

(1964) 02 KL CK 0028

High Court Of Kerala

Case No: C.R.P. No. 723 of 1963

Kunjannam

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision: Feb. 19, 1964

Acts Referred:

- Evidence Act, 1872 - Section 10, 123, 124, 162

Citation: (1964) KLJ 762

Hon'ble Judges: C.A. Vaidialingam, J

Bench: Single Bench

Advocate: Varghese Kalliath, for the Appellant;

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Vaidialingam, J.

In this revision petition Mr. Varghese Kulliath, learned counsel for the petitioner, challenges the order of the learned Subordinate Judge of Irinjalakuda, dated 6th April, 1963, in T.A. No. 1016 of 1960 in L.A. Case No. 34 of 59. In respect of certain proceedings taken under the provisions of the Cochin Land Acquisition Act for acquiring some properties of the petitioner, the latter, obviously dissatisfied with the compensation awarded by the Land Acquisition Officer, has made a request for reference to the civil court, claiming enhanced compensation; and that is pending before the learned Subordinate Judge of Irinjalakuda in L.A. Case No. 34/59.

2. It will be seen that in the award that was passed, there is a reference to the fact that the value of cocoanut trees and arecanut trees originally fixed by the then Special Land Acquisition Officer, Shri A. Govinda Warriar, has been revised by the Officer who passed the award, having due regard to the market value of lands which includes the value of trees and other improvements and with reference to the trees of similar type remaining in the adjoining compound and in the acquired site.

Accordingly the Land Acquisition Officer has passed the award which is no doubt under attack before the learned Subordinate Judge.

3. The petitioner appears to have filed an application before the learned Subordinate Judge, for calling upon the State to produce the report of the Special Land Acquisition Officer Sri A. Govinda Warriar, which has been referred to admittedly in the award of the Land Acquisition Officer. Evidently the petitioner appears to think, that the said report, on the basis of which the valuation is stated to have been revised by the officer who passed the award may be in his favour. But the District Collector, Trichur, filed an affidavit, dated 9th July, 1960, claiming privilege in respect of the production of the said document. The Collector in the affidavit has stated that the document mentioned as valuation report, submitted by Revenue Inspector, Ezhuthassan, is an unpublished record relating to the affairs of State, being a report by a subordinate to the superior in official confidence. The District Collector also states that in his opinion, the disclosure of the said record is prejudicial to the public interest of the State, and therefore in the interest of justice it is necessary that the production of the document may not be compelled by the Court. That means that he had claimed privilege.

4. No doubt, the claim made by the District Collector may appear to fall under both the material provisions, namely Sections 123 and 124 of the Indian Evidence Act. But that aspect need not detain me further, because the petitioner's claim for ordering the production of the valuation report of the Revenue Inspector was disallowed by the learned Subordinate Judge on a former occasion, and the plea of privilege claimed on behalf of the State was allowed. The matter was taken up in revision before this Court by the petitioner; and my learned brethren Anna Chandy and Govinda Menon JJ., in the decision reported in *Kunjannatn v State of Kerala*, (1963 K.L.J. 51) have, if I may say so with great respect, after a very exhaustive discussion of the case law on the point, have proceeded on the basis ultimately that the plea of privilege is rested on Section 124 of the Evidence Act. That is why I stated earlier that I need not labour the point as to whether the plea that was raised by the Collector in the affidavit was really on the basis of Section 123 or 124. Ultimately the learned Judges in the decision referred to above, after referring to the case law and the principles applicable under such circumstances when a plea of privilege is claimed u/s 124, lay down that if a claim of privilege u/s 124 is made, the court may inspect the document in its discretion, and if the court comes to the conclusion that the communication in question was made to a public officer in official confidence, it will have to uphold the privilege claimed u/s 124 and leave the public officer concerned to decide whether or not to disclose the communication. The learned Judges also lay down that the final decision of both the departmental head, who had been summoned to "produce the document, as well the presiding Judge, should be governed by only one consideration, namely, whether the disclosure would result in any injury being caused to the public interest as the section gives effect to the principle that public interest must be paramount and private interest must give way

when there is conflict between public and private interests. Ultimately the learned Judges are of the view that in the case before them the document in respect of which privilege was claimed had not been produced before the trial court, and without seeing the document it would not be possible to decide whether the whole or any portion of the document would be privileged u/s 124 of the Evidence Act. And, in this view, learned Judges set aside the order under attack, and directed the learned Subordinate Judge to decide the question of privilege u/s 124 of the Evidence Act afresh, in the light of the principles laid down by them and after inspecting the document and hearing the parties.

5. Before I advert to the document itself, it is desirable to refer to the particular observations of the Supreme Court in the decision reported in [The State of Punjab Vs. Sodhi Sukhdev Singh](#), . No doubt, in that decision, the learned Judges were largely concerned with the scope of Sections 123 and 162 of the Evidence Act. But at page 503 of the report, the learned Judges consider also, in passing, the plea of privilege claimed u/s 124. After referring to the section itself, the learned Judges state that in dealing with an objection against the production of a document raised u/s 124, the court would have first to determine whether the communication in question has been made in official confidence. The learned Judges also state that if the answer to the said question is in the negative, then the document has to be produced; and if the said answer is in the affirmative then it is for the officer concerned to decide whether the document should be disclosed or not.

6. Therefore, it will be seen that in this case, when the decision rendered by the learned Judges of this Court on the former occasion clearly shows that the approach for considering the claim of privileges is to be made on the basis of Section 124 of the Evidence Act. The first and essential duty of the court is to determine whether the communication in question has been made in Official confidence because when once the court comes to the conclusion that the communication in respect of which privilege is claimed, is one made in official confidence, the court practically vanishes from the picture and it is for the officer concerned to decide whether the document should be disclosed or not. I am now concerned only to find out whether the order of the learned Subordinate Judge under attack has had due regard to the principles laid down by my learned brethren in the decision referred to above, namely *Kunjannam v State of Kerala* (1963 K.L.J. 51) which itself is based upon the decision, of the Supreme Court in [The State of Punjab Vs. Sodhi Sukhdev Singh](#), and especially pertaining to the plea of privilege claimed u/s 124 of the Evidence Act namely whether the court has, after looking into the document, as directed by the learned Judges, satisfied itself that the communication in question is one made in official confidence. So far as that is concerned, it will be seen that the trial court again after referring to the case law on the point, which in my view, was absolutely "unnecessary, because the whole ground had been traversed by the learned Judges of this Court when the matter came before them on the former occasion ultimately is of the view that the statement regarding the valuation made by the Revenue

Inspector must be considered to have been made in official confidence, as that expression is used in Section 124 of the Evidence Act and therefore, the first and essential requirement of Section 124 is satisfied. Quite naturally having arrived at this conclusion the learned Judge, regarding the second requirement of Section 124, holds that the public officer himself is the sole Judge as to whether public interest would suffer by its disclosure; and for that purpose, he refers to the affidavit of the District Collector, claiming privilege on the ground that public interest would suffer by its disclosure.

7. No doubt, Mr. Varghese Kalliath, learned counsel for the revision-petitioner, has very strenuously attacked this order of the learned Subordinate Judge again upholding the plea of privilege. The learned counsel, no doubt, urged that the directions given by this Court, when the matter came before it on the former occasion, have not been properly taken into account and considered by the trial court. The learned counsel also urged that in this case, when Rule II (8) of the rules framed under the Cochin Land Acquisition Act provides for revenue officers, when submitting the declaration to give details regarding the valuation, and when Rule III (2) also makes provision for the award being passed on the basis of the reports of the subordinate officers, there can be absolutely no claim of privilege being made on behalf of the Government, especially when those reports have been relied upon in the award in question and acted upon by the officers concerned.

8. In my view, the contention of the learned counsel for the petitioner cannot certainly be accepted. The circumstance that Rule III (2) framed under the Cochin Land Acquisition Act provides for an award u/s 10 of the Act being passed on reports of subordinate officers, does not certainly mean that each and every report submitted by subordinate officers regarding the valuation of the property is a document made in official confidence to a superior officer. So far as that is concerned, as I have already indicated, the learned Judge is perfectly satisfied, after referring to the document in question, that the report must be considered to have been made in official confidence. No doubt the learned counsel for the petitioner urged that there can be no question of any plea of privilege being claimed when a report is submitted on the basis of the provisions of the statute or the rules thereunder, I do not think I am called upon to consider in this case the large contention that has been raised, because according to the learned counsel, it is only when a report is sent by the subordinate official to the Head of the Department or a higher officer and when there are no rules or statute governing that matter, that it can be considered to be a communication made in official confidence. I have no hesitation in rejecting this contention of the learned counsel. But I reserve my liberty to consider that question as and when it directly arises.

9. So far as the present claim is concerned, the learned Government Pleader has stated before me that the plea of privilege is essentially based upon Section 124 of the Evidence Act. If that is so, the two essential conditions that had to be considered

and which were indicated by the learned Judges in the decision reported in *Kunjannam v State of Kerala* (1963 K.L.J. 51) have certainly been borne in mind by the learned Subordinate Judge when he upheld the plea of privilege. No doubt, by disclosing the report of the revenue officers in respect of the valuation of the properties for the purpose of enabling the Land Acquisition Officer to pass the necessary award, whether public interest would suffer, is a question that has been asked no doubt by the learned counsel for the petitioner. As the Supreme Court has pointed out that is not a matter for this Court to consider, because when once it is established that the communication in question, in respect of privilege is claimed, is one made in official confidence, then it is for the officer concerned to decide whether the document should be disclosed or not. And this Court has nothing to do with the question as to whether the view expressed by the Officer that public interest will suffer by such disclosure is correct or not. That is essentially a matter for the officer to decide. By and large, I do not see any reason why the petitioner should waste his energy in trying to get at the report that may have been sent by one of the subordinate officers to the Land Acquisition Officer, because the civil court, where the claim of enhanced compensation is pending, is not controlled by any one of those reports and especially when those reports are not made available to the party and the claimant will have to establish his claim for getting higher amount of compensation not on the basis of any reports, but more on the basis of tangible data justifying his claim for enhanced compensation. In the result the revision petition fails and is dismissed. There will be no order as to costs.