

(1988) 11 KL CK 0004
In the High Court Of Kerala
Case No : O. P. No. 198 of 1987

Kayamkulam Municipality

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 11-11-1988

Acts Referred:

General Clauses Act, 1897 — Section 21
Kerala Land Acquisition Act, 1961 — Section 3(1)
Land Acquisition Act, 1894 — Section 4, 48(1), 52, 6

Citation : (1988) 2 KLJ 811

Hon'ble Judges : K. Sreedharan, J

Bench : Single Bench

Advocate : V. Rama Shenoi and R. Raya Shenoi, for the Appellant; T.P.K. Nambiar, P.G. Rajagopalan, N.Govindan Nair and P. Kesavan Nair, for the Respondent

Judgement

1. Kayamkulam Municipality represented by its Chairman is the petitioner. Requisition was made by the Municipality to the District Collector, Alleppey, for acquiring parts of properties comprised in Survey Nos. 612, 613, 614, 615, 616, 622 and 627 of Kayamkulam village for expansion and development of its public bus stand. Pursuant to that, 2nd respondent published notification u/s 3(1) of the Kerala Land Acquisition Act, 1961, hereinafter referred to as "the Act", on 20-2-1982 in the Gazette dated 7-9-1982. There was an erratum notification to it published on 2-11-1982. The total land sought to be acquired is approximately 0.6727 hectares (about 1.7 acres). Out of that area, 80.5 cents belong to respondents 4 and 5. Even before the publication of the notification u/s. 3 (1) of the Act, they moved this court by filing OP. 3503/1982 for quashing the proceedings taken in pursuance of the requisition made by the petitioner. That petition was dismissed by this court on 28-7-1982. Respondents 4 and 5 took up the matter in Writ Appeal No 586/1982 which was also dismissed by the decision in Chacko v. Kayamkulam" Municipality (1982 KLT 968) dated 11-11-1982. Respondents 4 and 5 presented a petition before the Revenue Minister on

19-11-1982 complaining against the acquisition of 805 cents out of the properties notified in Ext. P1 notification. They suggested an alternate site of low lying paddy field belonging to them comprised in Survey Nos. 651, 652 and 653 of Kayamkulam village having an extent of 4.68 acres. The Revenue Minister ordered to drop the proceedings taken in pursuance of Ext. P1 and directed to acquire the alternate site suggested by respondents 4 and 5. This, according to the petitioner was on account of the pressure exerted by respondents 4 and 5 on the Minister. The petitioner was not served with any order of the Government. When asked for a copy of the order they were served with Ext. P3 letter. The petitioner contends that the order dropping the land acquisition proceedings taken in pursuance of Ext. P1 was passed without due care and attention and lacks in good faith. The petitioner, therefore, prays for quashing Ext. P3 communication and also the order passed by the Government dropping the acquisition proceedings initiated by Ext. P1 notification. A detailed counter affidavit has been filed on behalf of the State. An Under Secretary to Government, Revenue Department, has sworn to it. From the counter affidavit it is seen that respondents 4 and 5 submitted a petition before the Minister for Revenue on 19-11-1982 requesting to stay the acquisition proceedings, that on 26-11-1982 the proceedings were stayed, that a detailed report from the District Collector was called for, that the Revenue Divisional Officer had reported that the land owners' buildings, workshop of Nelson Motors etc. are situated on the land under acquisition, that acquisition proceedings will affect the business of the land owners and the workers in Nelson Motor workshop, that alternate land suggested by the land owners is low lying area, that it has to be reclaimed, that the suitability of that land had to be ascertained by the requisitioning authority, that the Government found the grievances of the land owners are real and that by Letter No. 70504/B3/82/RD dated 11-5-1983 the Government dropped the acquisition proceedings in respect of the land owned by respondents 4 and 5. It is further averred that the Government have power to drop or withdraw from land acquisition proceedings in respect of any land it has not been taken possession of. The counter affidavit proceeds on to state that:

Government did not feel it necessary to issue any notice to the petitioner in this O.P. in taking decision in respect of the petition submitted by the land owner as there is no such statutory requirement. The allegations regarding influence and political pressure etc. are not correct and are hereby denied.

2. Fifth respondent has filed a separate counter affidavit. It is averred therein that O.P. 3503/1982 was filed on the ground that there cannot be an attempt to acquire the property of the petitioner therein under the Land Acquisition Act when it is included in the Town Planning Scheme under the Town Planning Act. The Division Bench while disposing of Writ Appeal No. 586/82 took the view that mere inclusion of the land in a Town Planning Scheme in its initial stage will not confer any right under the Act in the owner of the land included under the scheme and that such land can be acquired under the provisions of the Act." Notification u/s. 3 (1) of the Act was published there-after. Then respondents 4

and 5 petitioned before the Government for dropping the acquisition proceedings. After conducting proper enquiry they directed the District Collector, Alleppey, to drop the land acquisition proceedings. This fact was communicated to them by Ext. R5(a) Letter No. 70594/B3/82/RD dated 11-5-1983. The power of the Government to drop the land acquisition proceedings is recognised by this court in the Full Bench decision in Thaliparamba Panchayat v. State of Kerala (1973 KLT 940). The allegation made by the petitioner that respondents 4 and 5 in the O.P. have exerted pressure on the Minister for Revenue to drop the proceedings has been stoutly denied. They accordingly prayed for dismissal of the Original Petition.

3. Respondents 7 and 8 also filed a separate counter affidavit supporting the order of the Government dropping the acquisition proceedings. A person claiming himself to be a passenger using private vehicle in Kayamkulam, got himself impleaded in this proceeding as Additional 10th respondent. He has filed an affidavit supporting the contentions raised by the petitioner. According to him by Ext. P3 order the Development Scheme has been distorted and mutilated.

4. In pursuance of the requisition made by the petitioner the 2nd respondent, Land Acquisition Officer, issued Exts. P1 and P1 (a) notification u/s. 3(1) of the Act. The proposal for the acquisition was as per the detailed Town Planning Scheme for Central area of Kayamkulam Town. The acquisition and development of the site and construction of the bus stand buildings form part of the centrally sponsored scheme for Kayamkulam town approved by the Ministry of Works and Housing, Government of India. On 19-11-1982 respondents 4 and 5 filed petition before the Minister for Revenue praying for dropping the proceedings for acquisition of 80.5 cents of land belonging to them as per Ext. P1 notification. On the same day they filed another memoranda before the Minister for Revenue suggesting an alternate site for acquisition to construct the bus stand. The Minister for Revenue ordered stay of acquisition proceedings on 22-11-1982. On the same day he directed to examine "whether an alternate site can be located."

5. The second respondent is seen to have sent up a report to the District Collector, Alleppey, on 3-2-1983. In that report it was stated that the residential building of 5th respondent is situated adjacent to the land under acquisition that the land under acquisition is in an important locality, that the petitioners (respondents 4 and 5 herein) buildings workshop of Nelson motors etc. are situated on the land under acquisition, that if the acquisition is proceeded with it will tell upon the business of respondents 4 and 5 and the workers of Nelson Motors, that the alternate site belonging to respondents 4 and 5 is a low lying area, that it is to be reclaimed for the purpose and that the suitability or otherwise of that land will have to be ascertained by the requisitioning authority. On the basis of 2nd respondent's report the District Collector by communication dated 2-3-1983 suggested to Government the following:

The Municipal authorities are pressing to proceed with L.A. Steps immediately so as to enable them to utilise the amount allotted under "Town Planning Scheme".

In the circumstances the Government may consider the question of vacating the stay- granted in this case in consultation with the Director of Municipalities and the Town Planning Department.

When the file was placed before the Minister for Revenue on 5-5-1983 be ordered:

As the grievances of the petitioner are real as evidenced by the report of the R.D.O. (page 17 C.F.) the acquisition proposals will be dropped. The requisitioning authority will take steps to acquire the alternate site pointed out.

6. Lands sought to be acquired as per the Notification, Ext. P1, are lying adjacent to the existing bus stand. The existing bus stand was found insufficient to cater the needs of vehicles passing through it and of the travelling public. Requisition for acquiring the land was made by the petitioner in accordance with the provisions of the Kerala Municipalities Act. Lands sought to be acquired were found to be suitable by the. District Medical Officer, Alleppey, who was functioning as the Health Officer in respect of the local limits of the petitioner. Municipality, the Municipal Engineer and the Chief Town Planner. Acquisition of land for construction of modern bus stand for providing facilities to stage carriage operators and the members of travelling public is necessarily a public purpose for which the land belonging to private owners can be acquired under the provisions of the Act. Respondents 4 and 5 objected to the acquisition of a portion of their registered holding having an extent of 805 cents of land. They also suggested alternate site belonging to them for construction of the bus stand. The Land Acquisition Officer, 2nd respondent, has reported that the alternate site suggested is a low lying area and it has to be reclaimed for using it as a bus stand. The District Collector agreed" with the report of the 2nd respondent. The feasibility of putting that alternate site to use as a bus stand was not verified through The Health Officer, the Municipal Engineer or the Chief Town Planner. The District Collector, Alleppey, has suggested to Government to vacate the order of stay granted against the Land Acquisition proceedings in consultation with the Director of Municipalities and the Town Planning Department. From the files made available to me by the learned Government Pleader; it is not seen that Government did consult any of those authorities before passing the order on 5-5-1983, quoted earlier. By the said order the Government not only dropped the acquisition proceedings initiated by Ext. P1, notification but also directed to take steps to acquire the alternate site pointed out by respondents 4 and 5.

7. Contesting respondents try to support the order of the Government on the ground that the Government have absolute power to withdraw from, acquisition at any stage of the proceedings. In support, of this argument they relied on the decisions in State of Madhya Pradesh and Others Vs. Vishnu Prasad Sharma and Others, , Special Land Acquisition Officer, Bombay and Others Vs. Godrej and Boyce, and Thaliparamba Panchayat v. State of Kerala (1977 K.E.T. 940 (F.B.)). In the first decision the Supreme Court held that it is always open to the Government to rescind a notification u/s.4 or u/s. 6 of the Central Land

Acquisition Act and withdrawal u/s. 48 (1) of the Act is not the only way in which a notification can be brought to an end. According to Their Lordships, Section 21 of the General Clauses Act also enables the Government to rescind a notification. In the second decision referred to above the Government's power to withdraw from the acquisition at any stage before (the possession of the land is taken is recognised. The Full Bench of this court in the decision referred to earlier, by majority recognised the power of a citizen to make a representation to the Government to induce the Government to exercise its right of withdrawal of the notification. Such a representation, according to this court, is to be taken as a reminder to the Government to exercise its power of withdrawal u/s 52 of the Act. Accordingly, the majority took the view that it is impossible to say that the Government's action in withdrawing from the land acquisition was improper. In the instant case it appears that the Government have not exercised the power u/s. 52 of the Act. The Government, as stated earlier, ordered to drop the proceedings initiated in pursuance to Ext. P1 notification and directed to take steps to acquire the alternate site pointed out by respondents 4 and 5. The alternate site pointed out by respondents 4 and 5 is a low lying area away from the existing bus stand. The owners wanted to part with it and to impose it on the local authority. Without ascertaining the utility of that land and willingness of the local authority to acquire the same, the Government have ordered its acquisition. Has the Government such a power ?

8. Unlike a private individual the State cannot act as it pleases in the matter of conferring benefits on private individuals. The discretion of the Government has been held to be not unlimited. It cannot exercise its discretion in an arbitrary manner according to its sweet will and pleasure. Though, ordinarily a private individual would be guided by economic considerations and self gain in any action taken by him, it is always open to him under the law to act contrary to his self interest. He can oblige another in entering into a contract or dealing with his property. But the Government is not free to act as it likes. The power conferred of the Government cannot be exercised by it arbitrarily or capriciously or in an un-principled manner. It has to be exercised for the public good. In *Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another*, The Lordships observed:

Every activity of the Government has a public element in it and it must, therefore, be informed with reason and guided by public interest. Every action taken by the Government must be in public interest; the Government cannot act arbitrarily and, without reason and if it does, its action would be liable to be invalidated. If the Government awards a contract or leases out or otherwise deals with its property or grants any other largess it would be liable to be tested for its validity on the touch-stone of reasonableness and public interest and if it fails to satisfy either test, it would be unconstitutional and invalid.

Where any Governmental action fails to satisfy the test of reasonableness or lacks in the element of public interest, it would be liable to be struck down as

invalid. Reasonableness is to be tested in the touch-stone of public interest. In other words the Government cannot act in a manner which would benefit a private party at the cost of the State. Such an action would be both unreasonable and contrary to public interest. The low lying area owned by respondents 4 and 5 which they wanted to part with has now been directed to be acquired by the State. The benefit that is now conferred on respondents 4 and 5, at the cost of public money is unreasonable and it lacks public interest. On that ground the order is to be invalidated. This ground of invalidity, viz., that the governmental action is un-reasonable or lacking in the quality of public interest is different from the ground of mala fides, though, it may furnish the evidence of mala fides.

9. It is true that the Government have power to withdraw from acquisition u/s. 52 of the Act. That power is to be exercised not to defeat the efforts of the local authority to expand the existing bus stand to serve public needs in a more effective manner. The fact that the land-holder has access to the seat of the Government is no ground to thwart the attempt of the local body and to thrust upon it the land which lies elsewhere which the land owner wants to part with. In a similar situation in *Secretary to Government v. Sebastian* (1988 (1) K.C.T. 691) a Division Bench of this court quashed the order of the Government exempting certain area from acquisition" proceedings commenced in pursuance to the request made by a local authority.

10. The petitioner has alleged mala fides against the then Minister for Revenue. According to him respondents 4 and 5 are highly influential people and are supporters of the Kerala Congress (J) Group of which the Revenue Minister appears to be the leader. It is further averred that, the order of the Government dropping the proceedings for the acquisition of the lands of respondents 4 and 5 is based solely on communal and political considerations. The then. Minister for Revenue has been impleaded in this proceeding and Additional 9th respondent. 9th respondent did not file any counter affidavit denying the above averments. So, according to the learned counsel appearing for the petitioner, the allegation of mala fides must be found to be true. I find it difficult to agree with this argument. The fact that respondents 4 and 5 are belonging to the same community as that of 9th respondent is no ground to jump to the conclusion that the order of the Government was passed on the said consideration. There is no averment in the O.P., much less, any evidence to show the manner in which respondents 4 and 5 are connected with the political party of which the then Minister for Revenue appears to be the leader. In such a situation, personal mala fides cannot be found. At this juncture, I consider it worthwhile to read the following observations made by the Supreme Court in *Hem Lall Bhandari Vs. State of Sikkim and Others*, :

The petitioner has made various allegations of mala fides against the Chief Minister of Sikkim. These allegations are not supported by any acceptable evidence. Therefore, we do not propose to consider them. Much was made of the

fact that the Chief Minister has not filed a Counter Affidavit himself denying the allegations. According to us it is not necessary since the allegations are wide in nature and are bereft of details. We do not think it necessary in all cases to call upon persons placed in high positions to controvert allegations made against them by filing affidavits unless the allegations are specific, pointed and necessary to be controverted.

The above observation applies on all fours to the facts of this case.

11. The petitioner, Kayamkulam Municipality, could function only within the powers given to them under the Municipalities Act. They took action for the acquisition of the land in-conformity with those powers. The contesting respondents or the Government have no case that the Municipality acted beyond its power or acted in a mala fide or arbitrary manner. Construction of bus stand for providing amenities for the good of the public is one of the duties which the local authority is obliged to provide in discharge of its duties. The said public purpose is not to be thwarted by the Government by dropping the acquisition proceedings. Nor can the Government thrust upon the local authority a waste land which the land-owners who oppose the acquisition proceedings want to part with. Recognition of the private individual's right by subordinating the public purpose is certainly not a policy or object of Section 52 of the Act. The private interest of the land-owner must be subservient to the public interest. The Government failed to take note of these matters when they ordered to drop the proceedings initiated by Ext. P1 notification, Therefore, I have no hesitation in holding that the decision taken by the Government on, 5-5-1983 is arbitrary and against public interest. Now the question that remains to be considered is whether the notification, Ext. P1, is to be revived or not? Ext. P1 notification was issued on 20-2-1982. An erratum notification Ext. P1(a) was published on 2-11-1982. The proceedings in pursuance to Ext. P1, notification were ordered to be dropped-on 5-5-1983. All these proceedings took place prior to the coming into force of the Land Acquisition Amendment Act, Act 68 of 1984, on 24-09-1984. On that date the notification was not in force. The notification if was in force should have ended in an award on or before 23-9-1986. That period has expired long back. In these circumstances, I do not consider it proper to revive Exts. P1 and P1(a) notifications. During the pendency of this Original Petition a new elected council has come into existence for Kayamkulam Municipality. In case that Council takes a decision to acquire the land covered by Exts. P1 and P1(a) notifications proceedings under the Land Acquisition Act should be initiated by the concerned authorities ignoring the decision taken by the Government to 5-5-1983.

The Original Petition is disposed of with the above observations.