
(1965) 12 KL CK 0032
In the High Court Of Kerala
Case No : O.P. No. 1949 of 1964

Varkey Devassy

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 03-12-1965

Acts Referred:

Constitution of India, 1950 — Article 27, 31
Kerala Land Acquisition Act, 1961 — Section 3, 3(2), 4, 43(1), 5
Land Acquisition Act, 1894 — Section 3(1), 3(1)

Citation : (1966) KLJ 712

Hon'ble Judges : P. Govindan Nair, J

Bench : Single Bench

Advocate : K.S. Sebastian, for the Appellant; K. Chandrasekharan and T. Chandrasekhara Menon for Respondent 3, for the Respondent

Final Decision : Dismissed

Judgement

P. Govindan Nair, J.—The prayer in this writ application is to issue a writ of certiorari or such other appropriate writ order or direction to the respondents in order to call up the records and proceedings of Ex. P. 1 notification issued by the 1st respondent, Ex. P. 2 and P. 6 notice issued by the 2nd respondent to scrutinise the same and quash the entire land acquisition proceedings taken against the petitioner's property, 42 cents in Sy. No. 1325/8 of Maradu Village, Kanayannur Taluk, Ernakulam District.

The first respondent to this writ application is the State of Kerala. The second respondent is the Revenue Divisional Officer, Fort Cochin and the additional third respondent is the General Secretary, Nettur Dharmaprasobhini Sabha. Ex. P.1 notification was issued u/s 3 (1) of the Land Acquisition Act, II of 1070 which was applicable to the Cochin area. It is unnecessary to read Section 3(1). It is very similar to Section 3 of the Kerala Land Acquisition Act, 1961. Ex. P. 1 notification stated.

Whereas it appears to the Government of Kerala that the land specified below is

likely to be needed for a public purpose, to wit, for the Nettur Dharmaprasobhini Sabha for a temple compound notice to that effect is hereby given to all whom it may concern in accordance with the provisions of section 3(1) of the Cochin Land Acquisition Act, II of 1070. The Government hereby authorise the Revenue Divisional Officer, Fort Cochin, his staff and workmen to exercise the powers conferred by section 3 (2) of the said Act.

2. It is alleged in the counter affidavit that no objections were raised to the above notification within the time prescribed by section 4 of Act II of 1070. Therefore a declaration was made u/s 6 on 21st January, 1964. Thereafter a notice Ex. P.6 was issued u/s 9 (3) of the Kerala Land Acquisition Act, 1961. It may be mentioned here that the Kerala Land Acquisition Act came into force on 1-4-1963 replacing Act II of 1070 and this was before the declaration was made. The declaration was made u/s 6 of the Kerala Land Acquisition Act, 1961.

3. (i) Counsel on behalf of the petitioner has contended that the acquisition for a temple is not an acquisition for a public purpose as envisaged by Art. 31 (2) of the Constitution and not within the meaning of that term in Section 3 of the Land Acquisition Act, 1961.

(ii) It is also urged that since the entire amount for the acquisition is to be paid by the third respondent, the acquisition cannot be said to be for a public purpose. The contention is that in order that the acquisition may be for a public purpose at least a part of the amount must be from public revenues or some fund controlled or managed by a local authority.

(iii) Alternatively it is urged that since it is mentioned in Ex. P.1 "for the Nettur Dharmaprasobhini Sabha" which is a registered society it may be taken that the acquisition is for a company. This, it is admitted, is possible under the Land Acquisition Act, 1961. But it is urged that in order that the acquisition may be made for a company, the procedure provided in Part VII of the Land Acquisition Act must be followed and there must be a written agreement executed before any enquiry u/s 5 is undertaken and further any acquisition under that part can be only for one of the purposes mentioned in Section 43 (1) thus:

43. (1) Previous enquiry--(1) Such consent shall not be given unless the Government be satisfied, either on the report of the Collector under sub-section (2) of section 5 or by an enquiry held as hereinafter provided,--

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

(c) that such acquisition is needed for a purpose calculated to promote and develop agriculture, industry or co-operation.

And the purpose here is not one such. So the acquisition even treated as for a company is bad.

4. In support of the first contention that the acquisition for a temple is not an acquisition for a public purpose, it is urged that Art. 27 of the Constitution which is in these terms:

27. No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.

Itself gives an indication that the State should not promote or provide facilities for the religious worship of a particular class. The argument is that the Constitution envisages a secular State and the State machinery cannot be utilised for the purpose of promoting one religion. The matter is certainly not free from difficulty. But a secular State does not mean that no religion should be allowed to flourish in the State or that no support should be given by the State in any manner for the development of any particular religion. On the other hand, it seems to me that facility must be afforded to all the religions to develop in a secular State. No doubt by virtue of Art. 27 of the Constitution which I have read no person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion. This restriction on the wording of the Article only applies to compulsion to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination. This article of the Constitution does not preclude the application of the general revenues of the State in payment of expenses for the promotion or maintenance of any particular religion. In fact, it appears to me that the Article implies that the general revenues may be utilised for such purposes. What ever that be, this Article of the constitution can have no application in determining the question as to whether the acquisition of land for a temple can be said to be an acquisition for a public purpose. 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 a temple or a church or a mosque must normally be for a public purpose. Counsel on behalf of the petitioner has not referred me to any decision where it has been ruled that acquisition for the temple cannot be acquisition for a public purpose. I therefore negative this contention.

5. I am also of the view that the question whether there is a public purpose or not is not justiciable. The matter is covered by the decision in *Smt. Somawanti and others v. State of Punjab* (reported in A.T.R. 1963 S.C. 151). The contention of counsel for the petitioner that the case cannot apply, that it is based on the provision to Section 6 (1) of the Land Acquisition Act, 1894, cannot stand. There is a similar provision in the Land Acquisition Act in Section 5 reading as under:

5. Hearing of objections:--(1) Any person interested in any land which has been notified under sub-section (1) of section 3 as being needed or likely to be needed for a public purpose may, within thirty days after the issue of the notification, object the acquisition of the land or of any land in the locality, as the case may be.

(2) Every objection under sub-section (1) shall be made to the Collector in writing and the Collector shall give the objector an opportunity of being heard either in person or by counsel and shall, after hearing all such objections and after making such further enquiry, if any, as he thinks necessary, submit the case

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(i) where the preliminary notification under sub-section (1) of section 3 was published by the Government, to the Government;

(ii) where the preliminary notification under sub-section (1) of section 3 was published by himself, to the Board of Revenue;

for the decision of the Government or the Board of Revenue, as the case may be, together with the record of the proceedings held by him and a report containing his recommendations on the objections.

The decision of the Government or the Board of Revenue, as the case may be, shall be final.

Declaration u/s 6 can and will be issued only when the Government is satisfied that the purpose is a public service. This conclusion is final and cannot be challenged. For this reason also the first contention must fail.

6. Counsel for the petitioner also referred to Ex. R7 an agreement entered into by the Government with the Dharma Prasobhini Sabha and urged that the entire compensation payable for the acquisition is to come from the Sabha referred to and therefore the acquisition cannot be an acquisition for a public purpose. The argument is that in order that an acquisition may be for a public purpose the compensation payable for such acquisition must wholly or partly be out of the public revenues or some fund controlled or managed by a local authority. This argument is based on the proviso to Section 6(1) of the Land Acquisition Act, 1894. The proviso is in these terms:

Provided that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, or wholly or partly out of public revenue or some fund controlled or managed by a local authority.

Counsel referred to a number of decisions of the Supreme Court such as Babu Barkya Thakur v. State of Bombay (now Maharashtra) and others (reported in 1960 S.C. 1203), R.L. Arora v. The State of Uttar Pradesh and others (reported in 1962 S.C. 764), State of West Bengal and others v. P.N. Lalukdar and others (reported in 1965 S.C. 646), Pandit Jhandu Lal and others v. The State of Punjab and another (reported in 1961 S.C. 343) and Shyam Behari and others v. The

State of Madhya Pradesh and others (reported in 1965 S.C. 427) and urged that the acquisition in this case is not for a public purpose because the entire fund is to be furnished by the Nettur Dharmaprasobhini Sabha. I do not think that the argument is sound. The proviso to Section 6(1) of the Land Acquisition Act, 1894 can have no application. The acquisition in this case is under the Kerala Land Acquisition Act 1961. There is no provision in the latter Act corresponding to the proviso to Section 6 (1) extracted above of the Land Acquisition Act, 1894. The decisions of the Supreme Court referred to, I think, are based on the provisions of the Land Acquisition Act, 1894. They did not lay down any general principle that there can be no acquisition for a public purpose unless the public revenues of the State are utilised for the acquisition. The fact that public revenue has been utilised for an acquisition may indicate that the purpose is a public purpose. But 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 acquisition. Persons interested in promoting or maintaining any particular religion may make funds available for the purpose of acquiring land for a temple. The fact that the Government have insisted that community should pay the costs is perhaps based on a good principle that public revenues should not be diverted for one class of religion. I am therefore unable to infer from the mere fact that public revenue has not been utilised that the acquisition is not for a public purpose.

7. Coming to the last contention that there has been no compliance with Part VII of the Kerala Land Acquisition Act, 1961, the answer of counsel on behalf of the State is based on paragraph 3 of the counter-affidavit reading as under:

I submit that the acquisition in this case is for a public purpose. Though the acquisition is for a temple of a particular Hindu Community, it can be used as a place of worship by all Hindus.

The case is that the acquisition is for a public purpose and not for a Company. This contention does not seem to be against the notification Ex. P.1 or the declaration u/s 6. The name of Nettur Dharmaprasobhini Sabha is apparently referred to in the notification and the declaration because they have agreed to pay the compensation. But it is also mentioned that the acquisition is for a temple compound. And the facts are clear and it is not disputed that the acquisition is for temple purposes. This I have held earlier, is a public purpose. So I am unable to accept the contention that the acquisition is for a company. It follows that Part VII of the Kerala Land Acquisition Act, 1961 cannot apply. There is therefore nothing wrong in having concluded an agreement Ex. R7 before the enquiry u/s 5 was completed. The acquisition need not also be exclusively for one of the purpose mentioned in Section 4. This argument must also fail.

8. There is no substance in the suggestion made by counsel that there has been any mala fide exercise of power. In the result, this writ application is dismissed. I make no order as to costs.