

**(1990) 12 KL CK 0009**  
**In the High Court Of Kerala**  
**Case No : W.A. No. 498 of 1989**

G.C.D.A.

APPELLANT

Vs

Dr. M. Chandrasekhar

RESPONDENT

**Date of Decision :** 12-12-1990

**Acts Referred:**

Land Acquisition Act, 1894 — Section 12, 16, 33, 4(1), 6

**Citation :** (1994) 1 KLJ 512

**Hon'ble Judges :** V.S. Malimath, C.J;T.L. Viswanatha Iyer, J

**Bench :** Division Bench

**Advocate :** M.V. Joseph, for the Appellant; Jose K. Kochupappn, Govt. Pleader, for the Respondent

**Final Decision :** Dismissed

## **Judgement**

Mallmath, C.J.—This appeal is directed against the judgment of the learned single lodge rendered in OP.No.4417 of 1988, in which the appellant has been treated very generously by being granted time till 30th of June, 1989 to take definite steps for acquisition of the land belonging to respondents 1 and 2. Nearly an year and a half has elapsed after the expiry of the time granted by the learned single Judge and till this date no effective steps have been taken. When this matter was heard on the last occasion and we were about to proceed with the judgment, the learned Government Pleader thought that she could retrieve the situation by taking appropriate and concrete steps to persuade us to deal with the situation with some more leniency. The learned Government Pleader, on instructions, now submits that she is not in a position to make any statement about the State Government using in a position to provide necessary funds to enable the Greater Cochin Development Authority to proceed with the acquisition of the land in question within a reasonable period. Though the counsel for the appellant, Greater Cochin Development Authority, submits that it cannot do anything to give effect to the Schema which they have put forward without funds being made available by the State Government and necessary steps taken by

them in the required manner, it now being made known to us that the hopes of the appellant are not going to be fulfilled by the State Government the question of showing any further indulgence in this case does not arise. However, it is necessary to clarify the legal position, so that the parties to the proceedings are not left with any doubt or confusion in regard to their rights, it is therefore necessary to refer to the relevant facts and the legal "consequences flowing from the relevant statutory provisions.

2. The draft scheme prepared was sanctioned u/s 12 (3) of the Town Planning Act on the 13th of March, 1984. For giving effect to the said Scheme, the land of the respondents had to be acquired under the relevant statutory provisions. The Scheme was published in the Gazette on the 10th of July, 1985. Certain restrictions have been imposed on the rights of the owners of the land and buildings in the area affected by the Scheme, which came into force from the date of publication of the Scheme u/s 12. The statutory obligations imposed are contained in section, 16, which reads:

"From the date of the notification of Our Government sanctioning a scheme u/s 12, all owners of lands and buildings in the area affected by the scheme who propose to construct or reconstruct or in any way alter or add to buildings shall conform in every particular with the requirements of such scheme : and no building shall be constructed or reconstructed in any area In which building is expressly forbidden in the scheme, or which is reserved in the scheme for any purpose incompatible with building.

As from the date of publication of the scheme u/s 12, the owners of the lands and buildings located in the area affected by scheme held their rights restricted to the extent specified in section 16. But section 33 of the Act provides, that if the land required for the scheme is not acquired within three years from the date of notification u/s 6 it shall cease to have effect as a declaration under section 6 of the Land Acquisition Act. The first part of section 33 provides, that-

Notwithstanding anything in the Land Acquisition Act, XI of 1989, a notification u/s 12 shall operate in respect of any land required for the purpose of the scheme as a declaration u/s 6 of the said Act and no further declaration be necessary.

Thus, if the land is not acquired within three years from the date of notification u/s 12, the notification u/s 6 lapses, with the result that no step for acquiring the land can be taken. If no step can be taken as required by section 33 for acquiring the land within the period of three years from the date of notification u/s 12, the restrictions imposed on the owners by section 16 of the said Act would cease to have effect. As it is not disputed that the land of respondents 1 and 2 has not been acquired within the period of three years from the date of publication of the notification u/s 12, no step can be taken to acquire the land on the basis that the notification u/s 12 is deemed to be a notification u/s 6 of the Land Acquisition Act. As already stated, the respondents would not be bound by the restrictions imposed by section 16 of the Act on the expiry of publication of the notification u/

s 12.

3. It was initiated by Shri Joseph, Learned Counsel for the appellant, that though under the Town Planning Act, a notification u/s 12 can be treated as a notification u/s 6 of the Land Acquisition Act, acquisition proceedings can be initiated independently under the Land Acquisition Act. In this case, steps were taken to invoke the provisions of the Land Acquisition Act by getting a notification issued u/s 4(1) of the Land Acquisition Act on the 13th of August, 1986. It is not necessary for us to examine in this case as to whether in the light of the specific provisions contained in the Town Planning Act, the authorities could Ignore those provisions and issue at notification u/s 4(1) of the Land Acquisition Act for the purpose of the scheme sanctioned and notified u/s 12 of the Town Planning Act. Even assuming that the authorities could Invoke the provisions of the Land Acquisition Act, under which In fact, they issued a notification u/s 4 (1) on the 13th of August, 1986, even that notification has lost efficacy for the reason that it was not followed up by a notification u/s 6 within the statutory period of one year fixed by clause (ii) of the proviso to Sec. 6 of the Land Acquisition Act. As no notification was issued within the period of one year from the date of publication, the statutory provisions preclude the authorities from issuing a notification u/s 6. In Other Words, acquisition proceedings Initiated under the provisions of the Land Acquisition Act also stood lapsed no declaration having been made within a period of one year from the date of the notification u/s 4(1). Hence the respondents ceased to be bound by the restrictions imposed in the matter of enjoying their property by section 4(1) of the Land Acquisition Act as well. It is, therefore, obvious that the respondents can proceed to exercise their rights in respect of the lands in question, there being no subsisting restrictions on the rights of the respondents either under the provisions of the Town, Planning Act or under the provisions of the Land Acquisition Act, on the basis of the action taken so far, as noticed above. So far as the appellant is concerned, in view of the fact all the notifications have lapsed, it has lost the right to proceed against the respondents" land in pursuance of the scheme published u/s 4(1) of the Land Acquisition Act. The question of showing any further indulgence does not arise, as, in the light of the statutory provisions examined above, it is not possible for this Court to make any direction in favour of the appellant.

For the reasons stated above, this appeal falls and is dismissed No costs.