

(2022) 06 KL CK 0302

In the High Court Of Kerala

Case No : Writ Petition (C) No. 11722 Of 2020

Muralichand

APPELLANT

Vs

Thiruvananthapuram Corporation Represented By Its
Secretary

RESPONDENT

Date of Decision : 24-06-2022

Acts Referred:

Constitution of India, 1950 — Article 300A
Kerala Municipality Act, 1994 — Section 509(6)
Kerala Municipality Building Rules 1999 Rule 160
Kerala Town and Country Planning Act, 2016 — Section 67, 67(1), 67(2), 67(5)

Citation : (2022) 06 KL CK 0302

Hon'ble Judges : T.R. Ravi, J

Bench : Single Bench

Advocate : P.B.Krishnan, P.B.Subramanyan, Sabu George, Manu Vyasana Peter, Meera P, N.Nandakumara Menon, P.K.Manojkumar

Final Decision : Allowed

Judgement

T.R. Ravi, J

1. The petitioner owns 20 cents of land in Sy.Nos.1221/B-1-1, B-1 and B-4 of Thycaud Village. The properties were purchased in the year 2008 as per Ext.P1. The petitioner applied for building permit before the 1st respondent on 10.4.2018. The application was rejected as per Ext.P3 dated 29.11.2018 stating that as per the Detailed Town Planning Scheme (DTP Scheme for short), for the road from Thycaud Women and Children Hospital Junction to Aryasala Junction, the land in which the petitioner intends to make the construction, is one to be acquired for commercial use. The petitioner challenged Ext.P3 before this Court by filing W.P.(C)No.2912 of 2019. By Ext.P4 judgment dated 25.3.2019, this Court directed the petitioner to avail of the statutory remedy available under Section 509(6) of the Kerala Municipality Act and Rule 160 of the Kerala Municipality Building Rules. On 22.4.2019, the petitioner issued Ext.P5 notice to respondents 1 and 2 under Section 67 of the Town and Country Planning Act,

2016 (2016 Act for short) requesting them to purchase his interest in the land and also stating that if the Corporation fails to initiate action for acquisition within 10 days from the receipt of the notice as provided under Section 67(2) of the 2016 Act, the petitioner will be entitled to the building permit as sought for. The petitioner had also filed W.A.No.1707 of 2019 against the judgment Ext.P4, which was disposed of by Ext.P6 judgment directing the 1st respondent to take appropriate decision as provided under Section 67 of the 2016 Act and communicate the decision to the petitioner within two weeks from the date of receipt of a copy of the judgment. The judgment was rendered on 14.11.2019. The petitioner forwarded the judgment to the 2nd respondent on 7.12.2019 as seen from Ext.P7. When action was not forthcoming, the petitioner filed Contempt Case No.250 of 2020 before this Court. The learned Standing Counsel on instructions submitted before this Court that on 16.12.2019, a decision has been taken under Section 67 of the 2016 Act and that the same will be communicated to the petitioner. The contempt case was closed recording the above submission, by Ext.P8 judgment dated 31.1.2020. The 1st respondent thereafter issued a notice on 31.1.2020 to the petitioner referring to the decision of the Council dated 16.12.2019 in which it is stated that the Town Planning Committee of the 1st respondent had considered the request of the petitioner for acquisition of the property and recommended acquisition for future development. It is further stated that the Council had considered the issue and taking note of the fact that hospitals, railway station and bus stand are situated near the property, it was decided that the property can be acquired for the purpose of construction of a rest home, short stay home and pay and park for the benefit of the public. It is also stated that the Superintending Engineer has been entrusted with the duty to initiate acquisition process.

2. The counsel for the 1st respondent has filed a statement stating that the Council had decided to acquire the property and a letter had been sent to the District Collector for acquisition of the land after deciding the purchase value, but that no reply has been received from the District Collector and a reminder letter has also been sent for follow up action. The said statement was filed on 30.9.3031.

3. Heard Sri P.B.Subramanyan on behalf of the petitioner and Sri N.Nandakumara Menon, Senior Advocate instructed by Sri P.K.Manoj Kumar, Standing Counsel for the Thiruvananthapuram Corporation, on behalf of the respondents.

4. The counsel for the petitioner primarily contends that a decision as required under Section 67(1) of the 2016 Act has not been taken and hence the petitioner is entitled to the building permit as applied for. Yet another contention that is taken is that even after the decision which is stated to have been taken as per Ext.P11, no acquisition proceedings have been started till date and hence the provisions of the Section 67 can no longer be applied.

5. In the decision in District Town Planner, Malappuram v. Vinod & Ors. reported in [2019 (3) KHC 672], a Division Bench of this Court held that going by Section

67, where any land is designated for compulsory acquisition in the Town Planning Scheme, but no acquisition proceedings were initiated within a period of two years from the date of coming into operation of the plan, the owner or the affected person may serve a purchase notice requiring the authority to purchase the interest in land. The authority, within 60 days of receipt of such notice, is statutorily required to decide on the acquisition of the property. If the land is designated for any Government Department or other authorities the information on the receipt of purchase notice is to be forwarded to the said authority. As per the Section, if an authority decides not to acquire the land, variation of the development plan should be made and even otherwise, if land acquisition could not be effected within two years of the resolution to acquire the land, the authorities prescribed under Section 67(5) of the Act should initiate suitable variation of the plan. The Court further held that statutory consequences for failure of the authority to acquire the land notified under the Town Planning Scheme are clearly delineated and the Act itself suggests that the property owner cannot be indefinitely deprived of his right to the enjoyment of the property under the pretext that the land is earmarked for acquisition under the DTP Scheme. The counsel for the petitioner relies on the above judgment to submit that it squarely applies to the facts of this case. It is pointed out that the DTP Scheme provided for compulsory acquisition of the land for commercial use as is evident from Ext.P3 order of rejection of building permit. Almost four years have elapsed even after Ext.P3. If the notice under Section 67 is to be the criterion, the same was issued on 22.4.2019 and 60 days had elapsed by 24.6.2019. No decision had been taken for acquisition within the said 60 days. As such, the statutory period available was over. Admittedly, the decision was taken only on 16.12.2019, almost six months thereafter. The Senior Counsel appearing for the Corporation submitted that the judgment of this Court in the writ appeal preferred by the petitioner was rendered only on 14.11.2019 and hence the time of 60 days stood extended further. However, this Court had not made any such observation in Ext.P6 judgment and had merely taken note of the fact that the 60 days period had already expired even on the date of the judgment. I do not think that the 1st respondent can take any advantage of the date of Ext.P6 judgment, and get the time statutorily fixed under Section 67 extended. So also, even if the date of Ext.P6 judgment is to be considered, the fact remains that more than two years have elapsed after the judgment and no acquisition proceedings have been initiated so far. Even though an attempt was made to rely on the decisions of the Apex Court and this Court extending the period of limitation, the same will also not come to the advantage of the 1st respondent for the purpose of extending the period of limitation prescribed under Section 67 of the 2016 Act.

6. A Division Bench of this Court in *District Town Planner v. Joby* reported in [2020 (6) KLT 600] had held that Section 67 is an indicator that clearly expresses that an owner of the property cannot be kept in limbo under the guise of public interest and town planning and it is to be viewed along with

constitutional right of the owner of a property conferred under Article 300A of the Constitution of India, whereby no person shall be deprived of property save by authority of law. In *Abul Hakkeem v. Manjeri Municipality* reported in [2018 (1) KLT 1026], this Court has held that if Section 67 is to be treated as mandatory, if the local authority fails to pass a resolution either in favour of or against acquisition within the statutory period, the applicant is entitled to the building permit if he is otherwise entitled to. The petitioner is hence entitled to succeed in this writ petition.

7. In the result, the writ petition is allowed. Exts.P3, P9, P10 and P11 are quashed. There will be a direction to the respondents to grant building permit to the petitioner for construction of a commercial building as requested for, in the extent of 20 cents in Sy.Nos.1221/B-1-1, B-1 and B-4 of Thycaud Village.