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K.Anil Kumar and Others Vs. State of Kerala and Others

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Court : Kerala

Decided On : Feb-25-2015

Judge : Honourable Mr.Justice a.M.Shaffique

Appellant : K.Anil Kumar and Others

Respondent : State of Kerala and Others

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE WEDNESDAY, THE25H DAY OF FEBRUARY20156TH PHALGUNA, 1936 WP(C).No.33729 of 2010 (M) PETITIONERS:

1. K.ANIL KUMAR,SREEVILASAM,SAI VIHAR, VALATHUNGAL P.O.,KOLLAM.

2. LALITHA,CHECKALAKONATHU VEEDU, PATTATHANAM P.O.,KOLLAM-691021 3. HASEENA,NIZAM MANZIL,KILIKKOLLOOR P.O., KOLLAM4 GEETHA B,T.C.9/198,JAWAHAR NAHAR, SASTHAMANGALAM,THIRUVANANTHAPURAM.

5. PAUL.C.,REJA COTTAGE,VIDHAYA NAGAR, MANAGAD P.O., KOLLAM BY ADVS.SRI.S.SANTHOSH KUMAR SMT.P.LISSY JOSE. RESPONDENTS:

1. THE STATE OF KERALA, REP.BY THE SECRETARY TO GOVERNMENT,REVENUE DEPARTMENT,

SECRETARIAT,THIRUVANANTHAPURAM-695001 2. THE SECRETARYTO GOVERNMENT, LOCAL SELF GOVERNMET DEPARTMENT,SECRETARIAT, THIRUVANANTHAPURAM,PIN-695001 3. THE COMMISSIONER OF LAND REVENUE, THIRUVANANTHAPURAM,PIN-695001 4. THE DISTRICT COLLECTOR,KOLLAM,PIN-691001 5. THE SPECIAL TAHSILDAR,L.A.NO.2-KOLLAM, KUNDARA,KOLLAM,PIN-691006 6. THE CORPORATION OF KOLLAM. R1 TO R5 BY SENIOR GOVT.PLEADER SRI.P.K.ABDUL RAHMAN. R6 BY SRI.M.K.CHANDRA MOHAN DAS,SC, THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON2502-2015, ALONG WITH WP(C).29746/2010 AND CONNECTED CASES THE COURT ON THE SAME DAYDELIVERED THE FOLLOWING: pk WP(C).No.33729 of 2010 (M) APPENDIX PETITIONER'S EXHIBITS: EXT.P1:TRUE COPIES OF THE LAND TAX RECEIPTS DATED266.2009,10.8.009 & 14.10.2009, ISSUED TO THE1T PETITIONER. EXT.P1(a):TRUE COPY OF THE LAND TAX RECEIPTS DATED266.2009 & 14.10.2009, ISSUED TO THE2D PETITIONER. EXT.P1(b):TRUE COPY OF THE LAND TAX RECEIPT DATED294.2010, ISSUED TO THE3D PETITIONER. EXT.P1(c):TRUE COPY OF THE LAND TAX RECEIPT DATED1410.2010 ISSUED TO THE4H PETITIONER. EXT.P1(d):TRUE COPY OF THE LAND TAX RECEIPT DATED105.2010 ISSUED TO THE5H PETITIONER. EXT.P2:TRUE COPY OF THE IDENTITY CARD ALONG WITH AGREEMENT AND BUILDING PERMIT DATED244.2010 OF THE5H PETITIONER. EXT.P2(a):TRUE COPY OF THE BUILDING PERMIT DATED167.2010 ISSUED TO1T PETITIONER. EXT.P2(b):TRUE COPY OF THE BUILDING PERMIT DATED58.2010 ISSUED TO THE3D PETITIONER. EXT.P3:TRUE COPY OF THE RESOLUTION DATED223.2008 OF THE6H RESPONDENT. EXT.P4:TRUE COPY OF THE

ORDER

DATED293.2008 OF THE2D RESPONDENT. EXT.P5:TRUE COPY OF THE LETTER DATED1210.2009 OF THE4H RESPONDENT. EXT.P6:TRUE COPY OF THE

ORDER

DATED202.2010 OF THE3D RESPONDENT. EXT.P7:TRUE COPY OF THE NOTIFICATION DATED134.2010. EXT.P8:TRUE COPY OF THE VALUATION REPORT DATED1610.2009,OF THE PROPERTY OF THE1T PETITIONER. EXT.P9:TRUE COPY OF THE REPRESENTATION DATED810.2010. EXT.P9(a):TRUE COPY OF THE REPRESENTATION DATED510.2010. EXT.P10:TRUE COPY OF THE INTERIM

ORDER
DATED2110.2010 IN W.P(C) NO.323122010. EXT.P10(a):TRUE COPY OF THE INTERIM

ORDER
DATED610.2010 IN W.P(C) NO.29746/2010. RESPONDENT'S EXHIBITS: NIL //TRUE COPY// pk P.S. TO JUDGE A.M. Shaffique, J.

=-=-=-=-=-=-=-=--=-=-=-=-=-=-=-=-=-= W.P (C) Nos. 33729, 29746, 32312and 33727 of 2010 =-=-=-=-=-=-=-=-=--=-=-=-=-=-=-=-=-= Dated this, the 25th day of February, 2015.

JUDGMENT

Petitioners challenge a notification issued under Section 4(1) of the Land Acquisition Act, 1894, inter alia contending that there is no necessity for invoking urgency clause under Section 17(4) of the Land Acquisition Act, 1894. For easy reference, I am relying upon the documents in W.P (C) No. 33729/2010.

2. The facts involved in W.P (C) No. 33729/2010 would disclose that an attempt had been made by the Corporation of Kollam to acquire certain item of land for public purpose. Though a decision has been taken much earlier and the Government had approved acquisition of land as per Government Order dated 29.3.2008 invoking urgency clause under Section 17(4), notification under Section 4(1) of the Land Acquisition Act was issued only as per Ext. P7 dated 13.4.2010.

3. The main contention urged is that the dispensation of an enquiry under Section 5A of the Act was unwarranted on account of the fact that there was delay between the date of Government Order Ext. P3 and the date of notification under

Section 4(1).

4. Counter affidavit has been filed by respondents 4 W.P (C) Nos. 33729, 29746, 32312and 33727 of 2010 -:

2. :- and 5 indicating the necessity for invoking urgency clause under Section 17(4) of the Act.

5. Other writ petitions are also filed seeking similar reliefs with reference to very same acquisition.

6. The learned counsel for the petitioners relied upon the judgment of the Supreme Court in Prabhawati & Others v. State of Bihar & Others, (2014) 13 SCC721to contend that on account of long lapse of time and notification under Section 17(4), the notification is required to be quashed.

7. The questions to be considered in these writ petitions whether (a) notification 17(4) is required to be quashed and (b) whether the writ petitioners are to be heard under Section 5A of the Act before orders are passed.

8. As far as the notification is concerned, it is well settled by judgment of the Supreme Court that unless there are special circumstances by which land is required to be acquired on an urgent basis, Section 5A enquiry shall not be dispensed with. It is evident from the facts available in the case that though Corporation of Kollam had requested for acquisition of land on urgent basis, Government issued 4(1) W.P (C) Nos. 33729, 29746, 32312and 33727 of 2010 -:

3. :- notification only after 2 years. Under such circumstances, invoking urgency clause under Section 17(4) is clearly bad in law since land owners/holders were not granted an opportunity to submit their objection under Section 5A.

9. Under such circumstances, I am of the view that the notification to the extent that it does not provide opportunity for hearing under Section 5A has to be set aside. Accordingly, I do so.

10. In Prabhawati's case (supra), the notification was issued after 15 years before the date of decision, which will not apply to the facts of the preset case. In the

present case, further proceedings were stayed by interim orders. Hence, the request for quashing the entire notification is declined.

11. The learned counsel for the petitioners would further submit that in respect of certain persons who had not challenged the notification, it seems that the notification had already been lapsed. If no steps had been taken for passing an award pursuant to the notification under Section 4(1) in respect of other land holders whose land had already been notified under the same notification, the petitioners are also entitled for W.P (C) Nos. 33729, 29746, 32312and 33727 of 2010 -:

4. :- the same benefit and the notification shall be deemed to have lapsed.

12. In the said circumstances, the writ petitions are disposed of as under: If the notification under Section 4(1) has not lapsed as stated above, it is open for the land acquisition authorities to proceed further after giving an opportunity to the petitioners to submit their objections under Section 5A of the Land Acquisition Act and thereafter necessary proceedings shall be taken in accordance with the procedure prescribed. Sd/- A.M. Shaffique, Judge. Tds/

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