
(2017) 02 KL CK 0030
In the High Court Of Kerala
Case No : WP(C).No. 10839 of 2014

Varghese Varghese M.

APPELLANT

Vs

The Land Acquisition Officer

RESPONDENT

Date of Decision : 17-02-2017

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 11

Citation : (2017) 2 ILRKerala 387 : (2017) 1 KLT 833

Hon'ble Judges : Mr. Shaji P. Chaly, J.

Bench : Single Bench

Advocate : Sri. M.P. Ramnath, Sri. P. Rajesh (Kottakkal), Smt. Uma R. Kamath, Smt. S. Sandhya, Sri. Bepin Paul and Sri. Shalu Varghese, Advocates, for the Petitioners; Sri. Y. Jafarkhan, Addl, Government Pleader, for the Respondent Nos. 1 and 2; Sri. K. Jaju Babu, Senior Advocate, Smt. M.U. Vijayalakshmi, SC, for the Respondent No. 5

Final Decision : Dismissed

Judgement

Mr. Shaji P. Chaly, J.—This writ petition is filed by the petitioners seeking to declare that the proceedings of acquisition covered by Exts.P2 and P4 pertaining to Survey Nos.595/2-19 and 575/2-8 of Ernakulam Village have lapsed, and for other related reliefs. Material facts for the disposal of the writ petition are as follows:

2. Petitioners seek to declare the entire acquisition proceedings as null and void and lapsed by operation of law, since none of the mandatory enquiry proceedings are conducted and the petitioners were not heard, no pre-award enquiry in pursuance of objections filed to Section 9(3) notice is conducted and no award notice is issued under the Land Acquisition Act, 1894 [for short, Act, 1894]. Ext.P4 reference was made to the Court under Section 31(2) of Act, 1894 dated 12.02.2014, stating that an award is passed on 30.12.2013. Therefore, according to the petitioners, it is absolutely clear that manipulations and fraud is played by respondents 1 and 2, merely making records as if award is passed on

30.12.2013, with the intention of getting over the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation & Resettlement Act, 2013 [for short, "Act, 2013"].

3. Petitioners and respondents 3 and 4 are the coowners of the property under acquisition proceedings initiated by respondents 1 and 2 for the Metro Rail Project in Ernakulam city. Properties are having a total extent of 10.98 Ares consisting of 0.30 Ares in Sy.No.575/2, 1.04 Ares in Sy.No.575/6, 4.41 Ares in Sy.No.595/2, 3.92 Ares in Sy.No.595/3, 0.20 Ares in Sy.No.595/18 and 01.114 Ares in Sy.No.595/19 of Ernakulam Village and is situated very close to the Ernakulam Junction Railway Station. A three storied commercial building with appurtenant structures with Cochin Corporation No.39/1115 is also situated in the property. The mother of the 2nd petitioner was a co-owner and on her death on 11.01.2014, the 2nd petitioner inherited various assets including the rights of her mother in the property as per her registered Will dated 09.12.2011.

4. The 1st petitioner and 2nd petitioner's mother and respondents 3 and 4 received notice dated 29.09.2012 under Section 9(3) of Act, 1894 from the 1st respondent, intimating that an extent of 0.36 Ares and 0.11 Ares situate in Sy.Nos.595/2-19 and 575/2-8, totalling to 0.47 Ares, is proposed to be acquired for a public purpose and calling for objections if any to be filed before the 1st respondent. Though dated 29.09.2012, it is seen sent by the 1st respondent only on 09.10.2012 by registered post, and the same was received by the 1st petitioner on 11.10.2012, and mother of the 2nd petitioner on 12.10.2012, evident from Ext.P2.

5. Immediately thereafter, 1st petitioner and 2nd petitioner's mother issued preliminary reply dated 18.10.2012 itself, stating inter alia that the acquisition is understood to include co-owned properties of the parties in Sy.No.595/18 and 595/19 inside the compound walls, and also that, as per the orders of a Division Bench of this Court in R.F.A No.389 of 2010, the matter was remanded to trial court, the question of title to such property is pending consideration before the Sub Court, Ernakulam in O.S.No.15 of 2008, and that fresh notice has to be issued incorporating such property also and annexing the court appointed surveyors plan, and the judgment of this Court in R.F.A No.389 of 2010. The preliminary reply was served on the 1st respondent in person on 18.10.2012, and also sent by registered post on 18.10.2012, evident from Ext.P3. Thereafter, no further proceedings have been taken or intimated to the petitioners nor they were called for any hearing, much less any contemplated by law up to date.

6. After Ext.P2 notice, for the first time, a notice bearing No.LAC 67A/12/A3 dated 12.02.2014 is issued by the 1st respondent and received by the petitioners on 22nd and 23rd of February, 2014, evident from Ext.P4. It is supposedly a notice addressed to the Principal Sub Judge, Ernakulam, referring the matter to court under Section 31(2) of Act, 1894. Therefore, it is the case of the petitioners that, after Ext.P3 reply given by them, there was no proceedings intimated or conducted with notice to petitioners, as statutorily mandated under

Act, 1894. There has been no intimation of any proposed value to be given/ compensation as per statutes, for the land intimated to be acquired. Only if any such proposal is intimated, there can be an objection raised and appropriate value of compensation sought to be determined. It is also stated that, there was no proper enquiry before passing the alleged award 81 of 2013 dated 30.12.2013 as stated in Ext.P4. According to the petitioners, the entire proceedings are created and made to appear as if done in order to get over the provisions of Act, 2013. The other aspects contained in Ext.P4 notice is totally denied by the petitioners. Petitioners have issued a reply against Ext.P4 notice, evident from Ext.P5, which was also served in person. Exts.P6 and P7 are the orders passed in two Interlocutory Applications in O.S.No.15 of 2008. Therefore, it is the contention of the petitioners that the entire proceedings as per Exts.P2 and P4 are to be declared null and void and further directions have to be issued to initiate proceedings for acquisition of the land of the petitioners.

7. Other documents are also produced by the petitioners consequent to the subsequent developments with respect to the suit pending by and between the petitioners and the party respondents, and other documents surrendering the rest of the properties by the petitioners and other party respondents.

8. First respondent has filed a counter affidavit and an additional counter affidavit denying the allegations and claims and demands raised by the petitioners. That apart, it is stated that the land has been acquired for widening the South Railway Station Road being the preparatory work of prestigious project of Kochi Metro Rail, and notification under Section 4(1) of Act, 1894 was published in the Gazette dated 07.06.2011 and in the Malayalam Daily newspapers dated 12.05.2011 respectively. The substance of the notification was published in the concerned Taluk and Village Offices on 30.06.2011 and in the locality on 31.07.2011. Therefore, the last date of publication of Section 4(1) notification is 31.07.2011.

9. The declaration under Section 6(1) of Act, 1894 has been approved by notification dated 19.06.2012 and published in the Kerala Gazette on 20.06.2012 for the acquisition of a total extent of 0.1256 Hectares of land from various survey numbers of Ernakulam Village, including the land mentioned in the award in question. The declaration has been published in Malayalam Dailies dated 05.07.2012 and 10.07.2012, invoking the urgency clause under Section 17(1) & (4) of Act, 1894. The provisions of Section 5A was given a go by and directed to take advance possession. Accordingly, public notice was issued on 09.08.2012 under Section 9(1) of the Act, by publishing in the notice board of the Taluk Office, Kanayannur and Village Office, Ernakulam on 16.08.2012. The notice was widely published in the acquisition site on 22.08.2012, the land was taken advance possession and handed over to the requisitioning authority on 13.12.2013.

10. Accordingly, Basis of Valuation Report (BVR) value of Rs.60,92,506/- per Are was prepared by the Land Acquisition Officer, and was approved by the 2nd

respondent as per proceedings dated 07.07.2011. Considering the nature of land and its location and other relevant aspects, the entire land covered by declaration has been categorized into two. An extent of 0.47 Ares of land in Sy.No.595/2 and 575/2 of Ernakulam Village owned by the petitioners and respondents 3 and 4 and other claimants were coming under acquisition.

11. Notice under Section 9(3) was served to the claimants viz., petitioners 1 and 2 and respondents 3 and 4 and other known claimants. The claimants through authorised representatives appeared before 1st respondent on 18.10.2012 and claimed title, possession and ownership over a total extent of 0.47 Ares of land in the above specified survey numbers. In response to public notice under Section 9(1), no one else appeared or filed any claim statement. As the claimants could not produce original documents, and prove title over the property, the compensation was liable to be deposited before the court under Section 31(2) of Act, 1894. It is also stated that the entire land acquisition proceedings was strictly obeying the provisions of the Land Acquisition Act, 1894, and there is no illegality in these proceedings. An amount of Rs.50,51,967/- is deposited before the Sub Court, Ernakulam, as per the proceedings in LAR No.24 of 2014 under Section 31(2) of Act, 1894. For enhancement in the above compensation, as sought for, a reference to Sub Court under Section 18 of Act, 1894 was made on 23.04.2014, and the same is pending as LAR No.48 of 2014. It is further stated that notice under Section 9(3) has been served to the claimants. However, after the hearing date, some of the co-owners of the property viz., Varghese Varghese M. and Dr. Alice Varghese submitted a Claim statement. But, they have not produced any evidence or documents to prove their title and therefore, there was no reason for the Land Acquisition Officer to change the order dated 18.10.2012 (incorrectly stated as 18.10.2013) under Section 9(3) hearing. It is also stated that the other properties belonging to the petitioners were notified and took possession.

12. That apart, it is submitted that necessary enquiry was conducted with respect to the land notified, and the petitioners could not produce documents of title in order to receive the award amount, and that is the reason why the proceedings under Section 31(2) of Act, 1894 was taken by the 1st respondent. The other extents of property belonging to the petitioners and party respondents and other claimants were taken, which is a subject matter in W.P.(C) No.22785 of 2016 and therefore, the facts in detail with respect to the same are not recited.

13. Additional counter affidavit is also filed reiterating the stand adopted in the counter affidavit filed by the 1st respondent, stating that pursuant to the notice under Section 9(3), petitioners participated in the hearing on 18.10.2012, and there is no sum and substance in contending that there was no enquiry prior to the award was passed.

14. Fifth respondent has filed a counter affidavit, virtually supporting the statements made by the 1st respondent in its counter affidavit. It is also contended that since an award is passed on 30.12.2013, petitioners and other

claimants are not entitled to get the benefits of Act, 2013. Therefore, the official respondents seek dismissal of the writ petition.

15. Heard learned counsel for the petitioners, learned Government Pleader, learned counsel appearing for respondents 3 and 4 and the learned Standing Counsel appearing for additional 5th respondent. Perused the documents on record and the pleadings put forth by the respective parties.

16. The thrust of the contention advanced by learned counsel for the petitioners is in respect of the proceedings under Section 11 of Act, 1894. It is the contention of the learned counsel that even though a notice was served under Section 9(3) and a hearing was conducted on 18.10.2012, there was no notice in the enquiry under Section 11 of Act, 1894. According to the counsel, a subsequent notice under Section 11 is required in order to conduct the enquiry and before passing of the award by the District Collector. In my considered opinion, the controversy in the writ petition can be resolved by making a reference to the provisions of Sections 9 and 11 of Act, 1894, which read thus :

"9. Notice to person interested. - (1) The Collector shall then cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land, and that claims to compensation for all interests in such land may be made to him.

(2) Such notice shall state the particulars of the land so needed, and shall require all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice), and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests, and their objections (if any) to the measurements made under Section 8. The Collector may in any case require such statement to be made in writing and signed by the party or his agent.

(3) 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.

(4) In case any person so interested resides elsewhere, and has no such agent, the notice shall be sent to him by post in a letter addressed to him at his last known residence, address or place of business and registered under Sections 28 and 29 of the Indian Post Office Act, 1898 (6 of 1898).

11. Enquiry and award by Collector.-(1) On the day so fixed, or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given under Section 9 to the measurements made under Section 8, and into the value of the land at the date of the publication of the notification under

Section 4, sub-section (1) and into the respective interests of the persons claiming the compensation and shall make an award under his hand of--

(i) the true area of the land;

(ii) the compensation which in his opinion should be allowed for the land; and

(iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him:

Provided that no award shall be made by the Collector under this sub-section without the previous approval of the appropriate Government or of such officer as the appropriate Government may authorise in this behalf:

Provided further that it shall be competent for the appropriate Government to direct that the Collector may make such award without such approval in such class of cases as the appropriate Government may specify in this behalf.

(2) Notwithstanding anything contained in subsection (1), if at any stage of the proceedings, the Collector is satisfied that all the persons interested in the land who appeared before him have agreed in writing on the matters to be included in the award of the Collector in the form prescribed by rules made by the appropriate Government, he may, without making further enquiry, make an award according to the terms of such agreement.

(3) The determination of compensation for any land under sub-section (2) shall not in any way affect the determination of compensation in respect of other lands in the same locality or elsewhere in accordance with the other provisions of this Act.

(4) Notwithstanding anything contained in the

Registration Act, 1908, (16 of 1908), no agreement made under sub-section (2) shall be liable to registration under the Act."

17. Petitioners have admitted that they have received notice and entered appearance on 18.10.2012. Respondents 3 and 4, subsequent to the said date of appearance entered appearance and filed statements. Even though the said aspect is not stated in the writ petition, the statement so made by the 1st respondent in the counter affidavit is not denied, which thus means, the parties were aware of the proceedings under Section 9 of Act, 1894. Petitioners have no case that they have sought adjournment of the proceedings to a later date. Nor they have case that any such opportunity was declined by the Collector. In effect, there is no established evidence in the writ petition to show that the requirements under Section 9 of Act, 1894 are violated. Therefore, the contentions raised in the writ petition contrary to available materials cannot be sustained under law.

18. Now the question remains to be considered is whether a separate notice for

conducting the enquiry is contemplated under Section 11. On a reading of Section 11, what I could gather is that, on the day so fixed or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given under Section 9 to the measurements made under Section 8, and into the value of the building at the date of the publication of the notification under Section 4, sub-section (1) and into the respective interests of the persons claiming the compensation and shall make an award. Therefore, on evaluating the stipulations contained under Section 11, it is clear that Section 11 is a dependent provision to Sections 4, 8, and 9 of Act, 1894. Therefore, the contention advanced by learned counsel for the petitioners that a separate notice is required under Section 11 of the Act cannot be sustained under law. The petitioners having admitted that notice under Section 9(3) was received and has filed a statement objecting to the proceedings cannot later turn around and contend that they have not received any notice under Section 11, because there is no provision for issuing any notice under Section 11, and the petitioners are thereupon not entitled to make claim, as of right that they are entitled to participate in the proceedings as per a notice received under Section 11. It could be said in a better way that, Section 11 is an enabling provision for the Collector to take note of the proceedings contemplated under the previous provisions and pass award in accordance with the stipulations contained thereunder. That being the situation, the contentions advanced by the learned counsel for the petitioners that they did not receive a notice under Section 11 of Act, 1894 cannot be sustained under law. It is an admitted fact that at the point of time when acquisition proceedings were initiated, disputes by and between the petitioners and party respondents, and other claimants were pending before the Sub Court, Ernakulam, in the proceedings specified above. It was thereupon that after passing award on 30.12.2013, the money due to the claimants was deposited by invoking Section 31(2) of Act, 1894 before the Subordinate Judge's Court. It is evident and admitted that being dissatisfied with the award, a reference was sought under Section 18 of Act, 1894 within time and consequentially a reference is pending before the appropriate court. The said circumstance is also a powerful and poignant indicator to show that petitioner participated in the award enquiry on receipt of notice under Section 9 of the Act. Apart from all these, none of the other claimants have made any challenge to the award proceedings which is also a component circumstance to think that, the case advanced by the petitioners have any bonafides, merit or truth. Therefore, in my considered opinion, petitioners have failed to make out any case of fraud, illegality, other material or legal infirmities or arbitrariness in the acquisition proceedings of an extent of 0.47 Ares of property situate in Sy.Nos.595/2-19 and 575/2-8 of Ernakulam Village, Kanayannur Taluk, warranting interference of this Court under Article 226 of the Constitution of India.

19. Therefore, the writ petition is dismissed, leaving open the liberty of the petitioners and other claimants to approach the Sub Court, seeking release of the

amount deposited under Section 31(2) of Act, 1894. I also make it clear, I have not expressed any opinion on the merits of the value of the property, improvements etc. etc. since the subject matter is pending in reference under Section 18 of the Act.