

(2025) 04 KL CK 1289
In the High Court Of Kerala
Case No : Writ Appeal No. 1119 Of 2018

State Of Kerala

APPELLANT

Vs

T.V. Haridasan

RESPONDENT

Date of Decision : 01-04-2025

Acts Referred:

Land Acquisition Act, 1894 — Section 16
Kerala High Court Act, 1958 — Section 5

Citation : (2025) 04 KL CK 1289

Hon'ble Judges : Nitin Jamdar, CJ;S. Manu, J

Bench : Division Bench

Advocate : V. Tekchand, P.M.Pareeth, Vaniah Mariya Dominic

Final Decision : Allowed

Judgement

Nitin Jamdar, CJ

1. The State of Kerala has filed this Appeal under Section 5 of the Kerala High Court Act, 1958, challenging the order passed by the learned Single Judge dated 10 November 2017 in W. P. (C) No. 26128 of 2008, in which the learned Single Judge held that the Respondent / Petitioner is entitled to the allotment of public land and that a sale deed be executed in his favour.

2. The subject matter of these proceedings is a portion of the land in Re-Sy. No. 102/4 of Valiyannur Amsom Varam Desom of Veliyannoor Village of Kannur Taluk, which was acquired for the Pazhassi Irrigation Project from one Puthiyapurayil Nabeesa Fathibi R. and vested the same with the Irrigation Department. A portion of the land had remained in excess after the original use.

3. Earlier, the State of Kerala had issued executive instructions with respect to the lands that remained unutilised after the purpose for which the lands were acquired was achieved that such land could be disposed of to the erstwhile owner. The High Court of Kerala had declared these executive instructions invalid, being in contravention of the Kerala Land Assignment Act, 1960. The Hon'ble

Supreme Court dismissed the appeal by the State of Kerala in the case of State of Kerala v. Bhaskaran Pillai 1997 (2) KLT 217 (SC), confirming the view taken by the High Court that such executive instructions could not have been issued, and once the land by operation of Section 16 of the Land Acquisition Act, 1894 stood vested in the State free from all encumbrances, its alienation has to be in the public interest.

4. Pursuant to the decision of the Hon'ble Supreme Court in Bhaskaran Pillai, the State of Kerala issued a Government Order dated 22 December 2000 laying down a procedure for the usage of such land by the Government Departments and making an application by the interested party for allotment. The Respondent / Original Petitioner, an Advocate, filed an application for assignment of the subject land on 2 July 1991. On 18 June 2005, the subject land was decided to be assigned, and the matter was taken up before the District Assignment Committee. The upset price of the land was fixed. An auction was conducted on 20 September 2006 by the Tahsildar. Petitioner was the highest bidder, and the Petitioner tendered the sale consideration on 19 October 2006. The proposal for confirmation of the sale was returned after various queries were raised, and on 11 August 2008, by Ext. P8 order, the District Collector, Kannur, set aside the auction sale of 6 cents of land being in contravention of the Government Order dated 22 December 2000. The Petitioner challenged this order by way of W. P. (C) No. 26128 of 2008, which was allowed by the learned Single Judge by the impugned judgment dated 10 November 2017.

5. The impugned order noted that the shape of the land was such that it could be utilised only by the Petitioner or the adjacent owner. The impugned order thereafter referred to Ext. P8 and observed that the procedure for publication of sale is the same as contemplated in the Kerala Revenue Recovery Act, 1968 (Act of 1968), and the publication was done as per the procedure, and therefore, Ext. P8 impugned order has to be set aside, and it was accordingly set aside. The Respondent State was directed to confirm the sale. Challenging this order, the State of Kerala is in appeal.

6. When the appeal came up for consideration on 7 November 2018, the Division Bench granted time to the learned Government Pleader to take instructions on whether any Government Department or undertaking needed the land in question. Thereafter, when the appeal came up for consideration on 6 February 2019, taking note of the submission of the learned Government Pleader that several Government Departments are interested in the said land, the appeal was admitted, and the implementation of the impugned order was stayed.

7. We have heard Mr. V. Tekchand, learned Senior Government Pleader appearing for the Appellant State and Mr. P. M. Pareeth, learned counsel for Respondent No. 1-Original Petitioner.

8. As stated earlier, the assignment of the excess land after satisfying the object of the acquisition is governed by the Government Order dated 22 December

2000. The Government Order reads as follows:-

"GOVERNMENT OF KERALA

Abstract

Land – Disposal of lands acquired under the Land Acquisition Act and unutilized for the purpose for which it was acquired by the Government – Instructions issued.

Revenue (P) Department

G. O. (Ms) No. 387/2000/RD Dated, 22.12.2000, Thiruvananthapuram

Read: 1) G. O. (Ms) No. 530/67/RD Dated 30.10.1967.

2) G. O. (Ms) No. 222/94/RD Dated 4.5.1994.

3) Judgment dated 18.12.1999 of the High Court of Kerala in S. A. No. 101 and 129 of 1990.

4) G. O. (Ms) No. 309/2000/RD Dated 28.9.2000.

5) Letter No. 101 & 129/50/SA/110/2000/AAG Dated 27.11.2000 from the Additional Advocate General.

ORDER

In the Government Order read as first paper above, standardized instructions were issued with regard to the procedure to be adopted for reconveyance of acquired lands.

2. In the light of the directions of the High Court disallowing reconveyance of land acquired for public purpose, further instructions were issued in para 3(viii) of the G. O. read as second paper above, that such category of land should either be used for public purpose or be disposed of by way of assignment or lease on consideration of market value.

3. In the judgment read as third paper above, the High Court of Kerala has directed, citing the ruling of the Supreme Court reported in 1997 (2) KLT 217 (SC), that such lands should be utilized only for public purpose and in contingencies in which such utilization is not possible, it should be disposed of in public auction.

4. After considering the matter in all its aspects, Government were pleased to issue the Government Order read as 4th paper above prescribing procedure for the disposal of lands acquired for public purpose and unutilized for the purpose for which it was acquired.

5. Now, the Additional Advocate General, in the letter read as 5th paper above, has suggested deleting clause 5 and amending clause 3 in this G. O. After considering his suggestion, the Government are pleased to modify the Government Order read as 4th paper above, as here under.

1. When any land required for a public purpose is not required for that purpose or for any other purpose of the Department for which the land was acquired, the concerned Department should bring this fact to the notice of the District Collector concerned and hand over possession of the land to the Revenue Department immediately. Until such handing over possession it shall be the responsibility of the acquiring Department to keep the land free from any encroachment.

2. Immediately on receipt of such intimation the District Collector shall ascertain from all Government Departments and the Local Bodies concerned whether they require the land for their use, and get fully satisfied about the genuineness of the claims made.

3. If the land is needed by any other Government Departments, Local Bodies or Public Sector Undertakings, the District Collector would take further action for the transfer / assignment of the land in accordance with the standing instructions relating to transfer of land between Government Departments or between Government Departments and Local Bodies or assignment of land to public sector undertakings as the case may be.

4. In the case of more than one claimant for the land, it shall be referred to the Government for their decision.

5. If the lands could not be disposed of as mentioned above, it shall be disposed of in public auction, following the procedure prescribed in the Kerala Revenue Recovery Act for the auction of attached immovable properties, except the procedure prescribed under Section 50 of the said Act for bidding on behalf of Government. Auction should be conducted only after fixing the upset price of the land, which should not be below the market value of the land prevailing at the time of auction or the amount spent by Government for the acquisition of the land whichever is higher. The Tahsildar concerned will conduct the auction subject to the confirmation of sale by the District Collector.

(By order of the

Governor)

C. Chandran

Secretary to Government"

Therefore, first the excess land has to be disposed of as per the need of other Government Departments or local bodies for public purpose only, if there are no requirements, then the procedure of auction has to be carried out.

9. In the case at hand, the District Collector, Kannur, upon examination of the

report received from the Tahsildar, Kannur, on 14 March 2006 for a proposal to dispose of 6 cents of land through a public auction, directions were given by the Collector to the Tahsildar on 24 March 2006 to strictly observe all the instructions mentioned in the Government Order. After the Tahsildar reported that on 6 December 2006, the land was put for public auction and the Petitioner was the highest bidder, the District Collector examined the record received from the Tahsildar and found that most of the directions in the Government Order were breached. The requirement of ascertaining from all Government Departments and local bodies whether they require the land was not followed. Also, no steps were taken to advertise the sale widely, there was no publication of the notice at the site, the increase in the land value and the premises were not reflected in the auction sale, and no attempts were made to fetch a moderate rate. The District Collector found a remark of the officer who conducted the auction that even a moderate amount would not be fetched even if the second auction was conducted to be absurd. Accordingly, the Collector, by order dated 11 August 2008, cancelled the auction. The Petitioner challenged this cancellation.

10. The Petitioner is not akin to an auction purchaser of a property put to sale in a court auction. Such an auction purchaser acquires a different set of rights. The auction at hand is not one such auction, even though the procedure adopted for it is the same as a court auction. This was an auction to dispose of the property vested in the State. It is the first principle, as emphasised by the Supreme Court in the case of Bhaskaran Pillai, that such property vested in the Government has to be utilised for a public purpose and only if it is not possible to do so, to dispose of it by way of public auction at a value. Therefore, the right of such an applicant would be subservient to the need of the Government or other public authorities to utilise the land. This has been amply made clear in the Government Order dated 22 December 2000.

11. The learned Government Pleader made a grievance that the impugned order only refers to the aspect of publication and procedure but does not refer at all to the main ground contained in Ext. P8 order of the Collector, that is the requirement of ascertaining the needs of Government Departments and local bodies. This submission is correct. There is no reference in the impugned order to the Government Order dated 22 December 2000 at all. There is also no finding that any other Government Departments or local bodies do not require the land. Without referring to and dealing with the main ground in the order of the Collector, the order could not have been set aside.

12. The requirement and need of the Government Departments and local bodies for this land is the paramount consideration. The learned Government Pleader has placed the following facts on record. The Deputy Excise Commissioner, Kannur, and the District Manager, Kerala State Scheduled Castes and Scheduled Tribes Development Corporation, have placed their requests before the District Collector for transferring the said land to build offices. This position existed when the Collector passed the order. Also, the Offices of Excise Enforcement and Anti

Narcotics Special Squad, Kannur, Excise Circle, Kannur, Excise Intelligence & Investigation Bureau and the Assistant Commissioner (Enforcement), Kannur, are functioning in a rented building. It is stated that these offices incur annual rental costs of around ₹ 6,00,000/-. If the land is obtained, the amount paid for office building rent will be significantly reduced. It is also stated that because of the space limitation of existing rented buildings, storing the properties seized in Abkari / NDPS cases is very difficult. The medical officer also requires the land as many patients who are currently functioning in the District Homeo Hospital, Kannur, are coming to the speciality clinics daily. The District Manager, Kerala State Scheduled Castes and Scheduled Tribes Development Corporation, Kannur, has requested the land to construct a district office and start self-employment enterprises, preparing a permanent system for selling traditional products. It is, therefore, clear that the land is required to be utilised for public purposes as different Government Departments have evinced interest in the said leftover land after acquisition proceedings.

13. The learned counsel for the Petitioner submitted that the position of the land is such that only the Petitioner can use the same. This submission is accepted in the impugned order. Learned Government Pleader submitted that there is no basis for this finding as various other government departments are interested in using the said land. If the case of the Petitioner is that the position of the land was such that only the Petitioner could use the land and no other person or authority, then the heavy burden lay on the Petitioner to demonstrate the said fact. There are no pleadings in the petition to discharge such a burden. The conclusion that the Petitioner alone could use the land is not based on any material.

14. The Collector had cancelled the auction on 11 August 2008, and the impugned judgment on 10 November 2017 set aside the order of the Collector. The impugned judgment was stayed in Appeal. The action of the District Collector based on the Government Order dated 22 December 2000 to cancel the auction could not have been faulted. The Appeal, therefore, is required to be allowed. The amount deposited by the Petitioner pursuant to the auction will have to be returned to the Petitioner.

15. In these circumstances, the Appeal is allowed. The judgment and order passed by the learned Single Judge dated 10 November 2017 in W. P. (C) No. 26128 of 2008 is set aside, and the writ petition is dismissed. The amount deposited by the Respondent-Petitioner pursuant to the auction, if any, be returned to the Petitioner by the Appellants.