

2022 LiveLaw (SC) 410

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
*DINESH MAHESHWARI; VIKRAM NATH, JJ.***

April 26, 2022

CIVIL APPEAL NO(s). 3189 OF 2022 (Arising out of SLP (Civil) No(s). 4125 of 2019)
KALYANI (DEAD) THROUGH LRS. & ORS. *Versus* THE SULTHAN BATHERY MUNICIPALITY & ORS.

Voluntary surrender - If the Panchayat / Municipality is taking a stand that a land was voluntarily surrendered, the burden would be on the Panchayat / Municipality to establish such voluntary surrender. (Para 12-13)

Constitution of India, 1950; Article 300A - Requirement of public purpose is a pre-condition and right to claim compensation is also inbuilt in Article 300-A. (Para 21)

(Arising out of impugned final judgment and order dated 12-09-2018 in WA No. 2108/2016 passed by the High Court of Kerala at Ernakulam)

For Petitioner(s) Mr. P.N. Ravindran, Sr. Adv. Mr. P. S. Sudheer, AOR Mr. Rishi Maheshwari, Adv. Ms. Anne Mathew, Adv. Ms. Shruti Jose, Adv.

For Respondent(s) Mr. Rajesh P., AOR Mr. Nishe Rajen Shonker, AOR Ms. Anu K. Joy, Adv. Mr. Alim Anvar, Adv.

J U D G M E N T

VIKRAM NATH, J.

Leave granted.

2. Appellants - eight in number, have assailed the correctness of Judgment and Order dated 12.09.2018 passed by the Division Bench of the High Court of Kerala at Ernakulam in W.A. No. 2108 of 2016 between Sulthan Bathery Municipality vs. Kalyani and 12 others, whereby the judgment of the Single Judge was set aside and the writ petition filed by the appellants was dismissed.

3. The relevant facts giving rise to the present appeal are that the appellants are the owners of the land in dispute measuring 1.7078 hectares. The land is situate within the territorial limits of Respondent No.1, Sulthan Bhathery Grama Panchayat (hereinafter referred to as the "Panchayat"), later on declared a Municipality. The Panchayat requested the appellants to utilize their land for construction/widening of Sulthan Bathery Bypass Road. The appellants were assured that they would be given adequate compensation for their land utilized for the said purpose. According to the appellants, they gave their land on the assurance that they would be given compensation.

4. The road was constructed but no compensation was paid. The appellants made various representations starting from the time, construction was going on and even after the construction work was completed. But when no heed was paid to their request, they approached the High Court of Kerala by way of W.P. (C) No. 2329 of 2014. Before the learned Single Judge, affidavits were exchanged.

5. In the counter affidavit, the stand taken by the Panchayat was that the land had been voluntarily given without any claim for compensation. The Panchayat denied of having given any assurance regarding adequate compensation to be paid to the appellants. It was also alleged that the construction of road was completed in 2010 whereas the appellants approached the High Court in 2014 as such, the petition was substantially delayed and liable to be dismissed on the ground of delay. It was also stated in the counter affidavit that the Appellants had voluntarily surrendered their portion of land for the purpose of construction/widening of the road and that is why no proceedings for acquisition were undertaken.

6. In the counter affidavit filed by the State-Respondent i.e., Public Works Department (hereinafter referred to as the "PWD"), it was stated that the Panchayat had handed over the land for the construction/widening of the road. The road is owned and possessed by the Panchayat and the PWD had only been assigned the work of construction for which due documents were executed. It also denied having encroached upon any part of the land of the appellants. It was also stated that to the best information of PWD, the land in question was surrendered free of cost.

7. The learned Single Judge, vide judgment dated 26.08.2016 , after considering the material on record, came to the conclusion that there was no material on record to show that the appellants had voluntarily surrendered their land or that they had given up their right to claim any compensation. It was also recorded in the findings that there was no issue or dispute that the land of the appellants has not been utilized for the construction/widening of the road. Learned Single Judge, further, after considering the mandate of Article 300A of the Constitution held that appellants would be entitled to compensation for the land utilized for the construction/widening of the road. Since, the Road is owned and possessed by Panchayat, the learned Single Judge issued appropriate directions to the State-Respondents as also to the 3rd Respondent i.e. Panchayat (converted into "Municipality"), would disburse the amount as may be determined by the Collector after determining the market value of the property to the concerned parties. It also gave liberty to the appellants that in case they were not satisfied with the amount of compensation determined by the Collector, they could raise the challenge before the Civil Court. The relevant findings and the operative portion of the judgment of learned Single Judge as contained in paragraphs 5 to 7 are reproduced below:

"5. As noted above, the specific stand of the Public Works Department is that a decision was taken by the Grama Panchayat on 28.04.2009 to form the road and the Public Works Department was required to construct the road. Ext.P4 communication issued pursuant to an application submitted on behalf of the petitioners under the Right to Information Act from the office of the Public Works Department indicates that the land required for the construction of the road was made available to the Public Works Department by the erstwhile Sulthan Bathery Panchayat. There is absolutely no reason to disbelieve the stand taken by the Public Works Department in the counter affidavit filed in this matter. If the road was formed based on the decision taken by the Grama Panchayat to the Public Works Department for construction of the road, the case of the petitioners that they have permitted the construction

of the road through a portion of their property, as requested for by the Panchayat has to be accepted. Then the question is as to whether the stand taken by the third respondent Municipality, which is the successor of the erstwhile Sulthan Bathery Grama Panchayat, in the counter affidavit, that the petitioners and others have surrendered their lands voluntary for the purpose of constructing the road is correct. Except the bald statement in the counter affidavit filed by the Secretary of the Municipality that the petitioners and others have surrendered their land for construction of the road, no material is placed before this Court which would show that the petitioners have in fact surrendered their land voluntarily, free of cost, it is only natural that a local body securing properties of citizens for a public purpose of this nature would get some documents evidencing such surrender from the persons concerned. Further, it is seen that the construction of the road was commenced during the last month of December, 2010, and Ext.P3 representation was preferred by the petitioners before the fourth respondent on 30.03.2011. The specific case of the petitioners is that they have sent ext.P8 representation also to the Grama Panchayat demanding payment of compensation and that there was no response to the same. The said statement made by the petitioners in the writ petition has not been denied in the counter affidavit filed by the third respondent. No reply was also sent by the third respondent. No reply was also sent by the third respondent to Ext.P8 representation. In the circumstances, especially in the absence of any evidence to indicate that the petitioners have surrendered their land free of cost for the purpose of constructing the road, I have no hesitation to hold that the case set up by the petitioners in the writ petition that the land acquired for the construction of the road was secured from them by the Panchayat on the basis of the assurance that they will be given adequate compensation for the same.

6. Article 300 A of the Constitution of India mandates that no person shall be deprived of his property save by authority of law. In the peculiar facts and circumstances of the case, I have no hesitation to hold that the utilization of the property of the petitioners for the purpose of construction of the road for the benefit of the general public was in violation of the constitutional right guaranteed to the petitioners under Article 300 A of the Constitution. In so far as the petitioners do not want their property back, they are certainly entitled to compensation for the land acquired from them.

7. In the result, the writ petition is disposed of as follows:

- i. The District Collector, Wayanad shall determine the market value of the property taken over from the petitioners by the erstwhile Sulthan Bathery Grama Panchayat for the purpose of construction of the Sulthan Bathery Bye pass road, within a period of two months from the date of receipt of a copy of this judgment, ' after affording the petitioners, an opportunity for hearing and issue a communication in that regard to the third respondent Municipality which succeeded the assets and liabilities of the erstwhile Sulthan Bathery Grama Panchayat.
- ii. The third respondent Municipality shall, thereupon, disburse the amounts determined as due to the petitioners, within a period of one month thereafter.
- iii. It is made clear that if the petitioners are dissatisfied with the quantum of the market value fixed by the District Collector, they are at liberty to move the civil court for the said purpose. Needless to observe that if such a suit is filed by the petitioners, the same will be disposed of by the civil court concerned on the same lines on which an application for

reference under Section 18 of, the erstwhile Land Acquisition Act, 1894 is being disposed of.”

8. The Panchayat / Municipality carried the matter in appeal. The Division Bench proceeded on the reasoning that the burden was on the appellants to prove that they were given assurance of suitable compensation. The appellants having failed to discharge their burden, their claim could not succeed. It also recorded that there was no provision for road development by giving price of the land acquired. On such considerations vide judgment dated 12.09.2018, the Division Bench allowed the appeal, set aside the judgment of the Single Judge and dismissed the writ petition. Relevant consideration as contained in paragraphs 6, 7 and 8 of the judgment is reproduced below:

“6 . The learned Judge in the impugned judgment however proceeded on the basis that the circumstances indicated that there was an assurance by the Panchayat, to compensate the writ petitioners, in the event they surrender their land free of cost, for the bypass road. We on the other hand find that such assumption is not borne out by any documents produced in the writ proceedings by the claimants. In fact there are vital contradiction on the stand of the land owners on who had given them the assurance of compensation.

7. In the aforesaid circumstances and particularly in the absence of any fact to show that the surrender of the land was not voluntary, we have reason to believe the Ext.P3 and the subsequent representations claiming compensations were nothing but after-thoughts and the right of the petitioner is not established, on the basis of those representations.

8. It is also necessary for us to point out that while formal surrender of land require written documentation, there can be situation where a land owner may voluntarily surrender their land without observing any formalities and that cannot be a basis for us to conclude that the surrender was not voluntary and would require the State to compensate the land owner.”

9. It is not disputed that the appellants did lose their land in the construction/widening of the road belonging to the Panchayat / Municipality. It is also admitted that the road as it existed and after further construction and widening would be owned by the Panchayat / Municipality, that is to say that the appellants would be deprived of their right, title or interest over the land utilized for the said purpose. As such the appellants have been deprived of their land in the said process.

10. The appellants are farmers and the land utilized is agricultural land. It was part of their livelihood. Depriving them of their part of their livelihood and also of their property without authority of law would be violative of Article 21 and Article 300A of the Constitution.

11. Article 300A though not a fundamental right but nevertheless it has status of being a constitutional or a statutory right. It provides that no citizen would be deprived of his property save without authority of law. Depriving somebody of his property, where it is land, can be made by number of modes e.g. by acquisition, surrender or by transfer and other facets also. In the present case, it being utilized for the road to be owned by the Panchayat / Municipality, it could either have been voluntarily surrendered, transferred by way of title deeds or by way of acquisition as may be provided under the statute.

12. In the present case, admittedly, there is neither any acquisition proceedings nor any transfer of rights by the appellants by way of sale, gift or otherwise. What is being alleged is that it was a voluntarily surrender of rights for no consideration. This is the stand taken by Panchayat / Municipality. If the Panchayat / Municipality is taking this stand, the burden would be on the Panchayat / Municipality to establish such voluntary surrender. A memorandum or an agreement or a written document ought to have been executed by the appellants stating their free will to surrender for no consideration in favour of the Panchayat / Municipality.

13. The learned single Judge has clearly recorded that Panchayat / Municipality as also the PWD failed to produce any such evidence. Even the Division Bench did not find any material on record produced by the Panchayat / Municipality or the PWD to the aforesaid effect. However, the Division Bench proceeded on the premise that the burden would lie on the appellants to establish that they were given an assurance. It is the Panchayat / Municipality which is the beneficiary. Burden should be on the Panchayat / Municipality to prove that there was a voluntary surrender.

14. In our considered view, the Division Bench proceeded on a wrong premise on shifting the burden on the appellants. The assertion that it was surrendered voluntarily without any claim for consideration is by the Panchayat / Municipality. The PWD has only stated that it received the land from Panchayat and that it was given to understand that the land was surrendered voluntarily. Thus, it is the stand of Panchayat / Municipality which is to be taken note of.

15. Another reasoning given by the Division Bench is that the appellants made a stale claim and it was as an afterthought that they started claiming compensation after construction/widening of the road had completed. This reasoning of the Division Bench, in our view, was also not sustainable in as much as the appellants had represented at the earliest, after the land was utilized, to the authorities to pay the compensation. As far as the averments in the petition are concerned, they refer to a couple of representations given right from 2011 onwards and when nothing proceeded, the appellants approached the High Court in 2014. Therefore, to say that there was substantial delay on the part of the appellants in agitating for their rights would not be correct. We find from the writ petition that one of the first representation was made on 30.03.2011 addressed to the Chief Engineer, PWD claiming compensation to which the appellants also received a response dated 25.04.2011 stating that PWD had not acquired the land but had received it from the Panchayat. The appellants also obtained relevant material under the Right to Information Act with respect to their claim which is also a part of the writ petition. The appellants further gave a legal notice dated 11.01.2013 addressed to the State as also the PWD. Thereafter another representation was given to the Secretary of the Panchayat on 05.11.2013 claiming compensation. In the counter affidavit filed by the Panchayat and also the PWD, the representation of the petitioners referred to above are not denied.

16. The Division Bench has also noted that there was no scheme for road development by giving price of the land acquired. This observation by the Division Bench would also be contrary to mandate of Article 300A. If there was no scheme, then it was the fault of the State or the Panchayat. To say that there was no scheme is one thing and owner of

the land surrendering his land voluntarily without payment of compensation would be different. If there was no such scheme then all the more it was necessary to get the surrender, if any, documented, by the Panchayat / Municipality or the State or the PWD, as the case may be.

17. Sole question for consideration would be as to whether the appellants had voluntarily surrendered their land to the Panchayat free of cost without raising any claim for compensation or not. The Panchayat as also the PWD have failed to produce a single piece of document or evidence in any other form in support of their defense that the appellants have surrendered their land voluntarily. The consistent stand of the appellants, on the other hand, has been that they have not given their land to the Panchayat voluntarily and that they were assured that they would be suitably compensated. The PWD proceeded to construct the road upon the land made available by the Panchayat. No doubt, the road is in the ownership and possession of the Panchayat but the land over which the road was to be constructed or widened was neither in ownership nor possession of the Panchayat. The PWD did not care to take any further clarification from the Panchayat as to whether such land has been acquired, purchased or voluntarily given by the land owners. The PWD has only stated that it received the land from Panchayat and that it was informed that such land has been made available voluntarily without any claim for compensation and free of cost.

18. The stand of the PWD cannot be the basis for determining as to whether the appellants had surrendered their land free of cost without any claim for compensation or that they had expectations to receive compensation as assured by the Panchayat. The Division Bench fell in error in taking into consideration the stand of the PWD.

19. The Division Bench also proceeded to note that the appellants were keen on changing their stand by initially claiming from the State and then from the Panchayat. This reasoning is also not tenable. The appellants are farmers. They cannot be treated as the persons conversant with intricacies of law. The appellants had, from the very beginning, stated that assurance was given by the Panchayat. They had not changed their stand but were consistent. It is for this reason that the learned Single Judge had although directed the collector to determine the value of compensation but the liability to pay the compensation was saddled on the Panchayat / Municipality and not on the State. The Division Bench committed an error in commenting against the appellants and drawing an adverse inference. It took a view too technical, to deprive the appellants of their right to compensation.

20. Article 300A clearly mandates that no person shall be deprived of his property save by authority of law. In the present case, we do not find, under which authority of law, the land of the appellants was taken and they were deprived of the same. If the Panchayat and the PWD failed to produce any evidence that appellants have surrendered their lands voluntarily, depriving the appellants of the property would be in violation of Article 300-A of the Constitution.

21. A Constitution Bench of this Court in the case of **K.T. Plantation Private Limited and another vs. State of Karnataka**¹ apart from others, dealt with an issue relating to payment of compensation where a person is deprived of his property after deletion of Article 31(2). It laid down that there are two requirements to be fulfilled while depriving a person of his property. Requirement of public purpose is a pre-condition and right to claim compensation is also inbuilt in Article 300-A. While answering the reference in paragraph 221(e) it provided as follows:

“221. We, therefore, answer the reference as follows:

xxx xxx xxx

(e) Public purpose is a precondition for deprivation of a person from his property under Article 300-A and the right to claim compensation is also inbuilt in that article and when a person is deprived of his property the State has to be justify both the grounds which may depend on scheme of the statute, legislative policy, object and purpose of the legislature and other related factors.”

Construction/widening of road no doubt would be a public purpose but there being no justification for not paying compensation the action of the respondents would be arbitrary, unreasonable and clearly violative of Article 300-A of the Constitution.

22. For the foregoing reasons, the appeal deserves to be allowed. The judgement and order of the Division Bench of the High Court of Kerala dated 12.09.2018 in W.A. No. 2108 of 2016 is hereby set aside and that of the Single Judge dated 26.08.2016 passed in WP(C) No. 2329 of 2014 is maintained. There shall be no order as to costs.

23. Pending application(s), if any, shall stand disposed of.

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¹ (2011)9 SCC 1