IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

MONDAY, THE 25TH DAY OF MAY 2015/4TH JYAISHTA, 1937

WA.No. 552 of 2015 ()

WP(C) 30665/2013 of THIS HONOURABLE COURT

APPELLANT/PETITIONER :

K FAIZEL,HOUSE NO.4/54(A)
OPPOSITE PROVIDENCE HIGHER SECONDARY SCHOOL,
GANDHI ROAD, KOZHIKODE, PIN-673032.

BY ADV. SRI K.FAIZEL(PARTY-IN-PERSON)

RESPONDENTS/RESPONDENTS :
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1. **STATE OF KERALA**
   REPRESENTED BY ITS CHIEF SECRETARY,
   TRIVANDRUM - PIN-695001.

2. **THE COMMISSIONER AND THE SECRETARY,**
   LABOUR AND REHABILITATION DEPARTMENT,
   GOVERNMENT OF KERALA, TRIVANDRUM, PIN-695001.

3. **THE SECRETARY**
   REVENUE DEPARTMENT GOVERNMENT,
   TRIVANDRUM, PIN-695001.

4. **THE DISTRICT COLLECTOR**
   KOZHIKODE, PIN-673010.

5. **THE PRINCIPAL, GOVERNMENT ITI,**
   MALIKKADAVU, KOZHIKODE- PIN-673010.

6. **ST. VINCENT INDUSTRIALS**
   REPRESENTED BY ITS GENERAL MANAGER,
   FR.JOSEPH MALIECKAL, CONVENT ROAD, KOZHIKODE-673032.

R1 TO R5 BY GOVERNMENT PLEADER SMT. GIRIJA GOPAL
R6 BY SRI.JOJU KYNADY

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 25-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

bp

WA.No. 552 of 2015 ()

APPENDIX

PETITIONER'S ANNEXURES :

ANNEXURE I: COPY OF THE COMMUNICATION DT 2/2/2015 ISSUED TO THE APPELLANT BY THE CENTRAL PUBLICATION INFORMATION OFFICER OFFICE OF THE REGISTRAR OF COMPANIES, KERALA.

RESPONDENT'S ANNEXURES : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

ASHOK BHUSHAN, CJ
& A.M.SHAFFIQUE, J.
* * * * * * * * * * * * * *
W.A.No.552 of 2015

Dated this the 25th day of May 2015

J U D G M E N T

Shaffique,J

The appellant is the writ petitioner. The writ petition was filed to quash Exts.P2 and P14 and seeking for directions to return the land which was acquired by the Government, to the petitioner. Ext.P2 is an order dated 04/11/2013 issued by the Government pursuant to the directions issued by this Court in W.P.C.No.23285 of 2005. The request of the petitioner was for re-conveyance of the land acquired from his predecessor-in-interest which came to be rejected by the Government. Ext.P14 is the order dated 02/02/2007 by which a decision was taken by the Government to resume an extent of 60 cents of land from St.Vincent Industrials for Government purpose.

2. The short facts involved in the writ petition would disclose that the Government acquired an extent of 88 cents in Sy.No.52/2A of Block 1 of Nagaram village of Kozhikode District by virtue of Section 4(1) of the Land Acquisition Act, 1894, notification dated 14/06/1962. The declaration under Section 6 was also published on the same day as the Government had invoked urgency clause under Section 17(4) of the Act dispensing with enquiry under Section 5A of the Act. Ext.P4 is the Section 4(1) notification, Ext. P5 is the declaration and Ext.P6 is the agreement executed between the Government and the requisitionist. Perusal of the above documents indicates that the property was acquired for housing the Industrial Training Centre of the Government of Kerala, run under the Craftsman Training Scheme of the Government of India, by constructing workshops, classrooms, office, hostel etc. needed for the trainees. In the section 4(1) notification and Section 6 declaration, the public purpose mentioned is “for the industrial Training Centre,

St.Vincent Industrials, Kozhikode.” In the agreement executed at Ext.P6, it is mentioned that the agreement is executed between St.Vincent Industrials, Charitable Institution, Kozhikode owned by the Roman Catholic Diocese of Calicut, a society registered under the Societies Registration Act, XXI of 1860. The land was acquired, compensation was paid to the land owners and possession taken and handed over to the requisitioning authority. However, the land owner based on the agreement, later contended that the property was not utilised for the purpose for which it was acquired and therefore sought for return of the land to the land owner in terms with Clause 3 of the said agreement. This Court directed the Government to consider the representation of the petitioner. Since nothing happened in the matter, she filed another writ petition as O.P.No.10352/1993 for considering the matter and further directions were issued by this Court. The Government, after having considered the matter, formed an opinion that M/s

St.Vincent Industrials violated the terms and conditions of the agreement. Hence it was ordered that 60 cents of land has to be resumed after cancelling the patta and returned to the original owner. The said order came to be challenged before this Court by M/s.St.Vincent Industrials in O.P.No.17209/1993. Writ petition was filed by the petitioner for implementing the Government order. However, the Government order was set aside as per judgment dated 22/07/1994 on the ground of violation of principles of natural justice. Though appeal was filed, the Division Bench did not interfere in the matter. Matter was again considered by the Government and again by order dated 02/02/2007 it was found that the land has to be resumed from M/s St.Vincent Industrials on the ground that the purpose of acquisition was not complied with and the Government can utilise the same for its own purpose. W.P.C.No.36318/2008 was filed by M/s.St.Vincent Industrials challenging the said Government order dated 02/02/2007 (Ext.P14 in W.P.CNo.30665/2013).

Petitioner again filed W.P.C.No.23285/2012 alleging fraud in the acquisition proceedings which was directed to be considered as per judgment dated 12/12/2012, which resulted in Ext.P2 order dated 04/11/2013. The learned Single Judge, after an elaborate consideration of the facts and circumstances involved in the matter, opined that the request of the petitioner for re-conveyance of the land cannot be granted. It was also found that the allegation of fraud was not made out. Hence the claim of the petitioner was rejected. Further it was found that acquisition proceedings were challenged by the owner of the property in 1964 itself and the said judgment had become final. Hence the issue raised is barred by the general principles of res judicata and the petitioner is estopped from raising any challenge against proceedings of acquisition. The writ petition was therefore dismissed, however, making it clear that the Government may take appropriate action for resumption of the land based on violation of the terms of agreement, if any, committed by M/s.St.Vincent Industrials.

3. The appellant is heard in person. We also heard the learned Government Pleader as well as the learned counsel appearing on behalf of the 6th respondent M/s.St.Vincent Industrials.

4. The appellant raised two specific issues. One contention is that the very acquisition proceedings has to be found to be void account of the fraud committed by the 6th respondent. It is argued that the 6th respondent was not a society entitled for acquisition of land for a public purpose and even if there is delay in taking such a contention, in so far as fraud is detected, only at this point of time it has to be held that the acquisition is bad in law. The second contention urged is the right of the land owner to get re-conveyance of land in terms of Clause 3 of the agreement executed between the Government and the requisitionist for not utilising the land for the intended purpose. The

petitioner also relied upon various judgments to support his contentions. Reliance is placed on a Full Bench judgment of this Court in **Kasim v. Mrs.Jucy Kochuvareed** *[1964 KLJ 198]* in which this Court held that fraud may be inferred from the facts established. If sufficient and reasonable ground for drawing inference of fraud is available, the conclusion of fraud must be adopted. Reference is made to the judgment of Supreme Court in **H.M.T. House Building Co-operative Society v. M.Venkata Swamappa and others** [(1995) 3 SCC 128] wherein the Supreme Court held that if the land acquisition proceedings are quashed, the land shall be restored to the respective land owners irrespective of the fact that they have challenged acquisition of land or not. Another judgment relied upon is **Vyalikaval House Building Co-operative Society v. V.Chandrappa** *[(2007) 9 SCC 304]* wherein the Supreme Court held that if the acquisition proceedings stand vitiated on account of fraud and the appellant society was found to be not a bona fide housing society, the entire notification is to be declared void. It was also argued that ground of delay in filing the writ petition nor acquiescance in having participated in Section 5A enquiry will not be a ground to deny the relief to the petitioners as the acquisition proceedings were mala fide and fraudulent. Another judgment relied upon is **Hamza Haji v. State of Kerala** *[2006(3) KLT 941]* wherein the Supreme Court held that if the judgment or order was obtained by manifest fraud, it has to be treated as nullity by every court, and it can be challenged in any Court even in collateral proceedings.

5. It is therefore argued that in so far as the acquisition is vitiated by fraud, the entire acquisition proceedings is to be declared as invalid and therefore the property has to come back to the original owner. The main contention on facts is that the 6^{th} respondent was not a society at the relevant time. Even perusal of Exts.P4 and P5 notifications under Sections 4 and 6 of the Act, does not

disclose as to whether the 6th respondent was a society or not. However in Ext.P6, the agreement dated 14/06/1962 between the requisitionist and the Government indicates that M/s.St.Vincent Industrials is owned by Roman Catholic Diocese of Calicut which is a society registered under the Societies Registration Act, XXI of 1860. Even assuming for the sake of argument that the acquisition amounts to fraud, the particulars were available as per gazette notification dated 14/06/1962. In other words the alleged fraud could have been detected even at the relevant time. The Government proceeded on the basis that acquisition could have been made for M/s.St.Vincent Industrials which was owned by a Society. Section 4 of the Act as it stood then reads as under:

> *"**4. Publication of preliminary notification and powers of officers thereupon**.- (1) Whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose, a notification to that effect shall be published in the Official Gazette, and the Collector*

shall cause public notice of the substance of such notification to be given at convenient places in the said locality.

(2) Thereupon it shall be lawful for any officer, either generally or specially authorized by such Government in this behalf, and for his servants and workmen,-

to enter upon and survey and take levels of any land in such locality;

to dig or bore into the sub-soil;

to do all other acts necessary to ascertain whether the land is adapted for such purpose;

to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon;

to make such levels, boundaries and line by placing marks and cutting trenches; and

where otherwise the survey cannot be completed, and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle:

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling-house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his *intention to do so."*

Chapter VII of the Act deals with acquisition of land for companies. Company is defined under Section 3(e) as under:

> *3(e): the expression "Company" means a company registered under the Indian Companies Act, 1882 (6 of 1882), or under the English Companies Acts, 1862 to 1890, or incorporated by an Act of Parliament of the United Kingdom or by an Indian law, or by Royal Charter or Letters Patent and includes a society registered under the Societies Registration Act, 1860 (21 of 1860), and a registered society within the meaning of the Co-operative Societies Act, 1912 (2 of 1912)];"*

6. It is apparent that company includes a society registered under the Societies Registration Act, 1860. Section 38 permits acquisition of land for the purpose of company and the procedure to be adopted is clearly mentioned in paragraphs 39, 40 etc. Section 40 of the Act reads as under:

> *"**40. Previous enquiry**.- (1) Such consent shall not be given unless the appropriate Government be*

satisfied, either on the report of the Collector under Sec.5-A, sub-sec.(2), or] by an enquiry held as hereinafter provided:-

(a) that the purpose of the acquisition is to obtain land for the erection of dwelling houses for workmen employed by the company or for the provision of amenities directly connected therewith, or

(b) that such acquisition is needed for the construction of some work, and that such work is likely to prove useful to the public.

(2) Such enquiry shall be held by such officer and at such time and place as the appropriate Government shall appoint.

(3) Such officer may summon and enforce the attendance of witnesses and compel the production of documents by the same means and, as far as possible, in the same manner as is provided by the Code of Civil Procedure in the case of a Civil Court."

7. Section 48 refers to an agreement to be executed with the Company. It is therefore clear from the aforesaid statutory provision that the Government had consciously entered into an agreement with the diocese which was the society owning M/s.St.Vincent Industrials. This fact was either known to the land owner at the relevant time of its

publication or could have known as it was in public domain. If at all there was any irregularity or fraud in the said action of the Government, land owners had sufficient time to challenge the said action. Apparently they did not raise a contention that there was fraud or irregularity in the acquisition of land. Therefore it is not open for the petitioner to agitate the said issue on the ground of fraud, alleging that he had come to know about it only subsequently. Therefore, we do not think that any ground is made out to set aside the acquisition proceedings on the ground of fraud.

8. Next contention is with reference to re-conveyance of the land. Clause 3 of the terms of agreement does not give a unilateral right on the part of the land owner to demand that the land should be returned back. Clause 3 is subject to various conditions. In the event, if M/s.St.Vincent Industrials fails to carry out the terms of agreement, Government has the power to resume the land on repayment to the Industrials, the amount of award as

finally settled less 15% of the award for compulsory acquisition or the estimated market value of the land at the time of resumption whichever is less. If there are buildings in the land, Government may, at their option, either purchase the buildings on payment of the estimated value at the relevant time or direct the Industrials to remove the building at their cost. Clause 3(d) further indicates that in the event of voluntary relinquishment of the land on the ground that they do not require the same for which it is acquired, the Government may resume the land if it is required for a public purpose or the Government may consider it to be returned to the original owner. This power of the Government to return the land to the original land owner, is only a discretion to be exercised by the Government when there is a voluntary relinquishment of land by the Industrials. No such eventuality has happened so far. Therefore, the appellant cannot have a legal right to demand that the property should be re-conveyed to them. In the above circumstances, we do not find any ground to interfere with the judgment of the learned Single Judge in this issue as well.

No grounds are made to interfere with the judgment of the learned Single Judge and consequently, the appeal is dismissed.

(sd/-)
(ASHOK BHUSHAN, CHIEF JUSTICE)

(sd/-)
(A.M.SHAFFIQUE, JUDGE)

jsr