

STATE OF KERALA AND ORS.
v.
M. BHASKARAN PILLAI AND ANR.

MAY 5, 1997

[K. RAMASWAMY AND D.P. WADHWA, JJ.]

Kerala Land Assignment Act, 1960 :

Land acquired in 1952 under Land Acquisition Act—Balance land remained unutilised—Government selling the land in 1979 to erstwhile land-owner at the same rate at which compensation for acquired land was awarded—Sale interdicted in Writ petition—Action defended as an executive order of Government—High Court declaring the executive order invalid in the light of the Act—Held order of High Court is justified—By operation of s.16 of Land Acquisition Act, 1894, acquired land vested in State—Land if not required for any other public purpose should be put to public auction and the amount so fetched can be utilised for public purpose—Land Acquisition Act, 1894—S.16.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3628 of 1997.

From the Judgment and Order dated 24.7.91 of the Kerala High Court in W.A. No. 86 of 1990.

G. Prakash for the Appellants.

Varghese Kalliath, Romy Chacko and M.K. Michael for the Respondent No. 2.

Roy Abraham for Baby Krishnan for the Respondent No. 1.

The following Order of the Court was delivered :

Leave granted.

This appeal by special leave arises from the judgment of the Division Bench of the Kerala High Court, made on July 24, 1991 in Writ Appeal No. 86 of 1990.

A The admitted position is that an extent of 1.94 acres of land was acquired way back in 1952 for construction of national highway. The construction was completed in 1955. Out of the extent of 1.94 acres, 80 cents of land were used and the balance land remained unused. When respondent No. 1 had applied for sale of the property by proceedings dated December 21, 1979, the property was sought to be sold to him at the same rate at which compensation was awarded under Section 11; that was interdicted by way of writ petitions. The sheet-Anchor of the Government to sustain the action is the executive order issued by the Government for permission for alienation of the land. The High Court has declared the executive action as invalid in the light of the Kerala Land Assignment Act, 1960 (Act 30 of 1960) (for short, the 'Act'). The High Court has pointed out that the assignment is in contravention of the Act. Thus, this appeal by special leave.

D In view of the admitted position that the land in question was acquired under the Land Acquisition Act, 1894 by operation of Section 16 of the Land Acquisition Act, it stood vested in the State free from all encumbrances. The question emerges: whether the Government can assign the land to the erstwhile owners? It is settled law that if the land is acquired for a public purpose, after the public purpose was achieved, the rest of the land could be used for any other public purpose. In case there is no other public purpose for which the land is needed, then instead of disposal by way of sale to the erstwhile owner, the land should be put to public auction and the amount fetched in the public auction can be better utilised for the public purpose envisaged in the Directive Principles of the Constitution. In the present case, what we find is that the executive order is not in consonance with the provision of the Act and is, therefore, invalid. Under these circumstances, the Division Bench is well justified in declaring the executive order as invalid. Whatever assignment is made, should be for a public purpose. Otherwise, the land of the Government should be sold only through the public auctions so that the public also gets benefited by getting higher value.

G The appeal is accordingly dismissed. No costs.