
(2009) 05 KL CK 0036

In the High Court Of Kerala

Case No : Writ Petition (C) No. 8084 of 2007 (K)

Dr. Sreedhar Kavil

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 12-05-2009

Acts Referred:

Constitution of India, 1950 — Article 226, 300A

Land Acquisition Act, 1894 — Section 17, 17(4), 4(1), 5A, 6

Citation : (2009) 05 KL CK 0036

Hon'ble Judges : Pius C. Kuriakose, J

Bench : Single Bench

Advocate : Kurian George Kannamthanam, for the Appellant; P.V. Chandra Mohan, for the Respondent

Judgement

Pius C. Kuriakose, J.—Writ petition No. 8084/2007 under Article 226 is filed by Dr. Sreedhar Kavil, who owns 64 cents of land near Sree Krishna Higher Secondary School, Guruvayur challenging the proceedings initiated for acquisition of his land invoking the urgency provisions of the Land Acquisition Act. The first respondent is the State represented by the Principal Secretary, Revenue, the 2nd respondent is the District Collector, Thrissur, the 3rd respondent is the Guruvayoor Devasom Board, the 4th respondent is the Guruvayoor Devaswom Administration Commissioner, the 5th respondent is the Principal of Sree Krishna Higher Secondary School. Additional respondents 6 and 7 are respectively one Sri. K.V. Raveendran and Sri. C.I. George, who are said to be a President and Executive Committee member of the Parents Teacher's Association, Sreekrishna Higher Secondary School, Guruvayoor.

2. The case of the petitioner is that he is a NRI presently working in the United State. His property extending to 64 cents is situated adjacent to the Sree Krishna Higher Secondary School Guruvayoor belonging to the Guruvayoor Devawom. The petitioner wanted to construct a residential apartment on this property and applied to the Guruvayoor Municipality for permit. While so, he came to know

from one Sri.Salim, the petitioner in W.P.(C) No. 9974/2008, who also owns a piece of land near the school, that he received a letter from the District Commissioner, Thrissur wherein it is stated that there is a proposal to acquire the land invoking urgency clause on the request of the Guruvayoor Devaswom Commissioner. Ext.P1 is a copy of that letter. It is submitted by the petitioner that Ext.P1 is a communication from the Government to the District Collector requesting to conduct enquiry regarding the need to undertake urgency clause for acquisition of land including that of the petitioner. According to the petitioner, no notice whatsoever has been given to him so far. On coming to know about Ext.P1, the petitioner submitted Ext.P2 representation before the Minister concerned on 9/2/2006. The Municipality granted building permit -Ext.P3 to the petitioner on 28/2/2006. On the strength of Ext.P3, the petitioner started construction of the apartment complex. Foundation work is almost complete. The petitioner started project in India and abroad and already entered into agreements with many prospective buyers. The petitioner has already invested about 50 Lakhs in this project. Without considering the objection of the petitioner, the Government passed Ext.P4 order according sanction for the acquisition of the petitioner property invoking the urgency provision. According to the petitioner, the reasons stated in Ext.P4 is curious and has nothing to do with urgency as contemplated by the Land Acquisition Law. The reason stated is that the District Collector has reported that since the land is close to the high school, if a multi storied building comes near the school, there is a probability of waste pollutants falling to the school compound. According to the petitioner, high rise residential building does not cause any sort of pollutions, since adequate precautions permissible under law for preventing pollution are being taken. The petitioner challenged Ext.P4 order before this Court by filing W.P.(C) No. 12472/2006. In that writ petition Devaswom filed Ext.P5 counter affidavit. It is pointed out that in Ext.P5 it is not stated anywhere that the Devaswom considered the question of expansion of the school and as to what was the urgency in the matter of acquiring the petitioner's land. The only reason stated in the affidavit as the reasoning and the need for acquisition is the risk of pollution by high rise building coming up near the school. This according to the petitioner can not be a public purpose warranting acquisition. The petitioner has produced Ext.P6 copy of a letter from the Principal of the school to the Devaswom Administrator, which had been produced by the Devaswom along with Ext.P5. It is stated that steps for acquisition started from Ext.P6. The petitioner has also produced Ext.P7 which is a copy of the decision of the Governing Board of the Devaswom dated 27/11/2005. It is submitted that under Ext.P7, there is no decision at all for expansion of the school premises. The only request is to acquire the land to avoid pollution by multi storied buildings coming up. Ext.P8 is a copy of the proceedings of the Devaswom Commissioner dated 28/12/2005 and it is submitted that without even considering the question of urgency Devaswom Commissioner has given permission to invoke the urgency provision. It is pointed out that the Devaswom Commissioner has no powers to give permission to invoke the urgency clause. But it is a power vested with the

statutory authorities under the Land Acquisition Act. Following Ext.P8, the Devaswom Administrator submitted Ext.P9 requisition for acquisition to the District Collector. It is pointed out that the only reason stated in Ext.P9 is that land owners are taking hasty steps to construct buildings and hence urgency clause is to be invoked. Along with Ext.P9 formal requisition Ext.P10 was also enclosed. Under Ext.P10 also no different reason is stated. The petitioner submits that even before the formal request was received on 7/4/2006 the Government has issued Ext.P4 order according sanction for invoking the urgency clause. The question as to whether the land is to be acquired or not has to be independently decided by the Government, on the receipt of the requisition. This has not so far been done. According to the petitioner from Ext.P4 it is clear that the same is based on Ext.P7 and the report of the District Collector. The petitioner submits that while issuing Ext.P4, the Government had not considered whether there is public purpose and whether there is necessity for invoking urgency provision. W.P.(C) No. 12472/2006 filed by the petitioner was disposed of by passing Ext.P11 judgment, under which the Government was directed to reconsider the matter after affording hearing opportunity to all concerned. Pursuant to Ext.P11, the matter was heard and the Government passed fresh order Ext.P12. It is submitted that acquisition is not absolutely necessary and in Ext.P12 the Government does not discuss any reason as to the need for invoking urgency clause. The reasons stated in Ext.P12 is at any rate is insufficient. It is submitted that the requirement of land for Higher Secondary School is only 3 acres. But the school in question owns about 5 acres. Whether the need for expansion and what is the expansion planned and decided are all material. These material aspects have never been considered. On these facts and for the grounds raised the petitioner prays that Exts.P4 and P12 be quashed and a writ of mandamus be issued directing the respondents not to invoke any urgency clause for acquisition of the petitioner's land.

3. On behalf of the second respondent District Collector, a counter affidavit is filed. It is submitted that the Administrator, Guruvayoor Devswom, vide its letter dated 17/4/2006 requested to acquire an extent of 0.3035H (Sy. No. 158/3-674 cents and Sy. No. 158/5-11 cents) of property belonging to the petitioner in Iringappuram Village, Chavakkad Taluk for the prevention of pollution and development of Sree Krishna Higher Secondary School, Guruvayoor. The Government vide order dated 7/4/2006 accorded sanction for acquisition of the above land invoking the urgency clause u/s 17. The Special Tahsildar (LA) Guruvayoor Devaswom was appointed as Land Acquisition Officer in this case vide District Collector's proceedings dated 5/5/2006. The petitioner in the writ petition, who is the owner of 64 cents covered by the proceedings has started construction of multi storied building on this side. The proposal for invoking urgency clause was submitted to the Land Revenue Commissioner from the District Collector's Office. While so the petitioner in W.P.(C)No.8084/2007 filed W.P.(C) No. No. 12472/2006. This Court by judgment in that writ petition directed the first respondent- the Principal Secretary, Revenue(Devaswom)

Department, Thiruvananthapuram, to hear all the parties and to decide the matter within four months. Accordingly, all parties concerned were heard and the matter was examined in detail by the respondent. It was found that the acquisition was highly essential for further development of the school. It is submitted that the Devawom Administrator, Guruvayoor Devaswom has reported that Sree Krishna Higher Secondary School is the one and only plus two school in this area accommodating more than 2700 students mostly from the lower strata of society and is in need of that land and hence acquisition is required. It is submitted that the land is absolutely for the development of the school. The requisition in Form No. 2 (Rule 4 (1) from the Administrator, Guruvayoor Devaswom (No. B3-8336/06 dated 17/4/2006) has been received for the land acquisition process. As per Government letter dated 18/1/2006, a petition from Sri.Salim was received from the Government. That petition was enquired into through the Special Tahsildar, Guruvayoor Devaswom and it was found that there is no merit in it. It is submitted that land is close to the Sree Krishna Higher Secondary School and it is sure that waste pollutants will come to school compound. Though the petitioner may be able to take measures to control pollution, the high rise building in front of the school will certainly hinder the smooth passage of fresh air and light to the school. The necessity of sufficient land for the future development of school is also a factor to be taken into account. The Land Revenue Commissioner took all relevant aspects into account and issued proceedings dated 13/10/2006 according sanction for invoking the urgency clause. Referring to Ext.P7, it is submitted that Ext.P7 is only a decision of the Administrator to request for the acquisition of 75 cents of land for the development of Sree Krishna Higher Secondary School. It is the Government which has accorded sanction vide Government Order No. 2510/06/RD dated 7/4/2006. The Land Revenue Commissioner vide its proceedings No. LR-C3-25310/2006 dated 13/10/2006 examined the proposal for invoking the urgency clause and being satisfied that the land is urgently required and directed in exercising the power under Sub-section (4) of Section 17 of the L.A. Act that the enquiry u/s 5A will not apply in this case. It is pursuant to the above order that the formal requisition was submitted. It is thereafter, the Collector appointed the land acquisition officer. Notification u/s 4(1) was published in Kerala Gazette and in the local dailies.

4. The third respondent, Administrator Guruvayour Devaswom has also filed detailed counter affidavit. It is contended therein that Guruvayur Sree Krishna Higher Secondary school is a pioneer High School of the locality which was started by the 3rd respondent for accomplishing its social obligations. The school was started with a view to help economically weak and down trodden people of Guruvayur and near by areas. The school maintains high standards in academic area. The student strength of the school is more than 3000. The school is situated on the eastern side of the public road. There is a private road that leads from public road to the school. This property is very much necessary for future development of the school. It is submitted that the 5th respondent noticed that

the petitioner proposes to put up a high rise building complex in his property and that any such building shall be a cause of perennial cause of hazard, nuisance and pollution to the school. It was also noticed that the proposed construction is likely to affect even free flow of fresh air to the school thereby adversely affecting the atmosphere of the school premises. The Guruvayoor Devaswom was convinced about the apprehensions of the 5th respondent. Hence the matter was placed before the Managing Committee of the Devaswom. The Managing Committee after due deliberations resolved to acquire the property of the petitioner having an extent of 64 cents with a view to avert pollution of the school premises and for future expansion of the school. It is submitted that once the subject matter is made use of for constructions, no more land will be available adjoining the school for expansion of the school in future. Decision of the Managing Committee of Guruvayur Devaswom is Ext.P7. Considering request of Devaswom the 4th respondent in his proceedings dated 28/12/2005 accorded sanction to acquire the subject land invoking urgency provision and to take advance possession. It is stated that the as the petitioner was taking urgent steps to start construction, the District Collector was requested to initiate immediate steps to invoke urgency clause and to take advance possession of the property on the basis of Ext.P8. The petitioner approached this Court and filed W.P. (C) No. 12472/2006 challenging proposal to invoke urgency provision of L.A. Act. This Court directed the Government to consider all relevant aspects and take decision after affording reasonable opportunity to all the aggrieved parties. The Government represented by Principal Secretary to the Government Revenue (Devaswom) Department considered the matter and passed Ext.P12 order. According to the counter affidavit, Ext.P12 is justified in all respects. The counter affidavit goes on to contend that Ext.P4 and Ext.P12 are not liable to be quashed as they are orders legally passed by competent Authorities on a consideration of all aspects involve in the matter. It is then submitted that decision on expansion of the school has to be taken at the appropriate time and in accordance with need. But to implement expansion projects land is necessary. The subject land to be acquired lies adjacent to the school property and in between the public road and the school property. Once the property is not acquired land will not be available for future expansion of the school. The Devaswom is bound to main in the school premises a healthy atmosphere free of all pollutions. It is lastly contended that the petitioner only started construction of the foundation. Exts.P4 and P12 orders are perfectly legal and in accordance with the spirit of Section 17 of the L.A. Act. It is the experience that once a high rise building come that is liable to cause pollution of all sorts. It is stated in the counter affidavit that even if statutory precaution and safety measures are provided, but in practice those are not complied with. The school is in possession of roughly 4 acres of land. Action of the authorities is not an violative of Article 300A of the Constitution.

5. Additional 6th and 7th respondents have also filed counter affidavit. Apart from endorsing the contention raised by the Devaswom Administrator, it is stated in this counter affidavit that the school is one of the largest and the oldest school

in the whole of State. There are 562 students in the Higher Secondary Section and 1831 students in the High School Section. There are 25 teaching and non teaching staff in the higher secondary and 64 in the High school. The school is situated on a land having an extent of 4.36 acres. The school playground occupies about 2 acres and only the remaining 2.36 Acres are available for the functioning of the school. Lack of enough space prevents construction of new buildings. Due to lack of accommodation the school authorities are not in a position to give admission to all students who are applying for it. During the educational year 2006 - 07 many students had to be denied admission for this reason. The school mainly caters to the students coming from socially and economically weaker sections of the society. Since the school is having a higher secondary section, it is essential to have a good library, reading room, computer lab, etc. These are the basic requirements to satisfy the needs of curriculum. Presently the school lacks all these facilities. The 8th, 9th and 10th classes are functioning in temporary sheds and they have to be shifted to permanent buildings. On finding that new buildings have to be constructed very urgently for the development of the school, Principal of the school submitted a representation dated 3/4/2006 to the Administrator, Guruvayoor Devaswom. The Parent Teacher Association of the school was also pressing the authorities for acquiring more lands for the construction of new buildings. It is submitted that the school is short of land and no other land is available in the neighbourhood. Ext.R6(b)- the sketch showing -the school premises and the locality is relied on. The counter affidavit goes on to reiterate the contention raised in the Administrator's affidavit regarding the evil effects of the high rise building coming up. In addition it is stated that the well of the school is very close to the boundary with the petitioner's property. This well is the only source of drinking water and water for other purposes for the students and the teachers. The petitioner has sunk a bore well, which is very close to the school well. Once this bore well is put in operation, the school well would definitely dry up. Expressing concerns regarding the construction of the petitioner's building, Principal of the school submitted a representation to the Government. Lastly it is contended that the petitioner is permanently settled in America and does not have much interest here, leave alone developing the land. A powerful builder is behind this venture and the petitioner is only a tool in his hands. The purpose behind this construction is to make as such profit as possible with scant concern for ecological and environmental factors. It is essential in the larger interest of the students and for the systematic development of the school that the land of the petitioner is acquired for constructing new building for the school, it is so stated in the counter affidavit.

6. WP(C) No. 9974 is filed by Sri. R.A.Saleem who is the owner of 10 cents of landed property which is being proposed to be acquired along with the property of the petitioner in WP(C) No. 8084/07. The respondents in this writ petition are: (1) The State of Kerala, (2) the Guruvayoor Devaswom and (3) The Sree Krishna Higher Secondary School. According to the petitioner , he owns 10 cents of land

with building thereon consisting of 15 flats and two shop rooms. Ext.P1 is copy of the title document. Ext.P2 is the location certificate and it is admitted that he went in to purchase the property relying on Ext.P2 which indicated that there was no proposal for land acquisition in respect of the property. The Municipality issued the petitioner with Ext.P3 building permit. The original proposal was for construction of a three storied flat complex. While so, the plan was altered and permission was sought for an addition of a floor. That was also sanctioned by the Municipality and Ext.P4 is copy of the building permit issued to the petitioner by the Municipality. The petitioner submits that subsequent to the grant of building permit, on extraneous reasons, the petitioner's land was proposed to be acquired at the instance of the Devaswom Administration. Ext.P5 copy of the order of the Government according administrative sanction for acquisition is produced. The petitioner came to understand that further proceedings for acquisition were not initiated on account of the pendency of a writ petition before this Court. Petitioner relies on Ext.P6 sanction issued by the Principal Secretary to the Government in this regard. The petitioner alleges that the attempt for the acquisition was wholly extraneous as the petitioner could not satisfy the illegal demands made by the members of the Devaswom Committee which administers the third respondent. Petitioner understands that the authorities are bent upon acquiring the petitioner's property for some reason or other. Dr. Sreedharan Sreedharan Kavil, a neighbour whose properties are also being acquired, moved this Court challenging the land acquisition proposal and pursuant to the judgment of this Court the petitioner was also surprisingly called for a hearing. Now the Government has passed Ext.P7 order proposing to acquire the land of Dr. Sreedharan Kavil as well as that of the petitioner stating the reason that the land is necessary for further development of the school. Immediately on receiving Ext.P7 petitioner submitted Ext.P8 review petition But nothing was heard in the matter. But when the building was completed in the meanwhile, the Municipality refused to number the building. Under these circumstances the petitioner moved this Court by way of WP(C). No. 32055/07 wherein this Court was pleased to direct numbering of the building by an interim order. It is said that the said writ petition is pending. In the meanwhile, the petitioner was issued with a communication from the Government informing that acquisition of the petitioner's land is necessary for the purpose of Sree Krishna Higher Secondary School and that the District Collector is directed to initiate the steps. The petitioner alleges that the proposal culminating in Ext.P9 proceedings is solely made without application of mind and is intended only to harass the petitioner. The Devaswom has adjacent to the petitioner's land, about 11 cents of land which could have been utilized for future development of the school if at all. The said property is still not taken. Similarly, another plot of land belonging to the Thahani Hospital is also not included in the acquisition proceedings. The petitioner does not understand how the property belonging to the Thahani Hospital or the building belonging to the Devaswom which could well serve the purpose of the school, are not acquired and the petitioner's property alone is proposed to be acquired. On these facts the petitioner has raised several grounds

and has filed this writ petition seeking the following prayers:

- 1) Quash Exts.P5, P7 and P9 by issuance of a writ of certiorari.
- 2) Declare that the action of the respondents in acquiring the petitioner land under the provisions of the Land Acquisition Act is wholly illegal and discriminatory.

7. The second respondent Administrator of Guruvayoor Devaswom has filed a detailed counter affidavit in this case. It is submitted that the property of the petitioner is situated adjacent to the property of Dr. Sreedharan Kavil and is very much essential for the development of the school. Except for the landed properties belonging to the petitioner and Dr. Sreedharan Kavil, all the other lands in the surrounding of the school are owned by the Devaswom. When the petitioner started construction work, the L.A. Officer visited the place and directed him to stop the construction as the land was to be acquired. Any type of construction on this land would adversely affect the development of the school by means of pollution of the school compound and the surroundings. The counter affidavit goes on to justify Ext.P7 order. It is submitted that Dr. Sreedharan Kavil having filed WP(C). No. 8084/07 before this Court challenging Ext.P7 order and in view of the interim order in the said case directing maintenance of status quo, further proceedings could not be taken. This has been made mention of in Ext.P6 communication. The counter affidavit stoutly denies the allegation that it was on extraneous reasons due to the petitioner not meeting the illegal demands made by the members of the managing committee that the acquisition proceedings have been taken. It is submitted that the members of the committee had not put forward any illegal demands. Petitioner has raised this allegation without any bona fides. It is submitted that the petitioner proceeded with the construction of the building in his property after being made known of the fact that the said property is going to be acquired. Therefore there is no merit in the contention that the construction of the building is completed. So also, there is no merit in the reliance sought to be made on the numbering of the building which was made pursuant to the interim order passed by this Court in WP(C). No. 32055/07. Ext. R1(a) is copy of the interim order. R1(a) is self explanatory and it will be seen that the numbering of the building is provisional and does not confer any right or claim on the petitioner. It is stated that Ext.P9 communication had been issued by the 1st respondent as early as on 16-11-2006, prior to the issuance of Ext.P7 order dated 7-2-2007 and the alleged review petition filed against Ext.P7. There is no merit in the statement of the petitioner that Ext.P9 had been issued during the pendency of the alleged review petition. It is also stated that the number of students increase day by day and there is enough scope for the development of the school. It is submitted that there is no limit for the development of a school like the Sree Krishna Higher Secondary School by opening new divisions, new batches, new course, play grounds, laboratory, library etc. For all these developments of the school, landed property is very much essential. The counter affidavit goes on to justify the orders of the

Government and submits that at any rate there is no justification for invoking the writ jurisdiction under Article 226 of the Constitution. A detailed reply affidavit has been filed by the petitioner reiterating his contentions.

8. I have heard the submissions of Sri.Kurian George Kannanthanam, learned senior counsel for the petitioner in WP(C) No. 8084 of 2007 and those of Sri.K.Ramakumar, learned senior counsel for the petitioner in WP(C). 9974 of 2008 who was assisted by Sri.T.Ramaprasad Unni, Advocate. I have also heard the submissions of Sri. E.R. Venkiteswaran, Guruvayoor Devaswom Standing Counsel who appeared in WP(C) No. 8084 of 2007 and also those of Advocate Sri. V. Krishna Menon, standing counsel for Guruvayoor Devaswom who appeared in WP(C) No. 9974 of 2008. I have incorporated the judge's papers in WP(C) No. 12472 of 2006 and as directed by me the standing counsel for Guruvayoor Devaswom made available for my perusal the entire file pertaining to the proceedings for acquisition of the properties involved in these cases.

9. Mr. Kurian George Kannanthanam referred to Ext.P1 in WP(C) No. 8084/07 and also to Exts. P7, P8, P9, P11 and P12. Mr. Kurian would assail the orders impugned in the writ petition on the garius grounds raised in the writ petition. Mr. Ramaprasad Unni referred to Ext.P2 in WP(C). No. 9974 of 2008 and to the averments in paragraph 15 of the writ petition and those in paragraph 11 of the counter affidavit submitted by the second respondent. According to him Ext.P2 in his case will show that there was no proposal to acquire the land. He argued that avoidance of pollution cannot be a public purpose warranting exercise of powers of eminent domain to acquire private persons" property. He referred to paragraph 6 of the reply affidavit which answers the averments in paragraph 11 of the counter affidavit. Sri. E.R. Venkiteswaran, standing counsel for Guruvayoor Devaswom referred to Ext.P4 and P7 in WP(C) No. 8084 of 2007. He referred to the letter sent to the Chief Secretary by the local MLA available in the files. Mr. Venkiteswaran relied on the judgment of the Division Bench of this Court in O.P. 34264 of 2000 wherein the Division Bench has declined to interdict the land acquisition proceedings initiated at the behest of the Guruvayoor Devaswom for the purpose of an English Medium School run by the Guruvayoor Devaswom Board through a society formed by it by name Guruvayoor Devaswom Educational Society. He highlighted that it has been found by the Division Bench that establishment and development of that school is a public purpose and this Court does not have any justification to interfere with the acquisition proceedings, particularly, when the Devaswom Commissioner, the statutory authority under the Guruvayoor Devaswom Act has found that the school does not have facilities. He drew my attention to the Gazette notification dated 11-2-2008 No. LR C3-36 485/2007 cancelling the notification published in the Gazette dated 3rd October 2007 in Mathrubhumi and Deepika dailies dated 19-12-2007. According to Mr. Venkiteswaran, in view of the above notification it is not necessary to quash the order dispensing with the enquiry u/s 5A since the enquiry u/s 5A is already dispensed with and it will suffice if this Court directs the enquiry u/s 5A to be expedited. Sri. Krishna Menon, learned standing counsel for

Guruvayoor Devaswom appearing in WP(C) No. 9974 of 2008 submitted that the said writ petition has to be rejected on the ground of laches. He took strong exception to the allegations of corruption alleged against the managing committee members of the Guruvayoor Devaswom. According to him, without producing any materials, wanton allegations have been raised by the petitioners. He submitted that it is very clear from the records available in this case that the petitioner in WP(C) No. 9974 of 2008 was having notice regarding the promulgation of the combined notification u/s 4(1) and Section 17(4) as well as the declaration u/s 6 and the order of the Land Revenue Commissioner dispensing with enquiry u/s 5A. He never chose to challenge any of them at the appropriate time.

11. I have anxiously considered the rival submissions addressed at the Bar. I have carefully gone through the file placed before me by the standing counsel for Guruvayoor Devaswom. The notification which is cancelled by notification dated 11-2-2008 is the notification which is published in Mathrubhumi and Deepika dailies dated 19-12- 2007. The above notification is the notification by which the declaration u/s 6 is made and after referring to the Land Revenue Commissioner's order dispensing with the enquiry u/s 5A, permission is granted to the District Collector for taking advance possession of the land u/s 17(4), i.e., permission to take possession within 15 days from the date of publication of the notice u/s 9 even prior to the passage of the award. The notification dated 22-9-2007 refers to the relevant Section 4(1) notification as the notification dated 1-11-2006 published in the Gazette dated 9-11-2006 and the notification published in Deepika and Mathrubhumi dailies on 8-11-2006. Copies of the above notifications are also available in the file and it is seen that the above notifications are combined notifications u/s 4(1) and Section 17(4). These combined notifications are not expressly cancelled by the notification dated 11-2-2008. However, these notifications cannot have legs to stand in view of the quashment of notification dated 29-9-07. This means, in my opinion, that a fresh notification u/s 4(1) will have to be promulgated, so that the acquisition proceedings are initiated de novo. It is difficult to accept the argument of Mr. Venkiteswaran that the L.A. proceedings can be permitted under the ordinary provisions in continuation of the notification dated 9-11-2006 treating the same as a notification regarding proposal to acquire under the ordinary provisions. Since the competent authority itself has been convinced that this is not a fit case where Section 5A enquiry can be dispensed with, I am of the view that appropriate orders are to be issued directing de novo proceedings regarding the property which is subject matter of WP(C) No. 8084 of 2007.

12. The question which now arises is whether the petitioner in WP(C) No. 9974 of 2008 is eligible for the reliefs which are being granted to the petitioner in WP(C) No. 8084 of 2007. I am fully convinced that the petitioner in Wp(C) No. 9974 of 2008 who is none other than the petitioner in WP(C) No. 32055 of 2007 is guilty of laches which should ordinarily disentitle him to any relief under the discretionary jurisdiction under Article 226. His laches in challenging L.A.

proceedings becomes evident when it is noticed that even when he filed WP(C) No. 32055 of 2007 he did not feel like challenging the L.A. proceedings and limited his prayers in that writ petition to the relief of getting the constructions put up by him on that property assigned door numbers by the Municipality. In fact on the strength of interim orders passed in WP(C) No. 32055 of 2007 he was able to get the constructions put up by him provisionally numbered subject to the clarification that the provisional numbering pursuant to that interim order will not confer any claim or right on the petitioner. At the same time it has been noticed in the interim order that if the constructions are otherwise legal, provisional numbering will not stamp any illegality on the constructions. I am of the view that the petitioner in WP(C) No. 9974 of 2008 has to pay a price for the inordinate delay which was occasioned by him in challenging the land acquisition proceedings. At the same time, I feel that since the grounds of challenge in WP(C) No. 8084 of 2007 and WP(C). No. 9974 of 2008 are same and the purpose of the acquisition is the same and the proportion proposed to be acquired in W.P. (C) 9974/2008 is only a relatively small portion of the total extent proposed to be acquired, considerations of propriety and fairness demand that the petitioner in WP(C) No. 9974 of 2008 also gets the benefit of enquiry u/s 5A. At the same time, considering his laches it is ordered that the date of of the do novo Section 4(1) notification to be issued notwithstanding, in the event of acquisition continuing after the enquiry u/s 5A, the market value of the property of the petitioner in WP(C) No. 9974 of 2008 will have to be determined as on 24-3-2008, the day of which WP(C) No. 9974 of 2008 was instituted and not on the date of the Section 4(1) notification.

13. The result of the above discussion is that WP(C) Nos. 9974 of 2008 and 8084 of 2007 are disposed of issuing the following directions:

All proceedings if any pending now for acquisition of the properties of the petitioners in these two cases are quashed and the respondents are permitted to initiate proceedings afresh under the ordinary provisions of the Land Acquisition Act by promulgating a notification u/s 4(1). It will be open to both the petitioners to raise all available objections for the purpose of dissuading the land acquisition officer from acquiring their properties by convincing him that acquisition of their properties is not necessary for accomplishing the avowed public purpose. The enquiry to be conducted by the land acquisition officer u/s 5A shall be effective and meaningful and all opportunity should be afforded to the petitioners for adducing evidence for substantiating their objections. Once the enquiry u/s 5A is completed the land acquisition officer should permit both the petitioners to address their arguments, and if they so desire they should be permitted to submit arguments in writing. Upon conclusion of enquiry and hearing as directed above, the land acquisition officer shall prepare his report incorporating his recommendations regarding the objections submitted by the petitioners for forwarding the same to the Land Revenue Commissioner. Copies of those reports should be given to both the petitioners.

Petitioners are permitted to apply to the Land Revenue Commissioner for hearing opportunity before the Land Revenue Commissioner takes a decision on the question whether the recommendations of the L.A. Officer should be accepted or not. It is however, clarified that in the case of the petitioner in WP(C). 9974 of 2008 in the event of the acquisition being continued, for the purpose of determining the market value of the property, the crucial date will be not the date of the Section 4(1) notification but will be 24-03- 2008.

Parties will suffer their costs.