

PERERA
v.
PREMADASA

SUPREME COURT
SAMARAWICKREMA J., THAMOTHERAM J., AND ISMAIL J.
S.C. NO. 23 OF 1979
JULY 18 AND 19, 1979

Fundamental rights - Discrimination on political grounds - Acquisition Order under Land Acquisition Act - Articles 12(2) and 126 of the Constitution.

Discrimination on the ground of political opinion must be deliberate on the part of the person or persons who had the power under the Land Acquisition Act to acquire lands for a public purpose.

APPLICATION Under Article 126 of the Constitution.

N. Senanayake with N. P. Guneratne, Miss S. M. Senaratne, S. Mathew and Mrs. K. Dissanayake for petitioners.

G. P. S. de Silva, Additional Solicitor-General with S. Ratnapala, State Counsel for 1 - 5 respondents.

Mark Fernando with Miss. K. Wickremasinghe for the 6th respondent.

Cur. adv. vult.

July 25, 1979.
THAMOTHERAM, J.

The petitioners are husband and wife. They have applied to the Supreme Court by way of petition in writing alleging that a fundamental right to which they are entitled under the Constitution had been infringed by an order to take immediate possession of their land specified in Schedules A and B of their petition and that the attempts to take possession of the said lands on 30th May, 1979 as stated in the notice of 23rd May disclose an imminent infringement of the same fundamental right.

The complaint of the petitioners is really against the action taken under the Land Acquisition Act to acquire their lands among others which form a composite whole. The fundamental right referred to is that given under Article 12(2) of the Constitution of the Democratic Socialist Republic of Sri Lanka *viz.* the right not to be discriminated against on the ground of political opinion. The jurisdiction we are called upon to exercise is that given to us by Article 126 of the said Constitution.

This Article vests us with jurisdiction only when there is an allegation that any fundamental or language right declared and recognized by Chapter III or Chapter IV of the Constitution has been infringed by executive or administrative action.

There are thirty four numbered paragraphs in the petition. As pointed out by Counsel for the 6th respondent paragraphs 1 - 5 and 25 - 29 do not relate to any fundamental right and if proved relate only to infringements of other laws.

In the written submissions for the State the reasons given by the petitioner for invoking the jurisdiction of this Court are grouped under seven heads. It is rightly submitted by the counsel for the State that five of them "even if proved to be factually correct do not establish an infringement of the fundamental rights guaranteed in Article 12 of the Constitution. The said reasons relate to alleged violations of the Land Acquisition Act."

As we agree with this obvious distinction between an infringement of the ordinary law of the land and an infringement of a fundamental right guaranteed by the Constitution we shall not consider the correctness or otherwise of the points made in the petition which have no bearing on the real issue in the case.

The question to which we have to address our minds is whether when an order was made to acquire the land belonging to the petitioners shown as lot 2 in sketch G, there had been an infringement or threatened infringement by executive or administrative action of the right not to be discriminated against on the grounds of political opinion.

The Counsel for all respondents very correctly stressed the words "executive or administrative action." The discrimination on the ground of political opinion must be deliberate on the part of the person or persons who had the power under the Land Acquisition Act to acquire lands for a public purpose.

There are six respondents. The Deputy Solicitor General appeared for the first five respondents. The first respondent is cited in his capacity as Minister of Local Government, Housing and Construction, who is in charge of the Ministry specified in a notice issued under Section 4 and who is the appropriate Minister under the provisions of the Land Acquisition Act. No specific executive or administrative action is attributed to him in connection with this acquisition. The 2nd respondent has been wrongly cited as the appropriate Secretary under the provisions of the Land Acquisition Act. He had nothing to do with the acquisition. Mr. Paskaralingam is the appropriate Secretary. The State has filed his affidavit. The petitioner has not attributed *mala fides* to Mr Paskaralingam who certainly speaks to the executive and administrative action in regard to the particular acquisition complained of, by the petitioners.

The 3rd respondent was the officer authorized to hold an inquiry and who did hold an inquiry in respect of this acquisition. It was vaguely suggested that this officer was selected in order to override and reject the petitioners' objections. The suggestion was based merely on the fact that the appointment of another officer earlier was cancelled and the 3rd respondent appointed instead. We see no merit in this suggestion. The 4th respondent is the Attorney-General and the 5th respondent is the Minister of Land and Land Development.

Of these five respondents it is only the 5th and 3rd respondents who have participated in the executive and administrative action directed towards the acquisition of the petitioners land. The 6th respondent is the M.P. of the area who had also recommended the acquisition of this land. He had acted in his capacity as the M.P. of the area but not participated nor could have participated in the executive and administrative action necessary for the acquisition of the petitioner's land. There is substance in the 6th respondent's submission that the "the 6th respondent has taken no action whatsoever against the petitioner and the question of any infringement or imminent infringement of the petitioners' fundamental rights by reason of executive or administrative action does not arise".

The main relevant allegations in the petition are contained in paragraphs 16, 17 and 18 of the petition. The general allegation is that the acquisition of the lands belonging to the petitioners is done as a measure of revenge and harassment on account of the 1st petitioner having opposed the present Member of Parliament and having openly expressed his political convictions as *pro* Sri Lanka Freedom Party.

Two main averments are made in support of this general assertion. The first is that the former Minister of Local Government took steps through the Government Agent, Puttalam to acquire a land in the village of Kolinjadiya along the Colombo - Chilaw road for the use of members of the public of Wennappuwa. The Government Agent had recommended it as the most suitable in the area for a play ground. The petitioner further alleged that the parties affected by this acquisition had not objected. The 6th respondent in his affidavit states that the Government Agent had not recommended this land for acquisition. The 6th respondent's counsel showed from the relevant file of the village committee that some of the parties affected had in fact objected to the acquisition.

In his statement of objections to the acquisition of his land the petitioner said, "I state that acquisition LA/4370 was deliberately abandoned by Mr Festus Perera for the sole purpose of taking political revenge against me and my family." This is a statement the truth of which must be tested in the context of the total relevant material placed before us.

As early as October, 1977 the Sports Officer had recommended to the Special Commissioner of the Town Council a play ground where a track of 400 meters was possible which could also have sufficient space for a football ground.

Mr. Paskaralingam, Secretary to the Ministry of Local Government, Housing and Construction who is the "approved Secretary" for action under the Land Acquisition Act said in his affidavit at para 6:

- (a) The acquisition referred to therein was upon an application made by the Village Council of Kammalpattu for a play ground for the said Village Council. The said acquisition has no bearing on the present acquisition proceedings which relate to a public play ground for the Town Council of Wennappuwa.
- (b) There were several buildings including residential houses on the said land intended to be acquired as a playground for the Kammalpattu Village Council.
- (c) Alternative accommodation for the occupants of the said buildings and houses was not available.

- (d) The said land being situated outside the Wennappuwa Town Council area is unsuitable for a playground for the public of the Wennappuwa Town and is also inconveniently situated as regards the public of Wennappuwa electorate as it is not centrally situated within the electorate.
- (e) On the 18th June, 1978 a decision was made to abandon the said acquisition proceedings.

Here we find the person competent to take executive and administrative action in relation to the proposed acquisition of the land in the Village Council area taking responsibility for the decision to abandon the said acquisition which was done on the 18th June, 1978. He has given reasons for the abandonment. They may be adequate reasons - they may not be, but certainly they are not false. No political bias has been urged against Mr Paskaralingam who has served even under the previous government in responsible positions. In the face of this allegation it can't be said that this abandonment was by Mr Festus Perera - the 6th respondent or that he did it for the sole purpose of taking political revenge against the petitioner and his family. However it is note-worthy that in making this allegation the petitioners were aware that in order to prove that he was discriminated against on the ground of political opinion he had to show that the decision to take their land was "for the sole purpose of taking political revenge." This he has miserably failed to do.

In para 18 the 1st petitioner states that the proposed acquisition consists of 12 allotments of land according to the sketch dated 2nd December, 1977 sent to the 1st plaintiff by Town Council, Wennappuwa marked 'G'. The 1st petitioner states that the acquisition of lots 10, 11 and 12 shown in the sketch has been since abandoned as lots 9, 11 and 12 belong to the supporters of Mr Festus Perera and lot 10 was abandoned because it belonged to the brother of Festus Perera called N.W.P. Larin Perera which lot comprises the residential ancestral house of Mr Festus Perera which is now occupied by his brother and mother. The 1st petitioner further states that the acquisition of the aforesaid lots had been abandoned due to the political favouritism on the part of Mr Festus Perera and owners of lots 9, 11 and 12 are active supporters of the United National Party.

I have already pointed out that the petitioners assertion in para 17 that the persons affected by the acquisition of the land in the village of Kolinjadiya did not object is false. I have perused the

documents in the file of this particular V.C. - of which I have now been furnished with an English translation. The documents confirm that Graecia Mercia Isabella Perera and Thomas Fernando had objected to that acquisition.

Now in regard to the assertion of the abandonment of lots 9, 10, 11 and 12 in the present proposed scheme it is important to remember that the petition is dated 25th May, 1979.

The Grama Sevaka, J.K.R. Cecil Perera in his affidavit stated "I have known the land owned by the petitioners and which is the subject matter of the acquisition proceedings for the last 15 years."

Mr Kingsley Dissanayake, Special Commissioner for Wennappuwa Town Council said in his affidavit that "the sketch marked 'G' showed the several lots chosen in consultation with the 6th respondent for the acquisition as a public playground for the Wennappuwa Town Council area. Since the funds available for 1978 were not sufficient to acquire all the said lots at one and the same time, I, in consultation with the 6th respondent decided on 18th February, 1978 to exclude for the time being a portion of the said land which roughly falls within the said lots 9, 10, 11 and 12. The portion of the land so excluded was situated at the periphery of the land and its exclusion in the first phase of the acquisition was expedient having regard to the physical lay out of the land. The exclusion of any other portion of the land would have resulted in an asymmetrical block of land unsuitable for a playground of even limited scale". This is obvious when one looks at the sketch.

Mr Dissanayake further stated that once additional funds were made available to him under the decentralized budget for the year 1979, he in consultation with the 6th respondent decided to take steps to acquire the balance portion of the land shown in the sketch and accordingly by writing dated 28th November, 1978, inquired from the known claimants as to whether they would agree to the proposed acquisition. Copy of this letter has been filed. Affidavits have been filed by those affected by the inclusion of lots 9, 10, 11 and 12 showing that the 6th respondent had persuaded them to agree to the acquisition. They were all closely connected to the 6th respondent, one being his brother.

By his letter dated 15th May, 1979 the Special Commissioner informed the Assistant Commissioner of Local Government Chilaw of this 2nd phase of the proposed acquisition. This affidavit shows that the allegation of the petitioner is not only groundless but even false as his petition is dated 24th May, 1979. The affidavit also

shows that the executive or administrative action was on the part of Mr Dissanayake. He only consulted the 6th respondent. The allegation of *mala fides* in regard to the acquisition of the petitioners land has not been substantiated. I agree with the submissions made by counsel that the 6th respondent's conduct in relation to the proposed acquisition has been perfectly *bona fide*.

I hold that there has been no discrimination against the petitioner on the ground of political opinion. Their petition is therefore dismissed with costs.

SAMARAWICKREMA, J. — I agree.

ISMAIL, J. — I agree.

Application dismissed with costs.