KERALA HIGH COURT

K. Padmadas

Vs

State, (Kerala)

W.A. No. 876 of 1991

(M. Jagannadha Rao, C.J. and T.L. Viswanatha Iyer, J.)

10.09.1991

JUDGMENT

T.L. Viswanatha Iyer, J.

1. Petitioner in the original petition is the appellant. The original petition was one filed under Article 226 of the Constitution to quash the proceedings initiated by the third respondent, at the instance of the Nayarambalam Panchayat, the 4th respondent, for acquisition of Order 3520 hectars of land belonging to the appellant in Sy. No. 255 / 1 of Nayarambalam Village, Kochi Taluk. The writ petition was filed when the Board of Revenue passed the proceedings Ext. P11 on 30-4-1990 approving the draft declaration under Section 6 of the (Central) Land Acquisition Act, 1894, after holding that the objections to the acquisition raised by the petitioner were not maintainable and that the acquisition was for a *bona fide* public purpose.

2. The facts as culled out from the original petition and the counter- affidavits filed on behalf of respondents 1 to 3, and respondent No. 4, may now be stated. The land in question belonged to the petitioner's father S. Krishnan. In the year 1981, the President of the Panchayat made a request to Krishnan by his letter Ext. P 1 requesting him to sell the land to the Panchayat as it was required for the purpose of a mini standium. Petitioner's father replied on 30th July, 1981 stating that he had a scheme for starting a medical centre with bed facilities for the benefit of the poor and that therefore the Panchayat should not insist on the land being sold for the purpose mentioned in Ext. Pl. The Panchayat then moved the government for acquisition of the land. The preliminary notification under Section 3(1) of the Kerala Land Acquisition Act, 1962 (which was then in force) was published in the Kerala gazette dated 17-7-1984 followed by a declaration under Section 6 dated 23-2-1985 published in the Kerala Gazette dated 16-3-1985. The matter was not pursued further because of lack of funds with the Panchayat. The proceedings therefore lapsed.

3. The Panchayat made another proposal for acquisition in the year 1988, pursuant to which a notification under Section 4(1) of the (Central) Land Acquisition Act 1894, (the Central Act) (which had by then been extended to this State) was published in the Kerala Times daily dated 15-3-1989, Mathrubhumi daily dated 23-3-1989, and the Kerala Gazette dated 2-5-1989. The

public notice envisaged by the section was given in the locality between 16-5-1989 and 28-6-1989. A true copy of the notification is Ext. P3 and the purpose mentioned was construction of a play ground and an open air theatre.

4. The petitioner objected to the proposed acquisition by his statement of objections Ext. P4, supplemented by Ext. P7. According to him he was a naval officer working in the Indian Navy and therefore the proceedings were bad under the provisions of the Soldiers (Litigation) Act 1925. He also pointed out that he had no other suitable place for constructing a building for his residence. It was his further case that there were vast areas available at cheaper rates just opposite to his land which could be utilized for the purpose. He prayed therefore that the acquisition proceedings may be dropped.

5. An enquiry was held under Section 5A at which the petitioner is stated to have appeared in person. The site was also inspected by the third respondent who submitted his report to the Board of Revenue as required by Section 5A(2). The Board thereafter passed the order Ext. P11 on 30-4-1990 as stated above. The petitioner has filed the original petition challenging these proceedings culminating in Ext. P11.

6. The petitioner had raised four contentions before the learned single Judge. Firstly it was contended that the proceedings were vitiated by *mala fide*s on the part of the Panchayat. The dropping of the prior proceedings for purchase/ acquisition was relied on for the purpose. Secondly it was contended that the declaration under Section 6 was made beyond the period prescribed by sub- clause (1) thereof and therefore the proceedings had lapsed. Thirdly it was stated that there was no enquiry under Section 5A, and lastly it was contended that the proceedings were barred by the provisions of the Soldiers (Litigation) Act. The learned single Judge overruled all these contentions and dismissed the original petition.

7. Before us, counsel for the appellant reiterated the same contentions. He raised further plea that the declaration under Section 6 was bad for the reason that the amount of compensation had not been deposited by the fourth respondent Panchayat (at whose instance the proceedings were initiated), before the declaration was made. We shall take up the contentions seriatim,

8. The *mala fide*s urged is that of the fourth respondent Panchayat. There was a request made to the petitioner's father in the year 1981 to sell the property to the Panchayat for the purpose of a mini stadium. The petitioner's father did not accede to this request. Proceedings were therefore initiated in the year 1984 for compulsory acquisition of the land. These proceedings could not however fructify as the Panchayat was not in a position to furnish the requisite funds for the acquisition. It was thereafter that the instant proceedings were initiated. It is not clear how *mala fide*s could be spelled on these facts. It is true that the Panchayat could not proceed with the earlier acquisition proceedings for the reason that they did not have the necessary funds for the purpose. That is no reason to hold that the Panchayat is thereafter precluded from acquiring the land at any further time. It cannot be denied, and it is also not denied, that the purpose of the acquisition is a public purpose and that the Act could otherwise be invoked for the purpose of acquiring the land. It is not also the petitioner's case that the earlier proceedings for acquisition were dropped for any reason other than lack of sufficient funds with the Panchayat. It cannot, in the circumstances, be stated that the machinery of the Act is being made use of for a purpose other than that which it is intended to subserve, or that otherwise, it is a colourable exercise of the

powers under the Act. We are not satisfied that there were any *mala fide*s on the part of the Panchayat in initiating the present proceedings for acquisition.

9. The plea that there was no enquiry under Section 5A is not tenable. The learned single Judge who had occasion to peruse the files has pointed out in paragraph 9 of his judgment that the files show that all the objections raised by the petitioner were properly considered by the third respondent and that he was even heard in person. It is evident from the counter affidavit that there was also a local inspection, This plea has therefore to fail.

10. We may also deal here with the objection that the proceedings are barred under the Soldiers (Litigation) Act. The said Act applies to proceedings before a court as defined therein. The Land Acquisition Officer is not such a court. Besides, there is no bar in the said Act to the initiation or continuation of proceedings for acquisition of land for a public purpose, The said Act has no application and the appellant is not well founded in his challenge to the proceedings as barred under the said Act.

11. The contention pressed vehemently by counsel is that the declaration under Section 6 was made beyond the period of one year prescribed under sub-clause (1). The case put forward before the learned single Judge was that the preliminary notification had been published in the newspapers namely Kerala Times and Mathrubhumi on 15-3-1989 and 23-3-1989 respectively and in the Kerala Gazette on 2-5-1989. The proceedings of the Board of Revenue approving the draft declaration were made on 30-4-1990 and published in the gazette on 29-5-1990. It is true that public notice of the substance of the notification was given in the locality between 16-5-1989 and 28-6-1989. Counsel submits however that there are only two publications adumbrated by Section 4(1), namely in the newspapers and in the gazette and therefore the period of one year has to be reckoned from the last of these publications. Public notice in the locality does not form part of the process of publication, and therefore is irrelevant in computing the period of one year prescribed by sub-clause (1) of Section 6. Rule 5 of the Kerala Land Acquisition Rules is referred in this connection.

12. Since the question is one of interpretation of Section 4, we shall extract the relevant clause namely sub-clause (1). It reads :

> "Whenever it appears to the appropriate government or to the Board of Revenue or to the Collector that land in any locality in the State of Kerala or within the jurisdiction of the Collector 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 the publication of the notification."

The section requires publication of the notice in two daily newspapers circulating in the locality as also in the official gazette. The Collector is also obliged to cause public notice of the substance

of the notification to be given at convenient places of the locality. Since the publications and the public notice are likely to be on different dates, the section itself prescribes that the last of the dates of publication and the giving of public notice shall be referred to as the date of publication of the notification. In other words, it is the last of the dates, of the publications or of the public notice that is treated as the date of publication of the notification for the purpose of the subsequent provisions of the Act. The proviso to sub-section (1) of Section 6 lays down that in the case of preliminary notifications issued after the commencement of the Land Acquisition (Amendment) Act, 1984 no declaration under section shall be made after the expiry of one year from the date of publication of the notification. The learned single Judge has taken the view based on his earlier decision in *Nanappan v. District Collector*[1], that the period of one year can be reckoned from the last of any of the dates mentioned in Section 4(1) including the date of public notice in the locality as prescribed therein.

13. But, counsel for the appellant maintains that the giving of public notice in the locality is not one of the modes of publication envisaged by Section 4(1) and therefore time has to be reckoned from the last of the dates of publication either in the newspapers or in the gazette. It is not possible to agree with this contention. The section is clear and specific that the preliminary notification has got to be published in two daily newspapers and in the official gazette and that public notice of the substance of the notification has to be given. When the section itself prescribes that the date of publication of the notification shall be deemed to be the last of the dates of publication and the giving of the public notice, it is not for the court to confine the date to the dates of publication in the newspapers and the gazette, ignoring the public notice in the locality. There is no ambiguity in the section. There is also no basis for the plea that the section envisages only two modes of publication, namely in the newspapers and in the gazette and that the third requirement namely giving of public notice in the locality is irrelevant while computing the period of one year under Section 6(1).

14. Counsel relies on Rule 5 of the Kerala Land Acquisition Rules to contend that there are only two modes of publication, in the newspapers and in the gazette, and that a third mode of publication by public notice is not envisaged in the rules. But counsel overlooks Rule 7 which requires public notice to be given in the locality immediately after the publication of the preliminary notification, under sub-rule (1) of Rule 3, namely publication in the newspapers and in the gazette. This rule does not sustain the plea of the appellant.

15. It was laid down by the Supreme Court in *Deepak Pahwa v. Lt. Governor of Delhi*[2], that there is no general principle that an

[1](1989) 1 Ker LT 582 [2] AIR 1984 SC 1721

acquisition would be regarded as void if the notification in the official gazette was not accompanied or immediately followed by the public notice. There is no invariable rule that there should be no gap of time between the publication in the gazette and the public notice in the locality. It follows that the requirements of Section 4 (1) are only that there should not be unreasonable gap of time between the publications and the public notice. What is intended is a sense of continuity, rather than of urgency. Any lethargy in giving the public notice, thereby prolonging the time for the declaration under Section 6 is taken care of by the prescription in Rule 7 that the public notice shall follow the publication immediately. The entire process of publication and public notice has to be viewed as an integrated process intended to ensure notice to the owner of the land, without at the same time sacrificing the expeditious completion of the

acquisition. We are referring to this aspect in view of counsel's argument that the Collector may deliberately delay giving of the public notice and thereby extend the time for the declaration under Section 6. We may point out that the appellant has no case that there has been any unreasonable time lag in this case between the publication in the newspapers and the public notice in the locality.

16. In this view of the matter, the last date of publication envisaged by Section 4(1) is 28-6-1989. Being so, the order of the Board of Revenue made on 30-4- 1990 and the declaration under Section 6 published in the gazette on 29-5-1990 are within the period prescribed by the first proviso to sub-section (1) of Section 6, namely one year from the date of publication of the notification under Section 4(1).

17. The question then arises whether all the requirements of a valid declaration as laid down in sub-section (2) of Section 6, namely publication in two daily newspapers and in the official gazette and the giving of public notice in the locality should be complied with within the period prescribed in Sub-section (7). It is stated that the sub-section defines the date of publication of the declaration as the last of the dates of the publication in the gazette and the newspapers and the giving of public notice and therefore unless all the publications and the public notice fall within the one year period, the bar of the first proviso to Section 6(1) operates. The publication in the gazette was on 29-5-1990 and in the Kerala Times and Mathrubhumi dailies on 29-5-1990 and 4-61990 respectively. The counter-affidavit of the third respondent does not disclose as to when public notice was given in the locality.

18. We must even at the outset mention that a plea in this form has not been put forward at the earlier stages. The contention before the learned single Judge (as evident from paragraph 7 of his judgment) was that the declaration under Section 6 should have been made within one year of the publication in the newspapers. The respondents did not therefore have any opportunity of meeting the present case or of placing before court the necessary details regarding the public notice of the declaration in the locality. We need not however rest our decision on this point as we are even otherwise of the opinion that the declaration under Section 6 was in time, in view of the publications effected on 29-5-1990.

19. Sub-section (2) of Section 6 reads :

> "Every declaration shall be published in the Official Gazette, and in two daily newspapers circulating in the locality in which the land is situate of which at least one shall be in the regional language, and the Collector shall cause public notice of the substance of such declaration 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 the publication of the declaration), and such declaration shall state the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected. "

It is evident from the parenthesis, which is relevant, that any reference in the subsequent

provisions of the Act, to the date of publication of the declaration is to be taken as the last of the dates of publication and the giving of public notice. The use of the expression "hereinafter referred to" makes it clear that the definition of the last date of publication is for the purpose of the subsequent provisions of the Act. It is not possible to project it back for the purpose of Sub-section (1). The High Court of Andhra Pradesh had taken the same view in (1991) 2 Andh LT (Notes on Recent Cases) page 41(2) between *The Executive Officer, T.T.D. v. N. S. Venugopal* (to which one of us, the Chief Justice, was a party). We are in agreement with this view. The publication of the declaration in the gazette on 29-5-1990 is therefore within the period prescribed by subsection (1) and therefore the proceedings are not vitiated in any manner.

20. Counsel for the appellant lastly contended that the Panchayat had admittedly not deposited the amount of compensation before the third respondent and therefore no declaration could be made under Section 6 (2). It is pointed out that the second proviso to Section 6(1) mandates that no declaration under Section 6 shall be made unless the compensation to be awarded for the property is to be paid by a company wholly or partly out of public revenues or some funds controlled or managed by a local authority. Counsel reads this proviso as making deposit of the compensation a condition precedent for the making of the declaration under Section 6. Consequently no declaration under Section 6 can be made unless and until the deposit is made.

21. What section obligates is only that the funds for the acquisition should be paid either by a company wholly or partly from public revenues or from some fund controlled or managed by a local authority. It refers to the source of the compensation for the property, and not to the time at which it should be deposited. This is clear from the use of words 'is to be paid" appearing in the proviso. If there is to be any validity in the contention of the appellant the words should have been "has been paid" and not "is to be paid". The section does not make deposit of the compensation a condition precedent for the making of the declaration.

22. This view of ours is supported by the decision of the High Court of Allahabad in *Luxmichand v. State*[3], where the Division Bench held that the second proviso to Section 6 (1) does not require actual deposit of the compensation awarded for the acquired property before the declaration under Section 6 (1). It only emphasises that

[3] AIR 1983 All 136

the declaration shall not be made unless the compensation is to be paid by a company or out of public revenue, etc. It does not require actual deposit of the compensation in advance of the making of the declaration.

23. Counsel for the appellant relied on the decisions in *T. Subbareddi v. State*[4], *Sikhar Mallik v. Baidhar Sahu*[5] Ram Narain Singh State AIR 1978 Patna 136 as supporting the contention. We have perused these decisions. But we do not find anything in these decisions suggesting that deposit of the compensation is a condition precedent for the declaration under Section 6.

24. There was a faint submission made by counsel that the appellant was entitled to be given alternate land, for which he relied on Section 31(3) of the Act. What the section provides is only that the Collector may with the sanction of the appropriate government make any arrangement with a person having a limited interest in the land, either by the grant of other land in exchange, or otherwise, instead of awarding money compensation. We do not find anything in the section obliging grant of alternate land, instead of compensation. The discretion is in the Collector and

he may in appropriate cases allot alternate lands instead of awarding compensation. There is nothing to indicate that the Collector is obliged to give alternate land instead of giving compensation or that the acquisition is vitiated in any manner for that reason.

25. The objection raised by the appellant that other suitable alternate land is available which could be acquired has not found favour with the respondents. Paragraph 12 of the counter affidavit of the third respondent has dealt with this matter. It is stated that the lands pointed out by the appellant are narrow and lengthy and not suitable for the purpose in question. All the contentions raised by the appellant therefore fail. The Writ Appeal is therefore dismissed *in limine*.

Appeal dismissed.

[4] AIR 1979 And Pra 127

[5] AIR 1976 Oris 230