

Givi Jacob Vs. The State of Kerala

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Court : Kerala

Decided On : Jul-17-2015

Judge : Honourable Mr. Justice a.V.Ramakrishna Pillai

Appellant : Givi Jacob

Respondent : The State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI FRIDAY, THE 17TH DAY OF JULY 2015 26TH ASHADHA, 1937 WP(C).No. 2083 of 2015 (I) ----- PETITIONER(S): ----- GIVI JACOB, AGED 33 YEARS, S/O. LATE JACOB MANGALAM, MANGALAM HOUSE, SOUTH BAZAR NELLIKUNNU P.O., THRISSUR - 680 005 BY ADV. SRI.G.SREEKUMAR (CHELUR) RESPONDENT(S): ----- 1. THE STATE OF KERALA, REPRESENTED BY THE SECRETARY TO THE GOVERNMENT, LOCAL SELF GOVERNMENT DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM 69500.

2. THE THRISSUR MUNICIPAL CORPORATION, REPRESENTED BY ITS SECRETARY, M.O. ROAD, THRISSUR -1 R1 BY GOVERNMENT PLEADER SMT. ANITHA RAVEENDRAN R2 BY SRI.K.P.VIJAYAN, SC SRI.V.N.HARIDAS THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: vmr.

WP(C).No. 2083 of 2015 (I) ----- APPENDIX PETITIONER(S)'
EXHIBITS ----- P1- ATRUE COOPY OF THE

JUDGMENT

IN O.S.NO.33 OF05DATED72.08 ON THE FILE OF TEH MUNSIFF
COURT,THRISSUR. P2- ATRUE COPY OF THE PROCEEDINGS OF THE
BOARD OF REVENUE, THIRUVANANTHPURAM DATED2005.91
RESPONDENT(S)' EXHIBITS : NIL. ----- /TRUE COPY/
P.S.TO JUDGE vmr. A.V.RAMAKRISHNA PILLAI, J.

===== W.P(C) No.2083 of 2015 =====
===== Dated this the 17th day of July, 2015

JUDGMENT

The petitioner has approached this Court seeking the following reliefs: (i) Declare that the acquisition which proposes dispossession of the petitioner from Room No.11/227 of the Thrissur Corporation, has lapsed in view of Section 24 Sub Sec.2 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 in the interest of justice. (ii) Alternatively, to issue a Writ of Mandamus or any other appropriate writ order or direction commanding the second respondent to rehabilitate the petitioner in an appropriate manner in the new Patalam Market, immediately and only thereafter to dispossess the petitioner from the existing place, on his consent, in the interest of justice.

2. The petitioner is the son of one Jacob Mangalam, who died on 12.8.2007. In Thrissur Taluk, in Thrissur village, in the Pattalam Road, the Sree Mariamman Kalamman Vinayakan Temple is situated and in a room owned by the said Temple and assigned with door No.11/27 of the respondent corporation about 60 years back, WP(C).2083/15 -:2:- the father of Jacob Mangalam had taken it on lease and it is the petitioner, being the grand son who is now conducting the business of hardware sale and agricultural implements there; it is alleged.

3. In the respondent corporation for road widening and for development of the Sakthan Thampuram municipal bus stand, the entire 'Pattalam Market' of which

the petitioner's premises also forms part, was displaced in as much as the market was shifted to a new place earmarked for the purpose at about 100 metres or so on the south of the erstwhile market. The petitioner further alleges that almost 90% of the tenants were displaced and in the new place a huge single storeyed building comprising of several rooms in one acre of land was constructed and the tenants were rehabilitated.

4. It is further alleged that the portion where the petitioner has his room was not disturbed as the process to take physical possession of this place was deferred. Now the respondent corporation proposes to take physical possession of this place also. According to the petitioner, this is impermissible since the award which results in dispossession was passed in the year 1993 and in view of sub section 2 of Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the acquisition is deemed to lapse. In WP(C).2083/15 -:3:- that regard, a declaration is required. Alternatively, if the petitioner is to be dispossessed then, he is entitled to the benefit of the rehabilitation programme since the land owners were given compensation and as far as the petitioner is concerned, he should be extended the benefit of the programme.

5. In other words, in the new market, either a room has to be allotted to him or in the space left which is an open space, he should be permitted to construct a shop room and should be permitted to occupy the same for conducting his business. Otherwise, it would be a case of negation of the equality clause as enshrined in the Constitution of India since similarly placed persons would be treated differently. Since it is an illegality, that is perpetrated by the second respondent, it becomes necessary that interference in judicial review by this Court is had in the matter; it is alleged. It is with this background, the petitioner has approached this Court.

6. Opposing the petition, the learned standing counsel for the respondent corporation submitted that it has been decided by the corporation to widen the Pattalam road and, therefore, the property where the building was leased out to the petitioner has to be acquired. In the counter affidavit filed by the second

respondent, it was contended as follows: WP(C).2083/15 -:4:- The corporation has decided to develop the Pattalam road as it presently found to be a great bottleneck to the passage on account of the increased traffic as a consequence of the fast growth and development of the city. For this purpose, it was decided to take steps for acquiring the lands wherein the BSNL, the post office and the Sree Mariamman Kaliyamman Vinayakan Temple and its properties are situated so that the Pattalam road could be broadened and this the present bottleneck in transport in that area could be solved to a substantial extent. Admittedly, the petitioner is a lessee of the aforesaid Temple, conducting trade in the shop room allegedly leased out to him and/or his ancestors by the aforesaid Temple. The shop room in which his trade and business is being carried on is assigned municipal door No.11/227. It was stated that the aforesaid area proposed to be acquired by the Corporation for the development of the Pattalam road is expected to be acquired by the Corporation by mutual negotiations with the owners of the said properties. The negotiation is in its initial stage, as no agreed decision with respect to that proposal has not yet been taken and agreed upon between the parties. However, it was further stated that the BSNL and the post office authorities have already agreed to shift their office to the places to be offered by the corporation in WP(C).2083/15 -:5:- view of the places acquired from them. Similarly, the Temple authorities are also negotiating with the corporation for removal of their establishment from the location to the alternate place agreed to be offered by the corporation accepting the incidental compensation for demolition/ shifting of their establishments. However, these negotiations are only in the early stage. No concrete decision in this regard has been arrived at between the parties. At any rate, it is stated that the interest of the owners of the properties and that of all those who were entitled to compensation and/or rehabilitation in law would be protected in the agreement to be executed between the corporation and the owners of the properties as statutorily envisaged. It was further stated that the submission that the land of the aforesaid Temple, including the shop room of the petitioner were already acquired etc., are all baseless. The land acquired previously has been taken possession of by the respondent corporation and it has been utilised for the public purpose. However, in spite of that, due to various reasons the area got more and more congested and the transport bottleneck in the area get more and more

deteriorated. That is why the corporation has come up with the new scheme for development of Pattalam road by acquiring the WP(C).2083/15 -:6:- aforesaid land. The respondent contended that the statements made by the petitioner to the contrary is baseless and they are made for the purpose of winning sympathies of this Court. It was further stated that from the facts submitted above, it would be clear that Exts.P1 and P2 have no relevance whatsoever in the present case. It is further stated that Ext.P1 judgment cannot have any effect whatsoever with respect to the issues connected with the present development plans/projects and the proposed acquisitions; in as much as it has been passed by the Munsiff's Court and not by a court of records. According to the respondent, the decision or ratio, if any, in Ext.P1 judgment is confined to the parties to that and also to the matter involved therein. This legal position is well known to any person who has anything to do with legal issues.

7. Arguments have been heard.

8. Admittedly, the tenanted premises in occupancy of the petitioner belongs to Sree Mariamman Kaliyammam Vinayakan Temple. The learned standing counsel for the respondent corporation would submit that for the purpose of widening the Pattalam road, the corporation has decided to take steps to acquire the land where the BSNL, the post office and aforesaid Temple and WP(C).2083/15 -:7:- its properties are situated. The intention of the respondents cannot be branded as tainted, as contended by the petitioner. Being a policy matter it is open to the respondents to have such developmental activities.

9. It was pointed out by the learned standing counsel for the respondent corporation that power of acquisition is given to the corporation as per Kerala Municipality (Acquisition and Disposal of Property) Rules, 2000. The learned standing counsel would submit that the corporation is competent to acquire the land as per the existing law or through bilateral negotiations between the corporation and the owner. It was submitted that bilateral negotiations are going on with the owner of the properties and if the negotiation proceedings fail, they would opt to acquire the land in accordance with law relating to acquisition.

10. As it appears from the averments in the writ petition and the arguments submitted by the learned counsel for the petitioner, the apprehension of the petitioner is that he would be thrown out without adequate relief, this Court is of the view that the writ petition can be disposed of directing the respondent corporation to proceed with the developmental activities only under due process of law i.e. either acquiring the land by bilateral negotiations or through WP(C).2083/15 -:8:- a proper acquisition under the existing law. In the result, the writ petition is disposed of as under: The respondent corporation is directed to proceed with the developmental activities, either acquiring the land by bilateral negotiations between the respondent corporation and the owner of the premises or through a proper acquisition under the existing law. In case the respondent corporation fails in getting the property through bilateral negotiations, they shall go for acquisition proceedings as per Rule 4 of the Kerala Municipality (Acquisition and Disposal of Property) Rules, 2000, as the Land Acquisition Act has been superseded by the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2012. Till any of the aforesaid process is completed in accordance with law, the petitioner shall not be dispossessed. Sd/- A.V.RAMAKRISHNA PILLAI JUDGE krj

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