

KERALA HIGH COURT

Lonappan

Vs

Sub-Collector

Writ Appeal No. 58 of 1955, Madras High Court in W. P. No. 839 of 1953

(Kumara Pillai and T.K. Joseph, JJ.)

09.01.1959

JUDGMENT

Kumara Pillai, J.

1. This is an appeal against the order of a learned Single Judge of the High Court of Madras dismissing an application under Article 226 of the Constitution of India. The appellant is the owner of R. S. No. 125/7 in Thaikad Amsam, Pomiani Taluk. His house is situated in the adjacent land, R.S. No. 125/12. Both these survey numbers, R.S. 125/7 and 125/12, are enclosed by one fence all round and form part of the compound in which the appellant's house is situated. But a portion of R.S. 125/7 has been leased by the appellant to one Appu for the purpose of conducting a school, known as the Thaikad South Higher Elementary School. There is a dispute between Appu and the appellant as to who put up the school building in R. S. No. 125/7 and to whom that building belongs. According to the appellant, the building was put up by him and belongs to him and Appu has been allowed only the use of it. According to Appu the building has been put up by him and belongs to him. This dispute has led to a civil suit between them, and we were told at the time of the hearing of this appeal that the said suit is now pending in second appeal in the High Court. While that suit was pending in the trial court 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 play ground and a garden for the school, and on the recommendation of the Education Department the Government issued a notification on 5-S-1952 under Section 4(1) of the Land Acquisition Act proposing to acquire an area of 1-12 acres in the said survey number for the school, Notice was then issued to the appellant calling for 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 23-9-1952. On 23-9-1952 the appellant appeared with his pleader before the Sub-Collector of Palghat, who was the officer appointed by the Government to exercise the powers of Collector in this case, and filed a written objection contending that Appu had moved the authorities to make the acquisition out of spite towards him, that there was no *bona fide* necessity for the acquisition, that the proposed acquisition would cause much harm and inconvenience to the appellant as the land proposed to be acquired was part of his residential compound, and that if it was necessary to acquire any land for the purposes mentioned in the notification he (the appellant) was ready to give other suitably

lands in the vicinity. According to the appellant, on 23-9-1952 he and his pleader also prayed to the Sub-Collector for an adjournment to enable them to adduce evidence regarding these objections but the Sub-Collector refused the prayer for adjournment. On 28-9-1952 the Sub-Collector submitted his report under Section 5-A of the Act overruling the appellant's objections and recommending the acquisition. Thereupon, the appellant made a complaint to the District Collector of Malabar against the Sub-Collector's action. But this complaint also proved futile, and ultimately the Government of Madras published a notification, Ms. No. 2064 Education, dated 4-9-1953, in the Fort St. George Gazette, Part I-B, at page, 632, dated 16-9-1953, ordering acquisition of the land as per the earlier notification of 5-8-1952. The application under Article 226 of the Constitution was for issuing a writ of certiorari or any other appropriate writ, direction or order calling for the records of the proceedings relating to the notification of the Government of Madras, Ms. No. 2064 Education, dated 4-9-1953, and published at page 632 of Fort St. George Gazette, Part I-B dated 16-9-1953, and quashing the proceeding and granting other appropriate reliefs.

2. The appellant's main contention in the application under Article 226 was that the Government proceedings and order for the acquisition of the land were without jurisdiction as the provisions of Section 5-A of the Land Acquisition Act and the Rules framed thereunder had not been complied with by the Sub-Collector. According to him, on receipt of the objections filed by him under Section 5-A the Sub-Collector was bound by Rule 3 to give notice of those objections to the Education Department, all whose instance steps for acquisition had been taken and ascertained their views, and after ascertaining their views the Sub-Collector should have given an opportunity to the appellant to adduce evidence regarding his objections if the department's view was against him, and in submitting the report to the Government the Sub-Collector should have sent up the views of the Education Department also. It is contended that since the Sub-Collector has omitted to do these things the appellant has been prejudiced inasmuch as he has been deprived of an opportunity which he was entitled to have, under the law, of having his objections considered by the Education Department and of having the views of that department on those objections before the Government when they passed final order for the acquisition. It is also contended that the action of the Sub-Collector in refusing the prayer for adjournment made on 23-9-1952 has also resulted in causing prejudice to him. The learned Judge who heard the writ application repelled these contentions and dismissed the appellant's application, and hence the appeal.

3. In support of his allegation that he and his pleader had asked the Sub-Collector for an adjournment on 23-9-1952 for the purpose of enabling them to adduce evidence, the appellant relies upon the affidavit of his pleader. An Assistant Secretary to Government has filed a counter-affidavit denying this allegation, and relying upon that counter affidavit it is contended on behalf of the State that there was no application for adjournment on 23-9-1952 and that the appellant had not then desired to adduce evidence before the Sub-Collector. The appellant's counsel urges that the denial in the Assistant Secretary's counter affidavit cannot be accepted as correct and acted upon as he could not have had any direct knowledge of what had happened before the Sub-Collector on 23-9-1952 and that in the absence of a denial of the appellant's allegation by the Sub-Collector himself or any officer of Government who was present at the time before the Sub-Collector the allegation in the affidavit of the appellant's pleader must be accepted as true. The decision on this disputed question of fact, namely, whether an application for adjournment for adducing evidence was made before the Sub-Collector or not, is not very material for the

disposal of this appeal, for, in our opinion, the Sub-Collector has committed in this case a very flagrant breach of the provisions of law made for the express purpose of safeguarding the lawful interests of the owners of the properties and the case, therefore, merits the exercise of the jurisdiction under Article 226 of the Constitution.

4. Sections 5-A(1) and (2) of the Land Acquisition Act reads as follows :

"5-A(1) Any person interested in any land which has been notified under Section 4. Sub-Section (1), as being needed or likely to be needed for a public purpose or for a company may, within thirty days after the issue of the notification, object to 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 pleader and shall after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, submit the case for the decision of the appropriate Government, together with the record of the proceedings held by him and a report containing his recommendations on the objections. The decision of the appropriate Government on the objections shall be final".

For the regulation of the proceedings under Section 5-A Rules have been made by the Government of Madras under Section 55(1) of the Land Acquisition Act, and Rules 1, 3 and 4, of the said Rules are as follows :

"1. Issue and publication of notice by the Collector; Immediately after the publication of the notification under Section 4(1), the Collector shall issue a notice stating that the land is 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 the issue of the notification, a statement in writing of their objection, if any, to the proposed acquisition. This notice should be published at convenient places in the said locality, and copies thereof fixed up in the office of the Collector, the Tahsildar, and in the nearest police station.

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3. Hearing of objection; (a) If a statement of objections is filed after the due date or by a person who is not interested in the land it shall be summarily rejected.

(b) If any objections are received from a person interested in the land and within the time prescribed in Sub-Section (1) of Section 5-A, the Collector shall fix a date for hearing the objections and give notice thereof to the objector as well as to the department or company requiring the land, where such department is not the Revenue Department. Copies of the objections shall also be forwarded to such department or company. The department or company may file on or before the date fixed by the Collector a statement by way of answer to the objections and may also depute a representative to attend the enquiry.

(c) On the date fixed for enquiry or any other date to which the enquiry may be adjourned

by the Collector, the Collector shall hear the objector or his pleader and the representative, if any, of the department or company and record any evidence that may be produced in support of the objections.

4. Collector's report to Government; On completion of his enquiry the Collector shall submit the case for decision of the Local Government through the Board of Revenue, in the manner provided in Section 5-A(2) of the Land Acquisition Act."

5. It is clear from Section 5-A itself that the object of the legislature in enacting that Section was that no final order directing acquisition should be made by Government without giving the owner of the land proposed to be acquired or persons interested in it an opportunity to put forward their objections to the proposed acquisition and without the Government considering those objections. In the statement of objects and reasons of the Bill for the amendment of the Land Acquisition Act whereby Section 5-A was enacted also it was said;

"The Land Acquisition Act, 1 of 1894, does not provide that persons having an interest in land which it is proposed to acquire, shall have the right of objecting to such acquisition; nor is Government bound to enquire into and consider any objections that may reach them. The object of this Bill is to provide that a local Government shall not declare, under Section 6 of the Act, that any land is needed for a public purpose unless a time has been allowed after the notification under Section 4 for persons interested in the land to put in objections and for such objections to be considered by the local Government :"

6. Rule 3(b) enjoins that before the hearing of the objections the Collector should give notice of the objections to the department at whose instance the acquisition is to be made if that department is not the Revenue Department. There can be no doubt that the notice enjoined by this rule has not been given to the Education Department either before the hearing on 23-9-1952 or at any subsequent time. The appellant's allegation that the Sub-Collector had not given notice to the Education-Department and has submitted his report without notice to that department has not been denied in the counter affidavit filed by the Assistant Secretary. The records of the case also do not show that the Sub-Collector had given any notice of the appellant's objections to the Education Department. Dealing with the appellant's objections regarding this matter the learned Judge says in his order :

"It was common ground that at the enquiry held by the Revenue Divisional Officer (Sub-Collector) on 23-9-1952 no representative of the Education Department on whose behalf the proceedings for acquisition had been started was present. It was only Appu who attended the enquiry along with his counsel and they were heard by the Revenue Divisional Officer. I am however, unable to see the failure of a representative of the Education Department to attend the enquiry on 23-9-1952 in any way prejudiced the petitioner. Nothing was decided adverse to the department which was not represented at the enquiry held on 23-9-1952."

The learned Judge thus seems to be of the opinion that the notice to the concerned department

provided for by R. 3 (b) is meant merely to give that department an opportunity to maintain or support its original requisition for the acquisition and not for any other purpose. We are unable to accept this view. Having regard to the object with which Section 5-A has been enacted we are of the opinion that the object of the Rule for giving notice to the department before the hearing of the 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 an 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. For example, in this case, the appellant had stated in his objections that in moving the department for recommending the acquisition Appu was actuated by spite towards him and there was no *bona fide* necessity for the school for this land and that if the school required more land he was willing to give other and more suitable land. If notice of these objections had been given to the department and if the department had made further enquiries in consequence of the same and it was convinced that there was no *bona fide* necessity for the school for this land or that other and more suitable lands were available it would very probably have withdrawn its original requisition or accepted the alternative offer of the appellant. In that case there would have been absolutely no necessity for the appellant to adduce any evidence, and even if the Sub-Collector had made a, perverse recommendation for acquisition of the land the Local Government to which the records of the proceedings had to be submitted might not have taken a decision contrary to the department's second recommendation withdrawing the original requisition for the acquisition. Under Section 5-A(2) although it is the Collector who is to hear the objections and make the enquiry, the decision has to be taken by the State Government, and for the purpose of enabling the State Government to make the decision the Collector has not only to submit a report containing his recommendations on the objections but also to submit the records of the proceedings. Rule 3(b) read with Section 5-A(2) makes it abundantly clear that the notice to the concerned department prescribed by Rule 3(b) is meant not merely ensuring that no prejudice is caused to that department but also to provide an opportunity for its earlier requisition being reviewed or reconsidered by it in the light of the objections filed under Section 5-A and to enable the Government to make a proper decision in the light of what the concerned department has to say in respect of those objections. The omission of the Sub-Collector to give notice to the department has resulted both in the Sub-Collector and the Government being deprived of the benefit of the views of the concerned department as regards the appellant's objections before it passed the final order, and this is a matter of grave concern to the appellant who was being dispossessed of his land. Having regard to all these circumstances, we are of the opinion that the appellant was entitled to have his objections heard and enquired into and reported upon to the Sub-Collector and final orders passed in the matter by the Government only after notice of those objections was given to the Education Department and an opportunity was given to that department to express its views about those objections.

We are, therefore, unable to accept the learned Judge's view that the contravention of Rule 3 has not caused any prejudice to the appellant or affected the validity of the enquiry or of the report of the Revenue Divisional Officer (Sub-Collector). We hold that the contravention has caused grave prejudice to the appellant and that in view of the contravention of the Rule the enquiry under Section 5-A has not been validly held.

7. It has also to be pointed out in this connection that the Sub-Collector had fixed the date of the hearing and enquiry even before the receipt of the appellant's objections. The appellant's objections were filed only on 23-9-1952, and there is no suggestion that it was filed out of time. The date for the enquiry was, however, fixed as 23-9-1952 by the very notification calling for the

objections. Rule 3 expressly says that if any objections are received from a person interested in the land within the time prescribed in Sub-Section (1) of Section 5-A the Collector shall fix a date of hearing the objections and give notice thereof to the objector as well as the concerned department. Before the expiry of the time for filing objections it will not be possible to ascertain from how many persons objections will be received on which notices will have to be issued to the concerned department and enquiries held. The Sub-Collector should have, therefore, waited till the receipt of the objections or the expiry of the time for filing the objections to fix the date for hearing and enquiry. His conduct in fixing the date for the enquiry, within the time allowed to file objections suggests that he never had the intention to comply with the provisions of Rule 3(b) and give any notice to the concerned department about the objections which might be filed as a result of his notification. There is, therefore, considerable force in the appellant's contention that there was no real hearing and enquiry under Section 5-A but only a pretence of hearing and holding enquiry by the Sub-Collector and that that officer had really taken a decision even before he called for the objections under Section 5-A. As the so-called hearing and enquiry by the Sub-Collector and his report were made in defiance of the mandatory provisions of Rule 3 we hold that the final order and declaration made by the Government for the acquisition of the land is without jurisdiction and illegal and have to be quashed.

8. The view we have taken above is shared by the Allahabad High Court also. In *Ram Charan v. State of Uttar Pradesh*¹, it has been held that, where the provisions of Section 5-A have not been complied with, the declaration made by the State Government under Section 6 is without jurisdiction and that even if the acts of the Collector and the State Government is an administrative act if it was made in violation of the mandatory provisions of Section 5-A it is without jurisdiction and the High Court has power under Article 226 of the Constitution to interfere even in the case of administrative orders which are made in defiance of mandatory provisions of law and without any jurisdiction.

9. In the result, the appeal is allowed and the order of the learned fudge of the Madras High Court dismissing; the Writ Petition No. 839 of 1953 of that Court is set aside. We allow the said writ petition and quash the orders of the Government of Madras contained in the notification G. O. Ms. No. 2064 Education dated 4-9-1953 and published in the Fort St. George Gazette, Part I-R, page 632, dated 18-9-1953, and the proceedings after the receipt of the objections filed by the appellant on 23-9-1952 and

¹ AIR 1952 All 752

culmination in the said notification. The petitioner will get his costs of the proceedings both before the learned Single Judge of the Madras High Court and in this appeal from the State. The advocate's fee in each of the proceedings is fixed at Rs. 100. It will, of course, be open to the Sub-Collector to proceed afresh with the hearing of the appellant's objections filed on 23-9-1952 after giving notice thereof to the Education Department and after fixing A date for hearing of the objections and enquiry in accordance with law, and we desire to make it clear that nothing contained in this judgment will be a bar to such fresh proceedings.

Appeal allowed.