
(2016) 03 KL CK 0119
In the High Court Of Kerala
Case No : WP(C) No. 22815 of 2007 (N)

T.P. Shahul Hameed

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 17-03-2016

Acts Referred:

Land Acquisition Act, 1894 — Section 12 (2), Section 17 (4), Section 17(4), Section 4 (1), Section 4(1), Section 5 (A), Section 5A, Section 6

Citation : (2016) 03 KL CK 0119

Hon'ble Judges : Alexander Thomas, J.

Bench : Single Bench

Advocate : M. Ramesh Chander, Advocate, for the Appellant;

Final Decision : Dismissed

Judgement

Alexander Thomas, J.—1. The petitioner and his brother was owning a total extent of about 82 cents of land in R.S. No. 392/1999 of Azhikkode South Village, Kollur Taluk, Kannur Revenue District. Earlier, the 4th respondent, Azhikkode Panchayat wanted to acquire about 30 cents of land out of the said land for the purpose of setting up of a taxi stand in the locality. During the pendency of the acquisition proceedings, the petitioner had sold about 17.466 cents of land of the said property, to the contesting respondent No. 5. The 5th respondent on coming to know of the acquisition proceedings, represented before the authorities concerned and before the Government contending that his property coming to an extent of 17.466 cents may be excluded from the acquisition proceedings. The Government after consideration of the matter, have issued Ext. P1 G.O.(Rt.) No. 2225/01/LAD dated 5.7.2001. The Government after consideration of the representation dated 19.6.2001 of the 5th respondent herein had ordered to withdraw the impugned acquisition proceedings. Contending that the 4th respondent Panchayat was not heard by the Government before the issuance of Ext. P1, the Panchayat had challenged Ext. P1 before this Court by filing a writ petition as O.P. No. 21481 of 2001 before this Court. This court as

per judgment dated 31.1.2002 had disposed of O.P. No. 21481 of 2001 filed by the Panchayat by directing that the Government should consider the request of the Panchayat and to pass appropriate orders on the prayer of the Panchayat for continuing with the impugned acquisition. The Government after hearing the Panchayat, the petitioner herein and the 5th respondent had passed Ext. P2 G.O. (Rt.) No. 1944/2002/LSG dated 18.7.2002 rejecting the request of the Panchayath and refusing to interfere with the earlier decision in Ext. P1. From a reading of Ext. P2, it is clear that one of main grounds on the basis of which the Government had passed Ext. P2, was that the petitioner herein had submitted an undertaking before the Panchayath stating that the Panchayat may proceed with the acquisition proceedings as against the property of the petitioner herein. This has been subsequently dealt with by the Government in paragraph 5 of Ext. P2, Government Order. This aspect of the matter was also pointedly considered by the Division Bench in Ext. P3 judgment.

2. Aggrieved by Ext. P2 herein, the Panchayat challenged the same by instituting a writ petition (Civil) as (W.P.(C). No. 21480 of 2003) before this Court. The Division Bench of this Court as per Ext. P3 judgment rendered on 31.3.2015 had dismissed W.P.(C). No. 21480 of 2003 and found that there are no grounds available in judicial review to interfere with the considered decision taken by the Government at Ext. P2. The Division bench had also pointedly considered the crucial aspect that the 3rd respondent therein (petitioner herein), as original owner of the land in question had agreed before the authorities concerned to make available his property in re-survey No. 395/9 in Azhikkode Village for effectuating the acquisition of the Panchayat for the setting up of the taxi stand in question. Thereafter, the 4th respondent Panchayat, set in motion, proceedings under the Land Acquisition Act 1984 for acquisition of land herein for the purpose of setting up of the taxi stand and this was so done based on the aforesaid undertaking given by the petitioner herein as referred to in Ext. P2 G.O and Ext. P3 judgment. This culminated in the issuance under Section 4(1) notification and Section 17 (4) proceedings for dispensation of Section 5 (A) enquiry. Ext. P4 is copy of Section 4 (1) notification, published on Mathrubhumi Daily dated 13.4.2007 wherein it is notified that an extent of land coming to 0.1198 hectares of land (29.660 cents) of land owned by the petitioner in re-survey No. 395/9 of Azhikkode Village is sought to be proceeded for the said acquisition. Ext. P5 is the copy of the notice issued under Rule 7 (2) of the Land Acquisition Rules in respect of the above said acquisition. Thereafter, the petitioner submitted Ext. P6 objections dated 30.6.2007 before the Land Acquisition Officer (3rd respondent) which was rejected. The petitioner has approached this Court by filing the instant writ petition for quashment of the impugned Exts.P4 and P5 land acquisition proceedings.

3. The 4th respondent Panchayat has filed counter affidavit dated 20.11.2007 resisting the pleas contained in the writ petition. The details of the previous round of acquisition proceedings for the above purpose which culminated in Exts.P2 and P3 have also been dealt with therein. As regards, the present

impugned Land Acquisition proceedings which has led to Ext. P4 and P5, it is averred in para 7 of the said counter affidavit that after Ext. P3 judgment, the respondent Panchayat had considered the entire issue in detail in the light of that judgment and also considered the undertaking given by the petitioner herein that this property in survey No. 395/9 of the Azhikkode village (after excluding the property alienated by him in favour of R5 herein) could be acquired for taxi stand was taken note of and it was found that the said land belonging to the petitioner is the only suitable land available for the acquisition for setting up of the taxi stand and there is no other suitable land available in the Panchayat for the said taxi stand. Accordingly, the respondent Panchayat had resolved to request the authorities concerned for acquisition of the said land coming to an extent of 29.60 cents in re-survey No. 395/9 of Azhikkode South Village owned by the petitioner herein for the public purpose of setting up of the taxi stand in the Panchayat locality, that the Deputy Director of Panchayat as per order dated 24.5.2006 had approved the site plan on local inspection and after the said approval, the Panchayat had approached the Government through the Deputy Director of Panchayat with the sanction of the acquisition proceedings for the aforesaid land for the setting up of the taxi stand in the Panchayat. The Deputy Director of Panchayat, Kannur by order dated 12.7.2006 had recommended the acquisition of the said land and the State Government as per G.O.(Rt). No. 2086/06/LSGD dated 23.8.2006 had ordered the grant of sanction for acquisition of 29.60 cents in R.S. No. 395/5 of Azhikkode South Village owned by the petitioner herein. Thereafter Ext. P4 notification and P5 notice were issued and published in full compliance of all statutory requirements etc. It is averred in the said counter affidavit that there is no irregularity or illegality in the issuance of those impugned proceedings. It is further averred in para 7 of the said counter affidavit that the new proposal has been made after Ext. P3 judgment by excluding the property of the 5th respondent and that the same is based on the consent/undertaking given by the petitioner herein as per Ext. R4 (a). Ext. R4 (a) is the consent/undertaking given by the petitioner on 11.8.2001 (referred to in Ext. P2 G.O and Ext. P3 judgment) wherein the petitioner herein has informed the Panchayat authorities that he had sold off a portion of his land to the 5th respondent and that he is fully willing that Panchayat could acquire land belonging to him for the purpose of setting up of the taxi stand. It is thus pointed out that the petitioner has clearly undertaken in Ext. R4 (a) that after exclusion of the land sold to the 5th respondent herein, the Panchayat may acquire the land belonging to the petitioner herein for the purpose of setting up of the taxi stand.

4. The 3rd respondent Land Acquisition Officer has filed a counter affidavit dated 28.11.2008. Para 2 of the said counter affidavit states that the Secretary of the 4th respondent Azhikkode Grama Panchayat had requisition to acquire an extent of 29.60 cents of land in R.S. No. 395/9 of Azhikkode South Village for setting up of the taxi stand and that the said decision was taken in accordance with resolution No. 107/06 dated 2.9.2006 of Azhikkode Grama Panchayat and that

the Government as per G.O.(Rt). No. 2086/06/LSGD dated 23.08.2006 and G.O. (Rt). No. 3122/06/LSGD dated 15.12.2006 had accorded special sanction for acquisition by invoking urgency provision by LA Act, 1894. The Land Revenue Commissioner, Thiruvananthapuram under proceedings No. LRC7-50367/06 dated 21.3.2007 had also accorded sanction in this regard that as there were no objectionable elements in or near to the proposed site, composite notification under Section 4(1) read with Section 17 (4) of the Land Acquisition Act, 1894 for publishing in Kerala Gazette (E.O) No. 748 dated 20.4.2007 as well as in Mathrubhumi and Deshabhimani daily dated 21.4.2007 and that Rule 7(2) notice in Form 4 (b) were also issued and published as per the rules. It is averred in para 3 of the counter affidavit that in pursuance of the publication of notification under Section 6 of the Kerala Survey and Boundaries Act in Kerala Gazette dated 20.4.2007, and the relevant records in this regard were prepared and scrutinized by the competent officials. The draft declaration under Section 6 of the L.A. Act was submitted to the Land Revenue Commissioner, Thiruvananthapuram through District Collector, Kannur and the Land Revenue Commissioner as per proceedings dated 3.5.2008 had approved the declaration as per Section 6. The same was published in Kerala Gazette dated 9.5.2008 and also published in two leading newspapers. The District Collector, Kannur as per proceedings dated 31.7.2008 had approved the basis for land value at Rs. 49,16,996/- per hectare in this case and accordingly the detailed valuation statement was prepared and submitted to the District Collector, who, as per proceedings dated 25.8.2008 had approved the detailed valuation statement. The District Collector as per proceedings dated 29.10.2008 had approved the draft award and the Award No. 3 of 2008 was passed on 31.10.2008 and Section 12 (2) notice was already issued to the petitioner. Since, this Court as per order dated 3.9.2008 had stayed the dispossession of the land, the land could not been taken possession till date. It is further averred in para 4 of the said counter affidavit that the earlier land acquisition proceedings were initiated in the year 1999, the same was dropped on the basis of Ext. P1 and P2. Later, the Panchayat authorities had obtained fresh government sanction for acquiring the land possessed by the petitioner and accordingly the impugned land acquisition proceeding have now been initiated. A counter affidavit dated 13.3.2008 has filed on behalf of the 2nd respondent District Collector. The 5th respondent has filed a separate counter affidavit denying the allegations and contentions raised in the writ petition. The petitioner has also filed a reply affidavit dated 7.3.2016 producing therewith Exts.P7 to P13 as well as an additional affidavit dated 7.2.2016 producing therewith Exts.P14 and P15.

5. Heard Sri. Ramesh Chand, learned Senior Counsel instructed by Sri. Aneesh Joseph, learned counsel appearing for the writ petitioner, learned Govt. Pleader appearing for respondents 1 to 3, Sri. M. Sasindran, Standing Counsel appearing for the 4th respondent, Azhikkode Grama Panchayat and Sri. P.V. George, learned counsel appearing for additional 5th respondent.

6. One of the main contention raised by the writ petitioner is that though he had

given undertaking/consent for acquisition of his land as referred to Ext. P2 Govt. order and P3 judgment, the acquisition proceedings are bad in law as there were no valid reason for dispensation of Section 5A enquiry and for invocation of the urgency as per Section 17(4) and further that the alternative sides mentioned by the Deputy Director, Panchayat and as referred to para 5 of Ext. P3 judgment has not been considered by the Panchayat Further it is submitted, the Panchayat has not invited any objections, against the setting up of the proposed taxi stand in terms of the provisions contained in Rule 3 of the Kerala Panchayat Raj (Landing places, halting places, car stand and other vehicle stand) Rules, 1995. It is also to be placed on record that though certain submissions have been made in the reply affidavit of the petitioner projecting a case that his Ext. R4(a) consent/undertaking was procured by fraud and coercion etc, the petitioner has not pressed on any of those submissions during the course of hearing. The petitioner has also placed reliance on Exts.P14 representation and Ext. P15 proceedings of the Government.

7. As regards the legality and validity of the impugned acquisition proceedings, it is to be noted that earlier the Panchayat had initiated steps in the year 1998 for acquisition of a portion of the petitioner's land for the purpose of setting up of the taxi stand. During the pendency of those acquisition proceedings, the petitioner had sold off about 17.466 cents of land out of the total extent of his property to the 5th respondent herein. On, subsequently, coming to know of the pendency of the said acquisition proceedings, the 5th respondent herein had represented before the authorities concerned and the Government, which led to Exts.P-1 and P-2 Government orders and Ext. P-3 judgment of the Division Bench, in his favour. It is to be noted that both the Government in Ext. P-2 Government order as well as the Division Bench in Ext. P-3 judgment have pointedly adverted to the crucial fact that the petitioner himself had voluntarily undertaken before the authorities concerned that the Panchayat can acquire the land owned by him so that the acquisition proceedings against the 5th respondent herein could be excluded. This was pointedly brought to the notice of the Government at the time of the hearing and also before the Division Bench of this Court, which culminated in Ext. P-3 judgment and in all these proceedings the Panchayat, the petitioner herein and the 5th respondent herein were parties. It is on the basis of this crucial aspect that the Division Bench also found in Ext. P-3 judgment that the considered decision taken by the Government in Ext. P-2 is not liable for any interference in judicial review. Ext. R-4(a) dated 11.8.2001 is the undertaking/consent given by the petitioner herein as referred to in Ext. P-2 Government order and Ext. P-3 Division Bench judgment. Though some feeble averments have been attempted to be made in the reply affidavit projecting a case as if the said consent was procured on the basis of fraud and coercion, etc., none of such submissions has been pressed into service during the hearing of this Writ Petition. Moreover, there are no materials or circumstances on the basis of which this Court can come to a considered conclusion that Ext. R-4(a) was not given voluntarily. Accordingly, it is only to be held that the petitioner with wide

and open eyes had voluntarily given consent before the authorities concerned that his land could be acquired by the Panchayat for the purpose of setting up of the taxi stand, as evident from Ext. R-4(a) dated 11.8.2001. It is not in dispute that the impugned Ext. P-4 notification issued under Sec. 4(1) of the Land Acquisition Act, 1894, has been issued in respect of the above said land of the petitioner covered by Ext. R-4(a) undertaking. In the light of these aspects, the respondent Panchayat cannot be found fault with in any manner for deciding to proceed the acquisition of the petitioner's land as covered by the impugned Exts.P-4 and P-5 proceedings, based on Ext. R-4 (a) undertaking.

8. As regards the petitioner's objections regarding the dispensation of Sec. 5A inquiry proceedings, the learned Standing Counsel appearing for the 4th respondent Azhikode Grama Panchayat submitted that in view of the voluntary consent given by the petitioner as per Ext. R-4(a) and as no other suitable lands were available, the Panchayat authorities came to the bona fide decision that the land acquisition proceedings can be set in motion as against the petitioner's property and that in view of the long pendency of the matter since 1998 and since no other land is available for the said purpose, the authorities concerned had decided to invoke the urgency clause contained in Sec.17(4) of the Land Acquisition Act, 1894, whereby it was also decided to dispense with Sec.5A inquiry proceedings. Ordinarily, in a matter like this, the authorities concerned should have been obliged to ensure full and proper compliance with all the procedural formalities as prescribed under the Land Acquisition Act, 1894, before a person's constitutionally guaranteed right to property is sought to be deprived. But in the facts of this case, the first round of acquisition proceedings was attempted by the respondent Panchayat authorities in the year 1998, which could not fructify in view of the complications, which resulted out of the transfer of the land by the petitioner to the 5th respondent during the pendency of the earlier the land acquisition proceedings. This led to the situation of the 5th respondent objecting to the same, which resulted in Exts.P-1 and P-2 Government orders and ultimately, led to Ext. P-3 judgment of the Division Bench in his favour. As noted earlier, the crucial aspect of the matter, which led to the Government and the Division Bench to decide in favour of the 5th respondent herein was the consent given by the petitioner. In view of the long lapse of the time, the Panchayat cannot be totally found fault with for believing in the consent given by the petitioner as per Ext. R-4(a) and in deciding to request the authorities concerned for invoking the urgency clause, etc. So, in the light of the clear facts and circumstances, which have emerged in this case, this Court is of the considered opinion that the authorities concerned cannot be faulted with for dispensing with Sec.5A inquiry proceedings by resort to the urgency clause contained in Sec.17(4) of the Land Acquisition Act, 1894. The said contention raised on behalf of the petitioner stands accordingly overruled.

9. The petitioner has raised a contention based on Rule 3 of the Kerala Panchayat Raj (Landing Places, Halting Places, Cart Stands and other Vehicles Stands) Rules, 1995, framed under the Kerala Panchayat Raj Act, 1994, that the

respondent Panchayat has not adhered to the provisions contained in Rule 3 thereof, and that therefore the acquisition of the land for the propose of setting up of the taxi stand is illegal and ultra vires, etc. Rule 3 of the above said Rules, framed under the Kerala Panchayat Raj Act, 1995, reads as follows:

"Rule. 3. Panchayat to invite objections before providing public landing places, halting places, cart stands or other vehicle stands.- (1) A Village Panchayat shall, if it intends to provide any public landing place, halting place, cart stand or other vehicle stand, publish a notice in the notice board of the Village Panchayat and in any prominent place in each of its constituencies requiring the public to raise objections regarding the same, if any, in writing within thirty days and publish the fact of such publication of notice in any two local daily newspapers in the regional language having wide circulation in that Village Panchayat.

(2) The notice shall contain the survey number and the extent of the land in which it is intended to provide the landing place, halting place, cart stand, or other vehicle stand."

The learned Standing Counsel appearing for the 4th respondent Panchayat has candidly stated that the Panchayat has not invited objections against the proposal of setting up of the taxi stand before the initiation of the present impugned land acquisition proceedings. But further the learned Standing Counsel for the Panchayat would submit that the said rules are not mandatory in nature and at any rate, non-adherence to the said rules will not vitiate the legality and validity of the action taken for acquisition of the land in terms of the provisions contained in the Land Acquisition Act, 1894. There was a clear advertance by the Division Bench to the above said Rule as can be seen from a reading of para 5 of Ext. P-3 judgment. The respondent Panchayat could have easily adhered to the simple procedure envisaged in Rule 5 of the above said Rules framed under the Panchayat Raj Act. In view of the facts and circumstances of this case, more particularly, the one emerging based on the consent of the petitioner in Ext. R4(a) Panchayat and other relevant facts and circumstances of this case, this Court is of the considered opinion that non-adherence to the said rules framed under the Kerala Panchayat Raj Act will not vitiate the legality and validity of the action taken in pursuance of the provisions contained in the Land Acquisition Act, 1894.

10. The learned counsel for the petitioner has also pointed out that it has been noted by the Division Bench in para 5 of Ext. P-3 judgment that the Deputy Director of Panchayats, Kannur, had indicated certain alternate sites for setting up of the taxi stand and that the Panchayat has not considered the feasibility of those alternate sites before the impugned land acquisition proceedings. The learned counsel for the petitioner has further pointed out that it has been observed in para 4 of Ext. P-3 judgment that pursuant to Ext. P-2 proceedings, the Government was informed that the proposed site is not suitable for the purpose, etc. The learned Standing Counsel appearing for the 4th respondent Panchayat would submit that these findings of the Division Bench are primarily in

respect of the land belonging to the 5th respondent, which was excluded from the acquisition proceedings, based on Ext. P-2. Further it is pointed out in the averments in the counter affidavit filed by the 4th respondent Panchayat that the Deputy Director of Panchayats had assessed the suitability after conducting local inspection and had found that the present land is suitable for setting up of the taxi stand and had made specific recommendation in that regard and it is on the basis of the specific recommendation made by the Deputy Director of Panchayats, Kannur, that the Government had also granted its sanction as per the issuance of two Government orders referred to above. It is also pointed out on the basis of the averments in the said counter affidavit that at the time of the issuance of the impugned notification, there were no other suitable lands for the above said purpose and that the Panchayat had no other alternative, but to opt for the acquisition of the present land.

11. On an anxious consideration of the rival pleas in this regard, this Court has no materials to assess the suitability or otherwise of the land in question and there are no incriminating circumstances or materials to disbelieve the above said versions projected in the averments in the counter affidavit of the 4th respondent Panchayat, which are made on the basis of the recommendations made by the Deputy Director of Panchayats, Kannur, which has resulted in the permission from the Government as well. Accordingly, the above said contention raised by the petitioner also stands overruled. It is also to be noted that the respondent Panchayat had initiated the first round of acquisition proceedings as early as in 1998 and the present impugned proceedings were initiated in the year 2006. More than about 18 years have elapsed after the respondent Panchayat has initiated steps for the acquisition of the land for setting up of taxi stand in the locality of the Panchayat.

12. Lastly, the learned counsel for the petitioner submitted that the petitioner had submitted Ext. P-14 representation dated 6.10.2014 before the Government, which resulted in Ext. P-15, in which the Government has directed the Panchayat to temporarily keep in abeyance the acquisition proceedings and to examine the feasibility of locating another alternate plot of land for setting up of the tax stand, etc. On consideration of Ext. P-15 it is seen that it does not even bear a date. However, very crucially, it can be seen from a mere reading of Ext. P-15 that it has been stated in the final paragraph thereof that in case the Government has already given sanction for the impugned acquisition proceedings, then a copy of the said Government order may also be forwarded to the Government, etc. So it is clear like day light from a mere perusal of Ext. P-15 that the directions issued therein are merely interlocutory in nature, wherein it has been ordered to temporarily keep in abeyance the impugned acquisition proceedings. However, it can be seen that while issuing Ext. P-15, the Government was not even aware that the Government had already granted sanction for the impugned acquisition proceedings by the issuance of G.O(Rt) No. 2086/06/LSGD dated 23.8.06 and G.O(Rt) No. 3122/06/LSGD dated 5.12.06 as referred to in paragraph 2 of the counter affidavit dated 28.11.2008 of the 3rd

respondent Land Acquisition Officer as well as in para 2 of the counter affidavit dated 13.11.2008 of the 2nd respondent District Collector. In that view of the matter, the petitioner's contentions based on Ext. P-15 are not tenable or sustainable.

13. The upshot of the above discussion is that there are no grounds for interference with the impugned acquisition proceedings by invoking the public law remedy of judicial review in the facts and circumstances of this case. Accordingly, this Court is constrained to dismiss the Writ Petition (Civil) and it is so accordingly ordered. However, there will be no order as to costs.