

Vijayan Vs. State of Kerala

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Court : Kerala

Decided On : Aug-19-2004

Reported in : 2004(3)KLT228

Judge : M. Ramachandran, J.

Acts : [Constitution of India](#) - Article 226; [Land Acquisition Act, 1894](#) - Sections 16

Appeal No. : W.P.(C) No. 17934 of 2004

Appellant : Vijayan

Respondent : State of Kerala

Advocate for Def. : Thomaskutty, Government Pleader;and M.K. Chandra Mohan Das; and A. Mohammed, Adv.

Advocate for Pet/Ap. : B. Radhakrishnan (Thottathil),;Sreelekha Puthalath; and George Varghese, Adv.

Disposition : Writ petition allowed

Judgement :

M. Ramachandran, J.

1. The petitioners were in possession of 7.60 Ares of land in Re.Sy. no.37 of Block No. 172 of Kollam Village. The property as above is situated adjacent to NH47.

Petitioners submit that they had proposed intention for building a shopping complex and though the plan had been submitted to the Corporation in 1993, the project had to be abandoned since they were advised that the Authority had a master plan on their sleeves. The land with a high commercial potential was remaining unproductive.

2. By Section 4(1) notification dated 25.5.2000, under Land Acquisition Act a portion of the properties had been earmarked for acquisition and later has been taken over. The petitioner has produced a rough sketch of his holdings as Ext. P1. It shows that entire road frontage had been divested for a public purpose. It is proposed for a bus bay, and the rest of his holding skirts the taken over portion, at its entire length. ,

3. Petitioners, had no basic objection about such acquisition, but pray that they should have been spared from the probable inconvenience and disuse that are proposed because of such steps. The opportunity to develop the balance of land should not have been totally blocked, by denying him any right of way. In O.P.No.15164/2001 filed, this Court on 5.7.2002 had directed the respondents, especially the District Collector to look into the grievances as highlighted in the pending representations. It appears that in the discussion, which followed on 1.11.2002, the Kollam Development Authority (KDA), on whose behalf acquisition proceedings had been initiated had indicated that there might not be any possible objections for giving pathway to the petitioners properties, but thereafter they had retraced steps, indicating that a concession as above had not come from them.

4. The petitioners had thereafter made a request for construction of shed. It was rejected by Ext.P5 dated 7.7.2003 by stating that since the Kerala Municipal Building Rules was definite about the requirement of access to a building and since there was no access possible to be claimed, the application could not have been entertained. The matter had been placed before the Government and the Development Authority had addressed a letter to the Government, wherein it had been pointed out that since the land is acquired for a public purpose, being a member of public, petitioners had only right to walk through the bus bay and had no rights further. Since the land was acquired for a bus bay, the authority found it

difficult to give land or exclusive pathway. It appears that further deliberations were there in the Chambers of the District Collector and the 1st petitioner at that time indicated that he required a pathway of 12 Ft. in width, Ext.P8 minutes dated 7.1.2004 indicates that the District Collector had required KDA to look into the matter. But by Ext.P9 dated 4.2.2004, application was rejected. The same objection raised by Ext.P5 was highlighted. A fresh application for construction of a temporary shed stands rejected by Ext.P11 on 2.6.2004, pointing out that there is no access to the property.

5. The Writ Petition has been filed pointing out that the Municipal Corporation as also the Kollam Development Authority, who are the 3rd and 4th respondents herein had been unreasonable in dealing with the issue and the blockage to the properties on permanent basis would never have been practiced or even proposed, and the steps are arbitrary. Their right to life ensured under Article 21 of the Constitution are thereby violated.

6. Mr. George Varghese, on behalf of the Petitioners submits that request has not at all been appropriately noticed by the respondents, even. What is really required is not a pathway at all but only an opening. The District Collector was satisfied of the genuineness of the claim and had suggested KDA by Ext.P8 to render a reasonable entry. Because of the adamant approach, the legality of the claims, according to him are to be examined. He submits that before the acquisition, petitioners were free to enter into their properties from all points, from the main road. The effect of the acquisition was that the boundaries were deemed to have been pushed further down to their properties, but their basic right for entry into the properties from the public road, was not to have been adversely affected. Their right to enter to their properties or from getting out to the public road, remained unhampered; even if it be that a part of Such rights was to be curtailed. In other words, the objective of the acquisition should have little effect on their larger rights.

7. We may examine the claim in the above background since the stand of the respondents are mainly based on provisions of the Land Acquisition Act and especially Section 16 thereof. It is pointed out that when the Collector makes an award under Section 11, he has to take possession of the land which shall

thereupon vest absolutely with the Government free from all encumbrances. According to the Standing Counsel the right presently claimed by the petitioners is almost equal to an encumbrance on the acquired property. Whatever might have been the right of the petitioners they stand extinguished. The inconvenience caused to the petitioners could not have been avoided in any manner recognized by law,

8. The counsel further submits that the property had been acquired for a bus bay, Buses will be parked there for facilitating boarding and for passengers to get down. There is possibility of even putting up a bus shelter, in due course. A pathway, or an entry to the property, as now claimed therefore is a proposition which does not go hand in hand with the purpose of acquisition. The KDA has all the rights to develop the acquired portion at its discretion, and also for barring entry or thoroughfare by whatever means it decides.

9. The proposition mooted as above appears to be made unmindful of the arbitrariness which it brings along. If we accept the argument, the position would not have been different from a case if the petitioners had a residential house there. It should be idle to contend that merely because of the acquisition and shifting of boundaries, the petitioners will have no more right to reside in the premises or can have no access to public road. Acquisition proceedings cannot nullify the rights of movement. This is essentially different from the encumbrance spoken to by Section 16 of the Land Acquisition Act. Easement of access and easement of necessity is not to be mixed up with principles relating to encumbrances. If the KDA was to construct a compound wall from one end of the property to the other in the portion taken possession of, it would have been objectionable. Likewise, digging of trenches, so as to suffocate the property owner, also could not have received any stamp of approval, if it affected their right for access. The authorities cannot take a decision in their absolute discretion that they were entitled to bar access even. By the act of acquisition, respondents have not been able to secure any better or greater rights, than those they had earlier. If on the road margin, a blockade could not have been placed earlier, an acquisition coupled with alteration of boundary by itself did not confer on them any more rights. The contention of the respondent if accepted would result in astounding consequences. A local authority

definitely cannot put up a brick wall or even a stone on the margin of the drain though it may be vested in them, if the effect thereof is to block entry to a house holder, in any manner.

10. The decision reported in Joseph v. District Magistrate, 1996 (2) KLT 490, also might be relevant. With reference to the law laid down in Harrison v. Duke of Hutland, (1893) 1 Q.B.142 and Harper v. Haden (G.N.) & Sons, (1933) Ch. 298, a learned Judge had held that a person owning land adjoining a highway has a right of access to the highway from any point. The principle gives expression to a common sense approach. If a person had a right of access to a public road, for the reason that acquisition of a part of the land was made on public purpose, the right of such persons for continued access to the main road could not have been prevented. I hold that the encumbrances referred to in Section 16 of the Land Acquisition Act is not intended to deal with the situation similar to that highlighted here.

11. The counsel refers to Section 49 of the Land Acquisition Act and submits that if the acquisition was in respect of any part of a house, manufactory or other building, in case the usefulness of the whole building stand to be affected, it should have been possible for the affected property owner to urge that the building as a whole is liable to be acquired. However, in the present case, since no building at all is involved, it is submitted that the benefit of such situation may not be possible to be claimed, but rest of the situations are similar. In this scenario, especially when the petitioners submit that what was required is not a pathway as misunderstood by the KDA, but only an access, I think the request can be considered as only reasonable and as coming within the rights of the petitioners for life, and enjoyment of their property, and also coming within the fold of Article 300A of the Constitution.

12. Notwithstanding the use of the property as a bus bay, as is envisaged, it continues to be part of the national highway, which has its boarder extended. As a citizen, the petitioner will have a right to use the bus bay and if necessary he will also have a right to enter into the adjoining land which was lying as a Single block before acquisition.

13. The petitioners, will be entitled to access to their properties from the national highway and from the bus bay portion. I direct that KDA should pass follow up order providing a ten feet width opening and petitioners will have the right to suggest the point of incision. This should be done within one month.

14. Writ Petition, is allowed. If the petitioners make a fresh application for temporary or permanent construction on their properties, for the reason that there is no provision for access such applications are not to be rejected. Parties to bear their respective costs.

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