

SUPREME COURT OF INDIA

Jnanedays Yogam

Versus

K.K. Pankajakshy

(S.B. Majumdar and U.C. Banerjee, JJ.)

Civil Appeal Nos. 6126-27 of 1999 (Arising out of SLP (C) Nos. 13587-13588 of 1995).

28.10.1999

JUDGMENT

S.B. Majmudar, J. - Leave granted.

By consent of learned counsel for the parties, we have heard these appeals finally and the same are being disposed of by this common judgment.

2. A writ petition was filed in the Kerala High Court by common Respondent No. 1 herein. She challenged the notification issued by the State of Kerala under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act'). The said notification dated 22nd March, 1988 issued under Section 4 of the Act provided that land admeasuring 0.028 cents situated in Kodyeri village in Tellicherry Taluk of Cnnoanore district was needed or likely to be needed for a public purpose for providing passage to Pallivetta procession of Sree Jagannath Temple, Tellicherry. The said notification was issued under Sub-section (1) of Section 4 read with Section 17(4) of the Act. It is this notification which was successfully challenged by Respondent No. 1 before the High Court in her writ petition wherein the present appellants were joined as Respondent Nos. 4 and 5 while the State Authorities were joined as Respondent Nos. 1, 2, 3 and 6. The case of Respondent No. 1 before the High Court in the writ petition was to the effect that she is the owner and is in possession of the land in dispute being R.S. No. 38\1. That she had purchased the property by a registered assignment deed No. 1899 of 1978. At a distance of about 1 km from Respondent No. 1's property is situated Sree Jagannath Temple, which was established by Shri Narayana Guru in 1906. The said temple was managed by the present Appellant No. 1-Original Respondent No. 4, while present common Appellant No. 2-Original Respondent No. 5 is the President of the said Sree Jnanedaya Yogam. As part of the festival in the Jagannath Temple, a Pallivetta (Royal Hunt) is performed on the penultimate day of the festival every year. The said festival is being held in the month of March every year. It is performed at a place situated to the south of first respondent-writ petitioner's property. On that occasion, the deity is taken out on an elephant in procession to the place where the Pallivetta is performed. This religious function lasts for an hour. In the said function, the deity is taken down from the back of the elephant and placed at the appointed site and the devotees and the priests perform religious ceremony for propitiating the deity and a pumpkin is cut at the said place to ward off evil spirits and for earning religious

merit. According to Respondent No. 1-writ petitioner, there is no fixed route through which the elephant carrying the idol and the procession of devotees passes every year on the aforesaid occasion. At the instance of the present appellants, a part of Respondent No. 1's land, wherein stands a pucca built shop, was sought to be acquired under the aforesaid impugned notification for having a passage for the elephant carrying the idol on the occasion of the aforesaid religious function and the said requirement for the passage of the elephant was for one hour every year in the month of March.

3. The said notification was challenged on diverse grounds before the learned Single Judge of the Kerala High Court. The learned Single Judge, after hearing the parties, allowed the original petition and held that when acquisition was not for 'public purpose', but for a 'company' or for a society like Appellant No. 1, the acquisition was governed by Part VII of the Act and consequently, Section 17(4) dispensing with Section 5-A enquiry could not get attracted.

4. Being aggrieved by the decision of the learned Single Judge, present Appellant No. 1-Original Respondent No. 4, filed Writ Appeal No. 377/1990 before the Division Bench of the High Court, while original Respondent Nos. 1, 2, 3 and 6 filed Writ Appeal No. 400 of 1990 challenging the very same judgment of the learned Single Judge. Both these appeals were heard together by the Division Bench of the High Court and by a common Order dated 27.1.1995, the Division Bench of the High Court dismissed both the appeals. That is how original Respondents Nos. 4 and 5 in the writ petition have filed these appeals on leave granted by us.

5. Learned senior counsel for the appellants vehemently contended that the Division Bench of the High Court was in error when it took the view that the impugned acquisition proceedings were not governed by Section 40(1)(b) of the Act. It was submitted, placing reliance on the two decisions of this Court, in the case of *R.L. Arora v. The State of Uttar Pradesh and others*, AIR 1962 SC 764 and in the case of *State of West Bengal and others etc. v. P.N. Talukdar and others etc.* AIR 1965 SC 646, that even if acquisition was for a society, represented by the Appellants-Original Respondent Nos. 4 and 5, who were acting on behalf of the temple for providing a route for the procession of the deity for approaching the place where the religious ceremony was to be performed, it could squarely attract Section 40(1)(b) of the Act and as the appellants had complied with the provisions of Section 41 of the Act in this connection, the impugned acquisition ought to have been upheld by the High Court. That the Division Bench had erred in taking the view that Sections 40 and 41 can apply if acquisition is for the purpose of construction of works like hospital, public reading room, library or any educational institution open to public or such other work as the public may directly use and, therefore, providing an approach road for going to the place of religious festival would not amount to construction of any work directly useful to the public.

6. Learned counsel for Respondent No. 1, who is the main contesting party, on the other hand, submitted that the learned Single Judge and the Division Bench have rightly set aside the acquisition proceedings by holding that providing for a passage for the religious procession could not be covered by Section 40(1) of the Act.

7. In the light of the aforesaid rival contentions, it is necessary to have a look at the relevant provisions of the Act. It is not in dispute between the parties that the impugned acquisition is for a society which is managing the temple in question. Therefore, acquisition for the purpose of the said society would not fall within the definition of 'public purpose' as per Section 3(f) of the Act. The said definition as amended by Act 68 of 1984, reads as follows :-

"(f) the expression "public purpose" includes -

(i) the provision of village sites, or the extension, planned development or improvement of existing village sites;

(ii) the provision of land for town or rural planning;

(iii) the provision of land for planned development of land from public funds in pursuance of any scheme or policy of Government and subsequent disposal thereof in whole or in part by lease, assignment or outright sale with the object of securing further development as planned;

(iv) the provision of land for a corporation owned or controlled by the State;

(v) the provision of land for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities or to persons displaced or effected by reason of the implementation of any scheme undertaken by Government, any local authority or a corporation owned or controlled by the State;

(vi) the provision of land for carrying out any educational, housing, health or slum clearance scheme sponsored by Government or by any authority established by Government for carrying out any such scheme, or with the prior approval of the appropriate Government, by a local authority, or a society registered under the Societies Registration Act, 1860 (21 of 1860), or under any corresponding law for the time being in force in a State, or co-operative society within the meaning of any law relating to co-operative societies for the time being in force in any State;

(vii) the provisions of land for any other scheme of development sponsored by Government, or, with the prior approval of the appropriate Government, by local authority;

(viii) the provision of any premises or building for locating a public office,

but does not include acquisition of land for companies;

Such acquisition, therefore, will be governed admittedly by Part VII of the Act which deals with acquisition of lands for companies. Section 3(e) of the Act defines the expression "Company" to mean, amongst others, a society registered under the Societies Registration Act, 1860, or under any corresponding law for the time being in force in a State, other than a society referred to in clause (cc). Appellant society is registered under the Societies Registration Act, 1860. We have, therefore, to turn to the procedure regarding acquisition of lands for a company. They are found in Part VII of the Act.

Section 39 of Part VII reads as follows :-

"Previous consent of appropriate Government and execution of agreement necessary - The provisions of [sections 6 to 16 (both inclusive) and sections 18 to 37 (both inclusive)] shall not be put in force in order to acquire land for any Company, [under this Part] unless with the previous consent of the appropriate Government nor unless the Company shall have executed the agreement hereinafter mentioned."

It must, therefore, be held that the High Court has rightly considered the applicability of Part VII to the present acquisition proceedings. Once that conclusion is reached, Section 40 of Part VII of the Act would directly get attracted. The said section reads as follows :-

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

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

(aa) that such acquisition is needed for the construction of some building or work for a company which is engaged or is taking steps for engaging itself in any industry or work which is for a public purpose; 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.

(2) Such enquiry shall be held by such officer and at such time and place as the [appropriate Government] shall appoint. ❖7❖3_ ❖

(3) Such officer may summon and enforce the attendance of witnesses and compel the production of documents by the same means and, as far as possible, in the same manner as is provided by the [Code of Civil Procedure, 1908] in the case of a Civil Court."

8. It, therefore, becomes obvious that before the appropriate Government i.e. the State of Kerala could have given consent for acquisition of land for Appellant No. 1, it had to be satisfied that such acquisition was needed for construction of some work by Appellant No. 1 and that such work was likely to prove useful to the public. Now, it becomes clear as laid down by Section 40(1)(b) of the Act that if acquisition is to be made for a 'company' like Appellant No. 1 it has to be shown that the purpose of acquisition is :-

(1) for construction of some work by Appellant No. 1; and

(2) that such work is likely to prove useful to the public.

In this connection, Section 41(5) becomes relevant. It reads as follows :

"where the acquisition is for the construction of any other work, the time within which

and the conditions on which the work shall be executed and maintained, and the terms on which the public shall be entitled to use the work."

When the acquisition is for the company for construction of some work as laid down by Section 40(1)(b), the Company concerned has to enter into an agreement with the appropriate Government. As required by Section 41(5), the company has to satisfy the appropriate Government about the time within which and the conditions on which the work shall be executed and maintained, and the terms on which the public shall be entitled to use the work. A conjoint reading of Sections 40(1)(b) and 41(5), leaves no room for doubt that the construction of such work for the company must be of such nature that it should be perennially and directly useful to the public and should not be of a sporadic or of a temporary nature. In other words, it should be permanently useful to the public for all time to come and the public can directly use that work constructed by the company as and when occasion arises. Such work has to be finished within the time schedule laid down by Section 41(5) and conditions on which the work has to be executed and maintained are also to be laid down. Maintenance of such work by the company for supporting the acquisition in question necessarily means maintenance on a permanent basis. Learned counsel for Respondent No. 1 contended that providing for a passage for a decorated elephant carrying the idol of the deity followed by the procession of devotees only once in a year at the time of festival and for which purpose the land in question has to be required for not more than an hour every year, cannot amount to any need for construction of such work, which has to prove permanently useful to the public for all the year round or even for an indefinite period in future.

9. It is difficult to appreciate this extreme contention. On the other hand, learned senior counsel for the appellants was right when he contended that the reasoning adopted by the Divisions Bench of the High Court in the impugned judgment for applicability of Section 40(1)(b) of the Act, that the work concerned should be like hospital, public reading room or library, would result in unduly limiting the wide scope of Section 40(1)(b). It cannot be doubted that if premises of the temple are landlocked, and a passage is to be carved out from the surrounding land so that devotees representing a class of public can approach the place of religious worship may be even once every year, acquisition of appropriate surrounding land for that purpose can squarely be covered by Section 40(1)(b) as such a permanent carving out of passage by levelling the acquired land can legitimately be treated to be construction of work directly useful to the public. With respect, the Divisions Bench has too narrowly construed the terminology employed by the legislature in Section 40(1)(b). It must, therefore, be held that if an approach road to the temple or the place where religious ceremonies are to be performed is to be laid on a permanent basis for perennial use of the members of the public, being devotees, even if to be utilised every year on a single occasion for approaching the place of religious worship, then acquisition of such land would be for construction of some work which is likely to prove directly useful to the public, as the members of the public, being devotees, can walk over the said constructed approach road for all times to come for going to the religious place concerned.

10. Learned counsel for the Respondent No. 1 vehemently contended that acquisition for having the passage for enabling the elephant and the procession to go towards the southern side for reaching the destination, cannot be considered to be for construction of any work for the company, including the society, in the present case as laying of

passage is not construction of any work. It is not possible to agree with this contention.

11. Work of carving out a passage would certainly amount to construction of the passage in question. Construction does not necessarily mean construction over the land which must rise above the surface of the land in all contingencies. It cannot be held that for this type of need, the acquisition proceedings could not have been resorted to at all.

12. In this connection, we may now refer to the two decisions of this Court on which strong reliance was placed by learned counsel for the appellants. In the case of *R.L. Arora v. The State of Uttar Pradesh and others* (supra), a Constitution Bench of this Court speaking through Wanchoo, J. for the majority, had to consider the question whether acquisition of land required by a company for construction of textile machinery parts could be supported under the relevant provisions of the Act. While deciding the said question, Wanchoo J., in para 12 of the report observed that the interpretation of the material terms in Section 40(1)(b) and the fifth term of the agreement provided in Section 41 read together is and must always be within the jurisdiction of the Court. Repelling the contention that the words of Section 40(1)(b) could permit acquisition for some work which could make the ultimate product of the work useful to the public, it was held in para 14 of the report that the work should be directly useful to the public and the product of the work, even though useful to the public, would not amount to the work being directly useful to the public.

13. In the case of *State of West Bengal and others etc. v. P.N. Talukdar and others etc.* (supra), Wanchoo J., Speaking for a three Judge Bench of this Court, had once again to interpret Section 40(1)(b) of the Act. In the light of the said provision, it was held that construction of hostel building and playground obviously meant for students of the institution, being a section of the public, was an activity which was directly useful to that section of the public but acquisition for the construction of staff-quarters of the company cannot be said to be directly useful to the public as they were meant for occupation of individual members of the staff.

14. The aforesaid decisions clearly indicate that permissible acquisition for the company under Part VII would be those type of acquisitions where the land sought to be acquired on a permanent basis must be required to be utilised for construction of works which are directly useful to the public. According to learned counsel for the appellants on the facts of the present case, it can be said that when devotees pass by the road or passage to be carved out for permitting the religious procession to move towards the place of festival, the said construction of road would amount to construction of a work directly useful to the public. We find considerable force in this contention. To this extent, the decision of the Division Bench with respect is erroneous.

15. One aspect of the matter which stares in the face has to be kept in view. The procession accompanying the elephant carrying the idol of the deity may require an appropriate passage for reaching the destination. That need may not be a continuous need as such. A festival may take place once in a year. However, for laying down such a passage if any construction intervenes and has to be demolished it cannot be said that such a requirement is of a sporadic nature or could be met requisitioning the premises from time to time every year. It is easy to visualise that once the passage is cleared by demolishing the shop for allowing the procession along with the elephant to pass over

the said land in a given year, next year when the occasion arises the same shop, if permitted to be re-constructed in the meantime, will have again to be demolished. That would create an impossible situation not beneficial to any one. For such a purpose, therefore, even though the requirement may be repeated every year and may be even for one hour in the month of March each year, the need for keeping such a passage open would be a perennial need and obviously will be of a permanent nature. Such requirement cannot be met by merely requisitioning the premises from time to time every year but the land over which the passage has to be carved out has to be kept open throughout the year and, therefore, must vest in the authorities by following the procedure of acquisition, if legally permissible. It is not possible to agree with the contention of learned counsel for the Respondent No. 1 that such a need is a temporary need which would, if at all, call for requisitioning the land from time to time instead of resorting to the procedure of acquisition.

16. We may now proceed to consider the legality of the impugned acquisition. In our view, on the peculiar facts of this case, basic requirements of Section 40 sub-section 1(b) of the Act are not met at all. The reason is obvious. The site plan placed before us by both sides, and on which there is no dispute, shows that the main road over which the procession has to proceed on spot is on the northern side. The respondent No. 1's disputed land is situated on the southern side of the main road. There is fence put up by the respondent over her land and leaving the compound land the respondent has put up a residential house in one corner of her land and there is a row of shops built up by her facing the main road towards the north just touching the main road on the Northern side. The last shop touching the main road is constructed on the disputed land which is sought to be acquired. The destination of the procession is on further southern side of the respondent's land. For reaching that destination where the procession has to end and the idol has to be taken down from the elephant's back for carrying out the religious ceremony, the procession has necessarily to go through the open land adjoining the respondent's compound land. The respondent's learned counsel, on instructions, made it clear that the respondent will have no objection in allowing the procession along with the elephant to go through the open land in her compound for approaching the southern side and for reaching the destination. For that purpose, instead of cutting across her last shop in the row, the procession can divert its route by five to ten feet on further right hand side while going towards South and can go through her compound land for reaching the destination. This little diversion of the road may save her shop without in any way hindering the procession for reaching the destination. In our view, the said stand of the respondent is quite fair. In fact, such an alternative route could have been suggested before the acquiring authorities. However, as procedure of Section 5A of the Act was dispensed with, the acquiring authorities got no opportunity to consider the alternative route suggested by her. It is obvious that such an alternative route would have satisfied the requirements underlying the acquisition proceeding for ensuring a convenient passage for the procession along with the elephant. Such procession could have easily utilised such alternative route without disturbing and cutting across the respondent's existing shop on spot. When we put this to the learned senior counsel for the appellants, he stated that on principle there may not have been any objection on this aspect but for the fact that astrologers consulted by the appellant temple have advised that the route of the procession cannot be changed and it is only the old route which is a sanctioned route. Now it is easy to visualise that this stand of the appellant clearly show

that the so called need for having the passage for the movement of the elephant and the procession only through the acquired land after demolishing Respondent No. 1's shop is not a genuine need of the temple or for that matter of the members of the public, who are the devotees and who would join in the procession every year. It is merely the sentimental approach of the temple authorities, solely depending upon the astrologers information which was made the sole basis for supporting the acquisition in question. It is easy to visualise that different astrologers opinions can be contradictory even on given facts. That can certainly not be treated to be a genuine need for public when the suitable passage for movement of elephant and the procession can be easily obtained on spot without disturbing or demolishing the shop. A title diversion of the route cannot, therefore, be held to be an impermissible possibility nor can the insistence by the astrologers not to divert the route can be taken to be a genuine need for construction of the road only by cutting across the intervening shop of the respondent so as to justify acquisition proceedings under Section 40(1)(b) of the Act. On the facts of the present case, therefore, there is no escape from the conclusion that the so-called need for having a passage only through the land on which the respondent's ❖ structure stands was not a genuine and felt need for construction of the road for the use of the public.

17. The State Authorities could not have validly reached such a subjective satisfaction on the relevant objective facts. It remained in substance subjective satisfaction of astrologers consulted by the appellant-society. No valid acquisition under the Act can be based on astrologers satisfaction only. Such type of satisfaction is *de hors* the scheme of Section 40(1)(b) of the Act.

18. Once this conclusion is reached, it becomes obvious that the final decision rendered by the Division Bench of the High Court would remain well sustained, though on entirely a different line of reasoning indicated herein-above and not on the line of the reasoning which appealed to the High Court and which, in our view, with respect, is not the correct exposition of the basic requirement of Section 40(1)(b) of the Act.

19. In the result, the appeals fail and are dismissed. In the facts and circumstances of the case, there will be no order as to costs.

Appeals dismissed.