

SUPREME COURT OF INDIA

E.A.Aboobacker

Vs.

State of Kerala

C.A.No.2772 of 2011

(Madan B.Lokur and Deepak Gupta,JJ.,)

27.09.2018

JUDGMENT

Deepak Gupta,J.,

1. The short question which arises in these appeals is whether Special Tahsildar (Land Acquisition), Cochin Refineries Limited, Ernakulam, Vytilla, Cochin-19 [hereinafter referred to as “the Special Tahsildar (LA), K.R.L.”] was empowered to act as Collector under the Land Acquisition Act, 1894 (hereinafter referred to as “the Act”), in respect of lands acquired by the State for an Infopark.

2. On 05.12.2005, the Government of Kerala accorded administrative sanction to acquire 177.79 acres of land in Ernakulam district for the purpose of the Infopark. The Government also accorded sanction to invoke the urgency clause under Section 17(1) of the Act. Thereafter, on 15.12.2005, the District Collector, Ernakulam issued a Government Order appointing the Special Tahsildar (LA), K.R.L. as the Land Acquisition Officer for the acquisition of land for the Infopark. Thereafter, a notification was issued under Section 4(1) of the Act. In the said notification, it is mentioned that in view of the order of the Government, application of Section 5(A) of the Act has been exempted by invoking the powers under Section 17(4) of the Act. According to the appellants 23.92 acres of land belonging to them was sought to be acquired along with the land of others. The appellants filed objections under Section 5A(1) of the Act. According to them no action was taken on their objections and, thereafter, they filed Writ Petition No.9735 of 2008 in the High Court of Kerala seeking various reliefs including quashing of the notification issued under Section 4(1) and 17(4) of the Act. The main ground raised was that the Special Tahsildar (LA), K.R.L. was not entitled to perform the functions of Collector under the Act. The stand of the State was that the Special Tahsildar (LA), K.R.L. was entitled to act as Collector for the entire Ernakulam District and was therefore empowered to act as Collector even in relation to land acquired for the Infopark. The writ court dismissed the writ petition in so far as this objection was concerned. The appellants filed Writ Appeal No.2446 of 2008 which was also dismissed on 06.01.2009.

3. We have heard Shri R. Venkataramani, learned senior counsel for the appellants, Shri Basant R., learned senior counsel appearing for Infopark and Shri K.N. Balgopal, learned senior counsel appearing for the State of Kerala.

4. Collector has been defined under Section 3(c) of the Act as follows :-

“(c) the expression “Collector” means the Collector of a district, and includes a Deputy Commissioner and any officer specially appointed by the appropriate Government to perform the functions of a Collector under this Act;”

A bare reading of the provision makes it amply clear that the Collector and the Deputy Commissioner of a District are, by virtue of their office, deemed to be “Collector” within the meaning of the Act. The appropriate Government is also empowered under Section 3(c) to specially appoint any other officer to perform the functions of a Collector. It is obvious that the State has to issue a specific notification to appoint any other officer to perform the duties of Collector. The State may in its wisdom appoint such officer for the entire district or for a special project.

5. Section 4(1) of the Act reads as follows :-

4. Publication of preliminary notification and powers of officers thereupon.- (1) Whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose or for a company a notification to that effect shall be published in the Official Gazette and in two daily newspapers circulating in that locality of which at least one shall be in the regional language, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality (the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of publication of the notification).

6. In the present case, the controversy revolves around the notification dated 21.08.1989, which reads as follows:

Government of Kerala Revenue (B) Department NOTIFICATION No.51590/BI/89/RD Dated, Trivandrum, 21st August, 1989 S.R.O No. 1743/89-In exercise of the powers conferred by clause(c) of Section 3 of the Land Acquisition Act, 1894 (Central Act 1 of 1894) the Government of Kerala hereby appoint the Special Tahsildar (Land Acquisition), Cochin Refineries Limited, Ernakulam Vytilla, Cochin-19 to perform the functions of a collector under the said Act within the area of Ernakulam District and under sub section 2 of section 4 of the said Act, authorize him, his servants and workmen in exercise of the powers conferred under the said sub section in respect of any land within his jurisdiction for the acquisition of which a notification under sub-section (i) of section 4 has been published.

By order of the Governor T . Sankaran, Additional Secretary to Government

Explanatory Note

(This does not form part of the notification but is intended to indicate its general purport.)

As per the Government Order (MS) No. 1/89/ID dated 15.04.1989 Government have sanction creation of new special Land Acquisition Unit with 30 staff for the acquisition of 320 acres of land for the expansion of Cochin Refineries Limited, Ambalamugal. In order to perform the function of a 'Collector' under the Land Acquisition Act, the Land Acquisition Officer has to be authorized under Section 3 (c) of the Land Acquisition Act. Hence the notification.

It has been urged by the State that the explanatory note not being part of the notification should not be taken into consideration.

7. According to the appellants the language of the notification is very clear that the Special Tahsildar (LA), K.R.L. has been appointed as Collector only in respect of those lands for which the notification of acquisition under Section 4 has already been published. Therefore, according to the appellants, the Special Tahsildar (LA), K.R.L. has no power to act as Collector in respect of other acquisitions for which he is not empowered under the notification. The appellants also place reliance on the explanatory note and submit that though it may not be part of the notification but it clearly indicates that the appointment of the Special Tahsildar (LA), K.R.L. was only in respect of 320 acres of land involved in the expansion of Cochin Refineries Limited and not for any other purpose. On the other hand, the stand of the respondents is that by this notification the Special Tahsildar (LA) K.R.L. has been specifically appointed as "Collector" for Ernakulam District and is, therefore, empowered to act as Collector for all acquisitions of land in Ernakulam District. It has been submitted on behalf of the State that the words "has been" cannot be read only in the past tense and the words "has been" may be read as "is". It is also contended that the District Collector has distributed the work to the Special Tahsildar (LA), K.R.L. vide order dated 15.12.2005.

8. On perusal of the notification it is apparent that by the said notification the Government of Kerala had appointed an officer by the name of Special Tahsildar (LA), K.R.L., to perform the functions of a Collector under the Act only within the area of Ernakulam District, only in respect of any land within his jurisdiction for the acquisition of which a notification under sub-section (1) of Section 4 of the Act has been published.

9. On a careful analysis of the notification, in our opinion, the State has empowered the specified officer i.e. the Special Tahsildar (LA), K.R.L. only in respect of the land for which the notification under sub-section (1) of Section 4 had already been issued. The Special Tahsildar (LA) K.R.L. was not empowered by the notification of 21.08.1989 to issue any fresh notification in respect of other land. Though the explanatory note may not be part of the notification the same can definitely be used to resolve the ambiguity, if any, in the notification. The explanatory note clearly indicates that the notification has been issued only to empower the officer to act as Collector in respect of 320 acres of land.

10. As far as the G.O. dated 15.12.2005 is concerned, all that we need to say is that under Section 3(c) of the Act, it is only the appropriate Government which can specifically appoint any other officer as Collector. The District Collector has no power to do so.

11. The High Court took the view that since public interest is concerned a liberal view has to be taken and when acquisition proceedings are completed or going on for acquiring large portions of lands required for public purpose, such acquisition cannot be stopped on “cryptic hyper technical ground”. We are not at all in agreement with this view of the High Court. It is a settled position of jurisprudence that when the law prescribes a procedure to be followed for doing any act or thing then that procedure has to be followed and any violation of such procedure would make the act voidable, if not void. There is no doubt that the State is empowered to appoint any officer other than a Collector or Deputy Commissioner to act as Collector. However, the notification should be clear as to for what purpose such Collector is being appointed. As far as the present case is concerned the Special Tahsildar (LA), K.R.L. was appointed as Collector only in respect of acquisition of land relating to Cochin Refineries Limited within Ernakulam District. If the State wanted him to act as Collector in respect of other acquisitions, nothing prevented the State from issuing a fresh notification in this regard, but relying upon the notification dated 21.08.1989 the Special Tahsildar (LA), K.R.L. cannot act as Collector in respect of other acquisitions. This is not a hyper technical ground. When the State wants to acquire the property of a citizen which is a constitutional right of any citizen under Article 300(A) of the Constitution of India it must strictly follow the procedure prescribed by law. It cannot urge that because the acquisition is in public interest a more liberal view is to be taken. There is no question of taking a liberal or conservative view. The only view which has to be taken is the legal view. In our considered opinion the Special Tahsildar (LA), K.R.L. was not authorized to act as Collector for the entire District of Ernakulam and is empowered only in respect of acquisitions for which notification had already been issued for acquiring land for the Cochin Refineries Limited.

12. It has been urged by Shri K.N. Balgopal that Special Tahsildar (LA), K.R.L. has acted as Collector not only in the case of Infopark but in many other cases and many land owners have accepted the award and if we decide the matter against the State many complications may arise. We, therefore, make it clear that if any land owners have, without any objection to the authority of the Special Tahsildar (LA) K.R.L., accepted the award of the Collector or have filed objections with regard to quantum and area only and have not disputed the authority of the Special Tahsildar (LA) K.R.L. to act as Collector, such land owners cannot take benefit of this decision. As far as this decision is concerned it will only enure for the benefit of the appellants before us.

13. The appeals are accordingly allowed. Pending application(s) if any is also allowed. The judgments and orders of the High Court in Writ Appeal No.2446 of 2008 dated 06.01.2009 and Writ Petition No.9735 of 2008 dated 25.11.2008 are set aside in the aforesaid terms. We also make it clear that no other point was raised before us and, therefore, the State can take appropriate action in accordance with law if it still wants to acquire the land.