

## KERALA HIGH COURT

Anthony D'Silva

Vs

Kerala State

Appeal Suit No. 443 of 1964, Trivandrum in L.A.R. No.322 of 1963

(P.T. Raman Nayar, C.J., P. Govindan Nair and K.K. Mathew, JJ.)

07.10.1969

### JUDGMENT

#### **P.T. Raman Nayar, C.J.,**

1. This appeal arises out of a land acquisition proceeding begun under the provisions of the (Travencore) Land Acquisition Act and completed under the provisions of the Kerala Land Acquisition Act. The relevant provisions of the two Acts are identical and therefore we shall refer, only to the provisions of the latter Act which we shall hereafter call, the Act.

2. The property acquired, 12.55 acres of land, situated, we are told by the learned Advocate General, near the beach within the limits of the Corporation of Trivandrum, belonged to three brothers who were at the relevant time residing in Malaya. They are Christians and held the property as tenants-in-common. Notice under Section 9 of the Act was issued to them by the Collector (a Special Land Acquisition Tahsildar. whom we shall hereafter refer to as the Land Acquisition Officer) on 12-3-1963 calling upon them to file their claims by 29-3-1963. The notices, it would appear, were sent by registered surface-mail, and, seeing that the section requires at least 15 days' time to be given for filing claims, this conduct on the part of the Land Acquisition Officer calling for claims from persons resident in Malaya within 17 days of the issue of the notice, probably less after the posting of the communication hardly impresses us as a responsible way of discharging statutory functions affecting valuable property rights. The notices were actually received by the owners only on 26-3-1963. Four days later, on 30-3-1963, the award was made allowing compensation at the rate of Rs. 40/- per cent. This was, of course, before the owners could put in their claim. Notice of the award was issued under Section 12(2) of the Act on 30-3-1963 and it admittedly reached the owners on or before 2-5-1963. On 2-5-1963 a communication. Ext. C 1, purporting to be by all the three brothers but signed by only one of them was sent to the District Collector, Trivandrum. This was in the form of an appeal against the award of the Land Acquisition Officer. It said that the compensation awarded was inadequate, that on the evidence put forward the owner should get at least Rs. 5000/- per acre, and that even at that price it was impossible to get land in the locality. It ended up with the prayer that the appeal should receive the sympathetic consideration of the District Collector and that it was left to him to enhance the valuation at his discretion. A copy of this communication was sent to the

Land Acquisition Officer and seems to have been received by him on 10-5-1963. On 28-8-1963, one of the brothers who had come to India armed with a power of attorney from the remaining two made a formal application for a reference to the Court under Section 20 of the Act, (Section 18 of the Land Acquisition Act, 1894) and, on the basis of this application, the Land Acquisition Officer made a reference to the Court.

3. The Court held that the reference was incompetent since the application under Section 20 had been made out of time. It declined to regard Ext. C 1 as an application under Section 20. Nevertheless, it considered the claim made by the owners on the merits, and, on the evidence, came to the conclusion that the proper compensation for the land was Rs. 60/- per cent. And notwithstanding that it was of the view that the reference to it was incompetent, it proceeded to make an award to the effect that the owners were entitled to get only the amount awarded by the Land Acquisition Officer and rejecting their claim for enhanced compensation. The owners have appealed claiming compensation at the rate of Rs. 80/- per cent. The case has come up before us since a Division Bench of this court thought that the decision of a Full Bench of this court in *Padmanabhan v. State of Kerala*<sup>1</sup>, to the effect that the Court should not entertain a reference made on an application preferred out of time required reconsideration.

4. The Court gets jurisdiction only on a reference being made to it; and that reference, needless to say, must be a proper reference made in accordance with the provisions of the Act. A reference can be made under Section 20 of the Act only on application made for the purpose and the section expressly provides that every such application shall be made within the time specified therein. If an application is made out of time, the Collector has no jurisdiction to make a reference and if he does make a reference, it is, strictly speaking, no reference, and the Court has no jurisdiction to entertain it. This was the view taken in 1962 Ker LJ 510 : (AIR 1963 Kerala 3 (FB) ) and, with great respect, we do not think that it requires reconsideration. Whether in making the reference the Collector acts as a quasi-judicial or a mere executive authority makes no difference whatsoever to the question of his competency to make a reference on an application made out of time. In either case, the reference would be incompetent, and the Full Bench decision we have referred to in no way depends for its conclusion on the circumstance of the Collector acting in a judicial capacity. That being so, the decisions in *Harish Chandra v. Dy. L. A. Officer*<sup>2</sup>, and *Grant v. State of Bihar*<sup>3</sup>, to the effect that the Collector's award only takes the place of an offer and cannot be regarded as an adjudication binding on the owners seems to us to have no bearing on the question. Nor are we in the least able to see how, as contended by counsel for the appellants, Article 31(2) of the Constitution can compel us to read the provisions of the Act as requiring that there should be an adjudication by the Court whether or not an application for a reference is made under Section 20. or if made, is made in time. We also fail to see what bearing Section 23, (Section 21 of the Central Act), which restricts the scope of the inquiry on a reference properly entertained, can have on the question whether the reference should be entertained at all. It might or might not be that the Collector acts as an agent of the State -we are inclined to think that in making

<sup>1</sup>1962 Ker LJ 510 : (AIR 1963 Ker 3 (FB))

<sup>3</sup> AIR 1966 SC 237

<sup>2</sup> AIR 1961 SC 1500

a reference under Section 20 he acts in discharge of his own statutory duty and not as an agent of the State. But, even if he does act as an agent of the State, we do not think that the State can be permitted to so discriminate between persons as to be allowed, when it is so pleased, to make references which under the law are incompetent. Or that the Court to which a reference is made

is bound to entertain an incompetent reference merely because it is made by the party who stands to be prejudiced thereby.

5. We are however of the view that the Court was wrong in thinking that Ext. C1 could not be regarded as an application under Section 20. If it can be so regarded, it is not disputed that it is in time. It is true that it was signed by only one of the three co-owners. But, it purports to be by all the three, and we regard it as a settled law that one co-owner by himself can initiate legal proceedings for the protection of the interests of all the co-owners. The decisions in *State of Travencore-Cochin v. Kuttipparu Amma*<sup>4</sup>, and *M. Ibrahim Sahib v. L. A. Officer*<sup>5</sup>, are readily distinguishable, for, in those cases it would appear that the co-owner concerned applied for a reference to the Court only in respect of his own share in the property and not for and on behalf of all the co-owners.

6. Ext. C1 it is true was addressed to the District Collector, but a copy of it was sent to the Land Acquisition Officer, and, indeed, it is this copy that has been marked as Ext. C1. What is the substance of Ext C1? It clearly states that the compensation awarded is too low and that the owners are not prepared to accept it. It definitely contains the claim that the compensation should be enhanced. And it clearly shows that the owners are appealing to an authority whom they regarded, though mistakenly, as competent to adjudicate in the matter. The communication of the copy to the Land Acquisition Officer amounts, in these circumstances, to a notice to him that the owners want to take his award before an authority competent to grant them higher compensation; and this, it seems to us satisfies the requirements of Section 20. That the authority competent to adjudicate on the award was wrongly assumed to be the District Collector, and not the Court, cannot affect the position. Nor can the absence of an express request to the Collector to refer the matter to the Court. The objection, it is expressly stated, is with regard to the amount of compensation, and that distinguishes this case from the case in *Veeraraghava Iyer v. S. T. M. Project*<sup>6</sup>, where no ground of objection whatsoever was stated. That also distinguishes this case from the case considered in *Trichur Dt. Co-operative Bank v. Dy. Collector*<sup>7</sup>. wherein the application contained nothing more than a request that the amount awarded may be paid under protest.

7. It is urged that Ext. C 1 says that the owner should get at least Rs. 5000/- per acre and that this constitutes not merely an admission but an estoppel by pleading against a higher claim. But, apart from that to say that compensation of at least Rs. 5000/- per acre should be paid is not to say that the land is not worth more, it will be recalled that Ext. C 1 expressly states that even at that rate it is impossible to get land in the locality. This is clearly a statement to the effect that the market value of the land is more than Rs. 5000/- per acre. Moreover, after the case came to the Court, both sides filed statements which the Court regarded as the pleadings before it. and, in the

<sup>4</sup>1958 Ker LJ 1012 : AIR 1959 Ker136

<sup>6</sup>1957 Ker LT 1040

<sup>5</sup> AIR 1958 And Pra 226

<sup>7</sup>1963 Ker LJ 193

statement filed by the appellants they claimed compensation at the rate of Rs. 80/-per cent. In their formal application for a reference, made out of time, they had claimed compensation at the rate of Rs. 120/- per cent. In these circumstances we are unable to regard the claim of at least Rs. 5000/- per acre made in Ext. C 1 as an estoppel or an admission precluding the appellants from showing that the land is worth more.

8. So far as the merits of the appellants' claim are concerned, we think that the conclusion reached by the Court is a fair conclusion on the evidence adduced before it. Neither side has been able to show us that it is wrong indeed neither has attempted to do so.

9. We might perhaps mention that a preliminary objection was taken to the maintainability of this appeal on the ground that there being no proper reference to it, the Court had no jurisdiction to adjudicate in the matter and therefore could not have passed an award. It is only against an award that an appeal lies under Section 60 of the Act. But, the Court did make an award, and, whether that was with or without jurisdiction, the provision for appeal is attracted. Moreover, as we have found, there was in this case, a proper reference under Section 20 of the Act, and hence the very basis of the objection fails.

10. In the result we allow this appeal in part and award the appellants compensation at the rate of Rs. 60/- percent, with the usual solatium of 15% and interest at 4% per annum from 20-4-1963 on which date possession was taken. We make no order as to costs.

Appeal partly allowed.