

(2024) 07 KL CK 0014
In the High Court Of Kerala
Case No : Writ Petition (C) No. 4008 Of 2024

P. Harish

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 11-07-2024

Acts Referred:

Kerala Highway Protection Act, 1999 — Section 4, 7
Kerala Town and Country Planning Act, 2016 — Section 61, 76, 77

Citation : (2024) 07 KL CK 0014

Hon'ble Judges : Mohammed Nias C.P, J

Bench : Single Bench

Advocate : Shyam Padman, C.M.Andrews, Laya Mary Joseph, Harish Abraham, Ashwathi Shyam, Swathy Sudhir, Ram Mohan, K.V.Manoj Kumar, V.Krishna Menon

Final Decision : Dismissed

Judgement

Mohammed Nias C.P., J.

1. Petitioners are stated to be the joint owners in possession of 21 Cents of land in Resurvey No.31/35, 36 of Elathur Village. A house situated on the said land was re-constructed after obtaining a building permit from the 8th respondent Corporation, in terms of the Master Plan applicable to the respondent Corporation and sanctioned under the Kerala Town and Country Planning Act, 2016. The permit dated 15.1.2021 is produced as Ext.P1 and the occupancy certificate granted on 20.5.2022 is produced as Ext.P2. The petitioners contend that the property in question lies within the Corporation limits in a residential zone in the Zoning Regulations specified in the Master Plan. As per the Master Plan, the proposed width of the access road of the aforementioned property of the petitioners is 18 metres (8 metres wider than the existing road). The relevant portion of the Master Plan is produced as Ext.P3 and the proposed Land Use Map of Kozhikode Urban Area Master Plan 2035 is produced as Ext.P4.

2. On the strength of Exts. P3 and P4 the petitioners contend that the regulation of constructions and/or land developments on the sides of the new roads/roads

proposed for widening as per the Master Plan shall be governed by the distance from the central line of the road unless otherwise specified in the Master Plan or Detailed Town Planning Schemes or any detailed road alignments approved by the Chief Town Planner concerned. Therefore, it is the case of the petitioners that even if the existing road with 10 metres width is increased to 18 metres as per the proposed plan, widening of the road should only take place equally from the central line of the road towards both sides and therefore, only 4 metres can be taken additionally from the adjoining properties on either side of the road for widening as per the Master Plan.

3. The petitioners submit that they came to know from the office of the Kerala Road Fund Board that there was a proposal for acquisition when the officials from the office of the seventh respondent came to the property of the petitioners on 27.7.2022 and placed survey stones 8.2 meters inside their property in a manner which would almost take half of the house of the petitioners. Though the petitioners pointed out the same was contrary to the measurement provided in Ext.P3 Master Plan, the officials responded by stating that the survey stones were being placed as part of the Pavangad -Ulliyery (PUKC) road widening project. Though the petitioners had submitted representation before the Public Information Officer of the seventh respondent, in the reply it was clarified that Pavangad -Ulliyery road is being widened to 14 metres, a copy of the road alignment which was designed and prepared by the third respondent was also furnished. Exts.P6 and P6(a) are the replies and the approved alignment of the PUKC road so obtained.

4. The contention of the petitioners, in short, is that the attempted acquisition is contrary to the stipulations in the Master Plan and also causes irreversible damage to the petitioner's property. The petitioners also rely on Ext.P8 circular issued by the second respondent dated 7.9.2023 to all departments to ensure that all new development brought into a place where there is a Master Plan/DTP Scheme in existence should be implemented based on the Master Plan/DTP Scheme. The petitioner further submitted that the road alignment is fixed from the central line of the road, as in the case of the Master Plan, the instant issue would never have arisen.

5. A statement has been filed by the respondents, the relevant portion of which is extracted hereunder:

"2. It is respectfully submitted that development of the Pavangad Ulliyeri-Kuttiyadi-Chovva road (PUKC road) which is a major State Highway in Kozhikode District was proposed under KIIFB funding. The project envisages widening and improvement of the road through land acquisition. Alignment for the proposed widening and improvement was prepared by the Design Wing of PWD considering various technical and design parameters as per PWD considering various technical and design parameters as per standard guidelines. The said alignment has been duly approved by the Project Director. The alignment thus prepared based on various technical and geometrical considerations need not necessarily

be in accordance with any Master Plan prepared by the Local Government bodies. Boundary marking and stone planting have been done by KRFB as per the approved alignment plan of the proposed project.

3. As already stated above, the road improvement is proposed to be implemented through Land acquisition. The parties affected by land acquisition will get the eligible compensation for the land and any structures or improvements thereon as per Rules. Petitioner's statement that the property is marked as a vacant land in the plan, does not affect the compensation, since the valuation of the land and properties will be taken in due course for arriving at the compensation. It is also submitted that the Master plan as stated in the petition exists only for Pavangad to Purakkattiri Bridge (ie. From Ch: 0/000 to ch: 4/000). Since the road is State Highway -38. alignment was prepared for the project reach as a whole based on State Highway criteria.

4. For this project land is proposed to acquire by Land Acquisition. For this same land is not taking into consideration the center line of already existing road and is taking consideration of the geometry of road and design speed criteria for State Highway. Hence deviation from the existing road alignment are required at some locations.

6. It is respectfully submitted that though land is proposed to be acquired from the petitioner's property, his house is not affected on account of the acquisition. Though the earlier alignment was affecting the Porch of the house, the revised/ corrected alignment does not affect even the porch. The petitioner's claim regarding free road land on the opposite side does not have any standing. It may also be noted that several other houses and other buildings are required to be acquired at the other reaches of the road, where the owners have not made any protests. The alignment as per any Master Plan of the Local Authority has no connection with the road up gradation now proposed."

6. Heard Sri. Shyam Padman learned Senior counsel appearing for the petitioners and Sri. K.V. Manoj Kumar, the learned Special Government Pleader for the respondents.

7. Learned Senior counsel appearing for the petitioners apart from reiterating the contentions taken in the writ petition argues that the proposed acquisition is clearly against the Master Plan prepared and also contrary to the Kerala Highway Protection Act and the Kerala Town and Country Planning Act. It is his submission, that even if a survey has to be conducted, it has to be in tune with the provisions of Section 7 of the Kerala Highway Protection Act, 1999, and there being a special enactment, the respondents could not have relied on the provisions of the Kerala Survey and Boundaries Act.

8. Opposing the prayers in the writ petition, the learned Government Pleader Sri.K.V.Manoj Kumar argues that the writ petition itself is premature as the acquisition can only be carried out in terms of the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and

Resettlement) Act, 2013 (hereinafter referred to as RFCT LAAR Act), and no acquisition can be carried out without following the procedure prescribed in the said Act. The petitioners can raise all their objections about the acquisition, the alignment, and even the compensation in terms of the said Act and therefore no prayers as sought for by the petitioners are liable to be considered at this stage. The prayers sought by the petitioners include one for quashing Ext.P7 dated 11.5.2022 issued by the Kerala Road Fund Board intimating the Executive Engineer about the approval granted to the alignment of the PUKC road by the Project Director. This per se cannot be treated as an attempt to bypass the provisions of the RFCT LAAR Act or to violate any provisions of the Master Plan. The Kerala Highway Protection Act, 1999, is intended for the protection and regulation of the highways in the State or to remove any encroachment on the highways. The said Act cannot have any role in either deciding the alignment or in the acquisition project which can only be dealt with under the RFCT LAAR Act.

9. As regards the argument that the survey has to be conducted under the provisions of the Kerala Highway Protection Act, the same has to be rejected as the survey mentioned in the Highway Protection Act can only be in furtherance of the purpose for which the said Act is enacted, viz to provide for the protection and development of highways and for the prevention of ribbon development along highways and encroachment and use of highways for purposes which will adversely affect the safety of traffic and proper condition of highways in the State of Kerala. The Kerala Survey Boundaries Act, 1961, consolidates, amends, and unifies the law relating to the survey of lands and settlement of boundary disputes in the State of Kerala. Under Section 4 of the said Act, the government has the power to direct the survey of any land or any boundary of any land forming the common limit of any Government land or any registered land.

10. The further contention based on the Master Plan that the regulation of constructions and/or land developments on the sides of new roads/ roads proposed for widening as per the Master Plan shall be governed by the distance from the central line of the road unless otherwise specified in the Master Plan of Detailed Town planning Schemes or any detailed road alignment approved by the Chief Town Planner concerned never restricts the power of the Government to go ahead with the acquisition. The same can only mean the central line of the road without any reference to its width. No inference is possible that the acquisition must be equal from both sides. The argument in that regard is only to be rejected

11. It is relevant to note that even in Ext.P3 Master Plan for Kozhikode Urban Area 2035 relied on by the petitioner if notices that almost 75% of the widening proposals are unimplemented proposals in the existing Master Plan and the table given shows the road in question and that the said widening is still underway. The further contention based on Section 61 and Section 76 of the Town and Country Planning Act, that the use and development of land has to conform with the Master Plans and Section 76 that the Government departments and other authorities are to take into account plans prepared under the Kerala Town and

Country Planning Act, 2016, while drawing up projects, cannot deprive the power of the Government to acquire. That apart, it is relevant to note that as per Section 77 of the Town and Country Planning Act, any land required, reserved or designated in a plan under this Act shall be deemed to be a land needed for a public purpose within the meaning of the Land Acquisition Act in force and may be acquired by the Government on request. This itself shows that the Town and Country Planning Act cannot stand in the way of the Government acquiring a property for infrastructure developments as the very Act itself is to provide for the promotion of planned development and regulation of growth of urban and rural areas in the State with focus on scientific spatial planning and to secure to their present and future inhabitants, sanitary conditions, amenities and convenience and for other matters connected therewith or incidental thereto.

12. It is trite that the power of eminent domain presupposes the power of the sovereign to take property for public use without the owner's consent. The citizen holds his property subject always to the right of the sovereign to take it for a public purpose. The power of eminent domain is merely a means to an end, namely, a larger public interest. The older and stricter view as regards eminent domain was that unless the property was dedicated for use by the public at large for a considerable section thereof, it would not be for public use or public purpose. The modern and more liberal view however, is that it is not an essential condition of public use that the property should be transferred to public ownership or for public use and it is sufficient that the public derives advantage from the scheme.

13. The further contention that no acquisition could be made against the stipulations in the master plan that, the argument has to be rejected, as there is no requirement of law that the land proposed to be acquired by the Government for a particular public purpose should be for the same purpose and or use mentioned in the Master Plan, or Zonal Plan for the said area. The acquisition will not be rendered invalid merely because the land proposed to be acquired is for a purpose other than the one permitted by the Master Plan or Zonal regulations applicable to that locality. The acquisition will be valid if it is for a public purpose even if it is not for the type of user permitted by the Master Plan or zonal plan in force at the time the acquisition is made. Acquisition generally precedes development. [See in this connection the decision in *Bhagat Singh v. State of U.P and others* [1999 (2) SCC 384].

14. In deciding whether the acquisition is for a public purpose or not, *prima facie*, the Government is the best judge. Although, the decision of the Government is not beyond judicial scrutiny, normally in such matters a writ Court should not interfere by substituting its judgment for the option of the Government. The meaning of the expression 'public purpose' is wider than that of 'public necessity'. It is not for the Court to decide as to which particular land and to what extent is required for acquisition, but it is left to the Government to decide.

15. None of the grounds raised in the writ petition warrant granting the reliefs sought and none of the rights of the petitioners are at present affected let alone infringed. All the contentions of the petitioners as regards the alignment or the acquisition itself can be raised by them in terms of the RFCT LAAR Act.

16. The writ petition is held to be premature and the same is dismissed without prejudice to any of the contentions of the petitioners which can be raised at the appropriate time when action is taken under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement) Act, 2013.

Subject to the above, the writ petition is dismissed.