

(1982) 11 KL CK 0023
In the High Court Of Kerala
Case No : W.A. No. 586 of 1982

C. K. Chacko and Another	Vs	APPELLANT
The Kayamkulam Municipality and 2 Others		RESPONDENT

Date of Decision : 11-11-1982

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 12, 26, 27, 28

Citation : (1982) KLJ 611

Hon'ble Judges : V. Khalid, J;G. Balagangadharan Nair, J

Bench : Division Bench

Advocate : T. P. Kelu Nambiar, P. G. Rajagopalan and P. Devakikutty, for the Appellant; V. Rama Shenoy, R. Raya Shenoi and Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

V. Khalid, J.—The petitioners in O.P. No. 3503 of 1982-P are the appellants. The respondents are the Kayamkulam Municipality, the District Collector, Alleppey and the State of Kerala. In the O.P. the prayers were for the issuance of a writ of certiorari to quash the proposed land acquisition proceedings in relation to the appellants' land and for the issue of a writ of prohibition restraining the respondents from taking any steps for acquiring their land in connection with the Kayamkulam Town Planning Scheme. The learned Judge dismissed the petition declining the reliefs. Hence this appeal. The facts of the case, in brief, can be stated. The appellants are the owners of land in the Kayamkulam Municipality having an extent of 2.72 acres situated in Sy. No. 612 etc. The 1st respondent - Municipality had published a Town Planning Scheme under the Town Planning Act, Act IV of 1108, (for short, the Act), and had also passed a resolution on 29-4-1981 adopting the scheme. The scheme was published in the Kerala Gazette dated 14-3-1978 and in the newspapers in July 1981. Thereafter, the scheme did not proceed further. The first respondent, in the meanwhile, was thinking of acquiring the land belonging to the appellants for the purpose of

expanding the existing bus stand. It was at this stage that the appellants approached this Court with the above prayers contending that once the scheme under the Act was proposed, acquisition under the Land Acquisition Act, except in accordance with the scheme, was irregular and invalid.

2. The first respondent in its counter affidavit admitted that it had an ambitious scheme under the Act. According to it, the scheme involved heavy expenditure. Help from the Central and State Governments was necessary for its implementation. The first respondent had established in the year 1970 a public bus stand in Sy. No. 616/2 and 3 in a property 10 cents in extent at a time when there were not more than four buses. At present, 67 buses are operating from Kayamkulam catering to the passenger traffic, besides the vehicles plying on the routes operated by the K.S.R.T.C. The 67 buses operated by private operators cannot make use of the bus stand established by the K.S.R.T.C. The facilities existing at present to private buses were very meagre. It was under these circumstances that steps were taken for acquisition of land belonging to the appellants. The acquisition for the bus stand could not be delayed because of the pressing need. The establishment of the bus stand was in exercise of the powers vested in the first respondent under the provisions of section 309 of the Kerala Municipalities Act. The Town Planning Scheme had not proceeded beyond, section 8 declaration. Law did not stand in the way of the acquisition of the land in question under the Land Acquisition Act. At the time the appellants approached the Court, even section 3(1) notification had not been issued. If the land acquisition proceedings were taken, the appellants would be at liberty to urge all grounds available to them under the said Act. The Original Petition was premature. This, in short, were the averments in the counter-affidavit filed by the first respondent.

3. The only question that falls to be decided in this appeal is whether the acquisition of the land in question contrary to the provisions contained in the Act is proper. The learned Judge held that in view of the fact that the Town Planning Scheme was only on the anvil and had not been finalised, nothing prevented the Municipality from acquiring the land under the Land Acquisition Act.

4. Counsel for the appellants took us through a few sections of the Act in his attempt to contend that once a scheme under the Act was under contemplation, the owners of land included in the scheme get certain rights which should not be defeated by piecemeal acquisition of lands included in the Scheme, except in accordance with the Act. Section 3 outlines the matters that may be dealt with in the Town Planning Act; Section 6 provides that a Town Planning Scheme shall determine the lines in which the improvement and development of the areas included in the scheme shall proceed; section 7 enables a Municipal Council to decide to prepare a scheme in respect of all land and then to have a plan prepared; section 8 provides for a notification to be published of the resolution u/s 7 ; section 9 deals with the publication of the draft scheme section 11 with the contents of draft scheme and section 12 with sanctioning of the scheme by the

Government. The appellants' counsel submits that in this case declaration u/s 7 and the notification u/s 8 had been made. The lands of the appellants were included in the scheme. The other sections of the Act confer on owners of land whose lands are included under the scheme certain rights. Specific reference was made to sections 26 and 28. u/s 26 the Government can appoint an Arbitrator to resolve disputes flowing out of the scheme. Section 28 enables an aggrieved party to move the High Court against the decision of the Arbitrator. According to him, these valuable rights under the sections are denied to the appellants in this case, by resort to acquisition of the land under the Land Acquisition Act.

5. We will examine this contention presently. In this case, all that has happened is that the 1st respondent has made the declaration u/s 7 to adopt the scheme followed by the necessary notification u/s 8. The scheme took in the whole municipal town. The scheme for its completion required large investment. The need for a bus stand was acute which is why the first respondent had to resort to the land acquisition proceedings in question.

6. The submissions made by the appellants' counsel have to be tested with reference to the scheme of the Act. Section 12 contains a detailed procedure before the scheme gets the sanction of the Government, which can be usefully read to have an idea as to how a scheme ultimately takes its shape. The relevant portion of section 12 reads:

12. Sanctioning of scheme by Government.-

(1) If within sixty days from the date of the publication of a draft scheme any person affected by such scheme - communicates in writing any objection or suggestion relating thereto, the council shall consider such objection or suggestion and may modify the scheme as it thinks fit.

(2) The scheme as passed or adopted by the council together with all written objections and suggestions shall thereupon be submitted to Our Government for sanction and the fact of such submission shall be published in the prescribed manner.

(3) Our Government may, after considering the objections and suggestions, if any, and making such inquiry as they think fit, sanction the scheme with or without modifications, or may refuse to sanction the scheme or may return the scheme to the council for reconsideration;

Provided that unless a modification is, in the opinion of Our Government, verbal or in consequential, Our Government shall not sanction the scheme with such modification without the consent of the Council:

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(5) The sanction of Our Government to a scheme under sub-section (3) shall be published by notification in Our Government Gazette and in such other manner as may be prescribed and such notification shall state at what place and time the

scheme will be open to the inspection of the public.

(6) A notification published under sub-section (5) shall be conclusive evidence that the scheme has been duly made and sanctioned. The scheme shall have effect from the date of publication of such notification, and the execution of the scheme shall be commenced forthwith:

* * *

On a reading of the above section, it becomes clear that the scheme has to under-go several stages before it gets sanctioned at the hands of the Government. The affected persons can object to the scheme. The Council has to consider the objection so raised. The scheme as passed or adopted by the Council has there-after to be submitted to the Government for sanction. The Government can make further enquiry as it thinks fit after considering the objections and then can sanction the scheme with or without modification or even can refuse to sanction the scheme. It is after this elaborate procedure that the scheme has to be published in the Gazette.

7. We find that the submissions made by the appellants' counsel in the context of the facts of the case and against the background set out above are out of place. Here, the scheme has not passed the stage of notification u/s 8 . The scheme has not been sanctioned by the Government. A person whose land is included in the Town Planning Scheme under the Act can get a right under the various sections of the Act, if at all, only when the scheme is finalised u/s 12 of the Act. The mere inclusion of a land in a scheme in its initial stage will not, in our opinion, confer any right under the Act on the owner of the land included in the scheme. In the view that we take, the rights u/s 26 for arbitration and u/s 27 to move the High Court are also, not available to such a person. That being so, a challenge at the instance of such an owner, against acquisition of the land under the Land Acquisition Act will not lie.

8. Now it is necessary to advert to sections 32 and 33 in Chapter VII of the Act. What the appellants' counsel attempts to urge before us is that acquisition of properties included in the Town Planning Scheme under the Act is possible only under sections 32 and 33 of the Act, and not under the Land Acquisition Act. This perhaps is so. But sections 32 and 33 can come into operation only when the Town Planning Scheme gets finalised by the Government according sanction to it. We have not reached that stage here, and therefore, the appellants are not in any way justified in invoking the help of sections 32 and 33 of the Act, to deny to the first respondent-Municipality its rights in getting the lands in question acquired under the general law of acquisition, for the immediate necessity of expanding the Bus stand. In our view, the approach by the appellants to this Court at this stage is premature.

9. The apprehension of the appellants is that the Municipality would invoke the urgency provisions under the Land Acquisition Act and dispossess them. The apprehension, again, is out of place at this stage. It is stated in the counter-

affidavit that the land acquisition proceedings are only in the embryonic stage and even section 3(1) notification has not been issued. That being so, the apprehension that the urgency provisions would be invoked is at best in the realm of conjecture. As stated by counsel for the 1st respondent, the appellants will get full opportunity to urge all their plea when proceedings are actually taken under the Land Acquisition Act. The counter-affidavit contains averments to the effect that in demarcating the land for acquisition, care was taken by the Municipality to cause as little annoyance and inconvenience to the appellants, as possible. We fail to see how the appellants will be prejudiced. If they can successfully thwart the land acquisition proceedings by any mode known to law, nothing prevents them doing so. For aught we know, the proposed acquisition under the Land Acquisition Act is less onerous for the appellants than the acquisition under sections 32 and 33 of the Town Planning Act for the reason that if their land is acquired under the Land Acquisition Act, the relevant date for fixing compensation is the date on which section 3 (1) notification is issued while if it is acquired under the Town Planning Act, the relevant date will be when the declaration u/s 7 and notification u/s 8 were issued. Counsel for the appellants drew our attention to the judgment rendered by Kochu Thommen J., in O.P. No. 4319 of 1981. In that case, owners of buildings in the Tellicherry Municipality objected to the acquisition of their properties for the purpose of widening a road. Their case was that the Municipality had in mind a proposal to introduce a town planning scheme. They wanted the acquisition proceedings to be shelved. The learned Judge felt that the approach to the Court at that time by the petitioners therein was premature since the town planning scheme was only in contemplation. The Original Petition was dismissed observing that the petitioners would be at liberty to put forward their case if they found that the proposed acquisition was against any scheme under the Madras Town Planning Scheme. The facts of the two cases are wholly dissimilar and no support can be sought from that decision.

For the foregoing reasons, we hold that the learned Judge was right in declining the reliefs to the appellants. On the facts of this case, we do not find any legal embargo on the respondents for proceeding with the acquisition of the land under the Land Acquisition Act. In the result, the appeal fails and is dismissed without costs.

Issue costs of this judgment to counsel for the appellants as well as the respondents on usual terms.