

Moosa Vs. State and ors.

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Court : Kerala

Decided On : Mar-26-1959

Reported in : AIR1960Ker96

Judge : N. Varadaraja Iyengar, J.

Acts : [Constitution of India](#) - Article 31(2)

Appeal No. : O.P. No. 48 of 1959

Appellant : Moosa

Respondent : State and ors.

Advocate for Def. : Government Pleader

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

Disposition : Petition dismissed

Judgement :

ORDER

N. Varadaraja Iyengar, J.

1. This is a petition under Article 226 of the Constitution complaining against the acquisition by Government under the Land Acquisition Act, of 6 cents out of S. No. 56/2 in Badagara amsom in Kurumbranad Taluk belonging in jenm to the

Kovilakarn of Kadathanat Valia Raja and outstanding on kanom Kuzhikanam with the petitioner.

2. It appeared that Kannan, a Harijan was living in a hut inside the plot proposed to be acquired as lessee under the petitioner and on account of continuous non-payment of rent, proceedings by way of eviction had been taken against him on 11-8-1955. And because he still continued to occupy the premises, proceedings for trespass were started against him by the Police and he had to furnish security for good behaviour. Soon later the question of housing him was taken up by the Madras Government on the motion of the Director of Harijan Welfare and the decision was then taken of acquiring the plot here at Government expense, for the purpose. Following this, the Section 4(1) Notification was published on 30-10-1956, the provisions of Section 5(A) were dispensed with and orders for urgent assumption of possession were also passed. The States Reorganisation Act then intervened and so the section 6 Notification was published in Kerala Gazette on 31-12-1957 in completion of the preliminaries. Hence this petition, and the main ground raised are two-fold : (i) that the acquisition of the land was not for public purpose within the meaning of Section 6 of the Land Acquisition Act inasmuch as one individual alone was benefited thereby, and (ii) that the acquisition was mala fide in that Kannan was already possessed of other property and dwelling house and the Government had here only lent their aid to a scheme of revenge evolved by Kannan as against his quantum landlord.

3. The Respondents, viz., the State, the Collector of Kozhikode and the Special Tahsildar for Land Acquisition (Harijans), Kozhikode. question the grounds relied on and further assert that the petition is not maintainable in view of the dismissal of prior petition O. P. 56 of 1958 filed by the petitioner in the same matter.

4. The second ground of mala fides can be easily disposed of. For the only fact on which it was sought to be rested, viz., the possession by Kannan of 19 cents in R. S. 13/2 in Pulayad desom in the same taluk, it is now conceded is not made out. In fact it was for the inclusion of this aspect in the petition that the first petition O. P. 56 of 1958 had been allowed to be withdrawn and the fresh petition herein was filed. It is unnecessary to add that no question of mala fide can arise from the

mere fact that an acquisition which is otherwise proper, sets at nought the continuous prior efforts of the owner to get the property from the persons benefited by the acquisition, even though directly.

5. The first question as to 'public purpose' is now well settled, whatever might have been the difficulty about it some time ago. For as observed in Willis' Constitutional Law :

'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. According to the newer view point there is a public use if the thing taken is useful to the public In these cases there is not necessarily a general use by the public, but there is a general benefit to the public. Private enterprises are thus allowed to exercise sovereign power of eminent domain, not because they are taking the property for their own use, but because in taking the property for their use they are benefiting the public.'

So it was held in *Thambiran Padayachi v. State of Madras*, AIR 1952 Mad 756, that acquisition of property for public purpose under Article 31(2) of the Constitution 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. Schemes for construction of houses, for clearing slum areas, relieving congestion and housing poor people are for public purpose as they tend to promote social welfare and prosperity. The learned Judges observed:

'There is considerable authority in America as to what constitutes a public purpose and the question has been considered with reference to schemes for construction of houses. 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'. Two views have been held on the connotation of the words 'public use'. The older and stricter view is that unless the property is indicated for user by the public at large or a considerable section thereof it would not be a public use. Vide Nichols on 'Eminent Domain', Vol. II, p.

430 (1950 Edn). But the modern and more liberal view is that it is not an essential condition of public use that the property should be transferred to public ownership or for public use and that it is sufficient that the public derives advantage from the scheme. According to this view, it is no objection to the validity of an acquisition that it is in favour of a private corporation or of individuals, provided it results in public advantage.'

In the subsequent case in *Gundachar v. State of Madras*, AIR 1953 Mad 537, the above principle was applied in case of acquisition for purpose of putting up a water channel. The learned Judge referred with approval to *Nichols on Eminent Domain* where public purpose was held to exist:

'In certain special and peculiar cases sanctioned by ancient customs or justified by the requirements of unusual local conditions, to enable individuals to cultivate their land or carry on business in a manner in which it could not otherwise be done, if their success will indirectly enhance the public welfare, even if the taking is made by a private individual and the public has no right to service from him or enjoyment of the property taken.'

It follows, therefore, that the mere fact that the effect of the Government Order is to enable it to acquire a particular house site for a particular individual is not in any way fatal. This is a matter of detail which does not affect the general question of the purpose being a public one. As observed by Venkatasubba Rao J. in *Secy. of State v. Gopala Aiyar*, AIR 1930 Mad 798, 'where Panchanas and other coolies were provided with house sites:

'What the Government proposes is to acquire the lands and once they are acquired, it may allot them in such manner as it pleases. But it is obviously the most sensible and convenient course to allot to each servant that particular house which he has been occupying. How this renders the purpose any the less a public one I am unable to follow.'

6. Learned counsel for the petitioner referred to *Maheswar v. State of Assam*, AIR 1956 Assam 190. The acquisition there was of a school and the present question did not arise. No doubt the learned Judges referred to *Hamabai Framiee v. Secy.*

of State for India, AIR 1914 PC 20, for the meaning of the expression public use and including:

'a purpose, i. e., an object or aim, in which the general interest of the community, as opposed to particular interest of individuals, is directly and vitally concerned'.

But this general meaning does not affect the discussion here. The same observations have alone to be made in respect of the other decisions cited.

7. In the light of my conclusion as above, it is unnecessary to consider the objection to maintainability based on the dismissal of the prior petition and raised by the Respondents.

8. In the result there is no substance in the petition herein. It is therefore dismissed but in the circumstances without costs.

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