Abraham Mathai

Vs

Sub-Collector (Land Acq. Officer) and Others

Civil Appeal No. 186 of 1976

(B. C. Ray, A. M. Ahmadi JJ)

27.07.1990

JUDGMENT

B. C. RAY, J. -

1. The appellant who is owner of land comprised in R. S. Nos. 44/11 and 44/20 in village Thottapuzhasseri in Alleppey District, assailed the validity of the declaration made under Section 6 of the Kerala Land Acquisition Act, 1961 (Act 21 of 1962) made by respondent 2, Board of Revenue, Kerala State on September 25, 1973 and published in Kerala Gazette dated October 16, 1973 stating that the lands described therein are needed for a public purpose namely for a playground for M.M.A. High School and directing the Revenue Divisional Officer, Changannur to order for acquisition of the same.

2. The grounds on which the challenge was made in the writ petition inter alia were that the property in question was mortgaged with the Maramon Marthomite Church, as the Church refused to return the property on accepting the money, the appellant filed a suit for redemption of the mortgage which was ultimately decreed and appellant got possession of the property on October 8, 1973. During the pendency of the suit the church authority moved the educational authorities as well as the Sub-Collector for acquisition of the property for the school in order to wreak vengeance on the petitioner-appellant. It has also been alleged that the purported proposal to acquire the said property was made mala fide. The land was situated about 3 furlongs away from the school and it was not convenient to be used as playground of the school, that there were more suitable land available for purpose of playground, that the land was required by the owner for purpose of constructing building for his sons. The appellant raised all those objections within the proscribed time on receiving notice under Section 5 of the said Act. No notice was issued to the Education Department as required under Rule 5 (b) and (c) of the Kerala Land Acquisition Rules and the objection made by the appellant was decided by the respondents without hearing the government department or its representative. As such the impugned declaration is illegal and bad and the proceeding for acquisition is also illegal and unwarranted. The writ petition being O.P. No. 3743 of 1973 was dismissed by the High Court holding that there was no violation of the provisions of Rule 5 (b) and (c) of said Rules nor there was infringement of Rule 6.

3. The instant appeal is on a certificate granted by the High Court under Section 133(1) of the Constitution of India.

4. The sole question that has been agitated before this Court by the learned counsel for the appellant is that provisions of Rule 5 (b) and (c) of Kerala Land Acquisition Rules, 1963 are mandatory and the notice of the date of hearing of objection filed by a person interested in the land has to be given

the Departmental Officer requiring the land and failure to serve such notice will invalidate the declaration made under Section 6 of the Kerala Land Acquisition Act, 1961 in short the said Act. Several decisions have been cited at the bar in support of this contention. The provisions of Section 5 read with Rule 5 (b) and (c) of the said Rule have not been complied with in hearing objections.

5. The learned counsel for the respondent has, on other hand, submitted that the proposal for acquisition of the land in question for playground of the said school was made at the instance of the Manager of the School, respondent 3. The said proposal was considered by the Education Department which certified that the acquisition was for a public purpose viz. for playground of the said school and also that the school agreed to place the necessary funds for payment of compensation for acquisition of the said land.

6. The appellant on receiving the notice under Section 3 of the said Act filed an objection to the proposed acquisition of the said lands in accordance with the provision of Section 5 of the said Act as well as under Rule 3 of the Land Acquisition Rules, 1963. Respondent 1 did not issue any notice of the objection filed by the appellant (petitioner) to the Education Department as required under Section 5 of the Act and Rules 5 (b) and (c) and 6 of the Rules framed under the said Act though notice was issued to respondent 3, the Manager, M.M.A. High School, Maramon. Respondent 1, Sub-Collector (Land Acquisition Officer) after hearing the petitioner-appellant and his lawyer as well as the representation of respondent 3 submitted a report to respondent 2, Board of Revenue, Kerala State recommending for the acquisition of the said land for the purpose of playground for the said High School. The Board of Revenue, respondent 2, after considering the report made a declaration under Section 6 of the said Act stating that the land specified in the notification under Section 3 of the Act is needed for a public purpose and the said declaration was published in the Kerala Gazette dated October 16, 1973 and directed the Revenue Divisional Officer, Changannur to take order for acquisition of the lands. It is convenient to mention that the procedure for requisition for acquiring land has been laid down by the government in the Land Acquisition Manual. Sub-clauses (a) and (b) of clause (i) of Section 1 of Chapter 6 of the Manual is in these terms :

> "(i) (a) Application in all cases in which land is required by a department of government other than the Revenue Department should be sent by the Departmental Officer authorised in this behalf in the prescribed form (Form 2-Appendix II) to the District Collector or to the Special Land Acquisition Officer, if any, appointed for the purpose. In the application it should be specifically stated whether the sanction of the competent authority exists for the work for which the land is required and for the acquisition of the land and whether necessary funds have been provided in the budget for meeting the cost of acquisition.
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> (b) Application from associations or private institutions other than educational institutions, should be sent in the prescribed form to the District Collector. When land is required by a private educational institution, the manager of the institution should send an application in the prescribed form to the District Educational Officer concerned who will forward it to the District Collector with a certificate from the departmental officer authorised in this behalf, to the effect that the acquisition is necessary as the land is required for a public purpose and that the private educational agency has agreed to meet the expenditure."

7. It is evident from this procedure that in case of land being required by the private educational institution, the Manager of the institution shall send the application for acquisition of the land. The

Educational Department has to consider the application and to give a certificate to the effect that there was a public purpose for which the proposed acquisition is asked for and the private educational institution is agreeable to meet the entire expenditure for acquisition of the said property. In the instant case Educations Department after considering the requisition made by the Manager of the said school certified about the public purpose for which the land in question is required to be acquired and also that the school authority is ready and willing to meet the entire costs of the acquisition. As has been stated hereinbefore that the appellant, the owner of the said plots of land submitted his objection to the application for acquisition mainly on four grounds inter alia that the proposal for acquisition of the land has been made by the Manager of the said school mala fide inasmuch as the said land was mortgaged previously with the Church authorities and subsequently the mortgage was redeemed on the basis of a decree passed by the court in a suit and the said land was taken possession of by the applicant in execution of the said decree. Secondly, this land is situated about 3 furlongs away from the said school and so it is not convenient to use the land for a playground of the school, thirdly, there are other land available in the locality which can be conveniently used for this purpose, fourthly, it has been stated in the objection petition that the land in question remain submerged during certain part of the year and so the same is not convenient for the purpose of playground of the school. Respondent 3 on receiving notice of the objections appeared before the Sub-Collector, respondent 1 and reiterated that the objections are all without any basis and the land was needed for the playground of the school and the said land is being used for this purpose for a period of about 10 years. Respondent 1 after inspecting the site and after considering the objections and hearing the appellant and his lawyer submitted a report recommending for acquisition of the said land. It will be evident from the inquiry report made under Section 3 of the said Act that the land is in possession of the school and it is being used as its playground for the last 10 years. The management of the said school has no other alternative but to request for acquisition for the said land for the above purpose. It is also stated in the report that the proposed land is at a distance of 3 furlongs and there is no other convenient and suitable land more nearer to the school.

8. On considering this report respondent 2, Board of Revenue made a declaration which has been notified in the Kerala Gazette on October 16, 1973 and directed proceeding for acquisition of the said land.

9. It is, therefore, clear that the Manager of the school submitted a requisition to the Education Department for a certificate as to the public purpose for acquisition of the said land for playground of the school and also to the effect that the school has agreed to meet the entire expenditure in due compliance with the procedure laid down in the Kerala Land Acquisition Manual. The Education Department made the necessary recommendations. The proposal for the acquisition of the plot was made at the instance of the Manager of the said private educational institution respondent 3 and not by the Education Department. Section 5 enjoins that any person interested in any land which has been notified under sub-section (1) of Section 3 as being needed or likely to needed for a public purpose may, within 30 days after publication of the notification, object to the acquisition of the land. It has been further provided therein that objections shall be made to the Collector in writing and the Collector on receiving the objections 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 either made a report in respect of the land which has been notified under sub-section (1) of Section 3 or make different reports in respect of different parcels of such land to the Board of Revenue where the notification under sub-section (1) of Section 3 has been made and published by the Collector. Rule 3 of the Kerala Land Acquisition Rules clearly states that after publication of the notification under Section 3, the Collector shall issue a

notice stating that the land is needed or is likely or to be needed, as the case may be, for a public purpose and requiring all persons interested in the land to lodge before the Collector within 30 days after receiving the objections from a person interested in the land within prescribed time the Collector shall fix a date for hearing the objections and "give notice, thereof to the objector as well as to the departmental officer or company or the local authority requiring the land, where such department is not the Revenue Department."

10. On a perusal of this provision it is clear that notice of the date of hearing of the objections has to be served not only on the objector but also to the Departmental Officer or company or the local authority requiring the land, that is, where the requisition for acquisition of the land is made by the Departmental Officer, the Departmental Officer who requires the land for acquisition has to be served with a notice of the date of hearing of objections. In the instant case the requisition was made not by the Education Department but by the Manager of M.M.A. High School, Maramon. The Education Department merely certified about the requirement of the land in question for a public purpose i.e. for playground of the school and that the entire cost of the requisition (sic acquisition) is agreed to be borne by the school.

11. The sole question agitated in regard to the validity of the declaration is that no notice of the date of hearing of objection has been served on the Education Department and as such the Education Department has no opportunity to consider the objections raised by the appellant and also to say whether the land in question was suitable for acquisition or whether other lands are available for this purpose for which the proposed acquisition is required to be made and non-service of such a notice invalidates the declaration made under Section 6 of the Act by respondent 2. It is only the private school as well as the owner of the land who are required to be informed as to the date when the objections will be heard under Section 5 of the said Act and only they are to be heard. The High Court has rightly held that in the instant case there has been no violation of Rule 5(b) and (c) of the Rules. The High Court has further held that there has not been any infringement of Rule 6. It has also been held that it is inappropriate to issue notice to the Education Officer or Departmental Officer who certified about the public purpose as well as readiness of the school authority to pay the entire money for acquisition and failure to issue such a notice to the Departmental Officer would not amount to violation of the principles of natural justice and infringement of the said Rule 5 (b) and (c) of the said Rules. We have mentioned hereinbefore that the proposal for acquisition of the land was made by the Manager of the school for the purpose of playground of the school was thus made the instance of the school. The Education Department merely certified about the public purpose and also about the willingness on the part of the school authority to bear the entire cost of acquisition. The land is not sought to be acquired at the instance of the Departmental Officer and as such it has been rightly found by the High Court that non-service of notice of hearing of the date of objection on the Education Department does not per se infringe the provisions of Rule 5 (b) and (c) of the Kerala Land Acquisition Rules 1963. We do not find any flaw in the judgment rendered by the High Court.

12. Several decision have been cited at the bar to impress upon us the point that Rule 5 (b) and (c) read with Section 5 of the said Act are mandatory and non-compliance therewith will render the declaration invalid and the entire acquisition proceedings on the basis of the said declaration will be illegal and unwarranted. In the case of Lonappan v. Sub-Collector, Palghat (AIR 1959 Ker 343 : 1959 Ker LT 457) one Appu moved the authorities of the Education Department to acquire 1.12 acres of land in R.S. No. 125/7 for the construction of a building and for a playground and a garden for this school. On the recommendation of the Education Department the government issued a notification under Section 4(1) of the Land Acquisition Act proposing to acquire an area 1.12 acres

in the said survey for this School. Notice was issued to the appellant calling for appellant Lonappan, the owner of the land, for filing objections, if any, under Section 5-A of the Land Acquisition Act to the proposed acquisition and in that notice it was stated that the enquiry under Section 5-A would be held on September 23, 1952. The Sub-Collector after hearing the appellant and his objections overruled his objections and recommended acquisition. The appellant thereafter made application under Article 226 of the Constitution for a writ of certiorari and for other directions for quashing the proceedings and for granting other reliefs, on the ground that under Section 5-A the Sub-Collector was bound by Rule 3 to give notice of those objections to the Education Department at whose instance step for acquisition has been taken. It was held that the object of Rule 3(b) of the Rules made by the Madras Government under Section 55(1) of the Act for giving notice to the concerned department before hearing of objections filed under Section 5-A is not merely to give the department an opportunity to maintain or support its original requisition but also to provide n opportunity for the original requisition being reviewed or reconsidered by the department in the light of the objections raised by the owner of the land and other persons interested in it.

13. In State of Madras v. Periakkal (AIR 1974 Mad 383 : (1974) 2 MLJ 217) the land acquisition proceedings were started at the instance of the Harijan Welfare Department for the purpose of constructing houses for the Harijans. Notice of the date of hearing of objections filed by the respondent, owner of the land was not given to the Harijans Welfare Department at whose instance the proceedings for acquisition were initiated under Rule 3(b) of the Rules made under Section 55(1) of the Land Acquisition Act. It was held that under Rule 3(b) it is incumbent on the Collector to give notice of objection to the department requiring the land and copies of the objections had to be given to such other departments. This is for enabling the department to file on or before the date fixed by the Collector a statement by way of answer to the objections and also depute a representative to attend the enquiry. This has to be done in order to give an opportunity to the department requiring the land to traverse the objections, if any filed by the person interested in the land, so that in the light of the reply of the department, a decision may be arrived at for the purpose of making the declaration under Section 6. It has been held that the rule being not mandatory it effect is that in the absence of service of such notice acquisition proceedings are not invalidated.

14. In State of Mysore v. V. K. Kangan ((1976) 2 SCC 895 : (1976) 1 SCR 369, 371) the land was sought to be acquired for an Engineering College at the instance of the Education Department of the State of Mysore, Section 4 notification was issued in the year 1960. After an enquiry into the objections filed under Section 5-A the Land Acquisition Officer sent his report to the government. Government overruled the objections and issued a notification under Section 6. The Education Department at whose instance the land was sought to be acquired was not given notice as required by Rule 3(b) of Madras Land Acquisition Rules. The respondents filed a writ petition in the High Court challenging the validity of both the notifications on the ground that the Education Department was not consulted. The High Court upheld the contention of the respondents and quashed the notifications issued under Section 4 and 6 of the Act on the ground that if the department concerned filed any reply pursuant to the notice issued, the objector would know what the department had stated by way reply and at the stage of hearing of objections, the objector might adduce evidence or address arguments to meet what is stated in such reply. The objector would further urge before the government that the reasons given by the department in reply to the objections should not be accepted. It was held that Section 5-A required the Collector to make a report after hearing the objections. It does not mean that a rule cannot be framed which would enable the department concerned to place its view point before the Collector when considering the objection under Section 5-A. The proceedings of the Collector are quasi-judicial and it is only proper that he should be apprised of the attitude of the department requiring the land in the light of the objections filed. It

would be helpful to the government in making the decision to have before it the answer to the objection by the department in order to appreciate the rival view-points. Rule 3(b) is not ultra vires Section 5-A.

15. It has been held that Rule 3(b) was enacted for the purpose of enabling the Collector to have all the relevant materials before him for coming to a conclusion to be incorporated in the report to be sent to the government in order to enable the government to make proper decision.

16. Rule 3(b) is mandatory and non-service of the notice on the government department at whose instance the requisition for acquisition was initiated, the notification under Section 6 becomes bad and as such the same was quashed. This decision is not applicable to the instant case for the simple reason that the requisition was not made at the instance of the government department but at the instance of the Manager, private school and the Education Department merely has been a note certifying that the purpose of the requisition is a public purpose and that the school agreed to bear the entire costs.

17. In these circumstances it cannot be contended that the requisition has been made by the Education Department or by its officer for acquisition of the land in question. Therefore, in our considered opinion the ruling cited above is not applicable to the instant case.

18. In the premises aforesaid the only conclusion that follows is to dismiss the appeal. In the facts and circumstances of the case the parties will bear their own costs.

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