
(2009) 12 KL CK 0100
In the High Court Of Kerala
Case No : R.P. No. 1073 of 2009

Secretary to Government

APPELLANT

Vs

Nazar

RESPONDENT

Date of Decision : 21-12-2009

Acts Referred:

Constitution of India, 1950 — Article 300A

Citation : (2010) 1 ILR (Ker) 521 : (2010) 1 KLJ 737 : (2010) 1 KLT 286

Hon'ble Judges : Thottathil B. Radhakrishnan, J

Bench : Single Bench

Advocate : C.M. Suresh Babu, Government Pleader, for the Appellant; E.S. Ashraf, for the Respondent

Judgement

Thottathil B. Radhakrishnan, J.—Having been granted leave, the Secretary to Government of Kerala in Local Self Government Department has filed this petition seeking review of the judgment dated 10.6.2009 in W.P.(C) 16046 of 2009, a Writ Petition disposed of as part of a bunch of matters - Nasar v. Malappuram Municipality 2009 (3) KLT 92 : 2009 (3) KHC 35.

2. The relief sought for in the Writ Petition filed without the Government on the array, was to quash the Malappuram Municipality's decision refusing building permit on the ground that the land in relation to which building permit was sought, fell within an area identified as wet land and restricted, to be for such user in terms of the master plan approved by the Government. It was noticed that in terms of the judgments issued by this Court in Padmini v. State of Kerala 1999 (3) KLT 465 different judgments were issued by this Court including those placed on record along with the Writ Petition as Exts.P3, P4, P5 etc. The judgment sought to be reviewed was accordingly issued. It is also a matter of record by now, that even the judgment sought to be reviewed has been followed later by this Court in issuing different judgments.

3. For one thing, the Municipality is not aggrieved by the judgment sought to be reviewed. It is a Municipality which makes a Scheme for Town Planning and

places it to the Government for approval. The Government sanctions that scheme after a preliminary notification and after considering the objections thereof. Thereafter, the scheme becomes operational and obliges the Municipality and the citizens to abide by its terms. The withdrawal of the scheme or a master plan can thereafter be only in terms of the statutory provisions which enjoin that such action can only be with the orders of the Government. The provisions in the Town Planning laws also provide for compensation to persons who have acted in accordance with the scheme and have changed the user of the land to suit the dictate of the scheme; but on withdrawal of the scheme, may suffer on that count.

4. The learned Special Government Pleader appearing on behalf of the Local Self Government Department pointed out that the application for review is filed essentially because the judgment sought to be reviewed as also different other judgments issued before that and following it, are misused to get over the prohibitions contained in Town Planning laws. It is pointed out that the fact situations which would fall within the parameters of the law laid in *Padmini* (supra) would be only those where acquisition is necessary for the purpose of giving effect to a particular clause of the Town Planning Scheme and that the said principle cannot be extended to the provisions relating to the zoning regulations contained in the scheme which do not require any acquisition to bring the land to the public hold but enjoins only a restriction on the user of the land. Therefore, the Review Petition needs to be answered, having regard to the issues raised.

5. *Friends Colony Development Committee v. State of Orissa and Ors.* (2004)8 SCC 133 was rendered by the Apex Court noticing that the concept of zoning and planning, though may result in hardship to individual property owners as regards their freedom to use their property in the way they like, such regulation and control is no reason by which alone, the controlling regulations could be termed as arbitrary or unreasonable. It was held that the private interest stands subordinate to public good and the power to plan development of city and to regulate building activity therein flows from the police power of the State. It was accordingly held that the exercise of such governmental power is justified on account of it being reasonably necessary for the public health, safety, morals or general welfare and ecological considerations; though an unnecessary or unreasonable inter-meddling with private ownership of property may not be justified.

6. In *Raju S. Jethmalani and Others Vs. State of Maharashtra and Others*, referred to in the judgment sought to be reviewed, the Apex Court posed the question as to whether the Government can prepare a development plan and deprive the owner of the land from using that land. It was held that while there is no prohibition against including private land in a development plan, no development could be made on that land unless that private land is acquired for development and that the Government cannot deprive the persons from using their private property. The said judgment does not impeach the governmental

power to classify the land for the purpose of planned development of cities and zoning, planning and regulating building construction activities for such purpose; recognized by the Apex Court in its earlier judgment Friends Colony Development Company (supra).

7. With this, it needs to be noticed that in Padmini (supra), this Court was considering a case involving area to be acquired for residential purpose as per DTP Scheme. The requirement of acquisition was therefore the basic issue that steered the judgment in Padmini.

8. The judgment sought to be reviewed, viz., Nasar (supra) was also rendered only with relevance to the law relating to cases where land acquisition becomes necessary. It was therefore that this Court held in paragraph 8 of that judgment that the land acquisition proceedings having not commenced, the attempt to curb the rights of owners of those land until publication of statutory notifications and declarations would result in infraction of right to property under Article 300A of the Constitution. The judgment sought to be reviewed therefore does not in any manner decide the issues referable to zoning and planning without the necessity of acquisition of land. It is clarified that any statement as to law, in the judgment in Nasar (supra) would not apply to cases which do not involve acquisition of land for the purpose of a Town Planning Scheme. With this, the purpose of the Review Petition filed by the Local Self Government Department in the Government would stand satisfied.

9. On the facts, the decision in Nasar is not challenged by the Municipality. The reported version is issued in a bunch of matters. The facts of each case have not been separately dealt with. Therefore, but for issuing the clarifications as stated in the preceding paragraphs, the judgment sought to be reviewed, does not require to be modified. Subject to the aforesaid clarification, this Review Petition is ordered without modifying the judgment sought to be reviewed.