

(2022) 11 KL CK 0068
In the High Court Of Kerala
Case No : Writ Appeal No. 1535 Of 2022

Sahira Special

APPELLANT

Vs

Tahsildar (La), Koyilandy, Kozhikode District, Pin 673305

RESPONDENT

Date of Decision : 07-11-2022

Acts Referred:

Constitution of India, 1950 — Article 14, 21
Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Section 15
High Court Act, 1958 — Section 5

Citation : (2022) 11 KL CK 0068

Hon'ble Judges : S. Manikumar, CJ; Shaji P. Chaly, J

Bench : Division Bench

Advocate : P.B.Krishnan, P.B.Subramanyan, Sabu George, Manu Vyas Peter, Tekchand V., Praveen Representing, Santhosh Kumar

Final Decision : Dismissed

Judgement

Shaji P. Chaly, J.

1. The appeal is filed by the petitioners in W. P. (C) No. 3320 of 2022 challenging the judgment of the learned Single Judge dated 01.04.2022 whereby the reliefs sought for by the appellants to interfere with a land acquisition proceedings was declined.

2. Brief material facts for the disposal of the writ appeal are as follows:-

3. Appellants are owners of an extent of 1.75 ares of property in Resurvey No. 159/10 of Nellikode Village, Kozhikode Taluk. The said property is sought to be acquired allegedly for the purpose of widening a road leading to a private temple by name Ponnankode Kunnil Sree Thrikkaipetta Maha Kshetram. The appellants have earlier approached this Court challenging the proceedings by filing W. P. (C) No. 28125 of 2020. In the said case, the contention advanced by the appellants was that a major portion of the property was acquired by the Government for the

formation of Cyber Park while the property was in the possession of the predecessor-in-interest of the appellants. According to the appellants, in the acquisition proceedings, it was made clear that the acquisition was made for the purpose of formation of a 30 meter road as an access to the Cyber Park; however the public will also be permitted to use the proposed road.

4. Therefore, it was contended that the further acquisition is unwarranted and done only with an ulterior motive to demolish the building owned and possessed by the appellants abutting the National Highway. It was also the contention of the appellants that there is already an existing road having a width of nearly 15 feet leading to the temple, and the temple being private, acquisition of property for the formation of a way to the temple is beyond the scope of public interest or public need.

5. However, the said writ petition was closed, reserving the right of the appellants to raise their objections, at the stage of Section 15 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act 2013) dealing with hearing of objections.

6. It is also the case of the appellants that the southern boundary of the property is National Highway Bypass and the way to the Cyber Park is directly from the National Highway on the southern side having a width of 27.05 meters, one of the widest road in the said area, and which seems to be exclusively leading to the property owned by the Kerala State Information Technology Infrastructure Ltd. and Uralungal Labour Contract Co-operative Society Ltd., respondents 4 and 5.

7. The paramount contention advanced by the appellants is that Ext. P11 order issued by the Special Tahsildar dated 10.12.2021 seeking to acquire the properties is illegal and arbitrary. That apart it is contended that the Special Tahsildar has no power or authority to consider the objection of the affected persons. Various other contentions, legal and factual, are also raised, including that the action of the respondents is violative of Articles 14 and 21 of the Constitution of India.

8. The learned Single Judge, after taking into account the contentions advanced by the appellants and the respondents, has arrived at the conclusion that since the 30-meter-wide Road already formed is an elevated one, the authorities concerned found it necessary and convenient that the existing service road, which runs adjacent to the property of the appellants, be widened to 10 meters or more so that access to the remaining portions of the Cyber Park, as also to the temple can be arranged and facilitated.

9. It was also found that there is nothing wrong in the proposal mooted by the competent authorities, and in any event, the Court does not have the expertise to speak on the technical feasibility of such proposals or projects and it was accordingly that the writ petition was dismissed.

10. We have heard Sri. P. B. Krishnan for the appellants, learned Government Pleader Sri. V. Tekchand for the officials of the State and Sri. Santosh Kumar, learned Standing Counsel for the Kozhikode Corporation and perused the pleadings and material on record.

11. The sole question generates for consideration is whether any interference is required to the judgment of the learned Single Judge.

12. Apparently, earlier, an acquisition was made in order to form a road with 30 meters to access the Cyber Park, Kozhikode with access to the public also. It may be true that in the counter affidavit filed in the earlier writ petition, it was stated by the Special Officer of the Cyber Park, Kozhikode, that the land to be acquired from the predecessor-in-title of the property for making a 30-meter road as access to the Cyber Park to be set up by the Government and the nearby IT Park being set up by the 5th respondent Society with the permission of the Government of Kerala. It was also stated in the said counter affidavit that usually roads leading to IT Parks are exclusively for the purpose of IT Parks and the general public do not have access through such roads. But in the instant case, the public, including the petitioner therein also will be permitted to use the proposed road. It is also stated that the net result is that the remaining property of the petitioner left after the acquisition will have frontage of a 30 meter road, thereby increasing the value of the land considerably.

13. This statement in the counter affidavit is heavily relied upon by learned counsel for the appellants to contend that the action now initiated to acquire more land from the appellants cannot be justified and it is with the malafide intention to protect the interest of a private temple. Even though contentions are advanced in the writ petition in that manner, there is no established piece of evidence to arrive at the conclusion that the acquisition would only benefit the temple and it was done at the instance of the private temple. To put it otherwise the said contention remains as a blunt statement unsupported by any reliable proof or even any material evidence. This we say because in a writ petition, the issues are decided in a summary manner and if the material pleadings are not supported by evidence the writ court will be reluctant to entertain any such plea. This is exactly happened in the instant case.

14. It is also equally important to note that the respondents have a case that through the property acquired earlier, an elevated road is formed, and for the purpose of having access to the properties by the side of the service road, widening is required. It was accordingly that the new acquisition was launched in contemplation of the provisions of Act 2013.

15. Having evaluated the situations and the law, we are of the definite and undoubted opinion that the appellants could not establish any malafides in the matter of acquisition of the property in question, which may be the only reason by which a writ court could interfere with any acquisition proceedings, as is well settled in law.

16. In our view, even though the stand adopted by the Special Officer of the Cyber Park earlier was that the 30 metre wide road could be used by the public also, probably, taking into account the safety and security reasons, an elevated road was constructed for the sole purpose of the Cyber Park. Therefore, acquisition of more land was necessitated in order to protect the interest of the property owners by the side of the existing service road, may be including the temple, and without widening the same, a proper access would not be able to be provided to the property owners.

17. In that view of the matter, we have no hesitation to say that the appellants have not made out any case of jurisdictional error or other legal infirmities justifying our interference in an intra court appeal filed under Section 5 of the High Court Act, 1958.

Needless to say, appeal fails and accordingly it is dismissed.

So far as the contentions with respect to the legality of the acquisition proceedings initiated are concerned, it is for the appellants to raise the same before the statutory authority under the Act 2013, and those aspects are all left open.