
(1999) 08 KL CK 0017
In the High Court Of Kerala
Case No : W.A. No. 329/99

Padmini and Others

APPELLANT

Vs

State of Kerala and Another

RESPONDENT

Date of Decision : 05-08-1999

Acts Referred:

Constitution of India, 1950 — Article 300A
Kerala Land Acquisition Act, 1961 — Section 214, 215, 4(1), 52(1), 5A
Kerala Municipalities Act, 1994 — Section 214, 215, 393, 393(1)

Citation : (2000) 1 RCR(Civil) 656

Hon'ble Judges : A.R. Lakshmanan, Acting C.J.; S. Sankarasubban, J

Bench : Division Bench

Advocate : R. Bhaskaran, for the Appellant; Alexander Thomas, Govt. Pleader for 1st Respondent and P.C. Sasidharan, for 2nd Respondent, for the Respondent

Judgement

A.R. Lakshmanan, A.C.J.

1. Heard Mr. R. Bhaskaran for the Appellant, Mr. P.C. Sasidharan for the 2nd Respondent and Government Pleader for the first Respondent.

2. Petitioners in the Original Petition are the Appellants herein. They are in possession of 26 cents of land in R.S. 247/6 C-2 in Vadakara amsom, desom as per registered document dated 27th January 1969. The property is situated very near to the new bus stand and the by pass road. It is submitted that the Appellants are residing in a rented building. Therefore, they applied for permission to construct a residential building, to the 2nd Respondent Municipality on 16th January 1996, which was rejected by the Municipality as per Ext. P-1 on the same day stating that the area is proposed to be acquired for residential purposes. According to the Appellants, the first Respondent State of Kerala have decided to abandon the Narayanapuram Housing Colony Scheme since it was found impractical and non-profitable. In support of the said contention the Appellants have produced Ext. P-2 communication from the first Respondent to a Member of the Legislative Assembly with copy to one of the residents of

Narayanapuram. Since the scheme was abandoned as per Ext. P-2, the Appellants again applied for permission to construct a residential building as per Ext. P-2 dated 23rd December 1997, which was again returned on 13th January 1998 with the endorsement "the area to be acquired for residential purpose as per D.T.P. Scheme for new bus stand area. May be returned." Thereupon the Appellants approached this Court by filing the writ petition. The Appellants also produced a copy of the application with the above endorsement as Ext. P-3 in the Original Petition. They prayed for quashing the order in Ext. P-3 application for permission to construct the building and also a mandamus directing the 2nd Respondent to take back Ext. P-3 application and the plan accompanying the same and grant approval if the same is in accordance with the Building Rules.

3. According to the Appellants, the Municipality has no jurisdiction to return an application for permission to construct a building on the ground that the area is proposed to be acquired but it can only refuse permission under Clause (vii) of Section 393(1) of the Kerala Municipality Act when the land is under acquisition proceedings. According to the Appellant the acquisition proceedings commence with a notification u/s 4(1) of the Land Acquisition Act and when there is no notification under the said provision on the date of the application, the Municipality is not entitled to reject the application on the basis of a proposed acquisition. It is contended that the Appellants being the owners in possession of the land, have the right to use the land for their own purposes without violating the law of the land and that the denial of the right or permission for construction of a building amounts to deprivation of their right to property.

4. The Municipality has filed its counter-affidavit along with Exts. R-2 (a) to (d). The P.A. in charge of the Secretary has signed the counter-affidavit. It is stated therein that the Government has accorded sanction for acquisition of 3.096 hectares of land in Survey Nos. 246/3B, 246/4B, 246/5B, 247/1C, 247/6 A2, 247/6 C2, 247/6 C7 and 248/1 of Badagara Village for the construction of Narayanapuram Housing Scheme as per G.O. (Rt.) No. 810/97/LAD, dated 27th February 1997. Copy of the said order has been produced as Ext. R-2 (a). It is stated further that pursuant to Ext. R-2 (a) the Municipality has addressed the District Collector, Kozhikode to initiate necessary land acquisition proceedings as per letter dated 5th September 1992, Ext. R-2 (c). It is also stated that the Municipality has forwarded necessary agreement and requisition to the Collector along with Ext. R-2 (a) and the matter is seized by the Land Acquisition Authority. It is submitted that the Municipality has prepared a detailed scheme envisaging scheme in the area, and in the meanwhile if the Appellant is permitted to construct the house in the property, the scheme will be rendered unworkable and the public purpose will be defeated. It is in these circumstances that the Municipality has returned the application submitted by the Appellant. It is contended by the Municipality that the Petitioners/Appellants herein have no fundamental right to hold possess the land. The Municipality also brought to the notice of this Court that in terms of the Madras Town Planning Act, when a town planning scheme is prepared and approved, it has force of the Land Acquisition

Act and that restrictions are imposed in the use of the land included in the detailed town planning scheme. It is also submitted that the application of the Appellant was rejected by the Municipality in public interest and that the Appellant cannot rely on Ext. P-2 for the relief sought for in the Original Petition. It is the case of the Municipality that it has only imposed restrictions on the use of the land held by the Appellants and that the land of the Appellants is liable to be acquired for public purpose, for which they will be entitled for compensation in terms of the relevant law.

5. P. Shanmugam, J., by his judgment which is impugned in this appeal, held that the expression "acquisition proceedings" will take in the decision and the sanction and the procedure to be followed for acquiring the land and that the said expression cannot be confined only to the last of Section 4(1) notification. If it is so understood, according to the learned Judge, the acquisition proceedings will include the decision taken by the Municipality and the sanction given by the Government and the learned Judge noted that the Government, by Ext. R-2 (a) order, had accorded sanction to acquire 3.0496 hectares of land in various survey numbers for a housing scheme based on the recommendations of the Chief Town Planner and the Secretary of the Municipality. According to the learned Judge, the Municipality has taken all the necessary steps for the land acquisition and they have sent copy of the resolution, site sketch and agreement in Form No. 7 as well as requisition in Form No. 2 and the District Collector has only to issue the notification under the Land Acquisition Act. The learned Judge further observed that if the contention of the Appellants is accepted, the purpose of the acquisition will be defeated. Before the learned Judge a decision of this Court in *Hassan v. Corporation of Calicut* 1996 (2) KLT 839 and of the Supreme Court in *Collector (District Magistrate) Allahabad and Another Vs. Raja Ram Jaiswal*, were also cited by counsel for the Appellant, According to the learned Judge, the said decisions may not be of any help to the Appellants, case. The learned Judge dismissed the Original Petition holding that an action taken u/s 215 of the Kerala Municipality Act for the purpose of acquiring land is one of the proceedings under the Kerala Municipality Act, which can certainly be brought u/s 393(1)(vii) of the Act. Being aggrieved by the said judgment, the Petitioners have come up in appeal.

6. The following questions arise for consideration in this appeal:

(a) Whether the Municipality is justified in rejecting the application submitted by the Appellants for permission for construction of a residential building, u/s 393(1) (vii) of the Kerala Municipality Act, 1994 on the ground that the land is proposed to be "acquired, and whether the expression "acquisition proceedings will take in the decision, the sanction and the procedures to be followed for acquiring the land.

(b) Whether Sections 214 and 215 of the Municipality Act give power to the Municipality to acquire and possess the land and whether it does mean that the acquisition proceedings u/s 393(1)(vii) includes the formalities before Section

4(1) notification is issued under the Land Acquisition Act.

7. As already noticed, the reason for rejection of the application for permission to construct a building submitted by the Appellants is that the land is proposed to be acquired. Whether the said reason will come u/s 393 of the Kerala Municipality Act is a matter to be considered in this appeal. Section 393 of the Municipality Act deals with the grounds on which approval of site or permission to construct or reconstruct building may be refused. Clause (vii) of Sub-section (1), and Sub-section (2) of the said section are the provisions relevant for the case on hand, which run as follows:

393. Grounds on which approval of site or permission to construct or reconstruct building may be refused.- (1) The grounds on which approval of site for construction of a building or permission to construct or reconstruct a building shall be refused are the following, namely:

* * * * (vii) the land is under acquisition proceedings.

(2) No application for approval of a building site or for permission to construct or reconstruct a building shall be refused without stating the reasons for such refusal.

As stated before, the contention of the Appellants is that the proceedings for acquisition of land commence with a notification u/s 4(1) of the Land Acquisition Act and, therefore, till the notification is issued, the Municipality cannot reject the application on the ground of proposed acquisition of the land. It is also the specific case of the Appellants that the earlier attempt for acquisition of the land in question was given up by the Government as can be seen from Ext. P-2. It is also submitted by counsel for the Appellants Mr. R. Bhaskaran that even after the rejection of the application on the ground of proposed acquisition, the second Respondent is not taking any step to acquire the land and, even if any step has been taken, no acquisition proceeding has been commenced by the issuance of a notification u/s 4(1) of the Land Acquisition Act. It is, therefore, submitted that the Appellants, being the owners in possession of the land, have a right to use the land for their own purpose. In support of this contention Mr. Bhaskaran cited the decision reported in Hassan's case 1996 (2) KLT 839 (supra). The question considered in that case was whether the rejection of the application submitted by the Appellants for permission for construction can be sustained in view of Clause (vii) of Sub-section (1) of Section 393 of the Kerala Municipality Act. In that case also, the Corporation of Calicut as the only ground for rejection of the application that the Corporation was proposing to acquire the land where the buildings are proposed to be constructed for the purpose mentioned therein. P.A. Mohammed, J. held that Clause (vii) contemplates existing land acquisition proceedings and nothing else, and hence, it was held that the land in question in that case could not be considered to be a land under acquisition proceedings in view of the withdrawal of the acquisition proceedings by the Government u/s 52(1) of the Kerala Land Acquisition Act, 1961. Paragraphs 5 and 6 of the judgment can be

usefully extracted for the purpose of the case on hand:

5. It must be recalled that every citizen has the freedom to enjoy his land in a manner he likes of course subject to the prevailing laws in the country, the right to hold land and enjoyment thereof though is not a fundamental right, is a civil right protected by Chapter IV of the Constitution. Article 300A mandates that no person shall be deprived of his property save by authority of law. When a person is restrained from enjoyment of his land it may amount to deprivation of his property. But such deprivation can be made only by authority of law. That means all restrictions for enjoyment of land must be in accordance with the procedure authorised by law. It also envisages strict compliance of such procedure in all matters restraining the enjoyment of land.

6. As far as the present case is concerned, the Land Acquisition Act is the law which restricts the enjoyment of land by the Petitioners. These must be strict compliance of the provisions of this law before the enjoyment of land by the Petitioners is restrained. The grant of permit for construction of buildings is regulated or controlled by the provisions contained in the Kerala Municipalities Act, 1994. There is no case for the Corporation that any of the provisions contained in the said Act has been violated by the Petitioners while applying for such permission. The only ground for rejection of the permission as pointed out earlier is that the land is proposed to be acquired by the Corporation. The acquisition proceeding have not been commenced by the Land Acquisition Officer authorised in this behalf. What is available is only a resolution passed by the Corporation for fresh acquisition in spite of the withdrawal of the earlier notification under Sub-section (1) of Section 52. As matters stand now there is no existing notification u/s 4(1) of the Act declaring that this particular land is required for the public purpose. Therefore, the ground alleged for not granting permission to construct the building is only an anticipated land acquisition proceeding and not an existing one. The right of enjoyment of land available to the Petitioners cannot therefore be taken away on such anticipated grounds. Therefore, the reason for rejection of permission to construct the buildings in these cases cannot be sustained under any circumstances.

When the above decision was cited before Shanmugam, J., the learned Judge distinguished the same stating that the decision was rendered without considering Sections 214 and 215 of the Municipality Act. The said provisions deal with the procedure for acquisition of immovable property under the Land Acquisition Act and the power of Municipality to acquire and dispose of property. Section 214 provides that any immovable property which a Municipality is authorised under Kerala Municipality Act to acquire may be acquired in accordance with the provisions of the Land Acquisition Act for the time being in force, and on payment of the compensation awarded under the said Act in respect of such property and of any other charges incurred in acquiring it. Section 215 provides that a Municipality may, with the previous sanction of the Government, acquire any property whether land or building within or without its

Municipal area for any public purpose for providing any convenience, service or facility or may dispose of toy sale or otherwise any property belonging to it or vested in it in the manner as may be prescribed. Sub-sections (2) to (12) of that section provide for the procedures for construction of commercial building, letting them out, etc. with which we are not now concerned in these proceedings. These provisions do not, in any way, affect the rigour of Section 393 of the Act.

7A. Section 4(1) of the Land Acquisition Act provides that a notification under that provision can be issued only when it appears to the appropriate Government that the land is needed or is likely to be needed for a public purpose or for a company. The appropriate authority has to hold a preliminary investigation into the need and the suitability of the land for the purpose. The decision is to be according to the subjective satisfaction of the authority. It is for the Government to make the choice or selection of the land which is suitable for acquisition for the public purpose. The object of inclusion of Section 4(1) is to give public notice of the proposal to acquire the land mentioned in the notification and to give a warning that any one who deals with that land subsequent to the notification would do so at his own risk. The notification u/s 4(1) achieves two fold object, viz. (a) it is a public announcement by the Government and a public notice by the Collector in respect of the land being need or likely to be needed by the Government for a public purpose; (b) it authorises departmental officers or officers of a local authority or company, as the case may be, to survey and do other acts by entering the land. Section 6 of the Land Acquisition Act deals with the declaration of the Government that the land is required for a public purpose. As already noticed, the object of a notification u/s 4(1) of the Act is to give notice that the land in the locality is needed or is likely to be needed for a public purpose; whereas the object of the declaration u/s 6 is to intimate the decision of the appropriate Government that the particular land is needed for a particular public purpose. Such declaration shall be issued only if the Government is satisfied after considering the report or reports of the Collector u/s 5A of the Act that the land is needed for the particular public purpose. The declaration u/s 6 can become final only if the steps and procedures mentioned in that section are followed and not otherwise. What is enjoined u/s 6 is the satisfaction of the appropriate Government. The Government has to be satisfied initially that the land is needed for a public purpose. The identity of the land has to be specified, sketched and shown so as to indicate to the owners or persons interested in the land, that it is their land that is going to be acquired. They should have notice to enable them to state their objections. They may question the purpose of acquisition. Only after hearing their objections, the Government has to decide. It is open to the public to show that the land in question is most unsuitable for the purpose. A different land may be suggested by the objector. But the ultimate subjective satisfaction regarding the purpose and the land required for the purpose is with the Government.

8. It is thus clear that the object of Section 4(1) of the Land Acquisition Act is to give public notice of the proposal to acquire the land in a particular locality and

that the ultimate subjective satisfaction regarding the public purpose and the suitability of the land for the public purpose, etc. is with the Government. In the instant case, it is not in dispute that there was no proposal to acquire the land in question on the date of the Appellants submitting the application for permission to construct a residential building on 16th January 1996 or when he again applied for permission to construct the building on 23rd December 1997 which was rejected by the Municipality by the endorsement as contained in Ext. P-3, and no notification u/s 4(1) of the Act was issued. Therefore, the Municipality had no authority to reject the application on the ground that the land is proposed to be acquired. Such rejection, in our opinion, does not in any come within the ambit of Section 393 of the Kerala Municipality Act, since, under the said provision, the application can be rejected only if the land is under acquisition proceedings. In the decision reported in Collector (District Magistrate) Allahabad and Another Vs. Raja Ram Jaiswal, the Supreme Court has held that a bare perusal of Section 4(1) of the Land Acquisition Act clearly shows that in order to comply with the statutory requirements therein set out, a notification stating therein the land which is needed or is likely to be needed for a public purpose has to be published in the official Gazette and the Collector has to cause public notice of the substance of such notification to be given at convenient places in the locality in which the land proposed to be acquired is situated. Both the conditions are mandatory. This decision also has not been followed by the learned Single Judge. We are of the opinion that the Municipality cannot freeze the land for an indefinite period on the pretext that they are taking steps to acquire the land. In our opinion, the learned Single Judge erred in holding that the expression "acquisition proceedings" will take in the decision and the sanction and the procedure to be followed for acquiring the land. The decision rendered by P.A. Mohammed, J. in Hassan's case 1996 (2) KLT 839 (supra) is, in our opinion, directly on point. As pointed by the Supreme Court in the decision reported in Sharad Birdhichand Sarda Vs. State of Maharashtra, , the decision of the Government is hardly relevant unless it takes the concrete shape and form by publication in the official Gazette. The decision of the Government does not become effective and valid unless a notification in the official Gazette follows. Therefore, assuming that notification is a formal expression of a decision of the Government to acquire the land, unless the decision is notified in the Government Gazette by an appropriate notification, the proceedings for acquisition cannot be said to have been initiated and the decision would remain a paper decision. In such circumstances, the land in question cannot be considered to be one under acquisition proceedings.

9. The other reasoning given by the learned Single Judge, construing Sections 214 and 215 of the Land Acquisition Act are also not sound. In the instant case, the Government had once abandoned the scheme as evidenced by Ext. P-2. Except a bald denial, no acceptable material was placed before us to say that the scheme was not abandoned by the Government. The proposed acquisition is for a housing scheme, which was earlier abandoned for the reason that the property is

situated in a very important locality and, therefore, the market value is very high and hence the acquisition is not profitable or practical. The present proposal is stated to be for the very same purpose. The Appellants, in our opinion, has got every right to use their land to put the land for beneficial and profitable own use. The rejection of permission to construct a residential building, tantamounts to deprivation of the property of the Appellants without the authority of law, which is in violation of Article 300A of the Constitution of India.

10. In view of the above, we hold that the land in question was not under acquisition proceedings on the relevant date, viz. the date of the application, and therefore/the Municipality was not justified in refusing the permission sought for on the ground that the land is proposed to be acquired, in the light of Section 393 of the Kerala Municipality Act, 1994.

In the result, the writ appeal is allowed and the judgment of the learned Single Judge, which is impugned in this writ appeal, is set aside. The order/endorsement in Ext. P-3 application is quashed and the Municipality is directed to take back on its file Ext. P-3 application and the plan accompanying the same, consider the same and grant permission if the same is in accordance with the Building Rules and regulations. The Appellant is directed to represent Ext. P-3 application and the plan, etc. to the Municipality and the Municipality is directed to consider same and pass appropriate orders as directed above within two weeks from the date of representation of Ext. P-3 application. No costs.