

GUNASINGHE
v.
HON. GAMINI DISSANAYAKE, AND OTHERS

COURT OF APPEAL.

ANANDA GRERO, J.

C.A. APPLICATION NO. 231/88

DECEMBER 14, 1992.

Certiorari – Acquisition of land – Compliance with sections 2, 4, 5 and 38(a) of the Land Acquisition Act – Mala fides – Proof.

Where the acquisition of a land for an urgent public purpose has proceeded in terms of sections 2, 3, 5 and 38(a), the publication of the declaration under section 5(2) of the Land Acquisition Act, renders the declaration conclusive that the land is required for a public purpose. The question whether the land should or should not be acquired is one of policy to be determined by the Minister concerned and even if that question may have been wrongly decided, subsection (2) of section 5 renders the position one which cannot be questioned in the Courts.

Where *mala fides* is alleged on the ground that the petitioner was a supporter of the Sri Lanka Freedom Party (SLFP) and found employment at the Department of Census and Statistics by the SLFP, the bare averment would not make the acquisition *mala fide*. When *mala fides* is alleged against the repository of a power, it must be expressly pleaded and properly particularised. Here this has not been done. The petitioner has failed to enumerate in detail the part played by the 3rd respondent (Member of Parliament) to influence the Minister to acquire this land owing to political reasons or rivalry.

Cases referred to:

1. *Gunasekera v. Minister of Lands and Agriculture and Others* 65 NLR 119, 120.
2. *Fernandopulle v. Minister of Lands and Agriculture* 79(2) NLR, 116, 117.
3. *Muthumale v. Dissanayake*, C.A. Application No. 1373/85 and C.A. 113/86 and C.A. 33/86 C.A. Minutes of 02.09.1986.
4. *A. M. Surasena v. Gamini Dissanayake and two others* C.A. Application No. 593/83 – C. A. Minutes 02.12.1986.

APPLICATION for a writ of Certiorari.

H. M. P. Herath for petitioner.

K. Sripavan, S.S.C. for respondents.

Cur. adv. vult.

March 05, 1993.

ANANDA GRERO. J.

This is an application made by the petitioner to this Court, seeking as relief the issue of a Writ of Certiorari to quash the order of the 4th respondent (as stated in the prayer (b) to the petition) dated 4.5.89. The 1st and the 4th respondents filed their affidavits and for the averments contained in them stated, that the petitioner is not entitled to the relief claimed by him. In addition to the said affidavits the respondents filed affidavits from the Chief Education Officer, Kuliypitiya, and the Principal of Goda Kurugama Muslim Vidyalaya, Kuliypitiya.

The land which is the subject-matter of this application is owned by the petitioner by virtue of deed No. 6539 of 1.7.82, attested by A. Siri Prematilake, Notary Public marked and produced as "B".

The petition of the petitioner reveals, that the 1st respondent had taken steps under Section 2 of the Land Acquisition Act and thereafter steps were also taken under Section 4 of the said Act. The petitioner objected to the proposed acquisition and the Chief Education Officer who held an inquiry into such objections recommended that an extent of one acre from the petitioner's land should be acquired. Thereafter, according to the petitioner by notice under Section 38(a) of the said Act, the 4th respondent informed him that the possession of this land would be taken over on 17.3.88 at 10.30 a.m. This notice is filed along with the petition marked "I". Thereafter, the petitioner filed this application and sought that the said notice marked "I" (although he states it as an order in his petition) be quashed by the issue of a Writ of Certiorari.

It appears from the affidavit of the 1st respondent (Paragraph 7) that he was satisfied that the land in question is suitable to be acquired for a public purpose, i.e. for the development and expansion of Godakurugama Arafa Muslim School. As this land was urgently needed for the development of the said School he had made order under Section 38 proviso (a) of the Land Acquisition Act and directed the 4th respondent to take possession of the land on behalf of the State. The 1st respondent states that his decision to acquire this land was not influenced by the 3rd respondent (M.P. of the area) or by political or any other consideration.

It was the contention of the learned Counsel for the petitioner that the order for acquisition of the petitioner's land is bad in law and *mala fide*. It appears from the material facts placed before this Court by both parties, that necessary steps have been taken by the 1st respondent to acquire the land in question, according to the provisions of Sections 2, 4 and 38(a) of the Land Acquisition Act. Even the 1st respondent had taken steps under Section 5(1) of the Act. Section 5(2) of the Act states that a declaration made under subsection (1) in respect of any land ... shall be conclusive evidence that such land is needed for a public purpose.

The said Section 5(2) of the Act became the subject of discussion and interpretation by our Supreme Court and Court of Appeal from time to time.

In the case of *Gunasekera v. Minister of Lands & Agriculture and Others* ⁽¹⁾H. N. G. Fernando, J. (as he then was) held at page 120 as follows:-

"The consequence of the publication of that declaration is that subsection (2) of Section 5 operates to render the declaration conclusive evidence that the land was needed for a public purpose. The question whether the land should or should not be acquired is one of policy to be determined by the Minister concerned, and even if that question may have been wrongly decided, subsection 2 of Section 5 renders the position one which cannot be questioned in the Courts".

Samarakoon C.J. in the case of *Fernandopulle v. Minister of Lands and Agriculture* ⁽²⁾, following the decision of H. N. G. Fernando, J. held, as follows:

"It is conclusive evidence that the land is required for a public purpose (Vide Section 51(2) of the Act) and therefore cannot be canvassed in a Court of law". Such a provision expressly removes the right of a Court of Law to review the decision of the Minister.

The said view has been subsequently followed by the Court of Appeal in *Muthumale v. Dissanayake* ⁽³⁾ and *A. M. Surasena v. Gamini Dissanayake and Two others* ⁽⁴⁾.

In view of the decisions of the aforesaid cases, and also of the fact, that the 1st respondent had acted well within the ambit of Sections 2, 4, 5 and 38(a) of the Land Acquisition Act this Court cannot agree with the contention of the learned Counsel for the petitioner that this acquisition is bad in law.

With regard to the question of *mala fide*, the petitioner in his petition states that this acquisition was done as he is a supporter of the Sri Lanka Freedom Party and also he found employment in the Department of Census and Statistics under the government of the said party. The 1st respondent in his affidavit has specifically stated that his decision to acquire this land was not motivated by political or any other consideration. He had stated that the 3rd respondent did not influence him to acquire this land. According to him acquisition was for an urgent public purpose. Simply stating that the petitioner is a supporter of a political party which the 3rd respondent is opposed, and that the petitioner was given employment in a government department by the SLFP Government would not make the acquisition *mala fide*. De Smith's *Judicial Review of Administrative Action* at page 336 it is stated that, "a Court will not in general entertain allegations of bad faith made against the repository of a power, unless bad faith has been expressly pleaded and properly particularised (i.e. enumerated in detail)". This Court is of the view that the petitioner has failed to enumerate in detail the part played by the 3rd respondent to influence the 1st respondent to acquire this

land due to political reasons or rivalry. Further the petitioner has failed to satisfy this Court that it was due to political reasons that the 1st respondent took steps to acquire this land.

In the case cited by the learned Counsel for the petitioner (1985 AIR, at page 1625) the Supreme Court of India held that where power is exercised for extraneous or irrelevant considerations or reasons, it is unquestionably a colourable exercise of power or fraud and the exercise of power is vitiated. **If the power to acquire land is to be exercised, it must be exercised *bona fide* for the statutory purpose and for none other. If it is exercised for an extraneous, irrelevant ... consideration, the acquiring authority can be charged with legal *mala fides*.**

One who alleges *mala fide* should establish it to the satisfaction of Court. No doubt the petitioner simply alleges that the acquisition of his land was motivated by political reasons. But as stated earlier he has failed to satisfy this Court that the 1st respondent was influenced by the 3rd respondent and the result was that the former decided to acquire the land in question and thereafter necessary steps were taken to acquire it. There is no convincing evidence before this Court to come to the finding that the 1st respondent exercised his powers in bad faith. If there is sufficient evidence that he exercised his power due to political reasons as alleged by the petitioner or for any other consideration, then it could be held that the acquiring authority had acted in bad faith or *mala fide*. But such evidence is not forthcoming in this case.

It appears from the affidavits of the 4th respondent, the Principal of the Muslim School and the Chief Education Officer of Kuliypitiya that the alternative lands suggested by the petitioner are not suitable for the purposes of constructing a school building and a playground.

At the time the School Development Society suggested to the 3rd respondent this land in question was owned by one Mohamadu Fathima who by Deed No. 6539 dated 1.7.82 transferred it to the petitioner. He by Deed No. 6541 of 15.7.92 mortgaged the same to the original owner Fathuma. Thus it is clear that when the School

Development Society suggested that this land be taken over to construct a school building and a play ground it was not owned by the petitioner. Soon after the said suggestion is made by the school Development Society, Fathuma has sold this land to the petitioner. Suspicion arises in the mind of this Court whether this transaction is a genuine one. Be that as it may, as the petitioner has failed to satisfy court that there are sufficient grounds for this Court to exercise its extraordinary power of Writs, this Court is of the view that the petitioner is not entitled to the relief claimed by him in his petition, and therefore his application should be dismissed. In the circumstances, his application is dismissed, but I order no costs.

Application dismissed.
