

(1995) 05 KL CK 0002
In the High Court Of Kerala
Case No : O.P. No. 1555 of 1994

Saju Thomas

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 09-05-1995

Acts Referred:

Kerala Land Acquisition Act, 1961 — Section 4, 6

Citation : (1995) 05 KL CK 0002

Hon'ble Judges : K. Narayana Kurup, J

Bench : Single Bench

Advocate : T.R.G. Warriar and T.R. Ravi, for the Appellant; N. Radhakrishnan)
and K.P. Vijayan, for the Respondent

Final Decision : Allowed

Judgement

K. Narayana Kurup, J.—Petitioner is the owner of certain lands comprised in Sy. Nos, 1214/10 (0.0364 hectares), 1216/1 (0.0431 hectares) and 1217 (0.0446 hectares) in Trichur Village. These lands along with some other lands have been notified for acquisition as per Ext. P1 issued u/s 4 of the Land Acquisition Act, 1894. On receipt of Ext. P1 notice, petitioner submitted Ext. P2 objections to the proposed acquisition. After receipt of Ext. P2 objections, the Land Acquisition Officer by notice dated 9-7-1990 which was received by the petitioner only on 11-8-1990, called upon the petitioner to appear on 16-8-1990 and to adduce evidence, if any, in support of his objections. Petitioner had requested for two weeks time from 16-8-1990 to enable him to make detailed submissions after legal consultations. On 16-8-1990 petitioner appeared through counsel and filed an application for adjournment by two weeks. Counsel was told that he may submit his additional objections as soon as possible and that the hearing would take place on 22-8-1990. Under these circumstances, petitioner on 18-8-1990 sent detailed submissions as per Ext. P3 by registered post with acknowledgment due. In Ext. P3, it was also stated that it is necessary to obtain a copy of the sketch prepared by the fourth respondent Municipality and some other records to

enable the petitioner to substantiate the objections. Ext. P4 is the application made by the petitioner to the fourth respondent requesting for copies of the relevant records, viz., copy of the sketch of the properties proposed to be acquired for the purpose of providing a bell-mouth, widening the road and constructing the shopping centre, copy of the resolution of the Municipal council pursuant to which the acquisition is proposed to be made, copy of the requisition made by the Municipal council to the Special Tahsildar (LA) and copies of other connected records, if any. Even though the documents were made available to the Land Acquisition Officer, the petitioner was not even granted permission for inspection of the same. Ext. P4 request was followed up by Ext. P5 additional application requesting the fourth respondent "once again that necessary steps may kindly be taken urgently to let me have the copies of the sketch and other documents on or before 29-8-1990". Petitioner thereafter received Ext. P6 letter dated 25-8-1990 from the fourth respondent expressing his inability to provide the petitioner with the records applied for, as the land acquisition proceedings are being conducted by the Tahsildar (LA).

2. Immediately on receipt of Ext. P6, petitioner addressed two letters dated 8-9-1990 by registered post, one to the Special Tahsildar requesting for a copy of the sketch of the property proposed to be acquired and another to the fourth respondent requesting for copies of the relevant resolution of the Municipal Council and of requisition made by the council to the Special Tahsildar. Petitioner also intimated that he is willing to remit the fee which is necessary for taking copies of the relevant records and that the copies may be immediately made available to him. Thereafter, petitioner was served with Ext. P7 proceedings dated 20-5-1991 passed by the Board of Revenue overruling the petitioner's objections as not valid enough to drop the acquisition proceedings and the land in question is required for a bonafide public purpose. As per Ext. P7 the Board of Revenue while overruling the objections approved the draft declaration and sent for publication as required under the Land Acquisition Act 1894 (hereinafter referred to as "the Act"). Ext. P8 is the sketch prepared by the petitioner showing the lands in the neighbourhood and the lands proposed to be acquired by the fourth respondent - Municipality.

3. Petitioner challenged the acquisition of lands belonging to him in Sy. Nos. 1214/10 (0.0364 hectares), 1216/1 (0.0431 hectares) and 1217 (0.0445 hectares) before this Court in O.P. No. 9310 of 1991. This Court by Ext. P9 judgment dated 16-7-1992 disposed of the original petition quashing Ext. P7 proceedings in so far as it relates to acquisition of the property of the petitioner in Sy. Nos. 1214/10, 1216/1 and 1217 of Trichur District. While disposing of the original petition, this Court found that Ext. P7 was passed without proper enquiry as contemplated u/s 5A of the Act into the objections filed by the petitioner and the petitioner was directed by this Court to file detailed objections within a period of three weeks and the third respondent herein was directed to give a personal hearing to the petitioner, to make an enquiry into his objections and submit a report to the second respondent - Board of Revenue ? where - upon the Board of

Revenue was to take a decision whether the acquisition proceedings relating to the properties of the petitioner should continue by making a declaration u/s 6 of the Act.

4. Petitioner thereupon filed Ext. P10 detailed objections before the third respondent on 21-8-1992. The third respondent thereafter issued Ext. P11 notice to the petitioner u/s 4 of the Act asking the petitioner to appear in person or by counsel and to adduce evidence, oral and/or documentary in support of his objections, on 10-11-1992. Since Ext. P11 notice was delivered to the petitioner only on 11-11-1992, he sent a registered letter to the third respondent requesting for postponement of the hearing to another date. The third respondent thereafter issued notice to the petitioner informing him that the personal hearing will be held on 4-12-1992. Nothing was heard about the matter for quite some time after the personal hearing. Now, the second respondent - Board of Revenue - has issued Ext. P12 order No. D. Dis. 4363/93/LRC 3 dated 2-11-1993 whereby the petitioner's objections to the acquisition were overruled and the draft publication was directed to be published in the official gazette.

5. The challenge in this original petition is directed against Ext. P12 and to quash the same by a writ of certiorari. Petitioner also prays for issuance of a writ of mandamus directing the respondents to drop all proceedings initiated to acquire the lands belonging to the petitioner pursuant to Ext. P12.

6. According to the petitioner, Ext. P12 has been issued without considering any of the objections raised by the petitioner and that Ext. P12 is beyond the powers of the respondents and is liable to be quashed by this Court. Petitioner has a specific case that Section 6 declaration could have been made only within two years of 4-6-1990 on which date Section 4 notification has been made, According to the petitioner, Ext. P12 proceedings is beyond three years of Section 4 notification and as such, without jurisdiction. Petitioner has other contentions as well. In essence, petitioner submits that the proceedings now initiated are beyond the time prescribed by the statute and are liable to be quashed. The second respondent-Board of Revenue - has filed a counter denying the averments contained in the original petition and justifying the acquisition proceedings. Likewise, the fourth respondent has also filed a counter justifying the acquisition proceedings.

7. On the pleadings, the first question to be considered is whether Ext. P12 has been issued within time as provided under the relevant provisions of the Act. Proviso 1 (ii) to Section 8 of the Act says that no declaration in respect of any particular land covered by a notification u/s 4 shall be made after the expiry of one year from the date of publication of the notification u/s 4 of the Act. Going by the language of Section 6 it leaves no room for any doubt that a declaration u/s 6 cannot be made after the expiry of one year of the date of publication of the notification u/s 4. No doubt, the proceedings of the Board of Revenue approving the draft declaration u/s 6 issued on 20-5-1991 was quashed by this Court as per Ext. P9 judgment dated 16-7-1992 in O.P. No. 9310 of 1991 filed on 18-7-1991.

After Ext. P 9 judgment, petitioner filed his objections before the Special Tahsildar on 21-8-1992, which objections were overruled by the Board of Revenue as per Ext. P12 dated 2-11-1993 wherein it is stated that the draft declaration has been approved and sent for publication in the official gazette. But then, it has to be observed that by the time Ext. P12 was issued a period of more than three years have expired after the issue of notification u/s 4 Which is in gross violation of the proviso 1 (ii) to Section 6 of the Act under which a declaration u/s 6 of the Act under which a declaration u/s 6 cannot be made after the expiry of one year of the date of publication of the notification u/s 4 as already noticed Here, the notice u/s 4 of the Act was issued on 4-6-1990 which states that the notification was published in the official gazette dated 1-5-1990. Hence, I have no hesitation to hold that the Ext. P12 proceedings of the Board of Revenue approving the draft declaration is without jurisdiction as one issued beyond the period of one year from the date of issuance of notification u/s 4.

8. Of course, Explanation I to Section 6 of the Act provides that the period during which any action or proceedings is stayed by an order of Court shall be excluded in computing the period referred in the proviso. Here the petitioner moved this Court in O.P. No. 9310 of 1991 on 18-7-1991 which was disposed of by Ext. P9 judgment dated 16-7-1992. Under the Explanation, the period of stay alone is liable to be excluded and even after giving due credit to the period it cannot be said that Ext. P12 was issued within time. In fact, Ext. P12 was issued only after the expiry of 11 months from the date of Ext. P9 judgment. Having regard to all these facts and circumstances, I am of the view that the respondents have no power vested in them under the Act to issue a declaration u/s 6 after so many years of the issuance of the notification u/s 4 of the Act. Therefore, I hold that Ext. P12 is one issued without jurisdiction and the same is liable to be quashed.

9. No doubt, the State would contend that the fresh notice u/s 4 of the Act was issued on 11-11-1992 and the draft declaration was approved on 2-11-1993 as per Ext. P12. But the state has no case that a fresh notification u/s 4 was made nor a declaration u/s 6 has been issued after Ext. P9 judgment dated 16-7-1992. No such notification or declaration is produced before this Court. All that the counter says is that a notice u/s 4 was issued. Ext. P11 will show that the notice was only for hearing to be held on 10-11-1992. The notice is in form No. 4 (b) of the Rules read with Rule 7 (2). The only notification which preceded this notice is the original Section 4 notification and the hearing of objections was only to that notification. Ext. P12 itself clearly states that the Board of Revenue was only considering the original notification dated 7-6-1990. The reason given in Ext. P12 is that a draft of a declaration was adopted on 24-5-1991 and such a stand is taken by interpreting the earlier Section 6 declaration as a draft. This is without any basis, since the notification dated 24-5-1991 was set aside by Ext. P9 judgment. Even Ext. P12 does not make any reference to the issuance of Section 4 notification being issued. The entire proceedings are therefore beyond the time prescribed by the statute and are liable to be quashed.

10. There is yet another reason why the petitioner should succeed in this original petition. According to the petitioner, the entire proceedings for acquisition of land over and above the land required for the widening of the road is actuated by colourable exercise of power on the part of the respondents. Even though the petitioner does not question the motive behind the widening of the road, he has strong objection to the acquisition of the additional area for the construction of a shopping complex to rehabilitate the traders who are dislocated by the acquisition. According to respondents 1 to 3, the acquisition of the land over and above the land needed for widening of the road for the construction of a shopping complex for the traders dislocated by the acquisition of the land for widening of the road is absolutely essential in the public interest.

11. Similar contentions have been raised by the fourth respondent Municipality also. On a consideration of the rival contentions, I am of opinion that the matter in controversy is covered by the Division Bench decision of the Court reported in *Ramesh V. State of Kerala - 1992 (1) KLT 268*. In that case, the declared public purpose was the construction of a bell mouth and a shopping complex. There was an additional proposal to rehabilitate the displaced persons by the proposed acquisition in the shopping complex to be constructed. It is significant that the proposal for rehabilitation was inside the very same property acquired for the declared public purpose. Even in Such a case, this Court held that the proposal for rehabilitation of the displaced traders is only an ancillary matter and will not automatically become the purpose of acquisition. The case of the petitioner as far as I could see is far more stronger in the instant case. The declared public purpose is the widening of a public road. Petitioner does not oppose acquisition of his land for widening of the road. His grievance is against the proposal for acquisition of additional land Owned by him for accommodating other shop owners who are likely to be affected adversely by the widening of the road which according to the petitioner, cannot be construed as a public purpose. This contention of the petitioner finds ample support in the decision referred to above wherein it has been held that the proposal to accommodate the displaced traders in the shopping centre to be constructed for which the land was acquired would not become the purpose of acquisition. The Division Bench said: "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". Viewed in the above perspective, I have no hesitation in holding that the proposal for rehabilitation of the traders is only an ancillary matter and does not become the purpose of acquisition.

12. There is yet another aspect which cannot be overlooked. For widening of the road, a portion of the petitioner's land was also acquired. Over and above that its adjoining land which he intends to use for the construction of a service centre-cum-workshop is also under threat of acquisition to rehabilitate the traders. The question then is, is not the petitioner entitled to rehabilitation as he is deprived of his land on which he intends to construct a service-centre-cum-work shop? To call upon the petitioner to bear the burden of loosing his additional valuable

property over and above the one taken for the widening of title road for obliging the third parties in whom the respondents are interested is nothing but a travesty of justice. It is also to be noted that it has come out on record that the fourth respondent - Municipality - owns sizable land a few yards away from the land of the petitioner which is sought to be acquired for constructing a shopping complex and it is not known why the so-called displaced persons could not be accommodated there instead of depriving the petitioner of his valuable land - in which case the petitioner will stand in the same position as the alleged displaced traders and over which he wants to construct a service-centre-cum-work shop.

13. The present discussion will be incomplete without reference to the Division Bench decision of the Calcutta High Court reported in Radhashyam Sarma Vs. State of West Bengal and others, wherein it has been held that the reasonableness of acquisition of land to make room for alternative accommodation has to be viewed not only in the context of the need of the person seeking alternative accommodation, but also of the availability of the space at the site where the alternative accommodation has to be provided by the concerned authorities/In that case, the grievance of the petitioner whose godown was acquired for a public purpose was that he was not provided with alternative accommodation. It was submitted that the expression "alternative accommodation" must mean alternative accommodation of equal size and nature and that, therefore, the petitioner was entitled to the allotment of equal area in the new market complex nearby repelling the contention, the Court held as follows :

..... A person whose premises are requisitioned is entitled to compensation under law and that is his only right. If the right to claim alternative accommodation flows out of a scheme which is framed outside the law but is supplemental to the requisition proceeding, such scheme should specifically provide that an equivalent area would be given by way of alternative accommodation. No such scheme has been produced before us and we cannot, therefore, hold that any such right was independently created in favour of the appellant.

14. Going by the decision cited supra, it cannot be held that the shop owners who are likely to be uprooted have any right to claim any alternative accommodation nor the respondents have any legal authority to proceed with blind fold acquisition of land without there being any specific scheme which contains the details of the extent of land required, area of building to be constructed and the number of traders to be rehabilitated, etc. If the respondents are permitted to proceed with such a blind fold acquisition, it will certainly result in manifest injustice. Two decisions of the Hon'ble Supreme Court reported in State of U.P. Vs. Smt. Pista Devi and Others, and Karjan Jalasay Yojana Assargrasth Sahkar Ane Sangarsh Samiti Vs. State of Gujarat and Others, were also cited before the Division Bench in support of the proposition that the persons whose large tracts of land was acquired for constructing a

housing colony should invariably be provided with alternative accommodations equal in size and nature. The Court had no difficulty for repelling such a contention also. As already noticed it was observed that the reasonableness of alternative accommodation has to be viewed not only in the context of the need of the persons seeking alternative accommodation, but also of the availability of the space at the site where the alternative accommodation has to be provided by the concerned authorities. The Court went on to observe that it is difficult to appreciate how in the new market complex as large a space as the appellant's godown which is requisitioned could be provided. The position is no less different here. Admittedly, it is not in dispute that large number of persons have been dislocated as a result of acquisition of land for widening of the road and on account of dearth of space, it may not be possible to provide alternative accommodation for all those persons in the self-same area. Naturally one has to look for alternative accommodation, if need be at other places including the vacant land of the fourth respondent lying nearby.

15. For all these reasons, I am of opinion that the petitioner is entitled to succeed in this original petition on both counts, viz., that Ext. P12 proceedings are beyond the time prescribed by the statute and secondly, even assuming that Ext. P12 proceedings are within the time prescribed by the statute, the acquisition of the petitioner's land as shown in Ext. P8 sketch in so far as it relates to the land comprised in Sy. Nos. 1214/10, 1216/1 and 1217 of Trichur Village, over and above the extent needed for widening of the road is vitiated by a colourable exercise of power. Accordingly, I quash Ext. P12 as barred by limitation and vitiated by colourable exercise of power and the respondents are restrained from acquiring those portions of the petitioner's land comprised in Sy. Nos. 1214/10 (0.0364 hectares), 1216/1 (0.0431 hectares) and 1217 (0.0446) hectares of Trichur Village, which are shown to the west of the dotted line "AB" in Ext. P8 sketch.

Original petition is allowed as above with no order as to costs.