

Moosa Vs. State of Kerala

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Court : Kerala

Decided On : Mar-24-1960

Reported in : AIR1960Ker355

Judge : M.A. Ansari and; S. Velu Pillai, JJ.

Acts : [Constitution of India](#) - Articles 15(4), 31 and 226

Appeal No. : A.S. No. 741 of 1959

Appellant : Moosa

Respondent : State of Kerala

Advocate for Def. : Govt. Pleader

Advocate for Pet/Ap. : B. Pocker and; B. Moosakutty, Advs.

Disposition : Appeal dismissed

Judgement :

Ansari, J.

1. This appeal arises from the order by a learned judge of this Court, dismissing the appellant's petition under Art, 226 of the Constitution. The facts culminating in the order are shortly these : Kannan, a Harijan, was living in a hut within the plot owned by the writ petitioner, and eviction proceedings had been taken against him

due to his non-payment of rent. He, however, continued to occupy the but and the police started proceedings against him for the trespass, which resulted in his being made to furnish security for good behaviour.

About that time notification under Section 4(l) of the Land Acquisition Act was published in Kerala Gazette on December 31, 1957, and it is common ground that provisions of Section 5(A) of the Land Acquisition Act were dispensed with and orders for urgent assumption of possession were issued. The petitioner challenges the constitutionality of the aforesaid order on two grounds, one being that the acquisition was not for public purpose, as an individual was being benefited thereby and the next is that the acquisition was mala fide as the Harijan was already possessed of other property including a dwelling house, and the Government had only assisted him in his effort to take revenge on his landlord.

It is obvious that proceedings under Art. 226 are particularly inept to investigate questions of fact, and therefore such allegations as are made by the writ petitioner to support the plea of mala fide, which are denied or challenged by the Government, cannot be ascertained in these proceedings. Therefore whether the Government's conclusion of the site being fit is correct or otherwise cannot be investigated in these proceedings, and the position is similar so far as the allegation of being no mosque in the locality is concerned.

It follows that the plea of the acquisition proceedings being vitiated by revenge and its object being mala fide should be excluded due to these being complicated questions of facts. Apart from that, a learned judge of this Court has not accepted the correctness of these allegations and his conclusion has not been shown to be incorrect. Therefore the second ground taken by the writ petitioner to vacate the notification is rejected, and this brings us to the first objection,

2. The notification purports to acquire the land for purposes of constructing buildings to house Harijans and the petitioner argues that not to be the public purpose so as to justify exercise of the right of the eminent domain. His Advocate argues that under Article 31, not only must compensation be paid, but acquisition must also be for the public purpose. Now in a series of decisions the High Courts in this country have interpreted these words broadly, and have held that it is not

necessary that the entire community should be directly and immediately benefited.

They held that where the scheme be to redress some glaring evil affecting part of the community, or the object be to bring about contentment in the community to discharge the moral obligation the purpose would be public. Most of these cases are given by our learned brother Mr. Justice Vaidialingam, in *Kamamma v. State of Kerala*, 1960 Ker LT 232: 1960 Ker LJ 170: (AIR 1960 Kerala 321), and no useful purpose will be served in repeating them here.

We agree with our learned brother's conclusion in the aforesaid case that the definition of 'public purpose' should be elastic and it might arise even when the scheme be in favour of individuals provided thereby public prosperity, public welfare or public convenience is served. The same view has been taken in *Bhagwat Dayal v. Union of India*, AIR 1959 Punj 544, where Bishan Narain, J., has upheld a housing scheme for accommodating displaced persons. We therefore think that the notification challenged in this case which purports to acquire part of the land to provide housing accommodation for Harijans must stand, as it is for public purpose.

It is further clear that any complaint of the notification being discriminatory cannot be sustained. It has been made after the amendment was made to Article 15(4) of the Constitution which expressly provides that nothing in this Article or in Clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the scheduled castes and Scheduled Tribes. It follows the decision in *Jagwant Kaur v. State of Bombay*, AIR 1952 Bom 461, condemning acquisition of land for purposes of building a colony for Harijan is no longer incorrect. We therefore dismiss the appeal, but without costs. The injunction order is also discharged.

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