

Kamamma Vs. State

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Court : Kerala

Decided On : Nov-30-1959

Reported in : AIR1960Ker321

Judge : Vaidialingam, J.

Acts : [Constitution of India](#) - Articles 31, 31(2) and 226

Appeal No. : O.P. 41 of 1959

Appellant : Kamamma

Respondent : State

Advocate for Def. : Govt. Pleader (C.M. Kuruville, Adv.) for 1st Respondent,; P. Govindan Nair,;

Advocate for Pet/Ap. : G. Viswanatha Iyer, Adv.

Judgement :

ORDER

Vaidialingam, J.

1. In this application filed under Article 226 of the Constitution, the petitioners, who are the owners of Sy. Nos. 197/2 and 197/8 of Anchamada village, Trivandrum taluk, challenge the land acquisition proceedings taken by the State of Kerala, at

the instance of the City Corporation, Trivandrum in respect of portions of the two survey numbers. The acquisition is also in respect of parts of certain other survey numbers belonging to other owners and the petitioners are not interested in them.

2. The main attack that is made by the petitioners in these proceedings is that the proposed acquisition is not intended for a 'public purpose' or to benefit the public and that it is only to benefit the third respondent. Therefore, the question to be decided is as to whether the proposed compulsory acquisition in this case, is for a 'Public Purpose' in which case alone, it will be saved under Article 31(2) of the Constitution.

3. The circumstances leading up to this application are briefly as follows:

Though the petitioners have also filed a sketch showing the lie of the respective properties, including the portions of the lands proposed to be acquired, during the course of arguments. Mr. G. Viswanatha Iyer, learned counsel for the petitioners has agreed to this Court accepting the sketch, R-2 filed by the second respondent, Corporation of Trivandrum as the correct one. According to the petitioners, Sy. No. 1.97/8 lies north of Sy. No. 197/2. Sy. No. 197/8 is not shown in the sketch R-2, but there is no dispute about its location. There is a road called Puthichakonam road south of Sy. No. 197/2 and according to the petitioners, it ends on the west of Sy. No, 200.

4. The petitioners allege that Sy. No. 199 belongs to the third respondent, and she goes to her house from the Puthichakonarn road through a footpath, which is part of the petitioners' property at the eastern end. According to the petitioners, the third respondent is a very influential lady and in order to have greater facilities to go to her house, she attempted to get further properties from the petitioners' survey numbers, but she failed in that attempt. Therefore, she has managed with the City Corporation, Trivandrum, to make suitable reports to the Government about a portion of the petitioners' property being required for a 'Public purpose' namely for widening of a road, On this, the State, first respondent, has made a declaration under section 6 of the Travancore Land Acquisition Act -- Act XI/1089 to the effect that 1 cent 891 sq. links of land from Sy. No. 197/2 and 3 cents and 715 sq. links from Sy. No. 197/8 are required for widening the said road.

4a. It is further alleged that the petitioners moved the State to drop the acquisition proceedings and represented that the acquisition is being made solely to benefit the interests of the third respondent. But the State has not ultimately agreed with the petitioners' representations and the State is taking further steps to complete the acquisition proceedings.

5. The declaration of the Government is challenged on the ground that the acquisition is invalid and without jurisdiction as it is not for a 'Public purpose'; while on the other hand, it is only to benefit one single individual namely, the influential third respondent.

6. Attack also is made that the public will not at all be benefited by the said acquisition, There is also an attack made that the acquisition is mala fide and an abuse of the powers conferred under the Land Acquisition Act. Therefore, it is stated that the acquisition violates the fundamental rights of the petitioners and is also in flagrant violation of the provisions of Clause 2 of Article 31 of the Constitution.

7. The first respondent, the State, has controverted the various allegations made by the petitioners. On the other hand, it is stated that on 18-9-1957 the Commissioner of the Corporation of Trivandrum addressed the District Collector, Trivandrum that the lane leading from the extremity of Puthichakonarn road is very narrow and free passage of vehicles is not possible. The Commissioner also stated that there are houses on both sides of the lane and if the lane is widened, it will afford greater and better convenience to the residents of the locality. It was also mentioned by the Commissioner that some of the adjoining owners have agreed to surrender the land free of compensation in order to have better facilities. Regarding the other parts of the land required for widening the road, the Commissioner of the Corporation of Trivandrum suggested the necessity to initiate acquisition proceedings.

8. The first respondent further states that after receipt of this communication, the Deputy Collector, Land Acquisition, Trivandrum was directed to make the necessary inquiries and he reported to the District Collector about the desirability of taking acquisition proceedings. On the basis of the report submitted by the

Deputy Collector, Land Acquisition, Trivandrum, the District Collector made a report to the Government about the same. The State was also satisfied that the acquisition was for a 'Public purpose' and therefore, issued the necessary preliminary notification under section 4 of the Travancore Land Acquisition Act and it was duly published in Gazette No. 19 dated 13-5-1953. This was followed by the declaration under section 6 of the Act, published in the Gazette No. 21 dated 27-5-1958. Further proceedings were taken under section 9 of the Act.

9. In paragraphs 6 to 9 of the counter-affidavit, the State refers to the various matters pending before the appropriate authorities, both in respect of the claim for compensation, as also the right of the parties in respect of the lane already existing and taking off from the eastern end of Puthichakonam road. It is not necessary for me to refer to those aspects, as they do not arise in the proceedings before me. Whatever rights any of the parties may have, they will be decided by the appropriate authorities, before whom those matters are pending.

10. The first respondent further states that the Puthichakonam road reaches up to Sy. No. 200 on the eastern side and then proceeds north as a narrow path-way along the eastern boundary of Sy. Nos. 197/2 and 197/8 and then proceeds due west along the northern boundary of Sy. No, 197/8 and it is that narrow path-way which is sought to be widened by the proposed acquisition. According to the State, the existing path-way is a 'Public street' as defined under Section 3(30) of the Trivandrum City Municipal Act--Act IV/1116. The State also refers to the powers given under Section 209 of the said Act to the Corporation for acquiring land for the purpose of widening, opening, extending or other-wise improving the 'Public street'.

11. The allegation that the acquisition, proceedings have been started at the instance of the third respondent is repudiated by the State. On the other hand, the State affirms that the acquisition proceedings are started, by the Commissioner, Trivandrum City Corporation, Trivandrum asking the Government to move into the matter on the basis of the reports of the Deputy Collector, Land Acquisition and also the District Collector, Trivandrum. The State further affirms that the proposed acquisition is for a 'Public purpose' and that it benefits not only the third

respondent and her neighbours, but also several other members of the public who use the public path-way. The allegations of the acquisition being mala fide or being an abuse of the powers conferred under the Land Acquisition Act are again controverted. On these grounds, the State supports the Land Acquisition proceedings taken by them.

12. The City Corporation of Trivandrum, namely, the second respondent, has also stated the circumstances under which the acquisition proceedings were started. According to the second respondent. Puthichakonam road does not end on the western extremity of Sy. No. 200, but proceeds northwards to form a lane and then proceeds westwards. It is also stated that this lane does not end at the house of the third respondent but goes westwards along the northern boundary of Sy. No. 197. The allegation that the foot-path is a private one existing on the eastern end of the property of the petitioners is also disputed. According to the second respondent, the said lane is partly Poramboke and partly it goes through the properties belonging to the third respondent and others and is an ancient one and has been used by the public of the locality and others like hawkers, pediers and other pedestrians for a very long time. It is also stated that the existing foot-path is part of the Puthichakonam road and is a 'Public street' within the meaning of Section 3(30) of the Trivandrum City Municipal Act -- Act IV/ 1116.

13. The allegation of the petitioners that the City Corporation has moved in this matter at the instance of the third respondent is denied. On the other hand, according to the second respondent, the Corporation received a petition on 11-7-1956 signed by 25 persons of the locality, emphasising the need for widening the road and requesting the Corporation to take steps for widening the same by acquiring necessary land. No doubt, one of the signatories was the third respondent also and the other signatories included the owners of T. C. 311 and 312.

14. The Works Standing Committee of the second respondent met on 12-9-1956, and considered this representation dated 11-7-56 and decided to have the site inspected by the committee. The site was inspected by the committee and the committee was satisfied about the necessity of widening the road and therefore,

the committee resolved at its meeting on 28-8-1957 to sanction the acquisition.

15. As the width of the existing lane ranged from 7 to 14 links, it was found very narrow for vehicular traffic and therefore, the Corporation was satisfied that in the interests of the public the lane has to be widened by acquiring the necessary land so as to make, the road usable by carts and thus make it more useful for the general public. For this purpose, the road had to be widened to a width of at least 18 links.

16. After the Corporation decided to widen the lane by acquiring land for the said purpose, the Commissioner of the Corporation wrote to the District Collector on 18-9-1957 explaining fully the circumstances and requesting steps to be taken for acquisition. On this basis the District Collector took further steps and accordingly, the notification dated 5-5-58 under Section 4 (1) of the Travancore Land Acquisition Act was published in the Kerala Gazette on 13-5-58 and the further declaration under Section 6 of the Act was also published in the Gazette on 27-5-58.

17. The second respondent further states that the action taken by the Corporation and the declaration made by the Government are all valid and passed under the jurisdiction vested in them by law. It is further stated that the acquisition is for a 'public purpose' and it benefits the public and not merely the third respondent alone.

18. The allegation of mala fides is denied as utterly unfounded and baseless. It is also stated that none of the rights guaranteed to the petitioners under Article 31 of the Constitution have been violated. It is also further stated that the Corporation has got a statutory duty under Section 209 of Travancore Act IV/1116 to widen, open, extend and make other improvements to any 'Public street'. On these grounds, the second respondent also supports the proceedings taken for acquiring part of the property of the petitioners.

19. The third respondent has also filed a counter-affidavit, in the main, supporting the stand taken by respondents 1 and 2. It is stated therein, among other matters, that every day large number of people of all kinds pass along the foot-path. The

statement of the petitioners that the foot-path is carved out of the petitioners' property is disputed and it is stated that the foot-path is partly Poramboke land and partly it goes through private land belonging to third respondent and certain others. It is also stated that the said foot-path is being used for a very long time by many members of the public and it is also a very ancient one. The necessity for converting the lane into a road was felt for a long time and a petition was sent to the Corporation by the third respondent, and also by others for having the lane converted into a regular road. Then the inquiries made and the inspection made by the Works Committee are referred to. It is also stated that the acquisition is for a 'Public purpose' and the allegation that the acquisition proceedings are solely for the benefit of the third respondent is also denied.

20. The petitioners have filed a reply-affidavit reiterating in the main the allegations made in their original affidavit. The ownership of the existing path-way in the petitioners is again sought to be affirmed. The allegation that the acquisition is only for the third party is once more reiterated and it is also stated that action is being taken under colour of legal authority only to help the third respondent.

21. As mentioned by me at the beginning of the judgment, Ext. R. 2 filed by the second respondent is accepted by all parties before me as the correct one. Sy. No. 197 shown therein belongs to the petitioners and Sy. No. 210 is the Puthichakonam road. The existing lane taking off at the eastern end of Sy. No. 210 northwards, north eastwards, and north-westwards is shown in blue in the sketch. The proposed land to be acquired from the petitioners' property is shown in red in the said sketch and it will be seen that it is really to widen the blue marked existing lane. The question as to whether the blue marked portion of the lane is at the eastern extremity of the petitioners' land as alleged by them, or whether it is in part poramboke and in part on the property of 3rd respondent and others cannot be considered in this application under Article 226 of the Constitution. Those disputes are stated to be pending before the appropriate authorities. But one thing is clear and it is not challenged by the petitioners that the blue-marked portion is on ground now a lane.

22. Though an allegation that the acquisition is mala fide has been made in the original affidavit of the petitioners and also reiterated by them in their reply affidavit, there is absolutely nothing on record to substantiate those allegations. On the other hand, both the State, as well as the Corporation and the third respondent have all controverted the allegations of mala fide. In fact, Mr. G. Viswanatha Iyer, learned counsel for the petitioners, was not also able to convince me that those allegations made by his clients, could be supported from the materials available in this case. Therefore, the attack made on the acquisition proceedings on the ground that it is actuated by mala fides has to be rejected.

23. The main attack by Mr. G. Viswanatha Iyer, learned counsel for the petitioners was on the ground that the acquisition is not for a Public purpose, so as to be protected under Article 31(2) of the Constitution. On the other hand, it is only to benefit the third respondent and also her neighbours that these acquisition proceedings have been taken. The proposed acquisition will at the most, benefit immediately only the third respondent. An acquisition, only to help a single individual, cannot be stated to be for a 'Public purpose.'

24. On the other hand, the learned Government Pleader appearing for the State, Mr. G. Balagangadharan Nair, learned counsel appearing for the Corporation of Trivandrum and Mr. T. K. Nara-yana Pillai, learned counsel appearing for the third respondent, have all taken the uniform stand that the acquisition is for a 'Public purpose'. The acquisition is in discharge of the powers and duties laid upon the Corporation of Trivandrum under the provisions of the Travancore City Municipal Act, -- Act IV/1116. The Corporation of Trivandrum, in discharge of its duties and functions and having itself been satisfied about the necessity for widening the existing lane so as to afford greater facilities to the public, addressed the State for making the necessary acquisition. The State also was satisfied that the acquisition was really for a 'Public purpose' and therefore, they took further steps by way of issuing notification under Section 4 of the Travancore Land Acquisition Act and also the declaration under Section 6 of the said Act.

25. It was also contended by the respondents that it is not as if that the Government have acquired the property and handed it over to the third respondent

or to any particular individual. It may be that immediately, the third respondent and a few others, who are residing in that area, will benefit; but it is really a part of the scheme for improving the road system so as to afford better facilities for the members of the public who use the existing lane. The existing lane, as well as the proposed road as widened, will be used not only by the residents of the locality but also by several pedestrians, hawkers and pedlers who have been using it for a long time. As it is, the lane is very difficult to be used by carts and other vehicles and the widening of the lane will result in greater advantage -to the general public, inasmuch as they could go along the widened road in vehicles also more conveniently. The respondents also raised a contention that the Government is the best judge as to whether 'Public purpose' is served by taking acquisition proceedings and that the declaration of the Government is not justiciable under Article 226 of the Constitution. It is not possible for me to accept the contention of the learned Government Pleader that the declaration made by the Government that a land is required for a 'Public purpose' is not justiciable by this court. As observed by their Lordships of the Supreme Court in *State of Bombay v. R. S. Nanji*, (S) AIR 1956 SC 294 at p. 297:

' 'Prima facie' the Government is the best judge as to whether 'Public purpose' is served by issuing a requisition order, but it is not the sole judge. The Courts have the jurisdiction and it is their duty to determine the matter whenever a question is raised whether a requisition order is or is not for a 'Public Purpose'.'

Therefore, it Will be seen that courts have not only jurisdiction, but it is also their duty, to consider the matter and determine whether a 'Public purpose' has been established, because the Constitution authorises requisition or acquisition only for a Public purpose. Therefore, the question that arises for decision is as to whether the proposed acquisition in this case is for a 'Public purpose'. The expression 'Public purpose' is not defined in the Constitution nor is much light thrown on it by the provisions of either the Land Acquisition Act 1/1894 (Central Act) or by the Travancore Land Acquisition Act --Act XI/1089. Again as observed by the Supreme Court in (S) AIR 1956 SC 294 at p. 29T ;

'...that it is impossible to precisely define the expression 'Public purpose'. In each case all the facts and circumstances will require to be closely examined in order to determine whether 'Public purpose' has been established.'

The question as to what constitutes a 'Public purpose' has come up for consideration in America. The power to acquire private property compulsorily is called 'Eminent Domain', under the American Law and it is a condition of the exercise of that power that it should be for 'Public use'. Even in America, two views have been held on the connotation of the words 'Public use'. As Nichols in his book on 'Eminent Domain' 1950 Edition Vol. 2 page 430, states that the older and stricter view is that unless the property is dedicated for use by the public at large or a considerable section thereof, it would not be a public use. But the more modern and liberal view even in America appears to be that there will be no objection to the validity of an acquisition, even in favour of a private corporation or of individuals provided it results in public advantage. Nichols again states at pages 434 and 435 of the same book: 'Judicial opinion which follows the broad or liberal concept considers that the narrow doctrine has been repudiated and is no longer the prevailing view. 'Public use' is considered 'public benefit' and it is not considered essential that the entire community or even any considerable portion thereof should directly enjoy or participate in any improvement in order that it constitute a public use'.

26. The modern view in America is well illustrated by the decision in *Falbrook Irrigation District v. Bradely*, (1896) 164 U. S. 112 (161, 162): 41 Law Ed. 369 (389):

Under an Act of California, provision was made for the acquisition of lands when a particular number of land owners or a majority of them in a locality required it for constructing a water course. The validity of the Act was challenged on the ground that the acquisition will benefit only particular land owners who can take water from the channel and therefore, the public as such had no direct interest in the matter and therefore, the acquisition under the Act could not be stated to be for 'Public use'. The challenge made on the Act on this ground was rejected, with the following observations:

'The fact that the use of the water is limited to the land-owner is not, therefore, a fatal objection to this legislation. It is not essential that the entire community, or even any considerable portion thereof, should directly enjoy or participate in an improvement in order to constitute a public use.....it is not necessary, in order that the use should be public that every resident in the district should have the right to the use of the water'.

27. This statement of law has been approved and followed in several American decisions, to cite only one among them namely, Mt. Vernon-Wood-berry Cotton Duck Co. v. Alabama I. P. Co. (1916) 240 U. S. 30 : 60 Law Ed. 507.

28. The same view is again emphasised in Rindge Co. v. Los Angles County (1923) 262 U. S. 700: 67 Law Ed, 1186 in the following words:

'It is not essential that the entire community or even a considerable portion should directly enjoy or participate in an improvement in order to constitute a public use'.

Again, the older and the newer view points are referred to by Willis in his work on 'Constitutional Law'1936 Edition: and the learned author states at page817 as follows:

'What is a 'Public use? On this question there have been two view points. One may be called the older view point and the other the newer view point. According to the older view point, in order to have a public use, there must be a use by the public'.

At page 818 the learned author states:

'According to the newer view point, there is a public use if the thing taken is useful to the public'.

Again at page 819 the learned author says:

'In these cases there is not necessarily a general use by the public, but there is a general benefit to the public'.

29. As observed by Mr. Justice Mahajan in *State of Behar v. Kameswar Singh*, AIR 1952 SC 252:

'Public purpose' is an essential ingredient in the very definition of the expression 'Eminent Domain' as given by Nichols and other constitutional writers..... the exercise of the power to acquire compulsorily is conditional on the existence of a public purpose..... Jurisdiction to acquire private property by legislation can only be exercised for a public purpose. It may be the purpose of the Union or the purpose of the State or any other public purpose. Private property cannot be acquired for a private purpose'.

At page 311 of the same reports, the Supreme Court again observes:

'The definition of the expression 'Public purpose' is elastic and takes its colour from the Statute in which it occurs, the concept varying with the time and set of society and its needs'.

30. In the decision reported in *Thambiran Padayachi v. State of Madras*, AIR 1952 Mad 756, Rajamannar, C. J., and Venkatarama Aiyar, J. upheld an acquisition of lands made by the State on behalf of a Co-operative House Construction Society, to be ultimately given to members. The learned Judges observe at page 761 as follows:

'The result of the authorities may be thus summed up: Acquisition of property for 'public purpose' under Article 31(2) includes whatever results in advantage to the public. It is not necessary that it should be available to the public as such. It might be in favour of individuals provided they are benefited, not as individuals, but in furtherance of a scheme of public utility'.

This decision has been approved by the Punjab High Court consisting of Khosla Acting C. J., and Dulat, J., in the decision reported in *Jhandu Lal v. State of Punjab*, AIR 1959 Punj 535.

31. In particular, an acquisition of an item of land by the Government for constructing a branch irrigation channel for irrigating the lands of a single owner has been again upheld by Rajamannar, C. J. and Venkatarama Aiyar, J. in

Gundachar v. State of Madras, AIR 1953 Mad. 537. At page 538 the learned Chief Justice observes:

'It must now be taken as well established that the power of the State to acquire property compulsorily is a power to acquire it only for a public purpose. 'Public purpose' is a content of the power itself'.

The learned Chief Justice observes at page 540 as follows:

'The next question is, why does the State acquire it? It is here that a point is made of the fact that it is acquired for the private use of the third respondent. 'Prima facie' this is so. But there are certain other facts which should also be borne in mind before we judge the real purpose of the acquisition... Any scheme under which the Government provide for the utilisation of the available water in Government sources of supply for the extension of cultivation will be a public purpose.An acquisition for carrying out any part of this scheme will certainly be an acquisition for a public purpose....the present acquisition must be held to be for a public and State purpose namely, extension of irrigation. The fact that now only one individual stands to benefit by the channel proposed to be excavated on the site acquired would not make the acquisition any the less an acquisition for a public purpose.'

The Supreme Court has held that the requisitioning of a building for finding accommodation for an individual having no housing accommodation and the requisitioning of a building for housing a member of the staff of a foreign Consulate, as being acquisitions for a 'Public purpose' -- State of Bombay v. Bhanji Munji (S) AIR 1955 SC 41 and State of Bombay v. Ali Gulshan, (S) AIR 1955 SC 810.

32. In (S) AIR 1956 SC 294 the requisition of an accommodation for an employee of a Road Transport Corporation was held to be for a 'Public purpose'. Their Lordships referred with approval to the decision of the Privy Council in Hamabai Framjee Petit v. Secretary of State, 42 Ind App 44: (AIR 1914 PC 20) where the Privy Council upheld an acquisition by the Government for providing accommodation for the Government servants as being for a 'Public purpose'. The

Supreme Court again, after a reference to the relevant provisions of the Road Transport Corporations Act 1950 came to the conclusion that the Corporation there had power to provide, for its employees, among other things, living accommodation..

Their Lordships also adverted to Section 19 (2)(b) of the Road Transport Corporations Act, 1950, as giving power to the Corporation to acquire and hold both movable and immovable property as the Corporation may consider necessary and according to their Lordships of the Supreme Court, the power to 'acquire' includes not only the power to purchase by agreement, but also is wide enough to enable the Corporation to request the State Government to acquire property under the Land Acquisition Act--Act 1/1894 (Central Act) in order to provide living accommodation for its employees. Under these circumstances, their Lordships came to the conclusion that the requisitioning of accommodation was for a 'Public purpose'.

33. In this case it is also desirable to advert to certain provisions of the Trivandrum City Municipal Act--Act IV/1116, under which the second respondent, namely, the Corporation of Trivandrum is functioning. Section 205 of the Act vests public streets and their appurtenance in the Corporation.

Section 3(30) defines 'Public street' as any street, road, square, court alley, passage or riding-path whether a thoroughfare or not, over which the public have a right of way over and it also includes certain other items mentioned as clauses (a), (b) and (c) therein.

Section 206 of the Act casts a duty on the Corporation to maintain public streets in good repair and also to make improvements necessary for the public safety or convenience.

Section 207 (1) authorises the Commissioner of the Corporation to do certain acts and in particular, clause (d) therein authorises him to 'widen, open, extend or otherwise improve any public street'.

Clause 2 of Section 207 provides for reasonable compensation being paid to the owners and occupiers of any land or buildings which are acquired for or affected by any such purposes.

Section 209 authorises the Commissioner of the Corporation to acquire land, required for the purpose of widening, opening, extending or otherwise improving any public street etc. Therefore, it will be seen, by virtue of these provisions, that the Corporation has got a duty to maintain public streets and make necessary improvements thereto and also widen or extend them etc., for the public safety or convenience. These sections create a statutory duty on the part of the Corporation and also give them certain rights so that they can discharge the duties imposed on them properly and for the safety or convenience of the public.

Section 70 of the Act prescribes the procedure for acquisition of immovable property that may be required by the Corporation and that is to be under the Land Acquisition Act. It also provides that when compensation awarded under the Land Acquisition Act 11/1089 has been paid, the property shall vest in the Corporation.

34. The Corporation has got a statutory duty and a right to maintain public streets in good repair for the safety or convenience of the public and the Corporation has got also the power given by statutes to widen, extend, or otherwise improve any public street. Again, the statute authorises the Corporation to acquire any land required for this purpose and the acquisition is to be under the Land Acquisition Act. An acquisition under the Land Acquisition Act can be done only at the instance of the State Government.

35. In this case, the Corporation of Trivandrum, after making all necessary enquiries and having satisfied itself that the existing lane requires to be widened, moved the State Government to acquire the necessary land for that purpose. The State in turn, after having satisfied itself through the reports of the District Collector and the Deputy Collector, Land Acquisition, and after considering also the objections raised by the petitioners, have come to the conclusion that the widening of the lane by acquiring land, including a part of the petitioners' land, is necessary to provide greater convenience to the public who have been using the lane for a considerably long number of years. Even on the basis that the persons who may

be immediately benefited are the third respondent and her neighbors, it cannot be stated that the acquisition, in this case at the instance of the Corporation of Trivandrum in discharge of its statutory duties, for widening, 'public street' is not for a public purpose.

36. The expression 'public purpose' under Article 31(2) of the Constitution, has again been considered by Rajamannar, C. J., and Ganapatia Pillai, J. in the latest decision reported in *Vajrapuri Naidu v. New Theatras Carnatic Talkies Ltd.*, 1959-2 Mad LJ 469: (AIR 1960 Mad 108). No doubt, the matter arose before the learned Judges under the Madras City Tenants Protection Act--Act 3/1922 as amended. The learned Judges, if I may say so with respect, have again considered the various decisions of the Supreme Court, as also the earlier decisions of the Madras High Court on this point. The learned Judges sum up the discussion on this point at page 475 as follows:

'On this state of the law, the following propositions cannot be questioned; an acquisition can be for a public purpose, even though all the members of the public do not take the benefit, but only a section of it takes benefit; 'public purpose' in an acquisition may be served even though the acquisition is for the benefit of particular members of the public, provided the object of the acquisition advances a public purpose. In this category may be included advancement of public prosperity, public welfare & the convenience of the public'.

37. I may also refer to a decision of my learned brother, Mr. Justice Varadaraja Iyengar, reported in *Moosa v. State of Kerala*, 1959 Ker LT 844: (AIR 1960 Kerala 96). In that case, acquisition was of a particular house site for accommodating one single Harijan individual. The learned Judge, after considering the Privy Council and Madras decisions referred to above, upheld the acquisition as being for a 'public purpose'.

38. Having in view the various principles laid down by the decisions quoted above, even if the contention of the petitioners' counsel that the third respondent will be the person who will immediately benefit is correct, nevertheless she will get the benefit of the acquisition not as X, Y or Z but as a member of the public, for whose convenience, and better enjoyment, the lane is being widened by the second

respondent the Corporation of Trivandrum in discharge of its statutory duties and obligations.

39. To conclude, the attack that the acquisition is not for a 'public purpose' is negated. In my opinion, the acquisition in this case is for a 'Public purpose' and as such, it follows that the second respondent had ample jurisdiction to approach the first respondent to make the necessary acquisition and it further follows that the first respondent has also jurisdiction to issue the declaration dated 5-5-1958 under Section 6 of the Travancore Land Acquisition Act 11/1089. The rule nisi issued by this court on 13-1-59 is discharged; and this application is dismissed with costs of the first and second respondents, one set, fixed in the sum of Rs. 250/-. The third respondent, however, will bear her own costs.

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