

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

TUESDAY, THE 10TH DAY OF FEBRUARY 2015/21ST MAGHA, 1936

WA.No. 1459 of 2013 () IN WP(C).24524/2011

AGAINST THE JUDGMENT IN WP(C) 24524/2011 of HIGH COURT OF KERALA
DATED 15-07-2013

APPELLANT(S)/RESPONDENTS 1 TO 2 IN WPC:

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1. STATE OF KERALA
REPRESENTED BY THE SECRETARY
REVENUE (DEVASWOM) DEPARTMENT
THIRUVANANTHAPURAM-695001.
 2. THE LAND REVENUE COMMISSIONER
THIRUVANANTHAPURAM-695001.

BY SR GOVT PLEADER SRI.C.S.MANILAL

RESPONDENT(S)/PETITIONER AND RESPONDENTS 3 TO 5 IN WPC:

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1. DR. SREEDHAR KAVIL
KAVIL HOUSE, GURUVAYOOR
REPRESENTED BY THE POWER OF ATTORNEY HOLDER MINI MENON
W/O. DAEVAN MENON, 206, . ROYAL HERITAGE
BANGALORE-83.
 2. GURUVAYOOR DEVASWSOM
REPRESENTED BY ITS ADMINISTRATOR, GURUVAYOOR-680101.
 3. GURUVAYOOR DEVASWOM COMMISSIONER
GURUVAYOOR-680101.
 4. THE PRINCIPAL
SREE KRISHNAN HIGHER SECONDARY SCHOOL, GURUVAYOOR.
- R1 BY ADV. THOMAS GEORGE(NO MEMO)
BY SRI.TONY GEORGE KANNANTHANAM
R2, BY ADV. P.GOPAL
R4 BY SRI.P.V.CHANDRA MOHAN

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 10-02-2015, ALONG
WITH WA. 1504/2013, WA. 1741/2013, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.

W.A.Nos.1459, 1504 & 1741 of 2013

Dated this the 10th day of February, 2015

JUDGMENT

Antony Dominic, J.

1.All these writ appeals arise from the judgment of the learned single Judge in W.P(C).24524/11. The said writ petition was filed by the appellant in W.A.1741/13, who is impleaded as the first respondent in the other two writ appeals.

2.In the writ petition, the challenge was against Ext.P16, the declaration under section 6 of the Land Acquisition Act, 1894 (hereinafter referred to as the 'Act', for short) for the acquisition of 0.2579 hectares of land in Survey No.158/35 of Iringappuram village in Thrissur district. By the judgment under appeal, learned single Judge quashed Ext.P16, concluding that the acquisition proceedings were not for a public purpose as contemplated under section 3 (f) of the Act. It is this judgment which is challenged by the official respondents, in W.A.1459/13 and the Requisitioning Authority, the Guruvayoor Devaswom, in W.A.1504/13. The writ

petitioner has filed w.A.1741/13, seeking to impugn the observations made by the learned single Judge in paragraphs 11 and 12 of the judgment, that going by the definition of 'public purpose' contained in the Act, undisputedly land can be acquired for educational purposes as well.

3. We heard learned counsel for the appellants and the learned counsel for the contesting respondents and considered the submissions made.

4. Before we deal with the respective contentions, we shall refer to the facts which led to this litigation. The appellant in w.A.1741/13 owns the aforesaid plot of land. Ext.P11 is a resolution of the Guruvayoor Devaswom dated 27.11.2005. This resolution reads thus:

“ഗുരുവായൂർ ദേവസ്വം ശ്രീകൃഷ്ണ ഹയർ സെക്കൻററി സ്കൂളിന് സമീപം കൃഷ്ണനാട്ടം ക്വാർട്ടേഴ്സിനോട് ചേർന്ന (മൂന്ന് ഭാഗവും ദേവസ്വം സ്കൂൾ കോമ്പൗണ്ട്) നിൽക്കുന്ന സ്ഥലത്തും സ്കൂൾ മതിലിനോട് ചേർന്ന് മുൻ വശത്തും ബഹുനില കെട്ടിടങ്ങൾ, ലോഡ്ജുകൾ എന്നിവ നിർമ്മിക്കുവാൻ തുടങ്ങുന്നതായി അറിയുവാൻ കഴിഞ്ഞുവെന്നും ഇപ്രകാരം കെട്ടിടങ്ങൾ വരുന്നതായാൽ സ്കൂളിനേയും

വിദ്യാർത്ഥികളേയും വിദ്യാർത്ഥികളുടെ പഠനത്തേയും പരിസ്ഥിതി മലിനീകരണം ദോഷകരമായി ബാധിക്കുമെന്നും ആകയാൽ പ്രസ്തുത സ്ഥലങ്ങൾ ദേവസ്വം അകയർ ചെയ്യണമെന്നും സ്കൂൾ ഹെഡ്മിസ്ട്രസ് റിപ്പോർട്ട് ചെയ്തിട്ടുണ്ട്. മേൽ റിപ്പോർട്ട് ലഭിച്ചതിന്റെ അടിസ്ഥാനത്തിൽ ദേവസ്വം തഹസിൽദാർ, ഭരണസമിതി അംഗങ്ങൾ, സർവ്വേയർ എന്നിവർ സ്ഥലം പോയി പരിശോധിച്ചു. പ്രസ്തുത സ്ഥലങ്ങൾ അകയർ ചെയ്യേണ്ടത് സ്കൂൾ വിദ്യാർത്ഥികളുടെ ആരോഗ്യത്തിനും പഠനത്തിനും ദോഷകരമായി ബാധിക്കാതിരിക്കുവാൻ വളരെ അത്യാവശ്യമാണെന്ന് എല്ലാവരും അഭിപ്രായപ്പെട്ടു. ഭരണസമിതി ഇത് സംബന്ധിച്ച് വിശദമായ ചർച്ച നടത്തിയതിന്റെ അടിസ്ഥാനത്തിൽ ദേവസ്വത്തിന്റെയും സ്കൂളിന്റെയും ആരോഗ്യകരമായ സംരക്ഷണവും ഉത്തമ താൽപര്യവും മുൻ നിർത്തി ചാവക്കാട് താലൂക്ക് ഇരിങ്ങാപ്രം വില്ലേജ് സർവ്വെ നംബർ 158/3ൽ പെട്ട 64 സെന്റ് സ്ഥലവും 158/5 യിൽ പെട്ട 11 സെന്റ് സ്ഥലവും അർജൻസി ക്ലോസിൽ ഉൾപ്പെടുത്തി അകയർ ചെയ്യുന്നതിന് അഡ്വാൻസ് പൊസഷൻ സ്വീകരിക്കുന്നതിന് തീരുമാനിച്ചു. ആവശ്യമായ സത്വര നടപടികൾക്ക് അഡ്മിനിസ്ട്രേറ്ററെ ചുമതലപ്പെടുത്തി."

5. That resolution shows that the Headmistress of the Sree Krishna Higher Secondary School reported to the Devaswom that buildings are proposed to be constructed in the land and that according to the Devaswom, if buildings are so constructed, that would cause environmental pollution and would also adversely affect the Sree Krishna Higher Secondary School and its students. It is stated that on getting such a report regarding the proposed

construction and its possible impact, the Devaswom Tahsildar, Board Members and Surveyor inspected the land and observed that it was necessary to acquire the land for protecting the health of the students and to avoid anything adverse to the education of the students. Accordingly, it was resolved that the aforesaid land along with 11 cents of land in Survey No.158/5/p be acquired invoking the urgency clause under section 17(1) of the Act.

6. According to the Devaswom, based on Ext.P11 resolution, a requisition was made to acquire the two plots of land mentioned above. Based on that requisition, the Government issued Ext.P1 order dated 18.1.2006, directing the District Collector to enquire into the matter and submit a report. The report submitted by the District Collector on 8.2.2006 also shows that the proposal of the Devaswom was not only for the acquisition of the plot of land of the appellant in w.A.1741/13 but also 11 cents of land situated in Survey No.158/5. It also appears that in the meanwhile, on 28.2.2006, the appellant in

W.A.1741/13 obtained a building permit for construction of a building in his land.

7. Considering the report submitted by the District Collector, the Government issued Ext.P2 order dated 7.4.2006, according administrative sanction to acquire the aforesaid 75 cents of land, consisting of the two plots, invoking the urgency clause under section 17 of the Act. Challenging Ext.P2, the appellant in W.A.1741/13 filed W.P(C).12472/06. That writ petition was disposed of by this Court by Ext.P3 judgment dated 22.8.2006. In this judgment, this Court directed the Government to re-consider the matter with notice and after hearing the parties and to take a fresh decision in the matter.

8. Accordingly, the matter was re-considered and the Government issued Ext.P4 order dated 7.2.2007. In this order, the Government held that they did not find any reason to re-consider the orders issued earlier. The concluding portion of this order reads thus:

"After going through the arguments and perusing the documents produced by the petitioners in the W.P. And Counter Petitioner it is explicitly made clear that the acquisition of land comprising 75 cents in Sy.No.158/3 (64 cents belong to Dr.Sreedhar Kavil) and 158/5 (11 cents of land belonging to Sri.Salim) in Iringappuram Village was ordered to be acquired invoking urgency clause after it is satisfied that the land is highly essential for the further development of the school which now owns 4.76 acres of land only. It is also seen that 64 cents of land belonging to Sreedhar Kavil is lying very adjacent to the school. Though it is argued by the party that there are sufficient measures adopted against the possible pollution, the huge multistoried building in front of the school will definitely hinder the smooth passage of fresh air and light to school. It was only after taking into consideration all the above facts including the blockade of fresh air and light that Government have taken such a decision to acquire the property. The necessity of sufficient land for the future development of the school is also a factor to be taken into account. After hearing the parties and examining the relevant materials and documents submitted by the parties, the District Collector, Thrissur, the Devaswom and the School authorities, it is felt that the acquisition is absolutely necessary in view of public interest and safety of the school. Hence Government do not find any reason to reconsider the orders issued in the Government Order read

as second paper above and they order accordingly."

9. This order was again challenged before this Court in W.P(C).8084/07. That writ petition was disposed of by Ext.P5 judgment dated 12.5.2009 along with W.P(C).9974/08 filed by the owner of the 11 cents of land which was also proposed to be acquired. In Ext.P5 judgment, this Court set aside Ext.P4 allowing invocation of the urgency clause and permitted continuance of the acquisition proceedings under the ordinary provisions of the Act by completing enquiry under section 5A. Paragraph 13 of the judgment reads thus:

"13. The result of the above discussion is that W.P(C) Nos.9974 of 2008 and 8084 of 2007 are disposed of issuing the following directions:

All proceedings if any pending now for acquisition of the properties of the petitioners in these two cases are quashed and the respondents are permitted to initiate proceedings afresh under the ordinary provisions of the Land Acquisition Act by promulgating a notification under section 4(1). It will be open to both the petitioners to raise all available objections for the purpose of dissuading the land acquisition officer from acquiring their properties by

convincing him that acquisition of their properties is not necessary for accomplishing the avowed public purpose. The enquiry to be conducted by the land acquisition officer under section 5A shall be effective and meaningful and all opportunity should be afforded to the petitioners for adducing evidence for substantiating their objections. Once the enquiry under section 5A is completed the land acquisition officer should permit both the petitioners to address their arguments, and if they so desire they should be permitted to submit arguments in writing. Upon conclusion of enquiry and hearing as directed above, the land acquisition officer shall prepare his report incorporating his recommendations regarding the objections submitted by the petitioners for forwarding the same to the Land Revenue Commissioner. Copies of those reports should be given to both the petitioners."

10. After Ext.P5 judgment was rendered, on 24.10.2009, Annexure A requisition, produced in W.A.1504/13, was submitted by Guruvayoor Devaswom for the acquisition of the land belonging to the appellant in W.A.1741/13 and the other 11 cents mentioned earlier. In this requisition, against column "purpose for which land is to be acquired", it was written "for prevention of pollution from the flats that are going to be

constructed near the school and for Development of Sree Krishna Higher Secondary School”.

11. While in this context, we should mention that at the stage when Annexure A requisition was made, the only resolution that was passed by the Devaswom, in relation to the acquisition in question, was Ext.P11 dated 27.11.2005. That resolution did not state that the land in question is required to be acquired for the development of the school. But however, even without any resolution of Devaswom, during the course of the hearing which led to Ext.P4 order, development of the school was pressed into service as one of the purposes for the acquisition.

12. Subsequently, Ext.P6 notification under section 4 (1) of the Act was issued on 11.5.2010. In this notification, development of the school and prevention of pollution were the two public purposes that were mentioned justifying the proposal for acquisition. On the issuance of Ext.P6 notification under section 4(1), the appellant in W.A.1741/13 submitted Ext.P8 objection on 27.7.2010. It also

appears that subsequently, he submitted Ext.P12 objection on 25.2.2011 and according to the learned counsel, this additional objection was filed after obtaining a copy of Ext.P11 resolution.

13. In the mean while, on 7.1.2011, Ext.P10 resolution was passed by the Guruvayoor Devaswom. In that resolution, for the first time, the Guruvayoor Devaswom resolved that the land in question is needed for the development of the school. Relevant portion of that resolution reads thus:

"സർവ്വേ നമ്പർ 158/3-ൽപെട്ട 64 സെന്റ് സ്ഥലം ശ്രീകൃഷ്ണ ഹയർ സെക്കന്ററി സ്കൂളിന്റെ മുൻ വശത്ത് സ്കൂൾ കോമ്പൗണ്ടിനോട് ചേർന്നു കിടക്കുന്നതാണ്. ഗുരുവായൂരിൽ പ്രഥമസ്ഥാനത്ത് നിൽക്കുന്ന സ്കൂളാണ് ശ്രീകൃഷ്ണ ഹയർ സെക്കന്ററി സ്കൂൾ. ഹൈസ്കൂളായിരുന്ന ഇവിടെ പ്രീ-ഡിഗ്രി വേർപെടുത്തലിന്റെ ഭാഗമായി പ്ലസ് 1, പ്ലസ് 2 ക്ലാസ്സുകളും തുടങ്ങിയിട്ടുണ്ട്. സ്ഥലപരിമിതി മൂലം പുതിയ കെട്ടിടങ്ങൾ നിർമ്മിക്കാനും വിദ്യാർത്ഥികൾക്കാവശ്യമായ പ്രാഥമിക സൗകര്യങ്ങൾ ഒരുക്കുന്നതിനും കഴിയാത്ത സ്ഥിതിവിശേഷം നിലനിൽക്കുന്നുണ്ട്. ഗുരുവായൂർ നഗരസഭയുടെ ഹൃദയഭാഗത്ത് സ്ഥിതിചെയ്യുന്ന ഹയർ സെക്കന്ററി സ്കൂളിൽ വിദ്യാർത്ഥികളുടെ എണ്ണം വർഷം തോറും വർദ്ധിച്ചുവരികയാണ്. പുതിയ ഡിവിഷനുകൾ തുടങ്ങുന്നതിന് പുതിയ കെട്ടിടങ്ങൾ നിർമ്മിക്കേണ്ടത് അത്യാവശ്യമാണ്. നിലവിലുള്ള കെട്ടിടങ്ങളുടെ സ്ഥിതി ശോചനീയമാണ്. ഏറ്റെടുക്കാനുദ്ദേശിക്കുന്ന സ്ഥലത്ത് പുതിയ കെട്ടിടം നിർമ്മിക്കുകയും പഴയ കെട്ടിടങ്ങൾ

പുതുക്കി പണിയുകയും ചെയ്താലെ വരുന്ന വിദ്യാർത്ഥികളെ ഉൾക്കൊള്ളിക്കുന്നതിനും പ്രഥമിക അടിസ്ഥാനസൗകര്യങ്ങൾ ചെയ്തുകൊടുക്കുന്നതിനുംകഴിയുകയുള്ളൂ. മേൽപ്രകാരമുള്ള സ്കൂളിന്റെ അടിസ്ഥാന വികസനപ്രവർത്തനങ്ങൾ നടത്തുന്നതിന് ഇരിങ്ങപ്രം വില്ലേജ് സ.നം. 158/8ൽപ്പെട്ട 64 സെന്റ് സ്ഥലം അത്യാവശ്യമാണെന്ന് ഭരണസമിതിക്ക് ബോധ്യപ്പെട്ടു. ആയതിന്റെ അടിസ്ഥാനത്തിൽ പ്രസ്തുത സ്ഥലം ഏറ്റെടുക്കുന്നതിനുള്ള നടപടി തുടരാൻ തീരുമാനിച്ചു."

14.Yet another important decision that is contained in Ext.P10 is that taking note of the construction made by the owner of 11 cents of land, which was also notified for acquisition, Devaswom resolved to exclude this plot from the acquisition proceedings. This resolution reads thus:

"മേൽ പ്രകാരം സമർപ്പിച്ച ആക്ഷേപങ്ങൾ ഭരണസമിതി വിശദമായി പരിശോധിക്കുകയും വിലയിരുത്തുകയും ചെയ്തു. പുതുതായി പണി തീർത്ത ഫ്ലാറ്റിന് വൻ തുക നഷ്ടപരിഹാരമായി നൽകേണ്ടി വരുന്നതാണ്. 15-ഓളം കുടുംബങ്ങളെ പുനരധിവസിപ്പിക്കുക എന്ന ഭാരിച്ച ചുമതലയും ദേവസ്വത്തിന് വന്നു ചേരുന്നതാണ്. 10 സെന്റ് സ്ഥലത്തിനുവേണ്ടി ഇത്രയും "വലിയ തുക ചെലവാക്കി വലിയ ഉത്തരവാദിത്തങ്ങളും ഏറ്റെടുക്കുന്നതുകൊണ്ടു ദേവസ്വത്തിന് ഉദ്ദേശിച്ച ഫലം ലഭിക്കില്ലെന്ന് ഭരണസമിതിക്ക് ഉത്തമവിശ്വാസത്തിൽ ബോധ്യപ്പെട്ടു". ആയതിന്റെ അടിസ്ഥാനത്തിൽ പ്രസ്തുത ഫ്ലാറ്റും സ്ഥലവും ഏറ്റെടുക്കുന്നത് ഒഴിവാക്കുവാൻ തീരുമാനിച്ചു."

15. Counsel for the Devaswom states that Ext.P10 was conveyed to the Tahsildar under cover of Annexure D letter of the Devaswom, produced in W.A.1741/13. It is stated that in pursuance of Ext.P5 judgment, enquiry under section 5A of the Act was completed and Ext.P13 is the report of the enquiry. Based on Ext.P13 report, the Land Revenue Commissioner passed Ext.P14 order dated 9.7.2011 rejecting the objections raised by the land owner. Thereafter, a declaration under section 6 of the Act was made by the Land Revenue Commissioner on 14.7.2011, a copy of which is Ext.P16. It was at that stage, the appellant in W.A.1741/13 filed the writ petition mainly challenging Ext.P16 declaration.

16. From the judgment under appeal, we find that the writ petition was heard and judgment was reserved on 4.2.2013 and judgment was delivered on 15.7.2013. In the mean while, on 6.6.2013, intimation was given scheduling award enquiry on 27.8.2013 and according to the counsel for the Devaswom, they deposited Rs.1,22,00,000/- towards compensation on 18.6.2013.

It is stated that by Annexure F dated 1.7.2013, Land Revenue Commissioner granted prior approval to the award and finally Annexure G award was rendered on 12.7.2013.

17. As we have already stated, in the aforesaid factual background, the contention which was accepted by the learned single Judge was that there was no public purpose to justify the acquisition of the land of the appellant in W.A.1741/13. Learned single Judge also repelled the contention that in the absence of any challenge to the notification issued under section 4(1) of the Act, the writ petition was not maintainable. These contentions were reiterated before us also. Learned counsel for the Devaswom and the learned Government Pleader relied on the judgment of this Court in The Forane Church, Chalakudy v. State of Kerala [1971 KLT 733] and the judgment of the Apex Court in Ganapathi National Middle School v. M.Durai Kannan [(1996) 6 SCC 464] to contend that acquisition for the purpose of a school is a public purpose. Judgments explaining the concept of public purpose were also relied on to drive home the

contention that the acquisition in question was for a public purpose as defined in the Act. We were also referred to judgments where while deciding the validity of the acquisition, the Court took note of the fact that the compensation has already been deposited by the requisitioning authority.

18. We have considered the submissions made. While appreciating the dispute regarding the existence of public purpose, we cannot ignore the fact that the acquisition proceedings originated from Ext.P11 resolution of the Guruvayoor Devaswom dated 27.11.2005, which has already been extracted in the earlier part of this judgment.

19. Reading of Ext.P11 resolution would show that it refers to a report of the Headmistress of the school that she came to know that it was proposed to construct buildings in the land in question and that in case buildings are constructed as proposed, that would cause environmental pollution, adversely affecting the school and the students and that therefore, the land in question should be acquired.

It is stated that on inspection of the land, the members of the board opined that for the preservation of the health of the students and in the interest of the educational institution, it is necessary to acquire the land. It is stated that the matter was considered by the board and the board resolved that for the preservation of the health and welfare of the children, it is necessary to acquire the land belonging to the appellant in W.A.1741/13 and the 11 cents of land comprised in Survey No.158/5/p invoking the urgency clause.

20. Reading of Ext.P11 resolution therefore shows that prevention of environmental pollution and preservation of health of the students were the public purposes for which the board resolved to acquire the land and development of the school was not a purpose which is mentioned in Ext.P11. However, Ext.P4, the order passed by the Government in pursuance to the direction of this Court in the judgment in W.P(C).12472/06, shows that during the hearing that was conducted in compliance with the directions of this Court, Sri.Venugopal, Accounts

Officer of Guruvayoor Devaswom representing the Board stated that the school, which is the only plus two school in the area accommodating more than 2700 students, mostly from lower strata of the society is in need of land and hence, land was required to be acquired. He has also stated that the development of the school will be hindered if the residential flats are allowed to be constructed. It is on that basis, the Government is stated to have been satisfied that the land is highly essential for further the development of the school which now owns 4.76 acres of land.

21.While in this context, all that we need to state is that the requirement of land for the development of the school was not a part of Ext.P11 resolution mentioned above. Until Annexure A requisition was made, there was no other resolution of the Board, the requisitioning authority. In that requisition, in spite of the absence of any resolution of the board to acquire the land for the development of the school, development of the school was also stated as one of the purposes for which the land was required

to be acquired. It is pursuant to Annexure A requisition, Ext.P6 section 4(1) notification was issued on 11.5.2010. It was thereafter that for the first time, the board passed Ext.P10 resolution dated 7.1.2011, resolving to acquire the land in question for the development of the school and excluding 11 cents which also was resolved to be acquired. This, therefore, means that at the stage when section 4(1) notification was issued on 11.5.2010, the only purpose for which the land was resolved to be acquired by the Guruvayoor Devaswom was preservation of health and prevention of environmental pollution which was likely to be caused if construction is undertaken in the land belonging to the appellant in W.A.1741/13. If that be so, the subsequent resolution Ext.P10 dated 7.1.2011 cannot be relied on to contend that development of the school was one of the public purposes that was intended to be achieved by Ext.P6, the section 4(1) notification issued on 11.5.2010.

22.Having clarified the above aspect, we shall now examine the soundness of the public purpose stated in

Ext.P11 resolution dated 27.11.2005. As we have already stated, the purpose stated in this resolution is prevention of pollution and preservation of health of the students of the school. First of all, the pollution that was sought to be prevented by acquiring the land of the appellant in W.A.1741/13 was, at that stage, a purely imaginative and apprehensive one. Further, there is no material whatsoever to show that any pollution was likely to be caused by the appellant in W.A.1741/13 if he had undertaken any construction activity in the land owned by him. That apart, even if an account of construction works pollution is caused, the neighbours can take recourse to pollution preventing laws and seek their remedies against the polluter.

23. The subsequent proceedings of the Guruvayoor Devaswom, in particular Ext.P10 and the Government order state that the school in question is short of land and that the existing buildings are very old. It also says that they want to acquire the land and to construct buildings and to reconstruct the existing buildings of the school. This, therefore,

means that even if the land is acquired, the school management will undertake construction in the land in question. If the purpose of acquisition is prevention of pollution likely to be caused on account of construction and thus to preserve health of the students, we wonder how that purpose would be achieved if, after acquisition, construction is undertaken by the Devaswom itself. In such a situation also, the possibility and level of pollution cannot be different. Therefore, by stating that the land is proposed to be acquired to prevent pollution and to preserve the health of students, and at the same time, asserting that after acquisition, Board wants to undertake construction of buildings in the same land, the Devaswom is contradicting itself. Therefore, the reasons stated by the Devaswom are purely imaginary and are contradictory.

24. From Ext.P11, the resolution dated 27.11.2005, it can be seen that along with the land of the appellant in W.A.1741/13, the Devaswom had also resolved to acquire 11 cents in survey No.158/5. The decision to acquire the 11 cents was reiterated by the Devaswom

in its subsequent resolutions and further proceedings. However, in Ext.P10 resolution passed on 7.1.2011, the Devaswom dropped its proposal to acquire the said 11 cents and the reason stated was that it would have the added liability to pay additional compensation for the new constructions that were made in the land and also would have the responsibility to rehabilitate the families settled there. These reasons stated by the Devaswom have no basis at all. We have already mentioned that by Ext.P5 judgment, W.P(C).8084/07 filed by the appellant in W.A.1741/13 was disposed of along with W.P(C).9974/08 filed by the owner of the 11 cents of land. By this judgment, this Court set aside Ext.P4 order, whereby, urgency clause was allowed to be invoked and acquisition proceedings under the ordinary provisions of the Act were permitted. However, in this judgment, in so far as the challenge raised in W.P(C).9974/08 is concerned, taking note of the laches and delay, this Court ordered that after section 4(1) notification is issued and enquiry under section 5A is completed, if the acquisition proceedings continue, the market value of the

property of the petitioner in WP(C) No.9974 of 2008 will have to be determined as on 24.3.2008, the day of which WP(C) No.9974 of 2008 was instituted and not on the date of the section 4(1) notification. This was clarified again in the concluding sentence in the judgment.

25.The above specific directions, therefore, would show that the Devaswom would not have had any liability for anything that has happened subsequent to 24.3.2008 when W.P(C).9974/08 was instituted. Devaswom has not disputed the fact that the construction mentioned in Ext.P10 resolution and the consequent settlement of families were subsequent to 24.3.2008, when W.P(C).9974/08 was filed by the owner of the 11 cents. If that be so, the reason stated by Devaswom in Ext.P10 resolution to withdraw its proposal to acquire the 11 cents of land had no factual basis and that resolution of the Board would also create considerable doubt on the bonafides of its proposal to continue with the acquisition of the land of the appellant in W.A.1741/13.

26. Evidently therefore, the alleged public purposes for the acquisition of the land, viz., though are prevention of pollution, safeguarding the health, development of school etc., the real purpose or motive, as far as we can see, is to prevent construction in the neighbouring land owned by the appellant in W.A.1741/13. It is to achieve that ulterior purpose, the appellant in W.A.1504/13 initiated the acquisition proceedings. In our view, such an exercise of power is a colourable exercise and a fraud on the statute. An almost identical situation was dealt with by the Apex Court in the judgment in The Collector (Distt. Magistrate), Allahabad v. Raja Ram Jaiswal [AIR 1985 SC 1622], where, acquisition proceedings were initiated and the real purpose of which was to prevent the construction of a theatre in the neighbourhood of an educational institution. Interfering with the said acquisition proceedings, the Apex Court held thus:

"25. It is well settled that where power is conferred to achieve a certain purpose, the power can be exercised only for achieving that purpose.

Sec. 4(1) confers power on the Government and the Collector to acquire land needed for a public purpose. The power to acquire land is to be exercised for carrying out a public purpose. If the authorities of the Sammelan cannot tolerate the existence of a cinema theatre in its vicinity, can it be said that such a purpose would be a public purpose? May be the authority of the Sammelan may honestly believe that the existence of a cinema theatre may have the pernicious tendency to vitiate the educational and cultural environment of the institution and, therefore, it would like to wish away a cinema theatre in its vicinity. That hardly constitutes public purpose. We have already said about its proclaimed need of land for putting up Sangrahalaya. It is an easy escape route whenever Sammelan wants to take over some piece of land. Therefore, it can be fairly concluded that the Sammelan was actuated by extraneous and irrelevant considerations in seeking acquisition of the land and the statutory authority having known this fact yet proceeded to exercise statutory power and initiated the process of acquisition. Does this constitute legal mala fides?

26. Where power is conferred to achieve a purpose it has been repeatedly reiterated that the power must be exercised reasonably and in good faith to effectuate the purpose. And in this context 'in good faith' means 'for legitimate reasons'! Where power is exercised for

extraneous or irrelevant considerations or reasons, it is unquestionably a colourable exercise of power or fraud on power and the exercise of power is vitiated. If the power to acquire land is to be exercised, it must be exercised bona fide for the statutory purpose and for none other. If it is exercised for an extraneous, irrelevant or non-germane consideration, the acquiring authority can be charged with legal mala fides. In such a situation there is no question of any personal ill-will or motive. In *Municipal Council of Sydney v. Campbell*, 1925 AC 338 at p. 375 it was observed that irrelevant considerations on which power to acquire land is exercised, would vitiate compulsory purchase orders or scheme depending on them. In *State of Punjab v. Gurdial Singh*, (1980) 1 SCR 1071 : (AIR 1980 SC 319) acquisition of land for constructing a grain market was challenged on the ground of legal mala fides. Upholding the challenge this Court speaking through Krishna Iyer, J. explained the concept of legal mala fides in his hitherto inimitable language, diction and style and observed as under (at p. 321 of AIR) :

"Pithily put, bad faith which invalidates the exercise of power - sometimes called colourable exercise or fraud on power and oftentimes overlaps motives, passions and satisfactions - is the attainment of ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal. If the use of the power is for the fulfilment of a legitimate

object the actuation or catalysation by malice is not legicidal. The action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous considerations, good or bad, but irrelevant to the entrustment; When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the court calls it a colourable exercise and is undeceived by illusion. In a broad, blurred sense, Benjamin Disraeli was not off the mark even in Law when he stated : "I repeatthat all power is a trust - that we are accountable for its exercise - that, from the people, and for the people, all springs, and all must exist."

After analysing the factual matrix, it was concluded that the land was not needed for a Mandi which was the ostensible purpose for which the land was sought to be acquired but in truth and reality, the Mandi need was hijacked to reach the private destination of depriving an enemy of his land through back-seat driving of the statutory engine. The notification was declared invalid On the ground that it suffers from legal mala fides. The case before us is much stronger, far more disturbing and unparalleled in influencing official decision by sheer weight of personal clout. The District Magistrate was chagrined to swallow the bitter pill that he was forced to acquire land even though he was personally convinced there was no

need but a pretence. Therefore, disagreeing with the High Court, we are of the opinion that the power to acquire land was exercised for an extraneous and irrelevant purpose and it was colourable exercise of power, namely, to satisfy the chagrin and anguish of the Sammelan at the coming up of a cinema theatre in the vicinity of its campus, which it vowed to destroy, Therefore, the impugned notification has to be declared illegal and invalid for this additional ground."

This judgment has been followed by this Court in the judgment in Sulaiman v. State of Kerala [2010 (2) KLT 49].

27. Referring to the judgments of the Apex Court in Somawanti v. State of Punjab [AIR 1963 SC 151], Ratila Shankarabhai v. State of Gujarat [AIR 1970 SC 984] and Daulat Singh Surana v. First Land Acquisition Collector [(2007) 1 SCC 641], learned Government Pleader and the learned counsel for the appellant in W.A.1504/13 contended that the purpose for which the land is proposed to be acquired is a public purpose and also sought to impress upon us the jurisdictional limits of this Court while examining a

challenge against proceedings under the Land Acquisition Act. 'Public purpose' has been inclusively defined in section 3(f) of the Act. As held by the Apex Court, the concept of public purpose is elastic and will change with the passage of time. We have no doubt about this proposition laid down by the Apex Court. But in our view, none of these principles can have any application to the facts of this case for the reason that, as rightly held by the learned single Judge, there is no backing of a valid public purpose for the acquisition of land of the appellant in W.A.1741/13.

28. Learned Government Pleader relied on the judgment of this Court in *The Forane Church, Chalakudy* (supra) [1971 KLT 733] and the counsel for the appellant in W.A.1504/13 referred us to the judgment of the Apex Court in the judgment in *Ganapathi National Middle School* (supra) [(1996) 6 SCC 464] to contend that the purpose of a school is a public purpose. In fact, it was this observation of the learned single Judge in paragraphs 11 and 12 of the judgment led to the filing of W.A.1741/13. According to the counsel for

the appellant in W.A.1741/13, the land owner, in view of clause (vi) of section 3(f) of the Act, the provision of land for carrying out any educational purpose can be a public purpose only if it is sponsored by Government or by any authority established by Government or with the prior approval of the appropriate Government, by a local authority or a society registered under the Societies Registration Act or under any corresponding law for the time being in force in a State, or a co-operative society within the meaning of any law relating to co-operative societies for the time being in force in any State. According to the learned counsel, none of these requirements are satisfied in this case and that therefore, the acquisition for the purpose of the school cannot be a public purpose as defined in section 3(f).

29. First of all, public purpose is defined in section 3 (f) by an inclusive definition. Therefore, clauses (i) to (vii) therein are not exhaustive. Secondly, section 3 containing the definitions starts with the provision that 'in this Act unless there is something

repugnant in the subject or context'. Therefore, in the Act, if there is a provision repugnant to the subject or context, justifying acquisition of land for the purpose of a school, clauses (i) to (vii) contained in the inclusive definition in section 3(f) cannot control such provisions of the Act. Therefore, we are not in a position to agree with the counsel for the appellant in W.A.1741/13 that the observation of the learned single Judge contained in paragraphs 11 and 12 of the judgment under appeal that land can be acquired for educational purposes suffers from any illegality.

30. This view taken by the learned single Judge is also supported by the principles laid down in the judgment in *The Forane Church, Chalakudy* (supra)[1971 KLT 733] and *Ganapathi National Middle School* (supra)[(1996) 6 SCC 464] relied on by the learned Government Pleader and the appellant in W.A.1504/13.

31. Learned counsel for the appellant in W.A.1504/13 contended that the fact that compensation has been deposited by the requisitioning authority indicates

their intention to acquire the land in question. He also referred us in support of this contention the judgments in Hukum Chand Gupta v. State of Haryana [(2005) 11 SCC 572], V.Prabhakar v. Bangalore Mahanagara Palike [(2008) 8 SCC 337] and Dahyabhai Ranchhoddas Dhobi v. State of Gujarat [(2010) 7 SCC 705]. It is true that deposit of compensation is one of the factors which indicates the intention of the requisitioning authority. However, it merits mention in this context that in so far as this case is concerned, compensation was remitted by the requisitioning authority on 18.6.2013, long after the learned single Judge had heard and reserved the writ petition for judgment on 4.2.2013. That apart, even in a case where compensation has been deposited, unless the acquisition proceedings are supported by a valid public purpose as defined in section 3(f) of the Act, the mere deposit of compensation by itself cannot validate or legitimize the acquisition proceedings. Therefore, we are not in a position to agree with the learned counsel for the requisitioning authority that the fact of deposit of compensation should lead to the irresistible conclusion that the

acquisition proceedings are to be upheld. Therefore this contention also cannot be accepted.

32. In so far as the contention of the learned Government Pleader that in the absence of any challenge against section 4(1) notification, the writ petition filed with the prayer only to quash section 6 declaration was not maintainable is concerned, all that we should say is that, as rightly held by the learned single Judge, section 4(1) notification contains only a proposal. Thereafter, enquiry was conducted under section 5A and a report was made to the Land Revenue Commissioner. It is based on that report, that declaration is made in section 6. Therefore, if section 6 declaration is challenged and is set aside, the preceding proceedings including section 4(1) notification, being dependent proceedings, also would fall to ground. Therefore, the fact that in a writ petition filed challenging section 6 declaration, section 4(1) notification is not separately challenged cannot result in non-suiting the petitioner.

The upshot of the above discussion is that we do not find any illegality in the judgment of the learned single Judge and these appeals are only to be dismissed. Appeals are, therefore, dismissed.

Sd/-
ANTONY DOMINIC, Judge.

Sd/-
ALEXANDER THOMAS, Judge.

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PS to Judge