George Vs. State

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Court : Kerala

Decided On : Jan-12-1972

Reported in : AIR1972Ker181

Judge : K. Sadasivan, J.

Acts : Code of Civil Procedure (CPC) , 1908 - Order 39, Rule 2; Land Acquisition Act, 1894 - Sections 16

Appeal No. : Civil Revn. Petn. No. 1011 of 1971

Appellant : George

Respondent : State

Advocate for Def. : Govt. Pleader

Advocate for Pet/Ap. : M.K.N. Menon, Adv.

Disposition : Petition dismissed

Judgement :
ORDER

K. Sadasivan, J.

1. The plaintiff is the revision petitioner. He has come up in revision against the order vacating interim injunction issued in the first instance restraining the

defendant-State from obstructing or blocking the sluice which is the B Schedule item in the plaint. The suit itself is for a permanent injunction to restrain the defendants from interfering with the free flow of water through the sluice. Against the order refusing the injunction civil miscellaneous appeal was filed in the District Court, which was dismissed. The plaintiff-petitioner is stated to be the owner of over 17 acres of paddy land which is bounded on all sides by bunds. On the eastern side there is a river and the river water is let in through the sluice for the paddy cultivation and for prawn fishing. According to the plaintiff, the sluice is the only contrivance by which water could be let in, and let out Both for paddy cultivation and prawn fishing this process of letting in and letting out, of water is essential.

The bund has now been acquired by the Government under the Land Acquisition Act for the alleged purpose of facilitating paddy cultivation in the Vallarpadam area. The plaintiff's case is that now the sluice has been closed and thereby flow of water into the paddy land has been prevented and this has resulted in considerable damage to him. From the side of the Government, assurances were given to the plaintiff and other cultivators that by the acquisition, no difficulty at all wouldbe caused to the cultivators in the matter of the use of the sluice for paddy cultivation and prawn fishing. It is the definite case of the plaintiff that by closing the sluice his paddy land has been rendered useless.

2. The State in its counter-affidavit has stated that representations were received from institutions and the public of Vallarpadam who are engaged in paddy cultivation, and to protect their interests a scheme was formulated by the Government to put up a permanent bund on the eastern side of Vallarpadam with a view to prevent the flow of saline water into the paddy fields and damage to the crop. In implementation of the scheme, the bund was acquired by the Government. As a legal consequence of the acquisition, the bund along with the improvements thereon including the sluices, has passed on to the possession of the Government. An award was duly passed fixing the compensation due to the affected parties. The area acquired has already been handed over to the minor irrigation department for construction of the bund. The plaintiff's allegation that the acquisition was subject to his right of access to the river water, is denied.

The State would have it that under Section 18 of the Land Acquisition Act the land has vested in the Government free of all encumbrances. The minor irrigation department has proposed to construct a permanent masonry sluice at the mouth of the poromboke thodu and there will be no difficulty in regulating the water in the plaintiff's nilam since the thodu is adjacent to the petitioner's nilam. The further allegation that the acquisition was made to propitiate certain political parties is also denied. The plaintiff is not entitled in law to question the acquisition proceedings.

3. The trial Court has considered the question from all relevant stand-points and come to the conclusion that the plaintiff has not made out a case for an interim injunction. The argument advanced on the side of the plaintiff that the plaintiff has obtained an easement of necessity as a consequence of the acquisition did not find favour with the learned Munsiff. From the trend of the order of the learned Munsiff it would appear that all that the plaintiff is entitled to now, is to get compensation for the value of the land as also damage, if any, suffered by him on account of the acquisition, and this view has been upheld by the learned appellate Judge.

In dealing with the various questions mooted, the Court to some extent had to enter into the merits of the case which I think could have been avoided. 'The rule that before the issue of a temporary injunction the Court must satisfy itself that the plaintiff has a prima facie case, does not mean that the Court should examine the merits of the case closely andcome to a conclusion that the plaintiff has a case in which he is likely to succeed. This would amount to pre-judging the case on its merits. All that the Court has to see is that on the face of it the person applying for an injunction has a case which needs consideration and which is not bound to fail by virtue of some apparent defects. The balance of convenience also has to be looked into'. (AIR 1926 Lab 589). I am in respectful agreement with the above statement of the law. In the interests of justice, I would like to point out that whatever observations made by the Courts below and to be made by me in the present order shall be with reference to the injunction matter alone and shall not in any way bind the Court in trying the issues in the case.

4. Learned counsel argued that it is incorrect to say that by the acquisition, the property has vested in the Government free from all encumbrances. For this position, he relied on Collector of Bombay v. Nusserwanji, AIR 1955 SC 298 wherein it was observed:

'The word 'encumbrance' in Section 16 (of the Land Acquisition Act) can only mean interests in respect of which a compensation was made under Section 11, or could have been claimed.'

In the present case, the learned counsel would point out that no compensation for the damage caused has been awarded, and not even offered, and that being the case the sluice which was used by the plaintiff for letting in and letting out water cannot be treated as an encumbrance and the property cannot be said to have vested in the Government free from encumbrances. I was told at the bar that the plaintiff has claimed damages for all the loss sustained by him on account of the acquisition including the closing of the sluice and the matter is now engaging the attention of the civil Court. Compensation on that account was refused by the acquisition authority as the plaintiff was not able to satisfy him on evidence that such loss has in fact been sustained by him. The matter is still at large and it is open to the plaintiff to work out his rights in the forum already chosen by him.

5. Learned counsel then argued that the B Schedule property is necessary for the convenient enjoyment of A Schedule, that even if the existing easements are extinguished by the acquisition, his right to let in water is a fresh easement that has sprung up from the acquisition itself and he is entitled to protection of those easements. In Mitra v. Municipal Committee, Lahore, AIR 1925 Lah 523 it is observed that 'an acquisition under Section 16 vests the land absolutely in Government free from all encumbrances including easements, even if they come into existence only at the time of the acquisition'. The contention therefore is primafacie unsustainable. Encumbrance, of course, cannot take-in obligations created by nature but in the present case the obligation claimed is not one created by nature. It is an encumbrance created by the act of the plaintiff himself. Such an encumbrance will extinguish by the acquisition. 'A portion of the bed of a natural navigable stream which flows through lands of many owners is not and cannot be

the private property of the person in whom that portion of the bed of the stream is vested (by the proceedings under the Land Acquisition Act). He has therefore no right to divert the water of the stream in such a way as to interfere with the natural rights of other persons in the stream'. (B. B. L. Railway Co. Ltd. v. Nrisingha Charan, AIR 1943 Cal 128).

In the case on hand, the position on the very face of it is different. The river is not flowing into the paddy land as a stream but the water from the river is let into the paddy lands by artificial means by the plaintiff. In other words, the navigable character of the river is not disturbed by the acquisition. In this sense it could prima facie be said that the sluice is an encumbrance and its loss by the acquisition can well be compensated by damages. The proposed measure must affect all the paddy cultivators west of the bund but none of them has come forward to challenge the acquisition. It is the definite case of the defendant-State that the purpose in putting up a strong bund is to prevent the flow of saline water into the paddy fields. The plaintiff being a well-to-do cultivator can prevent the entry of saline water, if he wants, at his own cost. But that is not possible in the case of small cultivators and it is to protect the interests of such cultivators that the present scheme has been promulgated by the Government.

It is also significant that the plaintiff has not so far questioned the purpose of the acquisition. That being the case, his right, if at all, is only to claim compensation for the land and for the loss of amenities, if any, on account of the acquisition. Now that the suit is pending before the Court below, I do not propose to go further into the matter and would caution once again that the Court below in trying the issues shall not be influenced by any of the observations made in this order. Subject to these observations, the revision petition is dismissed.