
(2013) 03 KL CK 0017
In the High Court Of Kerala
Case No : W.A. No. 334 of 2013

Giri

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 15-03-2013

Acts Referred:

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

Citation : (2013) 2 KLT 443

Hon'ble Judges : Manjula Chellur, C.J;K. Vinod Chandran, J

Bench : Division Bench

Advocate : K. Jaju Babu, M.U. Vijayalakshmi and Brijesh Mohan, for the Appellant; N. Nandakumara Menon (Sr. Advocate), Spl. Government Pleader (Girija Gopal), P.K. Manoj Kumar and K.A. Jaleel, for the Respondent

Final Decision : Allowed

Judgement

K. Vinod Chandran, J.—The appellant, who applied for a building permit, was aggrieved by the rejection of the same on the ground of proposal to acquire properties for a Trade Centre-cum-Mini Bus Stand; in which the appellant's property, having an extent of 6 Ares and 10 square meters, is also included. The learned Single Judge found that since there was a proposal to acquire the said property, evidenced by Exhibits P3 and P4, there would be no purpose served in directing the Corporation to consider the application for building permit. The appellant impugn the above judgment and the learned counsel before us contended that S. 393 of the Kerala Municipality Act, 1994 inter alia permits refusal of approval of site for construction or reconstruction of a building only when the land is under acquisition proceedings. Exhibits P3 and P4, according to the learned counsel, are not acquisition proceedings and the respondent-Corporation ought not to have declined the appellant's application for building permit. The learned counsel also places reliance on the decision in The Kalpetta Municipality Vs. M. Mohandas, State of Kerala, The Chief Town Planner and District Town Planner, .

2. In Kalpetta Municipality case (supra), there was a proposal for acquisition of the property for construction of a bus station, under the Madras Town Planning Act, and the contention of the Municipality was that in the minutes it is indicated that a particular piece of property within the limits of the Municipality is required for a public purpose, no construction on the said property can be allowed or a building permit for such construction can be granted under S. 393(1)(vii) of the Municipality Act. A Division Bench of this Court, however, found that even if there is a notification under the Madras Town Planning Act, there is no deeming provision to consider such notification to take effect from the date of the acquisition proceedings under Sections 33 and 34 of the Madras Act. The rejection of building permit was, hence, found to be untenable.

3. On going through the records of the present case, it is seen that rejection was prompted by Exhibits P3 and P4. Exhibit P3 is not a notification under S. 4(1) of the Land Acquisition Act, 1894; nor is it professed to be a notification under any statute deeming the same as akin to S. 4(1) of the Land Acquisition Act. On a reading of Exhibit P3, it comes to fore that by G.O.(MS). No. 124/2011/LSGD dated 1.7.2011, 90.6 cents of land in Kazhakuttam Village was ordered to be acquired for the purpose of the project Kazhakuttam Trade Centre-cum-Mini Bus Stand invoking the urgency clause. However, no Section 4(1) notification has been published, since Exhibit P3 notification has been issued only on the condition that the Government will not be cast with any financial/litigation liabilities. It is also a specific condition in Exhibit P3 that 80% of the amount required for the acquisition shall be deposited before the District Collector in advance by the Thiruvananthapuram Development Authority (TRIDA).

4. The learned Government Pleader, on instructions, submits that though there was a notification under S. 4(1) of the Land Acquisition Act published on 29.06:2005, no declaration within the stipulated time under S. 6 of the Land Acquisition Act was published and the notification under S. 4(1) has lapsed. Admitting Exhibit P3, the learned Government Pleader, on instructions of the District Collector, Thiruvananthapuram, would submit that a fresh requisition was submitted by the TRIDA on 13.1.2012 and though a proposal for invoking urgency clause under S. 17(4) of the Land Acquisition Act was submitted before the Commissioner for Land Revenue, the same was returned for want of remittance particulars of 80% of fund required for the acquisition proceedings in advance. TRIDA, according to the Government, has not responded to this and no deposit of amount has been made. Hence, there is no notification under S. 4(1) or S. 17(4) of the Land Acquisition Act as of now.

5. We cannot countenance the contention of the appellant that some modifications were made with respect to the properties sought to be acquired earlier and certain properties wherein constructions were allowed have been exempted and the appellant's property is also eligible for such exemption. Such a contention on the grounds of discrimination cannot be made, primarily for the reason that no construction is made in the appellant's property and this Court

cannot sit in appeal over the proceedings made under the Land Acquisition Act or modifications carried on thereunder. No claim of mala fides on the part of the authority is substantially urged or substantiated.

6. However, it is to be noticed that the project envisaged in 2005 has not come to even the preliminary stage of acquisition after passage of almost 8 years. Since there is no valid notification under the Land Acquisition Act, S. 393 of the Kerala Municipality Act cannot be invoked to reject the application for construction. Exhibit P4 order of TRIDA, without depositing 80% of the amount sought for by the Government to set in motion the acquisition proceedings, need not at all be taken into account by the respondent-Corporation. In the circumstances there being no acquisition proceedings to enable the respondent-Corporation to invoke S. 393 of the Kerala Municipality Act, we are of the definite opinion that de hors Exhibits P3 and P4, the local authority has to consider the application for building permit, however, in accordance with law. We, on the strength of the above findings, set aside Exhibit P2 and direct the respondent-Corporation to consider the application made by the appellant in tune with the observations contained herein and, of course, in accordance with law. The respondent-Corporation shall complete the exercise within a period of two months from the date of receipt of a copy of this judgment.

The Writ Appeal is allowed, however, without any order as to costs.