
(2003) 03 KL CK 0069
In the High Court Of Kerala
Case No : O.P. No. 4686 of 2003

Babu Pilasserry and Another

APPELLANT

Vs

Govt. of Kerala and Others

RESPONDENT

Date of Decision : 25-03-2003

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 4(1), 52, 6

Citation : (2003) 2 KLJ 317 : (2003) 2 KLT 500

Hon'ble Judges : M.R. Hariharan Nair, J

Bench : Single Bench

Advocate : T. Sethumadhavan, Pushparajan Kodoth and K. Jayesh Mohankumar, for the Appellant; Babu S. Nair, Jijo Paul, Smitha Babu, Renjith B. Marar, Anju Divakar, P.N. Krishnankutty Achan (Sr.), K.P.G. Menon (SC), K.S. Madhusoodanan, M.K. Aboobacker (SC) and V.K. Beeran, for the Respondent

Final Decision : Dismissed

Judgement

M.R. Hariharan Nair, J.—The petitioners representing the public, challenge the decision of the Government to acquire only 1.34 acres out of the larger extent of two acres as desired by the Corporation. Kozhikode for establishing a play ground. The learned counsel for the petitioners submitted that in Ext. P5 judgment there was a specific direction that the Corporation should furnish details regarding the source of funds for payment of compensation and all other details that are required by the Government to initiate acquisition proceedings and that on receipt of such details, the Government should issue Notification u/s 4 of the Land Acquisition Act within one month. As regards the building permit issued to the respondents 7 to 9 in the present Original Petition also it was observed that there would be a stay of such constructions for three months and that if no decision was taken by the Corporation within two months, these respondents would be free to develop their land. There was also an observation that as open land of such extent is rarely available in the Corporation area, the demand of the petitioners that the Corporation should take action when the land is available deserves consideration.

2. The above judgment was passed on 8-11-2002. Before that, the Corporation had taken Ext. P2 resolution on 27-9-2002 proposing acquisition of the entire two acres. The grievance of the petitioners is that the said demand of the Corporation and the directions of the Court are flouted while taking Ext. P7 decision exempting the 66 cents of the aforesaid respondents and in limiting the issuance of Notification to the remaining 1.34 acres alone. Challenge is also made with regard to Ext. P8 issued later on exempting the 1.34 acres alone from the Zonal provision in the master plan prepared by the Corporation. Questioning of Ext. P9 (same as Ext. R2(c)) which is the formal order referred to in Ext. P7 is also sought. In short the petitioners demand is that the entire two acres proposed by the Corporation should be acquired and that the Government is without power to exempt 66 cents claimed by the respondents 7 to 9. In that regard the decision in Secretary to Govt. v. Sebastian 1988(1) KLT 691 is also relied on.

3. I have heard the learned counsel appearing for respondents 7 to 9 and also the learned additional Advocate General who appeared for the first respondent latter submitted that the Government has power to direct issuance of Section 4(1) Notification even excluding a portion of the land proposed by the Requisitioning Authority In this regard it is also pointed out that in Ext. R2(d) the Corporation had suggested to the Government acquisition proposal with regard to 158 projects while funds available with the Municipality was limited to just 98 lakhs of Rupees. According to the Government Pleader, in the above circumstances, the Government was well justified in limiting the area for acquisition.

4. The Secretary to Govt. v. Sebastian (1988 (1) KLT 691) cited by the learned counsel for the petitioners, the factual scenario was not the same as in the present case. That was a case where the relevant Notification was published on 9-2-1984. Later on the Government passed order dated 17-10-1984 exempting 10 cents of the notified land from acquisition. It was the said act of the Government in exempting 10 cents out of the area notified for acquisition that came up for consideration before the Division Bench. It was held that the Government may have power u/s 52 of the Act to withdraw from acquisition, but that power has to be sparingly used and it shall not be exercised at all to defeat the efforts of the local authority to discharge its statutory functions. It was observed that except when it is asserted and is positively established that the local authority was acting with corrupt motives or was abusing its jurisdiction clandestinely due to personal bias or other such considerations, the Government shall not step in and nullify the efforts of the Panchayats to discharge its functions. Observing that very peculiar facts were involved in that case and that the Government did not mention in its counter affidavit that any power to exempt was available with the Government, the Court intervened and upheld the order of the Single Judge striking down the relevant Government Order. Padmini v. State (1999 (3) KLT 465) cited by the respondents is a decision by a Bench of equal strength: but later in point of time and even for that reason it deserves

more weight. It was contended there that in the absence of any Notification u/s 4(1) of the Land Acquisition Act the owners had a right to use the land for their own purposes; that the purpose of Section 4(1) Notification is to give public notice of the proposal to acquire land and to give warning that anyone who deals with that land subsequent to the Notification would do so at his own risk; that the object of declaration u/s 6 is to intimate the decision of the appropriate Government that the particular land is needed for particular public purpose; and that the Government has to be satisfied initially that the land is needed for a public purpose before issuing such a declaration. With regard to the facts of the case and the contention that until the Notification u/s 4(1) was issued the Municipality cannot deny issuance of building permit applied for by the land owner it was further mentioned that on the date when the appellants submitted application for permission to construct residential building there was no Notification u/s 4(1) and such being the position the Municipality was not justified in rejecting the application on the ground that the land was proposed to be acquired. It was made clear that the decision of the Government would become effective and valid only when Notification is published in the Official Gazette and until then proceedings for acquisition cannot be said to have been initiated and as such the land owner could use it in his own way. In the present case two Notifications had been issued earlier; but both had lapsed and as certified Ext. R8(a) dated 21-3-1996 no acquisition proceedings were alive on that date. It was therefore that the petitioner purchased the property through 3 sale deeds between 1-4-1986 and 12-4-1996. The new proposal for acquisition of only 1.34 Acres is also in conformity with Exts. P1 and P2 judgments and takes into account the fact that the 8th Respondent has already started construction in the 66 cents armed with duly granted sanction issued before any new notification was issued.

In the above circumstances what remains to be considered is only whether the Government has acted malafide in the matter of limiting the area. It was taking into account all the relevant aspects and the decisions in the judgments of this court that the Government ultimately decided that for the purpose of the Corporation, acquisition of 1.34 Acres was sufficient and directed issuance of Section 4(1) Notification limiting the area to 1.34 acres. This is not a case where after issuance of Notification the Government interfered arbitrarily and limited the area; but where all relevant aspects including the grant of building permit and commencement of hospital building in the 66 cents were considered even before directing issuance of Section 4(1) Notification. There is no want of power on the part of the Government in doing so. The petitioner has not succeeded in establishing any malafides in the decision. It is not for the Writ Court to interfere in matters involving the Government policies when the decision is apparently fair. Availability of funds with the Corporation is also a matter, that appears to have been looked into by the Government before passing the impugned orders.

In the circumstances, I find no merit in the Original Petition. Dismissed.