
Aliyamma Mathai Vs State of Kerala

Writ Petition (Civil) No. 5618 of 2014

Court: High Court Of Kerala

Date of Decision: June 23, 2014

Acts Referred:

General Clauses Act, 1897 " Section 11, 6#Land Acquisition Act, 1894 " Section 9(3)#Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 " Section 1(3), 114(1), 114(2), 24, 24(1)

Citation: (2014) 3 KHC 808

Hon'ble Judges: C.T. Ravi Kumar, J

Bench: Single Bench

Advocate: Peeyus A. Kottam, Advocate for the Appellant; Sherin C.K., Government Pleader, Advocate for the Respondent

Judgement

C.T. Ravi Kumar, J.

The petitioner's parents were the joint owners in possession of 50 cents of property comprised in Survey No.

522/16 of Vallurkunnamm Village. Out of the said extent, in respect of 0.1246 Ares of land acquisition proceedings were initiated under the Land

Acquisition Act, 1894 (for short "the Act 1894") to acquire the same from their possession. While the acquisition proceedings are under way they

died and thereupon, the property devolved upon the legal heirs including the petitioner herein. In respect of the said extent proposed to be

acquired Ext. P2 notice under Section 9(3) of Act, 1894 was issued. Ext. P2 is dated 04/02/2014. The contention of the petitioner is that since the

Act 1894 was repealed with effect from 01/01/2014 and the new Act viz., Right to Fair Compensation and Transparency in Land Acquisition,

Rehabilitation and Resettlement Act, 2013 (for short "Act 30 of 2013") was introduced with effect from 01/01/2014 notice under the repealed

Act should not have been issued. That apart, it is the contention of the petitioner that in terms of the provisions under Section 24(2) of Act 30 of

2013 in respect of the acquisition proceedings initiated under the repealed Act but, no award was passed thereunder the determination of the

compensation shall be in accordance with the provisions under the Act 30 of 2013. If that be so, according to the petitioner, Ext. P2 notice should

not have been issued and notice should have been issued in terms of the provisions under the Act 30 of 2013. To lend support to the said

contention the learned counsel appearing for the petitioner relied on a decision of the Hon^{ble} Apex Court in Pune Municipal Corporation v.

Harakchand Musirimal Solanki. In the said decision the Hon^{ble} Apex Court held that under Clause (a) of Section 24(1) of the Act 30 of 2013

where the land acquisition proceedings have been initiated under the Act 1894 but no award was passed, then the provisions of Act 30 of 2013

should apply relating to the determination of compensation. I have heard the learned Government Pleader as well. A counter-affidavit has been

filed on behalf of the third respondent. It is admitted therein that the acquisition proceedings have been initiated in respect of the property in

question while the Act, 1894 was in force. It is also admitted thereunder that Ext. P2 notice was issued after the coming into force of Act 30 of

2013. It is the further contention therein that notice under Section 9(3) of the Act, 1894 was issued to the persons including the petitioner, whose

properties are proposed to be acquired under the notification in question only for the purpose of appearing before the Land Acquisition Officer on

or before the appointing day with original documents to prove their title over the land and file claims and objections. It is further stated therein that

despite the receipt of such notice none of them appeared before the Land Acquisition Officer or produced any document to prove their ownership

over the land in question. It is also stated therein that the acquisition proceedings in question are in the final stage. A statement in paragraph 10

assumes relevance in this context. It reads thus:

As regards the new Land Acquisition Act, the Government have not issued any order or instruction. Hence the third respondent is bound to

continue the Land Acquisition Proceedings on the basis of Land Acquisition Act, 1894, till the receipt of clear orders from Government and Higher

Authorities.

I am at a loss to understand how such an affidavit could be sworn in despite the coming into force of Act 30 of 2013.

2. In the context of the aforesaid statement in paragraph 10 of the counter-affidavit it is relevant to refer to Section 1(3) of Act 30 of 2013. It

reads thus:

1(3). It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that the Central Government shall appoint such date within three months from the date on which the Right to Fair Compensation and

Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 receives the assent of the President.

Indisputably, the notification was published in the Gazette of India Extraordinary Part II on 19th December, 2013 vide SO 3729(E) and it came

into force with effect from 01/01/2014. When the Act 30 of 2013 came into force with effect from 01/01/2014 by virtue of the specific provisions

thereunder how could an officer say and swear that the said Act would not operate until issuance of any order or instruction by the Government

and that till receipt of such orders from the Government or Higher authorities the third respondent is bound to consider the land acquisition

proceedings based on the Act, 1894. It is also apposite to refer to Section 114(1) of Act 30 of 2013. It reads thus:

114. Repeal and saving.--(1) The Land Acquisition Act, 1894 (1 of 1894) is hereby repealed.

Thus, after the coming into force of Act 30 of 2013 with effect from 01/01/2014 by virtue of operation of Section 114(1) thereunder the Land

Acquisition Act, 1894 stands repealed. Though there is a saving provision under Section 114(2) it is admitted by both the sides that it is

inapplicable in view of the facts obtained in this case.

It is evident from Section 114(2) that the repeal under sub-section (1) shall not be held to prejudice or affect the application of Section 6 of the

General Clauses Act, 1897 with regard to the effect of repeals. A joint reading of the provisions under Section 114(2) and Section 6 of the

General Clauses Act, would reveal that after the coming into force of Act 30 of 2013 to know whether any proceedings is saved for the repeal of

the Act, 1894, the saving provision under Act 30 of 2013 has to be looked into. The only saving provision which assumes relevance in the context

of Section 114(2) of Act 30 of 2013 is Section 24 of the said Act. Virtually, it is taking into consideration of such aspects that the Hon"ble Apex

Court referred to Clause (a) of Section 24(1) of the Act 30 of 2013 and held that in respect of land acquisition proceedings initiated under the Act,

1894 but no award under Section 11 was passed while the said Act was in force, then the provisions of Act 30 of 2013 shall apply relating the

determination of compensation. The respondents cannot say that Ext. P2 notice is not one relating to the determination of compensation. When it is

admitted that Ext. P2 notice was issued in relation to the determination of compensation, in the light of the decision of the Hon"ble Apex Court in

Solanki"s case (supra) and also in terms of the provisions under Clause (a) of Section 24(1) of Act 30 of 2013 the notice for appearance as also

the determination of compensation in such cases should have been under the provisions of Act 30 of 2013 and not under the repealed Land

Acquisition Act of 1894. In this case, there is no case for the respondents that an award under Section 11 of the Act, 1894 was passed. True that,

the proceedings were initiated while the Land Acquisition Act, 1894 was in force. In the said circumstances, I have no hesitation to hold that in

respect of the land involved in this writ petition the further proceedings in relation to the payment of compensation can only be under the Act 30 of

2013. Subject to the said observation, this writ petition is disposed of. In view of this judgment the Land Acquisition Officer is directed to issue

fresh notice relating the payment of compensation to the petitioner in accordance with the provisions under the Act 30 of 2013 fixing the date for

appearance and production of such documents and to determine the compensation in accordance with Act 30 of 2013.

The writ petition is disposed of accordingly.