

Lalithamma and others Vs Land Acquisition Officer and Special Deputy Collector

Court: High Court Of Kerala

Date of Decision: Aug. 23, 1973

Acts Referred: Kerala Land Acquisition Act, 1961 " Section 11, 16, 20, 33, 33(2)

Citation: AIR 1974 Ker 73 : (1973) KLJ 831

Hon'ble Judges: M.U. Issac, J

Bench: Single Bench

Advocate: V. Parameswara Menon and R.D. Shenoy, for the Appellant;

Final Decision: Dismissed

Judgement

M.U. Isaac, J.

The petitioners in these eight cases are members of a divided Marumakkathayam tarwad whose lands were acquired by

the Land Acquisition Officer and Special Deputy Collector (Land Acquisition), Fertiliser cum Petro Chemical Complex, Ambalamedu for the

purpose of the Cochin Division of the Fertilisers and Chemicals, Travancore Limited as per award Nos. 29 and 30 dated 15-6-1971. Notices

dated 28-6-1971 of the awards were sent to all the petitioners, requiring them to appear before the Land Acquisition Officer to receive the

compensation awarded to them on 8-7-1971. On the said date, all of them appeared either in person or through representatives, and received the

amounts awarded to them. It is stated that on the same day all of them prepared applications requiring the Land Acquisition Officer to refer the

cases under S. 20 of the Kerala Land Acquisition Act, 1961 to the appropriate Court for adjudication of their claim for enhanced compensation.

The applications were sent by registered post on 9-7-1971; and they were received by the Land Acquisition Officer on 10-7-1971. The Land

Acquisition Officer rejected the applications on the ground that they were not maintainable, since the amounts awarded were received by the

petitioners without protest. These petitions have been filed to quash the orders of the Land Acquisition Officer, and compel him to refer the cases

to the appropriate Court for adjudication. The impugned orders are based on the second proviso to Sub-s. (2) of S. 33 of the Act. It is necessary

to read Sub-s. (1) and (2) of this Section for appreciating the contentions in this case:

33. Payment of compensation or deposit of the same in Court: -- (1) On making an award under S. 11 or S. 16, the Collector shall tender

payment of the compensation awarded by him to the persons interested entitled thereto according to the award and shall pay it to them unless

prevented by any one or more of the contingencies mentioned in sub-s. (2).

(2) If they do not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive

the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a preference

under S. 20 would be submitted.

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount:

Provided further that no person who has received the amount otherwise than under protest shall be entitled to make any application under S. 20:

Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation

awarded under this Act, to pay the same to the person lawfully entitled thereto.

The only controversy is whether the petitioners, who admittedly received cheques for the amounts awarded in their favour on 8-7-1971, did so

under protest. If they did not receive the amount otherwise than under protest, they will not be entitled to apply for reference. It is not necessary

that the protest should be recorded in the receipt passed by the person who receives the payment. But it is clear from the relevant statutory

provision that the receipt of payment must be under protest. In other words, the protest must precede the receipt of payment; or at least it must be

simultaneous with the receipt of payment. It is not a requirement of the Statute that the protest must be in writing. But the person applying for the

reference must establish that the receipt of payment was under protest. In all these cases, the petitioners have alleged that they had orally protested

against the adequacy of the compensation awarded to them, before the payments were received. But that allegation is denied; and there is nothing

to establish that allegation. The applications made for reference do not contain such an averment. On the other hand, the receipts given by them

acknowledging receipt of the payments show that the amounts were received without any protest. Therefore, the conclusion is inevitable that the

cheque for the amounts of compensation were received by the petitioners without protest.

2. Confronted with the above situation, counsel for the petitioners raised a novel contention, namely that receipt of cheque for the amounts of

compensation did not amount to receipt of the amounts, that the giving of a cheque amounts only to a conditional payment, that in such a case, the

payment takes place only when the cheque is cashed, that in the instant cases, the cheque were cashed only long after the reference applications

reached the Land Acquisition Officer, and that therefore, the receipts of the amounts in all the cases were preceded by protest. I am unable to

accept this contention. There can be no dispute on the facts of the case that the compensation was received by the petitioners in the form of

cheques. Therefore, the receipt of the cheques satisfied the right of the petitioners for compensation. The fact that the petitioners cashed the

cheques only some time later, or they did not cash them at all, has no relevancy to the discharge of the liability to pay compensation under the

awards. Whether they should cash the cheques, or if so when they should do it is only a matter which concerns the petitioners only. The payment

of compensation is effected when a cheque in lieu of the amount is offered, and it is accepted by the person entitled to the compensation in

discharge of that liability. It is true that, if the cheque is dishonoured, the payee has to recover the amount from the person who issued the cheque.

But that would be a claim or action on the cheque. The question whether the payee can fall back on the original claim does not arise here, since

admittedly all the cheques have been cashed. It was also faintly contended by counsel for the petitioners that the reference applications were

prepared before the cheques were received by the petitioners, that the said applications contained protest against the adequacy of the

compensation awarded, and that, therefore, the receipts of compensation in the instant cases were preceded by protest, though the reference

applications were received by the Land Acquisition Officer only later. This is a totally untenable contention. What is required is that the receipt of

payment should be under protest. So it must be made to the Land Acquisition Officer either before receiving the amount or at least simultaneous

with the receipt. There is no protest until and unless it is communicated to the officer disbursing the payment. The preparation for a protest cannot

amount to an act of protest. So even accepting the petitioners' case that the reference applications were prepared before the cheques were

received, it does not help them. Unfortunate though it may be, the petitioners cannot escape the legal bar enacted in the second proviso to S. 33(2)

of the Act. These petitions are, therefore, dismissed. There will be no order as to costs.