

L. Sivanandan Vs. Greater CochIn Development Authority and ors.

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Court : Kerala

Decided On : Feb-14-1997

Reported in : AIR1997Ker209

Judge : J.B. Koshy, J.

Acts : Land Aquisition Act, 1894 - Sections 17 and 17(4)

Appeal No. : O.P. No. 1162 of 1997-L

Appellant : L. Sivanandan

Respondent : Greater CochIn Development Authority and ors.

Advocate for Def. : M.V. Joseph, Standing Counsel and N. Raghuraj, Govt. Pleader

Advocate for Pet/Ap. : T.P. Kelu Nambiar and Poly Mathai

Disposition : Petition dismissed

Judgement :

ORDER

J.B. Koshy, J.

1. Petitioner owns and possesses 7.5 cents of land comprised in Survey Nos. 410/17 of Elamkulam Village, Kanayannur Taluk. According to the petitioner, he is

staying in the house situated in that property. He had purchased the land with the building. The Greater Cochin Development Authority (GCDA) evolved a Scheme for laying a new road from Kadavanthara to Ponnurunni. 1st respondent-GCDA is building this road which is parallel to Sahodaran Ayyappan Road with the aid of Corporation of Cochin. It is done with the active assistance and co-operation of people residing within the area of the alignment of this road including land owners. This road is being built because of the severe traffic block in the Sahodaran Ayyappan road. According to the petitioner, he is residing in a substantial house situated in 7.5 cents of land and house occupies a space of about 5 cents and 2.5 cents of land can be surrendered. Petitioner' conveyed his willingness to surrender that portion of the land. But, as per the present alignment of the road, the road will go through the middle of the petitioner's property. It is also averred that the road is being built with the co-operation and good-will of the residents of the locality and petitioner also extended his co-operation and offered 2.5 cents of land. According to the petitioner, GCDA was also agreed. But now Ext. P1 notification was published using the emergency provisions under Section 17(4) of the Land Acquisition Act. This is challenged in the original petition.

2. Main grounds urged by the petitioner is that there is no emergency to invoke Section 17(4) of the Land Acquisition Act. In Ext. P1 it is stated that the need is for the completion of the Ponnurunni-Kadavanthara road and owners of the land mentioned in Ext. P1 refused to give possession of the land and co-operate with the GCDA to form the road. It was also argued that the road is proposed to be constructed by voluntary cooperation of the residents of the locality and voluntary surrender of land. There was no intention at all to resort to compulsory acquisition. It is also stated that there are deviations made to save houses of one Kumar which is named as 'Temple view' and of one Bhaskara Menon. A sketch was also produced to show that the proposed road is not straight and there are deviations. An immediate ouster from the house will cause difficulties to the petitioner and his family. When the case came up for admission, an interim direction was given in CM.P. No. 1962 of 1997 to the effect that the respondents shall not demolish the house of the petitioner. Thereafter, counter-affidavit and reply affidavit were also filed.

3. In the counter-affidavit filed by the GCDA, it has been stated that the 15 metre wide Ponnurunni-Kadavanthara road is a parallel road to Sahodaran Ayyappan road and it is being constructed with the active co-operation of the people including owners of the land and people who reside in the land falling within the area of alignment of this 'road. It was further stated that the road is envisaged as an important city road under the Elamkulam East Detailed Town Planning Scheme which was approved by G.O. (Ms) No. 53/88/LAD, dated 30-3-1988. It is provided in the Scheme that the implementation of the scheme must be with the co-operation of the people as far as possible. According to the GCDA, except the petitioner and the petitioners in O.P. No. 887 of 1997, all others are fully co-operating with the construction of the road. Other land owners have surrendered the land free of cost. GCDA has also tried to provide alternate sites having the same value of land to the land owners. According to the GCDA, even the petitioner himself had agreed to surrender the said house to the GCDA for widening the road. But, later, the petitioner withdrew the above promise. GCDA also specifically refused the allegation that earlier the GCDA agreed to accept 2.5 cents of land only from the petitioner. The road has already been formed and all works except metalling and tarring are over except in the land of the petitioner and one Shri Reghu and his wife who filed O. P. No. 887/97 which was also disposed of. Now, the only obstruction is the petitioner's house. At the time when the Notification was issued the road was already formed except the metalling and tarring work. From east as well as from west, the road touched the land of the petitioner and the moment the petitioner's building is removed passage for the road will be clear. Therefore, it is averred that for clearance of the Ponnurunni-Kadavanthara road, what is required is only the acquisition of the-petitioner's property. According to the GCDA, petitioner and one Reghu and his wife alone refused to surrender the property as originally agreed. When Ext. P1 notification was issued under Section 17(4) work till the petitioner's property was over. Work of the'road after the petitioner's property is also over except metalling and tarring. Therefore, for completing the road, urgent action was necessary and, therefore, notification was published under Section 17(4) of the Act using emergency provisions. It is also submitted that widening of the Sahodaran Ayyappan road is also in progress. To complete that widening process also, the only course for deviating the traffic is to

use the present parallel road which is being constructed. So. emergency action was necessary and, therefore, notification under Section 17(4) was published. It is mentioned in the counter-affidavit that if any deviation is taken as prayed for, it will cause a sharp curve and the land where the house is situated is essential to link the road from east to west. Any deviation will also result in unnecessary acquisition of properties of other people in that area. It is also stated that the GCDA does not possess any land in the Elamkulam East Detailed Town Planning Scheme area. The allegation to the effect that the GCDA officers were convinced about the necessity for deviation was also denied.

4. It is further stated by the GCDA in the counter-affidavit that the petitioner is having landed property near Durbar Hall Road, Kaloorkadavanthara road and Chilavannoor etc. in Ernakulam town limit. That is not specifically denied in the reply affidavit. The fact that the road has already been formed and all works except metalling and tarring are over except in the land of the petitioner and from east as well as from west, the road touched the land of the petitioner is also not denied in the reply affidavit in spite of specific averments. After disposal of the Original Petition No. 887 of 1997 Shri Reghu and his wife also cleared the objection. Now, the question to be considered is after construction of the road so far whether a sharp deviation should be made as contended by the petitioner. Whether there is any justification in invoking the emergency provisions in Section 17(4) of the Act. whether petitioner's house can be avoided while constructing the road etc. are the major contentions to be looked into the case. There is an application for appointment of a Commissioner which was filed on 10-2-1997. No such application was filed along with the original petition. In view of the fact that construction of the road has reached upto the petitioner's property from both sides, east and west, and considering the urgency of the matter, I am not in a position to issue a Commission as prayed for at this later stage. Apart from the above, petitioner produced Ext. P2 sketch which can be used for understanding the facts and nature of the contentions in the original petition. Petitioner's counsel and the Senior Advocate appearing for the petitioner also wanted to call for the concerned files for perusal of the Court. I have called for the concerned files as well as the Elamkulam East Detailed Town Planning Scheme and perused the same.

5. With regard to the contention that Section 17(4) of the Land Acquisition Act (Emergency Provision) should not have been taken, arguments are that the road was constructed by voluntary co-operation and the road was passing through smoothly when all on a sudden Ext. P1 notification using Section 17(4) of the Act was issued. Petitioner was also willing to co-operate with the construction of the road. There was no immediate necessity for the compulsory acquisition at all and, in any event, according to the petitioner, there was no necessity at all to use the urgency clause in Section 17(4) of the Act. In the counter-affidavit filed by the GCDA it is stated that serious efforts were made by the GCDA with the help of Corporation of Cochin to construct a parallel road to Sahodaran Ayyappan road. Persons residing in the area of the alignment of the road was co-operating with the construction of the road and the road has already been formed and all works except metalling and tarring are over and excepting the land of the petitioner and one Reghu and his wife from east as well as from west the road touched the land of the petitioner and the moment the petitioner's building is removed, passage for the road will be clear. So, it can be seen that construction of the road by consent and co-operation of the citizens were almost over except in the petitioner's land. Writ petition filed by Reghu and his wife as O.P. No. 887 of 1997 was already disposed off. It is the case of the GCDA also that the road was constructed by co-operation of people. But, only because the petitioner and Reghu objected, provisions of the Land Acquisition Act were to be taken. In order to avoid congestion in Sahodaran Ayyappan road, an alternate road is necessary and it is not disputed regarding the purpose and nature of acquisition for the road. The fact that the road alignment is completed upto the petitioner's premises is also admitted in the reply affidavit. In the reply affidavit, it is also stated that alignment of the new road is over and levelling work is being done upto the petitioner's property. From the pleadings and materials raised before me by both parties, it is clear that unfortunately petitioner's property is situated in the middle of the proposed road of which metalling and tarring are over towards east as well as west and construction of the road is not complete only in the petitioner's property. Since the petitioner did not surrender the property as others did, the only alternative was to take steps for acquisition. Since the construction of the road was so progressing except through the petitioner's property and considering the

congestion in Sahodaran Ayyappan Road and the fact that widening of that road is in progress and the only alternate road for deviation of the traffic is the proposed road, acquisition proceedings were taken under the emergency clause invoking Section 17(4) of the Land Acquisition Act. It cannot be said that the emergency powers invoked by the authorities are unjustified so as to warrant interference of this Court.

6. It is not competent for the Courts to inquire into the sufficiency of the grounds which led to the formation of the opinion of the authority that the need for acquisition was urgent and accordingly inquiry under Section 5A of the Act should be dispensed with. Of course, the Court can interfere if it is shown that the authority never applied its mind to the matter or that the action of the authority is mala fide. In this case, it is not disputed that acquisition is for public purpose. Whether there is urgency or not in the circumstance will depend upon the facts of each case. On the basis of circumstances explained in counter-affidavit, it cannot be stated that there is no urgency or view of the authority that there is such an emergency so as to invoke Section 17(4) of the Act is based on no material or perverse or based on extraneous considerations so as to attract the jurisdiction of this Court to delay a public purpose. The question of existence and extent of urgency is a matter for the subjective satisfaction of the authority and it is not open for the Courts to examine the propriety or correctness of the satisfaction by scrutinising the same as a Court sitting in appeal over it. Judicial review is permissible only in a narrow and limited fields, that is, (1) on the materials available the appropriate authority cannot have satisfied about the urgency; (2) the basic facts on which the opinion as to urgency is stated to have been formed were admittedly non-existing; and (3) the declaration in question has been made mala fide or for wholly extraneous reasons. None of these grounds are available in this case. According to me, there are sufficient materials for the authority to invoke Section 17(4) in issuing Ext. P1 notification. There is no specific allegations of mala fides which are proved.

7. It is well-settled that mere allegation that the power is exercised mala fide would not be enough, but, in support of the said allegation specific material should be placed before the Court. The burden of establishing mala fides is very heavy on

the person who alleges it. Normally, the very seriousness of the allegations demands a credible proof in support of such allegations especially when such allegations are made against the Government or a statutory body. Here, no materials have been placed why statutory body conspired together to harass the petitioner.

8. Shri T.P. Kelu Nambiar, Senior Advocate, appearing fo'r the petitioner, placed reliance on the decision reported in NatwarlaJ Jerambhai Patel v. State of Gujarat, AIR 1971 Guj 264, to show that to invoke urgency in Section 17(4), it has to be read in the light of the provisions of Section 5A of the Act. The urgency contemplated by the provisions of Section 17(1) and (4) must be of such a character that it cannot brook the delay of the period of inquiry under Section 5-A of the Act.

9. According to the learned Advocate, there was no urgency in this case. The urgency must be such that the purpose of acquisition cannot wait (for) a period of 30 days and reasonable period of inquiry under Section 5-A of the Act. In the above decision one village was situated on the bank of river Tapti and the bank was damaged every year by flood water. Population of the village was also increasing and the existing village site was not found sufficient to accommodate the growing population of the village. Therefore in 1963, a representation was filed and accordingly a notification was issued in 1967 and the Court observed as follows:

'..... The facts of the case clearly indicate that the instant cases are not one which could be covered by the provisions of Section 17(1) and (4) of the Act inasmuch as the application to acquire land was made by the village people to the Government in the year 1963, the Government decided to take the land in year 1966 and ultimately the notifications under Section 4 of the Act dispensing the provisions of Section 5-A of the Act were issued on January 24, 1967. It is to be noted that the notifications were issued in January 1967, at which time, there was no danger of any flood.'

Here, the facts are entirely different. The road upto and after the petitioner's property are ncing completion except metalling and tarring. Only the petitioner

and another party in the 2.5 k.ms. length road objected and others surrendered the land for construction of the road. Considering the emergency situation, acquisition notice was issued.

10. In the decision reported in *Raja Anand Brahma Shah v. State of Uttar Pradesh*, AIR 1967 SC 1081, the Supreme Court held that the Court cannot substitute its own opinion for the subjective opinion of the State Government. On the materials placed on the records of this case it is impossible to say that the authorities have not applied to the question of urgency or that the urgency provision has been invoked mala fide. The question of urgency is not to be waived. It is for the authorities to decide whether urgency exists. If the Government applied its mind and acted in good faith and there is subjective satisfaction, this Court would be reluctant in examining the propriety and correctness of the satisfaction by scrutinising the same as a Court of appeal. Facts in this case are similar to the facts in the decision of the Supreme Court in *State of U.P. v. Smt. Pista Devi and Meerut Development Authority, Meerut v. Smt. Pista Devi*, AIR 1986 SC 2025.

11. There is no clear averment regarding any specific mala fides against any of the officers or authority in the original petition. Even if 2.5 cents of land of the petitioner is taken as contended, deviation cannot be averted as 15 metre wide road already into existence from the eastern and western boundary of the petitioner's property. The road from west and east touching the petitioner's property on both sides are formed and the road has to be opened for public purposes and to avoid traffic congestion in the City. Therefore, I am of the opinion that the invocation of Section 17(4) of the Act cannot be held to be illegal or arbitrary on the -basis of any of the averments mentioned in the petition.

12. With regard to the case of discrimination etc., also there are no valid grounds. The rest of the property now used for construction of the road were all surrendered by the owners voluntarily. There is public co-operation in the construction of the road as people, as a whole, are expecting the completion of the road at the earliest. The parallel road is having 2.5 kms. length. GCDA had to resort to acquisition proceedings only in respect of the land mentioned in Ext. P1 notification. About two acres of land were received by the GCDA without any such

proceedings. No discrimination or favouritism was shown as can be seen from the facts of the case. There is a deviation of the road from the alignment as shown in Ext. P2 from the Temple Road. But, it has not caused any bending of the road. It has actually reduced the curve from the Temple Road. Apart from that, petitioner's property unfortunately happened to be in the middle of the proposed road. Any deviation to save the petitioner's property will have to cause a sharp bend which is not practicable. The petitioner's contention that his option to surrender 2.5 cents of land ought to have been accepted and the land lying on the eastern side of the petitioner's land can be acquired also is not feasible in view of the lie of the road and any deviation in the alignment of the road will cause a sharp bend. It may also be noted that petitioner's land and the place where the house is situated were already earmarked for constructing the parallel road as per the Elamkulam East Detailed Town Planning Scheme which was approved by G.O. (Ms.) No. 53/88/LAD, dated 30-3-1988. So, this is not a new plan to save somebody else's property. In view of the increasing traffic in Sahodaran Ayyappan Road and in view of the public demand the construction of the road was started in utmost speed with public co-operation. In any view of the matter, there are no records to show any kind of mala fides or discrimination shown to the petitioner. This Court cannot question the wisdom of the administrative authorities in choosing a particular land as suitable for formation of the road unless it can be shown that the power has been exercised by oblique motives or otherwise void on well established grounds.

13, The Supreme Court in the decision reported in *State of Punjab v. Gurdial Singh*, AIR 1980 SC 319, has held as follows (Para 8):

'First, what are the facts? A grain market was the public purpose for which Government wanted land to be acquired. Perfectly valid. Which land was to be taken? This power to select is left to the responsible discretion of Government under the Act, subject to Articles 14, 19 and 31 (then). The Court is handcuffed in this jurisdiction and cannot raise its hand against what it thinks is a foolish choice. Wisdom in administrative action is the property of the executive and judicial circumspection keeps the Court look-jawed save where power has been polluted by oblique ends or is otherwise void on well established grounds. The constitutional balance cannot be upset.'

Since the road has been so constructed except the portion where petitioner's property is situated, it will not be proper for this Court to quash the acquisition proceedings. The road is being constructed by the co-operation of all the people to avert to the traffic congestion in Sahodaran Ayyappan road and construction of the same cannot be delayed.

14. In the decision reported in *Awadh Bihari Yadav v. State of Bihar*, AIR 1996 SC 122, the Supreme Court expressed their distress in the practice of delaying land acquisition proceedings by some action or the other to defeat the public purpose. The Supreme Court has given specific directions regarding the considerations that should be borne in mind by the Courts while dealing with challenges in acquisition proceedings. In the decision reported in *Ramniklal N. Bhutta v. State of Maharashtra*, (1997) 1 SCC 134: (1997 AIR SCW 1281) the Apex Court held as follows:

'The means of transportation, power and communications are in dire need of substantial improvement, expansion and modernisation. These things very often call for acquisition of land and that too without any delay. It is, however, natural that in most of these cases, the persons affected challenge the acquisition proceedings in Courts. These challenges are generally in the shape of writ petitions filed in High Courts. Invariably, stay of acquisition is asked for and in some cases, orders by way of stay or injunction are also made. Whatever may have been the practices in the past, a time has come where the Courts should keep the Targer public interest in mind while exercising their power of granting stay/injunction. The power under Article 226 is discretionary. It will be exercised only in furtherance of interests of justice and not merely on the making out of a legal point And in the matter of land acquisition for public purposes, the interests of justice and the public interest coalesce. They are very often one and the same. The Courts have to weigh the public interest vis-a-vis the private interest while exercising the power under Article 226 -- indeed any of their discretionary powers.'

(Para JO)

15. In the light of the above discussions and in view of the authoritative pronouncements of the Supreme Court in various land acquisition matters, I am of

the opinion that petitioner's prayer to quash Ext. P 1 notification or to issue direction to the respondents not to acquire the house of the petitioner for the purpose of the road cannot be accepted. The Original Petition fails and is hereby dismissed with costs.

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