

Hareendran Vs. State of Kerala

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Court : Kerala

Decided On : Jul-15-2005

Reported in : 2005(3)KLT681

Judge : Pius C. Kuriakose, J.

Acts : [Land Acquisition Act, 1894](#) - Sections 4, 4(1), 5A, 6, 6(3), 7, 8, 9(1), 9(3), 11A, 16, 17, 17(1), 17(2) and 17(4)

Appeal No. : W.P. Nos. 18529 and 19458 of 2005

Appellant : Hareendran

Respondent : State of Kerala

Advocate for Def. : L. Aloysius Thomas, Government Pleader

Advocate for Pet/Ap. : V.P. Seemandini,; M.S. Unnikrishnan,; Lekshmy Ramanathan

Judgement :

Pius C. Kuriakose, J.

1. Petitioners in both these cases challenge the proceedings initiated for acquisition of land for the purposes of conversion of Kollam-Punalur meter-gauge railway line as broad-gauge. Petitioners in both the cases concede that notification

under Section 4(1) of the Land Acquisition Act has been promulgated as per Ext.P1. The petitioners have now received notices under Section 9(3) of the Act which are produced as Ext.P2 in these cases. The petitioners apprehend that in exercise of the emergency powers under Section 17(4) of the Act, they are going to be dispossessed of their properties immediately. According to them, in these cases, the declaration under Section 6 of the Land Acquisition Act has not been made and they are not liable to be dispossessed till such time as declaration under Section 6 is promulgated.

2. When these Writ Petitions came up for admission, I granted stay of dispossession temporarily and directed the Government Pleader to get instructions from the respondents as to whether declaration under Section 6 has been promulgated. On being informed that Section 6 declaration is yet to be promulgated, I have heard the submissions of Sri. M.S. Unnikrishnan representing M/s. Sukumaran and Usha on behalf of the petitioners and Sri. L. Aloysius Thomas, learned Government Pleader on behalf of the 1st respondent-State and the other two respondents. Arguments of the counsel were confined to the question as to whether in the absence of a declaration under Section 6 of the Land Acquisition Act, the land-owners are liable to be dispossessed in exercise of the powers under Section 17(1) or Section 17(2) of the Act.

3. According to Mr. Unnikrishnan, the issue as to whether the land in question is needed for a public purpose will attain finality only when the declaration under Section 6 is promulgated and only such a declaration will be exclusive evidence regarding the public nature of the need. Inviting my attention to Sections 4 and 6 of the Act, Mr. Unnikrishnan submitted that even in cases where the emergency provisions under Section 17 are invoked, a declaration under Section 6 is obligatory. He relied on the judgment of the Supreme Court in *R.L. Jain v. DDA* : AIR 2004 SC1904 to support his arguments.

4. Sri. L. Aloysius Thomas, learned Government Pleader on the contrary submitted that this is a case where the emergency provisions under Section 17 have been invoked by the Government and therefore it is open to the Government to make the declaration under Section 6 at any time after the notification under Section

4(1). This, according to the learned Government Pleader, is clear from the language of Section 17(4) itself. He would cite the judgment of this Court in *Abdulla Kutty Haji v. State* (1960 KLT 1029) as well as that of the Supreme Court in *State of U.P. v. Pista Devi* : [1986]3SCR743 so as to fortify his submissions.

5. I have considered the rival submissions, the pleadings in the petitions, the relevant statutory provisions as well as the decisions cited at the Bar.

6. The notification envisaged under Section 4(1) of the Land Acquisition Act is a preliminary notification. Such notifications are promulgated by the Government when it appears to the Government that a particular land is needed for a public purpose or is likely to be needed for a public purpose. If the acquisition is not a case of urgency, then the Land Acquisition Officer holds an enquiry under Section 5-A on the basis of the objections received by him to the notification under Section 4(1) and hears the parties. Thereafter, the Land Acquisition Officer submits a report to the Government incorporating his recommendations regarding the objections raised by the parties to the notice under Section 4(1) as well as a record of the proceedings before him in the enquiry under Section 5A. It is the Government which takes the final decision regarding acquisition on the basis of the above report and thereafter the Government promulgates the declaration under Section 6. Section 6 deals not only with the necessity of promulgating such a declaration but also regarding the time-limit within which the same is to be promulgated and the procedure by which the same is made and published. Sub-section (3) of Section 6 is important and the same is as given below:-

'(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a Company, as the case may be; and, after making such declaration, the appropriate Government may acquire the land in manner hereinafter appearing.'

A declaration under Section 6 is indispensable for acquisition of land under the Land Acquisition Act. This is clear explicitly from Section 11-A which deals with the period within which the award is to be passed and impliedly from Section 6 itself. The learned Government Pleader also does not dispute the necessity of a declaration under Section 6 which he conceded was clear from Section 11-A.

7. But the issue before me is whether the notice under Section 9(1) can be issued and whether possession of the property can be taken prior to the promulgation of a declaration under Section 6. The argument of the learned Government Pleader that it can be so is on the basis of Section 17(4) which I quote as follows:-

'(4) In the case of any land to which, in the opinion of the appropriate Government, the provisions of Sub-section (1) or Sub-section (2) are applicable, the appropriate Government may direct that the provisions of Section 5-A shall not apply, and if it does so direct, a declaration may be made under Section 6 in respect of the land at any time after the date of the publication of the notification under Section 4, Sub-section (1).'

8. Before I continue with the discussion, I shall advert to the decisions cited at the Bar on behalf of the Government. In Abdulla Kutty Haji's case (1960 KLT 1029) the relevant points decided by Velu Pillai, J. were the following:-

1. There is no impropriety or illegality in simultaneous publication of notification under Section 4(1) and declaration under Section 6.
2. The provision under Section 17(4) that Section 6 declaration can be issued at any time after the notification under Section 4(1) is an enabling provision from the point of view of the Government and the same is not a mandatory provision.
3. In a case where enquiry under Section 5-A has been dispensed with, the land owners cannot have a say in matters like this.

The judgment of the Supreme Court in State of U.P. v. Pista Devi : [1986]3SCR743 was delivered by a Bench of two Judges. The relevant point decided under that judgment is the following:-

'Just because there has been a delay of about one year in the matter of promulgation of the declaration under Section 6 from the date of the notification under Section 4(1), it cannot be assumed that the invocation of the emergency provisions under the Land Acquisition Act is mala fide.'

9. Both the above decisions do not support the arguments of the learned Government Pleader that the Government is entitled to take possession of the acquired property even prior to the declaration under Section 6. It is clear from the judgment of the Supreme Court that possession in that case was taken only after the declaration under Section 6.

10. It is necessary to analyse the statutory scheme of land acquisition to answer the question before me. As already indicated, the notification under Section 4 is a preliminary one and in cases where enquiry under Section 5-A has not been dispensed with, Government takes a decision regarding acquisition on the basis of report received under Section 5-A. Thereafter, the Government promulgates the declaration under Section 6. Section 7 provides for the necessity of an order by the Government or somebody authorised by the Government directing the Collector to take possession of the land covered by the declaration. The order under Section 7 can be issued only after the declaration under Section 6. A reading of Section 9, after reading Section 8, will show that notices under Section 9(1) are contemplated only after declarations under Section 6 are made. In ordinary cases, i.e., non-urgent cases, possession can be taken only after the land acquisition Collector passes award and this is clear from Section 16. Government is enabled to take possession even before passage of the award only in cases of urgency covered by Section 17(1) and Section 17(2). Section 17(1) is quoted below:-

'(1) In cases of urgency, whenever the appropriate Government so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in Section 9, Sub-section (1), take possession of any land needed for public purpose. Such land shall thereupon vest absolutely in the Government, free from all encumbrances.'

Ordinarily, possession under Section 17(1) is taken only after the expiry of 15 days from the issuance of Section 9(1) notice. But in cases of unforeseen emergencies, the Government can take possession immediately at the request of the authorities like Railway Administration, Water Supply, Communication, Electricity and the like, even before the expiry of 15 days. Section 17(4) which I have already quoted

certainly says that in cases of emergency under Sub-sections (1) and (2) of Section 17, declarations under Section 6 can be issued at any time after the publication of notification under Sub-section (1) of Section 4. As Velu Pillai, J. observed in *Abdulla Kutty Haji (supra)*, Section 17(4) is a provision which will enable the Government to publish notification under Section 4(1) and the declaration under Section 6 simultaneously. But in my view, Section 17(4) does not enable the Government to defer the promulgation of the declaration under Section 6 to a day after possession is taken. Some of the observations in *R.L. Jain's case* relied on by the petitioners are relevant in this context and I quote from the middle portion of para. 11 of that decision as follows:-

'...The urgency provision contained in Section 17(1) can be invoked and possession can be taken over only after publication of notification under Section 9(1) which itself can be done after publication of notification under Sections 4(1) and 6 of the Act.'

11. I have examined Ext.P1 notification produced along with the Writ Petitions. The notification is one under Section 4(1) and at the same time it contains a direction by the Government to the effect that since the emergency provisions under Section 17(1) have been invoked, the provisions of Section 5-A will not be applicable. But nobody has a case that Ext.P1 is a declaration under Section 6. Ext.P2 is a notice under Section 9(1). In Ext.P2 also it is not stated that on the basis of Ext.P1 a declaration under Section 6 has been promulgated. Government also did not have a case before me that Section 6 declaration has already been promulgated in this case. Under these circumstances, I am inclined to hold that the attempt by the Government to take possession of the properties covered by the acquisition proceedings before a declaration under Section 6 is promulgated is illegal. So also, it has to be stated that issuance of Ext.P2 which is not on the basis of a declaration under Section 6 and since the emergency provisions invoked in this case being only Section 17(1), is irregular. As already indicated, the only issue which the parties joined before me was regarding the legality of taking possession in the absence of a declaration under Section 6. Even though in the grounds raised in the Writ Petitions, the invocation of the urgency clauses under Section 17(1) is seen challenged, the above challenge cannot have any chance of success

in these cases where the invocation of Section 17(1) was in the context of an obvious urgency, i.e. conversion of Kollam-Punalur meter-gauge railway line as broad-gauge.

The above discussions lead these Writ Petitions to the conclusion that the attempt to dispossess the petitioners of their properties in the absence of a declaration under Section 6 will have to be stopped. But at the same time I am not inclined to quash Ext.P2 since I am told that there are hundreds of other similar cases involved and quashing Ext.P2 will result in considerable hardship for the Government since all the parties have already been served with notices similar to Ext.P2. Both the Writ Petitions will therefore stand disposed of granting the following reliefs to the petitioners:-

1. The respondents are directed not to dispossess the petitioners of their properties covered by the land acquisition proceedings initiated against them before a declaration under Section 6 is made and published.
2. Till such time as declaration under Section 6 is made and published by the respondents as above, all further proceedings in pursuance to Ext.P2 notices in both the cases will be kept in abeyance.