

N. Paramu Pillai Vs The District Collector and Others

Court: High Court Of Kerala

Date of Decision: Jan. 4, 1989

Acts Referred: Kerala Public Accountants Act, 1963 " Section 2, 3, 3(1), 3(2), 3(3)

Citation: (1989) 1 KLJ 729

Hon'ble Judges: V.S. Malimath, C.J; K.A. Nayar, J

Bench: Division Bench

Advocate: S. Easwara Iyer and E. Subramoni, for the Appellant; N. Sugathan, Government Pleader, for the Respondent

Final Decision: Allowed

Judgement

V.S. Malimath, C.J.

This appeal is against the judgment of the learned Single Judge dismissing O.P. No. 6177 of 1983, filed by die

Appellant. The Appellant was a Village Officer, Thrikkartiva-a Government servant. He was entrusted with the responsibility of preparing records

for acquisition of land comprised in Sy. Nos. 8306/86/325 and 8303/367/137 of Trikkaruva Village. He prepared the records and the sketch

showing the total extent of the land to be acquired or measuring 5 acres. It is on that basis that compensation was paid to the owner of the land

acquired. Subsequently it came to the notice of the Government that the land actually acquired measured only 4 acres and 8 cents and that the

Government was made to pay compensation in respect of 92 cents, though the said extent of land was not actually acquired, only for the reason

that the Appellant gave wrong measurements of the lands acquired as 5 acres. On the ground that the State Government has suffered loss by being

required to pay compensation in respect of 92 cents of land which was not actually acquired, on account of the negligence or misconduct in the

discharge of the duties by the Appellant as a Village Officer, action was initiated to recover the alleged loss suffered by the Government by

invoking the provisions of Section 3 of the Kerala Public Accounts Act, 1963 (hereinafter referred to as "the Act"). After holding an enquiry in this

behalf and considering the cause shown by the Appellant, the District Court at Quilon made the order Ext. P-7, dated 7th May 1983 determining

an amount of Rs. 15,586-74 as the liability of the Appellant in respect of the loss caused by him and directing him to pay the amount failing which

he was informed that action would be taken to recover the same, by resorting to the provisions of the Revenue Recovery Act. As there is no other

remedy available to challenge the order made u/s 3 of the Act, the Appellant approached this Court in O.P. No. 6177 of 1983 and challenged the

order Ext. P-7, dated 7th May 1983 on various grounds. The learned Single Judge came to the conclusion that there is no substance in any of the

contentions of the Appellant and dismissed the writ petition. Hence this appeal.

2. The principal question for examination is as to whether the provisions of the Act could have been invoked for recovering the loss caused by the

Appellant while discharging his duty as a Village Officer, as a result of giving inflated measurements of the land sought to be acquired under the

provisions of the Land Acquisition Act.

3. Section 3 of the Act which has been invoked by the authorities in this case may be extracted as follows:

Statement of particulars of claim to be drawn up by Collector or Head of Department 1. Whenever it appears to the Collector or the Head of a

Department of the Government or other authority or institution, notified under Clause (b) or Section 2, under whom a public accountant is or was

serving, that the Government or Such authority or institution have or has a claim on such public accountant for moneys, securities for money,

documents or other property, he shall draw up a statement of the particulars of the said claim, and if he is not a Collector, may send the

statement to the Collector in whose jurisdiction such account is or was employed.

2. The Collector when he has himself recorded a statement as aforesaid may and on receipt of such a statement from the Head of a Department of

the Government, other authority or institution shall by writing under his official seal and signature required the moneys, securities for money,

documents or other property, to be delivered either immediately to the person bearing the said writing or to such other person on such date and at

such place as the writing may specify. Such notice of demand may be served on the public accountant in the same manner as a summons is served

on a Defendant under the Code of Civil Procedure, 1908.

3. If the public accountant does not satisfy the demand, but appears and objects to the claim wholly or in part, the Collector shall enquire into the

objection and record a decision.

Sub-section (1) of Section 3 makes it clear that whenever the authority is satisfied that there is a claim on the public accountant for moneys,

security for money, documents or other property, that a statement of particulars of such a claim is required to be drawn. The same is required to

be served on the public accountant as provided in Sub-Section 2 and if the public accountant does not satisfy the demand and objects to the claim,

the collector is required to enquire into the objections and record his decision as required by Sub-section (3). The provisions of Section 3 can be

invoked against the public accountant in respect of a claim for moneys, security for money, documents or other property. The expression "public

accountant" has been defined in Section 2(b) of the Act as follows:

2(b) "public accountant means a person, who, by reason of being employed in the service of the Government or of any other authority or institution

notified by the Government in this behalf from time to time in the Gazette, is entrusted with the receipt, custody, possession or control of any

moneys or securities for money, documents or other property belonging to the Government, or to any such authority or institution notified as

aforesaid or who, in his capacity as Government servant, or servant of any such authority or institution, is entrusted with the receipt, custody,

possession or control of any moneys or securities for money, document or other property belonging to any person or persons or to any institution

for and on behalf of the Government or any such authority or institution, as the case maybe.

As we are not concerned in this case with the person employed by any authority or institution other than the Government, it is unnecessary to

advert to them. We are concerned in this case with the Appellant who was employed in the service of the Government as a Village Officer. The

definition of the expression ""public accountant"" makes it clear that it is not every employee in the service of the Government that can be regarded

as a public accountant.

It is only an employee who is entrusted with the receipt, custody, possession or control of any moneys or securities for money, documents or other

property belonging to the Government or who, in his capacity as Government servant is Entrusted with the receipt, custody, possession or control

of any moneys or securities for money, document or other property belonging to any person or persons or to any institution for and on behalf of the

Government. Thus a Government servant becomes a public accountant (1) if he is entrusted with the receipt, custody, possession or control of any

moneys or securities for money, documents or other property belonging to the Government or (2) if he is entrusted with the receipt, custody,

possession or control of any moneys or securities for money, document or other property belonging to any person or persons or to any institution

for and on behalf of the Government. What Sub-section (1) of Section 3 contemplates is the claim on public accountant for moneys, securities for

money, documents or other property. Though Sub-section (1) of Section 3 does not in terms speak of entrustment, as the claim can be enforced

only against a public accountant, having regard to the definition of the expression "public accountant" contained in Section 2(b) which renders an

employee in the service of the Government a public accountant.

4. So far as the facts of this case are concerned, this is not a case of entrustment of moneys, securities for money, documents or other property

either belonging to the Government or belonging to any person or persons or to any institution for and on behalf of the Government. What is

claimed is the loss assessed by the Collector on account of the inflated measurement of the land acquired provided by the Appellant when working

as a Village Officer. This is therefore a claim for a damage for the loss sustained by the Government on account of the wrongful act of the

Appellant in the discharge of his duties as a Village Officer. Such a claim is clearly outside the scope of the Act. Hence the impugned order Ext. P-

7 is liable to be quashed.

For the reasons stated above this appeal is allowed, the judgment of the learned Single Judge is set aside and Ext. P-7 is quashed. We make it

clear that the quashing of Ext. P-7 shall not come in the way of the State or the authorities resorting to other remedies available in law against the

Appellant. No costs.