

(1987) 11 KL CK 0051

High Court Of Kerala

Case No: O. P. No. 6576 of 1985

Pathrose

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision: Nov. 23, 1987

Acts Referred:

- Kerala Land Acquisition Act, 1961 - Section 3(1), 6
- Land Acquisition Act, 1894 - Section 17, 4(1), 5A, 6, 6(1)

Citation: (1988) 2 KLJ 40

Hon'ble Judges: T.L. Viswanatha Iyer, J

Bench: Single Bench

Advocate: K.S. Menon, for the Appellant; Government Pleader, for the Respondent

Final Decision: Allowed

Judgement

T. L. Viswanatha Iyer, J.

Petitioner's land was notified for acquisition u/s 3(1) of the Kerala Land Acquisition Act 1961 for the purpose of constructing a building for the local Village Office. A copy of the notification is Ext. P1 dated 4-8-1983. The petitioner filed his objections to the proposed acquisition on 27-8-1983. The declaration u/s 6 of the Act has not so far been published. The Original Petition was filed on 8-7-1985 challenging the acquisition proceedings as mala fide. An interim order was passed by this court on 9-7-1985 directing the respondents not to dispossess the petitioner from the property, but there was no stay of further proceedings pursuant to the notification Ext. P1. Counsel for the petitioner contends that since the three year period limited by the first proviso to Section 6, for the issue of declaration, expired in August, 1986, the proceedings for acquisition have lapsed. Counsel puts it very simplistically, pointing out that there was no stay of further proceedings pursuant to the notification u/s 3 (1), and therefore the declaration has to be issued within the period of three years as stipulated by the first proviso to Section 6. The learned Government Pleader on the other hand, contends that as per Explanation I to

Section 6(1) of the (Central) Land Acquisition Act, 1894, which was extended to the State of Kerala by Central Act 68 of 1984, with effect from 26-9-1984 and which governed the proceedings in question, the period during which any action or proceeding to be taken in pursuance of the preliminary notification is stayed by an order of court is liable to be excluded in the computation of the period of three years. His contention is that taking possession of the land is one of those acts to be undertaken pursuant to the notification and since that had been stayed by this court on 9-7-1985, the period from 9-7-1985 upto this date has got to be excluded in the computation of the period of three years available for issuing the declaration u/s 6.

2. The action or proceeding contemplated by Explanation I to section 6 (1) is an action pursuant to the notification u/s 4 (I) of the Central Act (corresponding to Section 3(1) of the Kerala Act). This notification is followed by a series of acts before it culminates in the next step of a declaration u/s 6. The filing of the objections, survey and demarcation of the land, and the enquiry u/s 5A are steps taken pursuant to the notification and leading to the declaration u/s 6. When the period with which we are concerned is the period for making the declaration u/s 6, the action or proceeding contemplated by Explanation 1 has to be read and understood as referring to the steps involved between the notification u/s 4 (1) and the declaration u/s 6.

Taking of possession is ordinarily a post award operation; and even in the case of acquisitions invoking the emergency provisions, possession can be taken only after publication of the notice u/s 9 and after payment to the landowner of 80% of the compensation (vide Section 17 of the Central Act). Therefore, and in my view, the order of court should be one staying one or other of the steps or proceedings to be taken after the notification u/s 4 (1) but not comprehending those beyond the issue of the declaration u/s 6. Explanation I will apply only in such cases of stay and no others. Only the actual dispossession of the petitioner was stayed by this court. There was no stay of any of the other proceedings, The time fixed for making the declaration u/s 6 does not therefore get enlarged, as Explanation I has no application. The proceedings in this case have therefore lapsed in the absence of a declaration within the period of three years limited for the purpose.

The Original Petition is therefore allowed. It is declared that the proceedings initiated under Ext. P1 have ceased to be in force and have lapsed.