
(1990) 06 KL CK 0044

In the High Court Of Kerala

Case No : O.P. No"s. 6489 of 1987 and 6778 of 1987 (F)

Annamma Chacko and Another

APPELLANT

Vs

Tiruvalla Municipality and Others

RESPONDENT

Date of Decision : 18-06-1990

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 4, 6

Citation : AIR 1991 Ker 18

Hon'ble Judges : K.P. Radhakrishna Menon, J

Bench : Single Bench

Advocate : O.V. Radhakrishnan and A.K. Alex, for the Appellant; K.C. John and K.G. Anil Babu, Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

K.P. Radhakrishna Menon, J.—The lands in dispute are admittedly included in the detailed town planning scheme for the development of the central area of the Thiruvalla Municipal town. That this scheme was approved by the Municipal Council only after considering the objections and suggestions made by the persons who would be affected by the scheme is beyond dispute. The Municipal Council thereafter submitted the scheme to the Government for sanction. The said approved scheme was published in newspapers, enabling the public to raise objections or to make suggestions to the Government. The Government after considering the objections filed by affected persons, ultimately sanctioned a modified scheme and the same was published in the Gazette in February 1987 as is seen from G.O. Ms. 42/87/LAD dt. 11-2-87. A reference in this connection to the following averments in the counter affidavit filed on behalf of respondents 2 to 5 is advantageous.

".....The Municipal Council, Thiruvalla vide its resolution No. VII(2) Dated 14-10-1980 resolved to invoke the detailed town planning scheme for the Central area of Tiruvalla for the purpose of regulating and systematising the growth of

the town and to provide basic comforts to the people and also to improve roads and streets. In consequence thereof, the Municipal Council addressed the Chief Town Planner to prepare a draft scheme for the central area. The Chief Town planner prepared the draft scheme (DSN-1) draft for the town plan. The Municipal Council on 6-1-1982 passed a resolution to implement the town planning scheme in central area of Tiruvalla to implement the detailed Town Planning Scheme for the development of the Central area of the Thiruvalla Municipal town. On 5-4-1983 the inhabitants of Thiruvalla, including the persons whose lands would be affected by the scheme were invited through paper publication in Mathrubhumi dated 29-3-1983 to appear before the Municipal Council in the presence of the Junior Town Planner deputed by the Chief Town Planner to educate the people about the need and necessity of the scheme under Rule 35 of the town planning Act. Subsequently the council at its meeting held on 11-4-1983 approved the draft Detailed Town Planning Scheme. Thereafter Form No. 39 under Rule 42 of the Travancore Town Planning Rules was published in Malayala Manorama dt. 13-11-1983 and Mathrubhumi dt. 11-11-1983 calling for objections to the draft scheme before 6-1-1983, Accordingly all the objections received during this period was considered in detail. To consider the objections put forth by the affected land owners, a local committee consisting of the then M.L.A. Sri P. C. Thomas and the Ex-Municipal Chairman of N. Narayana Bhattathiri was constituted on 18-9-86 vide council resolution No. 1 dt. 12-9-1986. The suggestions put forth by the committee was approved by the council vide resolution No. 1 dt. 28-11-1986 and the same was forwarded to the Chief Town Planner who in turn after modifying the scheme sent it to the Secretary, Local Administration Department for the approval of the Government. The Government thereafter vide G.O.Ms. 42/87/LAD dt. 11-2-87 accorded sanction for the Detailed Town Planning Scheme for central area Thiruvalla....."

2. The above sanction was granted u/s 12(6) of the Town Planning Act, 1108 (Travancore). As observed by the Supreme Court in State of Kerala and Others Vs. T.M. Peter and Others,) "Section 12(6) imparts finality to the scheme and this virtually corresponds to the declaration u/s 6 of the Land Acquisition Act". The following further observations of the Supreme Court are also relevant in this context :--

"Chapter III of the Act is comprehensive and complex because the subject of scheme-making demands expert attention and affects community interest. A Director of Town Planning is appointed who shall be consulted by Municipal Councils in matters of town planning. Developmental schemes are not sudden creations. On the other hand, the Municipal Council first decides to prepare a scheme, adopts a draft scheme, if any, made by the owners of the lands, prepares the necessary plans of the lands which is proposed to be included in the scheme and notify its resolution for public information. A copy of the plan is kept for the inspection of the public. Since all improvement schemes are matters of public concern, on the passing of a resolution and its notification u/s 8 a time-bound obligation is cast on the Municipal Council by Section 9. It is apparent that

improvement schemes cannot hang on indefinitely and an outside limit of 2 years is given for the preparation and publication of draft schemes from the initial resolution to make or adopt scheme as passed by the Municipal Council. Government itself may step in and direct the Municipal Council to prepare schemes and Section 10 empowers it in this behalf. Section 11 contains detailed provisions regarding the material to be included in the draft scheme. These are preparatory exercises and then comes the sanction of the scheme by the Government u/s 12. We indicate the elaborate character of the strategy, stages, contents and character of schemes for improvement and the opportunities for objections and suggestions to the public and the consultation with technical experts and Government, time and again, only to emphasize the complex nature of modern urban development schemes which makes it a different category altogether from the common run of "public purposes" for which compulsory acquisition is undertaken by the State....."

3. From what is stated above it can be inferred without fear of contradiction that to implement a town planning scheme it is unnecessary to start the land acquisition proceedings again by publishing the Notification u/s 4 of the Land Acquisition Act. The authority, to acquire the land involved in the scheme, can proceed with the acquisition as if the declaration u/s 6 of the Land Acquisition Act is already made.

4. It is in this background the various contentions raised by the petitioners in these O.Ps require to be considered. On going through the pleadings it can be seen that the declaration u/s 6 is under attack. only on their establishing that they are entitled to have the benefit of the enquiry contemplated u/s 5(A) of the Land Acquisition Act, they can challenge the declaration on the grounds of mala fide and lack of good faith on the part of the authorities concerned. Such a position the petitioners however cannot even take because they have not challenged the order of the Government imparting finality to the scheme u/s 12(6) of the Town Planning Act. In fact such a challenge is not possible at all because the petitioners have no case that the order of the Government u/s 12(6) is bad for violation of the procedure prescribed under the various provisions of the Town Planning Act.

5. In order to see whether there is any substance in the allegations contained in O.P. 6489/87 that the alignment of the road B1-B1 has been changed by the acquiring authority with a view to see that the lands of the Municipal Chairman and his relations were excluded from the purview of the acquisition proceedings, I perused all the relevant records including the sketch prepared by the concerned authorities under the Town Planning Act. The alignment of the road originally proposed was slightly changed so that the road is further straightened; and that it is so can be seen from the final sketch approved u/s 12 (6) of the Town Planning Act. The allegations of mala fide in the circumstances are without any basis. Whatever that be, these allegations cannot be taken cognizance of for the reason that the order of the Government u/s 12(6) of the Town Planning Act

giving finality to the scheme, as already noted, is not under challenge before me.

6. The reliefs prayed for in these O.P.S. if allowed, to my mind, would interfere with the implementation of the town planning scheme intended for the development of the central area of the town. These proceedings in fact have delayed the implementation of the scheme. Whatever that be in my view this court shall not interfere with town planning schemes like the one on hand, intended for the improvement of a town or city in the exercise of the discretionary jurisdiction under Article 226 of the Constitution unless it be that the same is approved by the Government in utter disregard of the provisions of the Town Planning Act. As already noted, the petitioners have not challenged the scheme approved u/s 12(6) of the Town Planning Act.

The O.Ps are therefore dismissed. But in the circumstances no order as to costs.

It is however made clear that this judgment will not stand in the way of the petitioner in O.P. 6489/87 moving the Land Acquisition Officer to get the relief, he is entitled to get u/s 23(1) of the Land Acquisition Act.