

(1992) 01 KL CK 0017
In the High Court Of Kerala
Case No : W.A. No. 1261/91

P.G. Remesh

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 17-01-1992

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala Municipalities Act, 1960 — Section 194, 84
Kerala Municipalities Rules, 1960 — Rule 43
Land Acquisition Act, 1894 — Section 4, 5, 6, 6(3)

Citation : (1992) 01 KL CK 0017

Hon'ble Judges : K.T. Thomas, J;K.S. Paripoornan, J

Bench : Division Bench

Advocate : P.V. Ayyappan and N.P. Samuel, for the Appellant; V.C. James, Government Pleader for Respondents 1 to 3, Mathews P. Mathew and K.P. Vijayan for 4th Respondent and K.J. Joseph, for 5th Respondent, for the Respondent

Final Decision : Dismissed

Judgement

K.T. Thomas, J.—Appellant's land (a small extent) situate on the side of "Municipal Office road", Thrissur, is under acquisition proceedings. The land is needed for providing a "bell mouth" at the end of the said road as well as for constructing a shopping complex for Thrissur Municipality ("Municipality" for short). Acquisition proceedings have been initiated at the instance of the Municipality. Ext. P-7 is the notice issued u/s 4 of the Land Acquisition Act, 1894 (for short "the Act") and Ext. P-9 is the declaration made by the Board of Revenue (on 27th September 1988) u/s 6(3) of the Act. Appellant filed the Original Petition under Article 226 of the Constitution to quash Ext. P-9 declaration. Learned Single Judge dismissed the Original Petition. Hence he filed this appeal.

2. It was urged before the learned Single Judge that construction of a Shopping Complex for the Municipality is not a public purpose and alternatively contended that no land on the eastern side of the road (where Appellant's land is situate) is

necessary for providing a "bell mouth". Both contentions were repelled by the Learned Single Judge.

3. The contentions urged on behalf of the Appellant in this appeal are that: (1) since the purpose of constructing a shopping complex is to accommodate some displaced traders, it is not a public purpose; (2) the proposal is mala fide inasmuch as the Municipality can conveniently accommodate such displaced traders in Anr. building owned by the Municipality and situated nearby; (3) Municipality does not seriously intend to provide any bell mouth since the rooms in the existing building (in the land sought to be acquired) would be rented out to other persons on higher rent.

4. Sri N.P. Samuel, learned Counsel for the Appellant made it clear at the outset that Appellant does not oppose the proposal for providing a bell mouth at the northern end of the road. According to the counsel, Appellant has already expressed his willingness to surrender his land for providing a bell mouth on the road. The purpose shown in Ext. P-7 as well as in Ext. P-9 declaration is to provide a bell mouth and to construct a shopping centre. Of course, the Municipality has a proposal to accommodate displaced traders in the shopping centre constructed. The said proposal is only ancillary to the purpose of acquisition. It is one thing to say that the purpose of acquisition is to construct a shopping centre and it is Anr. thing to say that accommodation would be given to the displaced traders in the new shopping centre. The latter would not become the purpose of acquisition. We understand by the expression "purpose of acquisition" as the main or dominant purpose and not the subsidiary or incidental or ancillary use to which the acquired land may be put.

5. If Municipality proposes to rehabilitate those traders who are or who would be uprooted as a consequence of acquisition proceedings it cannot be termed, by any stretch of reasoning, as one blended with mala fides. In a sense the proposal deserves admiration as it affords some rehabilitative reliefs to those who are deprived of accommodation. At any rate, we are not disposed to exercise the jurisdiction under Article 226 of the Constitution to disrupt the aforesaid proposal of a local body.

6. Appellant's contentions that there is no public purpose for the acquisition and that Municipality is actuated by mala fides were once raised by the Appellant in this Court and were repelled by this Court. (The same proposal for acquisition was mooted on an earlier occasion and a notification was issued by the Land Acquisition Officer. Then the Appellant challenged it in O.P. 4730/77). Ext. R-4(a) is the copy of the said judgment. It shows that acquisition proceedings were then challenged on three grounds. First was that construction of a shopping centre is not a public purpose; second was that acquisition proceedings were initiated with ulterior motive and the third was that legal formalities for acquiring land have not been observed. The first two grounds were found against the Appellant while the last one was upheld as per Ext. R-4(a) judgment. It is settled law that principles of res-judicata will apply to proceedings under Article 226 of the

Constitution. Recently the Supreme Court held in *The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others*, that principles of constructive res-judicata will also apply to proceedings under Article 226 of the Constitution. However, learned Counsel for the Appellant contended that Ext. R-4(a) judgment would not operate as res judicata as Ext. R-4(a) judgment had made it clear that no pronouncement on the merits of the case has been made and that an opportunity was afforded to the Appellant to raise his contentions in the enquiry u/s 5 of the Act.

7. We do not think it necessary to finally decide whether Ext. R-4(a) judgment would operate as res-judicata against the Appellant's contentions here. We have already indicated that providing accommodation to displaced traders is not the purpose of acquisition. Learned Counsel invited our attention to Section 194 of the Kerala Municipalities Act ("Municipalities Act" for short) which enables a Municipal Council to acquire "any land required for the purpose of opening, widening, extending or otherwise improving any public street or of making any new public street and the buildings, if any, standing upon such land". He contended on the strength of Section 84 of the Municipalities Act that Municipal Council is not empowered to acquire land for any purpose other than for the purpose envisaged in Section 194. Section 84 says that any immovable property which any municipal authority is authorised by the Municipalities Act to acquire, may be acquired under the provisions of the Land Acquisition Act for the time being in force. But we do not think that Section 194 can be regarded as containing a catalogue of all purposes for which a Municipality can acquire land. There could be other purposes for which Municipality may have to acquire land. One such purpose can be traced out from Part II of Schedule 2 of the Municipalities Act which contains rules for "authorised objects of expenditure". Rule 43(c) recognises "construction, establishment and maintenance...of shops" as one of the authorized objects of expenditure. If expenditure can validly be incurred by Municipality for construction of shops, its necessary prelude is to find out a site or land for making such construction. Hence it would be pedantic to construe the scope of Section 84 of the Municipalities Act as embracing Section 194 alone. Construction of building can be brought even u/s 194 of the Municipalities Act. We are not impressed by the contention that a Municipality cannot acquire land for the purpose of constructing buildings.

8. That apart, when once declaration is published u/s 6 of the Act, it is not open to contend that the proposed acquisition is not for public purpose. Section 6(3) of the Act makes it clear that "the said declaration shall be conclusive evidence that the land is needed for a public purpose...". It was held by a Constitution Bench of the Supreme Court in *Smt. Somavanti and Others Vs. The State of Punjab and Others*, that there is no difference between the effect of the expression "conclusive evidence" in Section 6(3) of the Act from that of "conclusive proof" the aim of both being to give finality to the establishment of the existence of a fact from the proof of Anr. and further held that "the conclusiveness in Section 6(3) must necessarily be attached not merely to a need but also to the question

whether the purpose was a public purpose". In *Ratilal Shakarabhai and Others Vs. The State of Gujarat and Others*, the Supreme Court followed the aforesaid dictum and further observed that where there is a declaration u/s 6 that the land proposed to be acquired is needed for a public purpose, the Court cannot go into the question whether the need was genuine or not unless it is satisfied that the action taken by the Government was a fraudulent one.

9. According to the Appellant, there is Anr. building in the vicinity of the land in question owned by the Municipality and vacant rooms are available therein for accommodating displaced traders. Even if there is any such building, we are not to make a selection of the place for providing accommodation to such traders. It is for the Municipality to decide as to whether and if so where and how the displaced traders should be accommodated. The Supreme Court has held in *State of Punjab and Another Vs. Gurdial Singh and Others*, that "the Court is handcuffed in this jurisdiction and cannot raise its hand against what it think is a foolish choice". One of us (Paripoornan, J.) has followed the said dictum in *Meerakutty v. R.D.O. 1985 K.L.T.S.N. 15*.

10. Lastly it was contended that the purpose made out is only a camouflage and the real object of the Municipality is to rent out the rooms in the building (situate within the land sought to be acquired) on higher rent to other persons. This allegation has been denied. The instance pointed out by the Appellant in which the same Municipality has rented out rooms elsewhere is hardly sufficient to conclude that the allegation is true. According to the Municipality, such a course was adopted only as a temporary measure to rehabilitate some of the evicted traders since the proposed shopping complex is yet to be realised. There is no merit in this appeal.

We accordingly dismiss the appeal.