(1993) 2 KLJ 812

High Court Of Kerala

Case No: W.A. No. 963 of 1992

Ramoo		APPELLANT
	Vs	
District Collector and Others		RESPONDENT

Date of Decision: Sept. 25, 1993

Acts Referred:

- Kerala Government Land Assignment Act, 1960 - Section 3(1)

Citation: (1993) 2 KLJ 812

Hon'ble Judges: M. Jagannadha Rao, C.J; K. Sreedharan, J

Bench: Division Bench

Advocate: P.K. Lakshmanan, for the Appellant; Benny Gervacis, for Respondent 4, for the Respondent

Final Decision: Dismissed

Judgement

Sreedharan, J.
Writ Petitioner in O.P. 5537/1990 challenges the judgment passed by the learned Single Judge dismissing the Original Petition. That Original Petition was disposed of along with O.P. 7560/1990 by a common judgment. Writ Petitioner in O.P. 7560/1990 has not come up in appeal.

2. Short facts necessary for the disposal of this appeal are as follows:-12.44 acres of land comprised in various survey fields were acquired by the State under the provisions of the Land Acquisition Act for the construction of a hospital building. Pursuant thereto, the properties were taken possession of by the State in 1958 and an award was passed in 1960. Entire compensation payable to the land owners, together with solatium, was paid. According to the Petitioners in the two Original Petitions, properties comprised in Survey Nos. 168/2 and 172/2, which were acquired by the State, belonged to their predecessors in interest, namely Govindan and Achuthan. Deceased Govindan is the father of the Appellant herein. After the completion of the acquisition proceedings, it was found that the

acquired land was not fit for construction of hospital building. Legal representatives of Govindan filed Exhibit P-3 representation stating that since the land is not required for construction of the hospital, it may be restored to them. Similar petition was also filed by the legal heirs of deceased Achuthan. Finding that no action was taken by the Government on those representations, they moved this Court by filing O.Ps. 345/1981 and 1844/1981. These petitions were disposed of by directing the Government to pass final order on their representations. On coming to know of the move to handover the land to the Tellicherry Municipality for the construction of a Stadium Complex, Appellant herein filed O.P. 7995/1987. That Original Petition was disposed of by directing the Government to pass final order on the representation filed by the Petitioner. Thereupon Government passed Exhibit P-7 order, G.O. (Rt.) 1106/90/RD, dated 28th April 1990. By this order, writ Petitioner was informed that their request for reassignment of the land cannot be granted since it is required by the local body for purpose of construction of a stadium. The legal heirs of previous owners challenged Exhibit P-7 order in the Original Petitions which were jointly disposed of by the learned Single Judge.

3. The main prayers made by the Appellant in O.P. 5437/1990 are for the issuance of a writ of certiorari quashing Exhibit P-7 order; for the issuance of a writ of mandamus directing the Respondents to reconvey the property which belonged to Sri Govindan; and to quash the decision taken by the Government to assign the property to the Tellicherry Municipality.

4. It is the admitted case of the parties that property which belonged to deceased father of the Appellant, Sri Govindan, was acquired by the State as per the provisions of the Land Acquisition Act for the construction of a hospital building. Possession of the land of Govindan alongwith other adjoining properties was taken by the Government way back in 1958. Award under the Land Acquisition Act was passed in 1960. Entire compensation as per the award was given to the land owners. As a result of this, the land became vested in the State. It is alto admitted that Government did not put up any hospital building in the acquired area. Hospital building was constructed in. an entirely different locality. Property continues to be in the possession of the Government.

While so, the Tellicherry Municipality requested the Government to make availa the acquired property to them for constructing a Stadium Complex. Government decided to handover the land to the Municipality for the construction of the Stadium Complex. Consequently the request made by the legal heirs of the previous owners to get the land reassigned to them has been turned down by the Government.

5. The main argument advanced by the learned Counsel representing the Appellant is that Government cannot transfer the property which was acquired for the purpose of constructing a hospital building to a local authority for construction of a Stadium Complex. Government can assign the land to the Municipality only in conformity with the provisions contained in the Land Assignment Act. If property is to be assigned to as per the provisions of the Land Assignment Act, the legal heirs of the previous owners must also

be given an opportunity to put forward their claim to get that land assigned to them under the provisions of the Land Assignment Act. This procedure having not been adopted by the Government, the decision to entrust the land with the Tellicherry Municipality for the construction of a Stadium Complex is arbitrary and is to be interfered with. The learned Counsel has even gone to the extent of saying that the decision taken by the Government to entrust the land with the Tellicherry Municipality for the construction of Stadium Complex is arbitrary inasmuch as it has denied the legal heirs of the previous owners to claim assignment in their favour under the Kerala Land Assignment Act. In support of his argument, learned Counsel relies on the Division Bench decision of this Court in Bhaskaran Pillai v. State of Kerala 1991 (2) KLT 332.

6. In Bhaskaran Pillai''s case 1991 (2) KLT 332 facts were as follow: A portion of the land acquired by the Government for the purpose of National Highway was not required for the said purpose. The lands so found excess and not " required for the National Highway was reconveyed to the previous owner. Petitioner who was having land adjoining this land, ordered to be reconveyed, challenged the action of the Government. The argument was that Government are not having the power to assign land dehors the provisions contained in the Land Assignment Act and the Rules. Dealing with this aspect, the Division Bench observed:

Thus, on a consideration of the Scheme of the Act and the Rules, we have no hesitation to hold that the provisions contained in the Land Assignment Act and the Rules are exhaustive in the matter of assignment of Government lands coming within the purview of the Act and the Government can assign lands without following the procedure prescribed under the Act and the Rules only if it is necessary in public interest.

(emphasis added)

We are in respectful agreement with this statement of the law.

7. The property which was acquired under the Land Acquisition Act has become vested in the Government. It is Government land. That land can be assigned to private parties only in conformity with the provisions contained in the Land Assignment Act and the Rules. But if the land is required for another public purpose, Government can assign the land for the said purpose without adhering to the provisions contained in the Land Assignment Act and the Rules. In the instant case, Tellicherry Municipality, a local authority, requires the land for the construction of a Stadium Complex. This purpose is a public purpose. The assignment of land by the Government to the local authority for meeting the said public purpose can certainly be in public interest. For effecting such an assignment to meet the said public interest the provisions of the Land Assignment Act and the Rules are not to be complied with.

8. In Bhaskaran Pillai''s case 1991 (2) KLT 332 this Court found fault with the action taken by the Government to assign the land in favour of the previous owner from whom it was

acquired under the Land Acquisition Act. The Division Bench observed:

The land in question was acquired in the year 1955, as stated in the counter affidavit. The 4th Respondent was paid the value of the land as on the date of Section 3(1) notification and he was also paid solatium as the land was compulsorily acquired. It is an admitted fact that the land is situate in a very important locality in Always town. To assign such a land to the original owner after three decades for the same price is abhorrent and cannot be upheld. Government cannot part with their property for a price which existed in the locality three decades ago. It is well known that the prices of property have enormously increased in the last thirty years and it will be against public interest if Government property is assigned to a person for a price which existed in the locality at the time of acquisition. In assigning the land to the 4th Respondent (the previous owner from whom the land was acquired) there is no allegation nor any proof that public interest is involved and the assignment was solely based on the fact that he was the erstwhile owner. Such an assignment could not be made ignoring the provisions in the Act and the Rules.

The above observation, to which we respectfully agree, applies on ail fours to the facts in this case. The predecessor in interest of the Appellant was paid full compensation as per the award passed in 1960. Government was in possession of the land for the past more than three decades. That land is now sought to be utilised for a public purpose, namely construction of a Stadium Complex. Appellant, who claims to be the legal heir of the previous owner, cannot have any right to have the said property reconveyed to him on the ground that the property is not being used for the purpose for which it was acquired and taken possession of in 1958. When it is found that the original acquisition under the Land Acquisition Act was valid and the title became vested in the Government, how the said land is made use of by the Government is not the concern of the original owner. Neither the original owner nor his legal representative can have any right to get the land reassigned to them on the basis that the property is not being used for the purpose for which it was acquired (vide Gulam Mustafa and Others Vs. The State of Maharashtra and Others, . In Mangal Oram and Others Vs. State of Orissa and Another, . Their Lordships stated that there is no principle of law by which a valid compulsory acquisition, of land stands voided because long later the requiring authority diverts it to a public purpose other than the one stated in the declaration. In 1958, the property with which the Appellant herein is concerned, was acquired under the provisions of the Land Acquisition Act for the purpose of putting up a hospital building. The land was not utilised for that purpose. After more than three decades it is now being utilised for construction of a Stadium Complex, which is another public purpose. Neither the previous owners nor their legal heirs can question the right of the Government to put the land to the said purpose. They are not having any legal right to have the property reconveyed to them.

In view of what has been stated above, we find no merit in this writ appeal. It is accordingly dismissed.