 250

Hon'ble Judges : Pius C. Kuriakose, J

Bench : Single Bench

Advocate : Santheep Ankarath, for the Appellant; K. Lakshmi Narayanan (GP) and Varghese P. Thomas (Sr. SC. Rlys), for the Respondent

Judgement

Pius C. Kuriakose

1. Contending that it will be illegal to acquire more extents of properties than what is actually mentioned in the notification u/s 4(1) and seeking appropriate directions restraining the respondents from acquiring the petitioner's property in excess of the extends mentioned in the said notifications, the petitioner prays for quashing the entire acquisition proceedings. The petitioner also prays for directions regarding expeditious disposal of Ext. P4 representation submitted before the 4th respondent, the Deputy Chief Engineer (Construction), Southern Railway, the requisitioning authority. According to the petitioner Ext. P2 is the individual notice received by her u/s 4(1) of the Land Acquisition Act. According to her, the extent of the property which is proposed to be acquired as per Ext. P2 is only 0.180 hectares. Ext. P3, the petitioner submits is the true copy of the representation which was filed by her before the Assistant Executive Engineer (Construction), Southern Railway when she received Ext. P2. The petitioner avers that on her land mentioned in Ext. P2, she is constructing a residential building for herself and the said land is part of the only property belonging to her. According to her, When she found that there was no response whatsoever to Ext. P3, she submitted Ext. P4 representation before the 4th respondent and as she

was awaiting favourable action by that respondent on Ext. P4, the second respondent land acquisition officer issued Ext. P5 award notice to the petitioner. According to her, Ext. P5 notice u/s 12(2) of the land acquisition act came by way of surprise to her. She states that award is not passed in respect of 0.0471 hectares of land which is about 4 times the land mentioned in Ext. P2 earlier notice. According to her, she had no previous notice regarding the proposal to acquire this much of land from her possession and therefore the very award is illegal. On the various grounds raised in the writ petition she contends that the award is illegal and irregular and seeks the reliefs which I have already mentioned hereinbefore. A counter affidavit is filed on behalf of the Land Acquisition Officer, the second respondent. The 4th respondent has filed a counter affidavit as well as an additional counter affidavit. The petitioner has filed a reply affidavit.

2. Going by the counter affidavit filed by the land acquisition officer the award is already passed in respect of the petitioner's property mentioned in the award. Award has been passed after complying with all statutory formalities such as publication of the notification u/s 4(1) and the award enquiry u/s 9(3). According to the counter affidavit, since no objections were filed to the individual notice send to the petitioner u/s 4(1) the enquiry u/s 5A was unnecessary and hence dispensed with. It is contended that the petitioner's husband P. Muhammed represented the petitioner during the award enquiry and since he was not able to produce any document to establish the petitioner's claims over the property the compensation amount is now ordered to be kept under revenue deposit. It is to be noted that the counter affidavit submitted by the land acquisition officer does not answer the grievance specifically highlighted by the petitioner that there is considerable variation between the extent of the petitioner's property mentioned in the notice u/s 4(1) and the extent mentioned in the subsequent papers including the award.

3. In the counter affidavit submitted by the Deputy Chief Engineer (Construction), Southern Railway (4th respondent), the requisitioning authority also the above aspect of the matter, i.e. the variation between the extents shown in the Section 4(1) notification and in the subsequent papers pertaining to acquisition is not adverted to. Instead it is the averment of the petitioner that her property is not required to be acquired and that the proposal is mala fide which are seriously dealt with and denied. According to the counter affidavit, the petitioner's representation for exemption of her land and the structures situated thereon from acquisition cannot be considered because the petitioner's properties situated very close to the railway track, i.e. 12 metres away from the proposed track. Not only for the purpose of doubling of the railway line but also for the purpose of developing the Karakkad Railway Station Yard the petitioner's property is badly needed. In paragraph 7 of the counter affidavit it is specifically contended that the railway line connecting Mangalore to Shoranur is the most important railway line in Kerala. It is contended that with the commissioning of the Konkon Railway the need for developing the Mangalore-Shoranur route has

become most important. The present development at Karakkad Station is a part of the Shoranur-Mangalore doubling project and therefore acquisition of the petitioner's property for the above purpose is an extremely urgent public need.

4. In the additional counter affidavit submitted by the 4th respondent the serious point which arises in the case is dealt with. It is stated in paragraph 3 of the additional counter affidavit that the extent of land shown in the Section 4(1) notifications was only an approximate extent but in the subsequent draft declaration which is published after the conduct of survey the correct extent is mentioned and it is in respect of the correct extent that the award is now passed.

5. The petitioner through her reply affidavit submits that Ext. P4 sketch will show clearly that the properties of the petitioner is beyond the new railway station platform building. According to the petitioner, if platform is to be extended upto the petitioner's land necessarily the new building will have to be demolished. It is also suggested through the reply affidavit that the railway authorities can easily construct a retaining wall for protecting the track as is done on the other side of the track rather than acquiring the land. Then highlighting the contention that there is difference in the extent of land shown in Section 4(1) notification and the subsequent document relating to acquisition the petitioner again contends that the respondents have no authority to notify more extents of land than notified as per Section 4(1) of the land acquisition act. Any declaration made in respect of the land not covered by Section 4(1) notification will be unsustainable and the same will be in violation of the principles of natural justice also. It is also claimed in the reply affidavit that Ext. P6 reference application is submitted in person as well as through post and an alternative prayer is incorporated in the reply affidavit that there must be a direction to refer the matter to the civil court for determination of the correct compensation.

6. Heard Mr. Santheep Ankarath, learned counsel for the petitioner, Mr. Varghese P. Thomas, learned Senior Standing Counsel for Railways and Mr. Lakshmi Narayanan, learned Government Pleader.

7. Mr. Varghese P. Thomas, learned Senior Standing Counsel for Railways would invite my attention to a Division Bench decision of this court in Land Acquisition Officer v. Mathews Mar Ivanios (1975 KLT 584) and submit that on a mere reading of Section 4 of the land acquisition act which corresponds to Section 3 of the Kerala Land Acquisition Act it will be clear that it is only after the issuance of Section 4(1) notification that the officers authorised by the Government or the Collector can enter upon and survey the land in the locality, mark out the boundaries thereof and do all other things necessary to ascertain whether the land is adapted for the purpose of acquisition. According to the learned counsel, it is only thereafter that the extent, the measurement and the boundaries of the land become crystalised and those details will become eventually reflected in the Section 6 declaration. Therefore, according to the learned counsel, there cannot be any merit in the objection that Section 6 declaration takes an extent of land different from or at variance with the extent mentioned in Section 3. Sri.

Santheep Ankarath, learned counsel for the petitioner would try to distinguish the said decision by pointing out that Land Acquisition Officer v. Mathews Mar Ivanios (supra) was a case where section 6 declaration showed a lesser extent than what was shown in section 3(1) notification and therefore the principles laid down in that decision cannot be of application in the present case where the argument is that a declaration u/s 6 which does not have a corresponding section 4(1) notification in respect of the land in question is illegal. Mr. Santheep Ankarath referred me to a Full Bench decision of the Delhi High Court in Roshanara Begum v. Union of India (AIR 1996 Delhi 206). Counsel would place strong reliance on the observation in the above judgment and submit that once it is shown that there was no notification issued u/s 4(1) pertaining to a particular land the entire subsequent proceedings will be void and it will be open to the petitioner to challenge the proceedings even at a belated stage. In the present case also as far as the petitioner's land in excess of the extent mentioned in Section 4(1) notification is concerned, there was no section 4(1) notification at all and therefore according to the learned counsel the petitioner is entitled to contend even at this belated stage that the entire proceedings are illegal and without jurisdiction. For the same proposition Mr. Santheep relied on a decision of the Madras High Court in K.A.S. Khader Sahib v. State of Tamil Nadu (AIR 1983 Madras 383). Relying on the observations in paragraph 3 of the judgment, counsel submitted that what was essential was the existence of a Section 4(1) notification which refers to the property in respect of which the declaration is passed. Notwithstanding the above submissions Mr. Santheep Ankarath would very fairly concede before me that a Division Bench of this court in a later decision in P.N. Menon v. Corporation of Calicut (AIR 1995 Kerala 136) has taken a contrary view. Inviting my attention to paragraph 13 of the judgment, the learned counsel pointed out that it is decided that in the notification u/s 4(1) the Government is not obliged to state the precise extent of the land to be acquired and that the sub-section only requires the Government to mention the locality where the land is situated. Counsel also referred to me the judgment of the Supreme Court in Narendrajit v. State of U.P. (AIR 1971 S.C. 306) which was relied on by the Division Bench in P.N. Menon's case (supra). Sri. Santheep further argued that in plan attached to Ext. P4 produced in the petition will show that the stand of the railway that it is necessary to acquire the entire extent of the petitioner's land mentioned in the declaration u/s 6 is totally incorrect.

8. Sri. Varghese P. Thomas, learned Senior Standing Counsel for the Railway submitted that the petitioner had been submitting representations Exts. P3 and P4 before the Assistant Executive Engineer (Construction), Southern Railway, Shomur and the Deputy Chief Engineer (Construction), Southern Railway, Calicut who are not statutory authorities under the land acquisition act. A grievance like the present one wherein the regularity of the statutory procedure is adopted in the matter of land acquisition is challenged, the petitioner ought to have moved the authorities under the land acquisition act even if there was a genuine grievance. Reiterating his initial submissions based on the decision of this court

in *Land Acquisition Officer v. Mathews Mar Ivanious* (supra) the learned counsel submitted that a combined reading of the principles laid down by the Supreme Court in *Narendrajit v. State of U.P.* (supra) and the Division Bench of this court in *P.N. Menon's case* (supra) will leave no room for doubt that the Government is not expected to mention the extent of the land proposed to be acquired in the notification u/s 4(1). Meeting the argument that it is not necessary to acquire the entire extent of the petitioner's land mentioned in section 6 declaration Mr. Varghese P. Thomas submitted that in such matters the satisfaction of the requisition authority is final. With the commissioning of the Konkon Railway the Shoranur-Mangalore sector has grown in importance and the expansion of the Karakkad Railway Station for which purpose the petitioner's land is acquired is an urgent necessity. Counsel concluded his submissions by pointing out that the award is already passed and therefore there is no further scope for judicial review. According to the learned counsel, the petitioner participated in the award enquiry through her husband and has even filed a reference application u/s 18.

9. Having considered the rival pleadings and submissions made in this case, it is to be noticed that the question which seriously arises for determination is whether the variation between the extents of petitioner's land mentioned in the notification promulgated u/s 4(1) and the declaration u/s 6 of the land acquisition act vitiates the acquisition proceedings. V.P. Gopalan Nambiyar & George Vadakkeli, JJ. in *Land Acquisition Officer v. Mathews Mar Ivanios* (supra) in unambiguous terms laid down that it is only after the issuance of the preliminary notification u/s 3 which corresponds to section 4 of the Central Act that the officers authorised by the Government or the Collector can enter upon and survey the land in the locality, marked out the boundaries thereof and do all other acts necessary to ascertain whether the land is adapted for the purpose of the acquisition and that it is only thereafter that the extent and other details of the land to be acquired become crystalised. But then *Land Acquisition Officer v. Mathews Mar Ivanios* (supra) was a case where the notification u/s 3 took in a larger extent than the property covered by the declaration u/s 6 in that case and therefore the facts in that case is not comparable to the facts which obtain in the present case where the notification u/s 4 mentioned a much lesser extent and did not include substantial portions of the property of the petitioner which is now described in the declaration u/s 6. The later decision by K.T. Thomas & S. Subramani, JJ. in *P.N. Menon's case* (supra) however leaves no room for doubt on the question. In that case the notification u/s 4(1) covered only a much smaller area than the area in respect of which the declaration u/s 6 was promulgated. Their Lordships after noticing that the area mentioned in section 4(1) had been specifically shown as only an approximate area held that in the notification u/s 4(1) the Government is not obliged to state the precise extent of land to be acquired. Sub-section only requires that the Government must indicate that the land in a particular locality is need for a particular public purpose. In fact the Division Bench was following the observations of the Supreme Court in *Narendrajit's case* (supra) that section 4(1) does not require

that the identity of the land which may ultimately be acquired is specified but it enjoins upon the Government the duty only to specify the locality in which the said land is needed. It therefore follows that the petitioner's challenge of the acquisition proceedings on the reason that the notification u/s 4(1) took in only a lesser extent of land than the extent of land presently mentioned under the notification u/s 6 will fail as decided by the Division Bench in P.N. Menon's case (supra). Here also the action 4(1) notification specifically mentioned that the area shown therein is only approximate. It was conceded before me that the petitioner had received individual notice u/s 9(3) of the statute and the said notice mentioned the correct extent as shown in the declaration u/s 6. In response to the said notice there was an award enquiry in which the petitioner was represented by her husband and pursuant to that an award is passed. The scope of judicial review is very narrow in cases where award has been passed and the petitioner has not been able to substantiate that the proceedings have been initiated mala fide or that any provision of law has been violated in the matter of passage of the award. As rightly pointed out by the learned Standing Counsel for the railway the acquisition is necessary for the development of Karakkad Railway Station in connection with the doubling of the most important route of Shomur-Mangalore. Therefore I hold that the petitioner is not entitled for any of the reliefs sought for in the writ petition. But through the reply affidavit she seeks relief in respect of Ext. P6 also. Learned counsel for the petitioner submitted that Ext. P6 was sent by registered post on the 42nd day of service of notice u/s 12(2) on the petition. The learned Government Pleader submits that in all probability the application is delayed by at least one day. This court admitted the writ petition on 28-06-2004 and granted stay of dispossession. By now it is trite that stay of dispossession amounts to stay of further proceedings in land acquisition (see Government of Tamil Nadu and another Vs. Vasantha Bai,) and Municipal Corporation of Delhi Vs. Lichho Devi and others, . In that view of the matter there is justification for construing the reference application as having" been filed within the period of limitation. Therefore even as I refuse the relief sought for in the writ petition the petitioner will be given relief in respect of Ext. P6. Accordingly, the Writ Petition will stand disposed by passing the following direction:

The second respondent land acquisition officer shall dispose of Ext. P6 favourably within a maximum period of one month from the date of production of a copy of this judgment.