

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE**

WEDNESDAY, THE 8TH DAY OF APRIL 2015/18TH CHAITHRA, 1937

WA.No. 490 of 2015 ()

AGAINST THE JUDGMENT IN WP(C) 28198/2011 DATED 09-02-2015

APPELLANTS/PETITIONER :

1. V. KRISHNA SHENOY,
LAKSHMI MACHINE WORKS, P.N.PALAYAM
COIMBATORE
NOW RESIDING AT KOTTUKULANGARA
'KALAM NIVAS', THURAVUR P.O.,
ALAPPUZHA DISTRICT.

2. V.V. CHANDRAMATHI BAI,
WIFE OF KRISHNA SHENOY,
'KAMAL NIVAS', THURAVUR P.O.,
ALAPPUZHA DISTRICT.

BY ADV. SRI.V.L.SHENOY

RESPONDENTS/RESPONDENTS :

1. THE STATE OF KERALA,
REPRESENTED BY DISTRICT COLLECTOR,
ALAPPUZHA-688 012.

2. THE SPECIAL TAHSILDAR,
LAND ACQUISITION (GENERAL), ALAPPUZHA-688012.

3. THE THURAVOOR COMMUNITY HEALTH CENTRE,
HOSPITAL MANAGING COMMITTEE, THURAVOOR P.O., CHERTHALA
REPRESENTED BY ITS CHAIRMAN.

4. C.P.VIJAYAN ALIAS C.P. BABU,
SON OF LATE C.K.PURUSHOTHAMAN, CHANIYIL HOUSE
THIRUMALA BHAGOM P.O., THURAVUR, CHERTHALA
ALAPPUZHA DISTRICT, PIN-688540.

5. K.A.ABRAHAM (KUNJAPPACHAN),
EX.MEMBER OF THE PANCHAYAT, S/O.K.V.ABRAHAM
THEKKANEZHATH (KAKKARAVELI), VALAMANGALAM SOUTH
THURAVUR, CHERTHALA, ALAPPUZHA DISTRICT
PIN-688532.

R1 & R2 BY SR. GOVT. PLEADER SRI. C.S. MANILAL

R3 BY ADVS. SRI.V.G.ARUN

SRI.T.R.HARIKUMAR

R4 & R5 BY ADV. SRI.P.SANTHOSH KUMAR (TR)

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 20-03-2015,
THE COURT ON 08-04-2015 DELIVERED THE FOLLOWING:

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**ASHOK BHUSHAN, CJ
& A.M.SHAFFIQUE, J.**

*** * * * ***

W.A.No.490 of 2015

Dated this the 8th day of April 2015

J U D G M E N T

Shaffique,J

This appeal is filed by the petitioners in the writ petition challenging the judgment dated 09/02/2015. The writ petition was filed seeking to quash Ext.P10 notification issued by the Land Acquisition authorities under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as 'the LA Act') by which proposal was made to acquire an extent of 0.2449 hectares of land in Survey No.338/9B of Kuthiathodu village. The public purpose specified was for developing the Thuravoor Community Health Centre. The petitioners narrate certain factual situation by which the petitioners got delivery of the property which is proposed to be acquired as per the decree passed in O.S.No.35/1969 of the Sub Court, Cherthala. It is stated that earlier there was a proposal for acquisition of the aforesaid land which got

lapsed. Thereafter, the present Section 4(1) notification dated 29/03/2010 was published. According to the petitioners, the last date of publication was 10/04/2010 in Mathrubhumi daily. Objections were filed to the said notification. However, declaration was published under Section 6 of the LA Act beyond the time specified thereunder. Petitioners therefore challenged the notification and also Ext.P14 by which the Land Revenue Commissioner has rejected the objections raised finding that the land is required for a public purpose. Ext.P15 is the notice under Section 9(3) of the LA Act, which is also impugned.

2. Counter affidavit and additional counter affidavit have been filed by the 2nd respondent inter alia stating that Section 4(1) notification was published in the gazette on 30/03/2010 and in regional dailies on 10/04/2010 and 12/04/2010. The notice was published in conspicuous places such as office of the Land Acquisition Officer on

10/05/2010, the Village Office, Kuthiathodu and Tahsildar's office, Cherthala on 11/05/2010 and in the office of the District Collector on 22/05/2010. Hence it was contended that the last date of Section 4(1) notification has to be taken into consideration to compute the date on which declaration has to be made. Declaration is made on 09/05/2011 and published in Kerala Gazette on 10/05/2011.

3. The requisitioning authority have impleaded themselves as additional respondents 4 and 5 and they have produced Ext.R4(a), the notification dated 09/05/2011 under Section 6 of the LA Act published in the gazette on 10/05/2011.

4. The learned Single Judge dismissed the writ petition on a finding that since Section 4(1) notification was published on 04/06/2010 and the declaration made on 10/05/2011, the declaration is well within time.

5. It is, impugning the said judgment, that this appeal has been filed inter alia contending that publication

on 04/06/2010 in the District Collector's office will not give any right to the land acquisition authorities to extend the period of limitation. It is apparent that the publication in newspapers were made only on 10/04/2010 in Mathrubhumi daily and on 12/04/2010 in Deshabhimani daily. That being the situation, the declaration ought to have been published on or before 11/04/2010 whereas it is published only on 10/05/2011. The learned counsel for the appellants also relied upon the judgment of the Supreme court in **Vijay Narayan Thatte v. State of Maharashtra** [(2009) 9 SCC 92] and **Ashok Kumar v. State of Haryana** [(2007) 3 SCC 470].

6. On the other hand, the learned senior Government Pleader appearing on behalf of the Land Acquisition Authorities submits that as per Section 4(1) of the LA Act, the last of the dates for publication in the locality has to be taken into consideration which evidently indicates that the publication has been made in the Village office and in the

Tahsildar's office on 11/05/2010. The land owners were also served with notices on 11/05/2010 and 04/06/2010. Therefore, even assuming that 04/06/2010 cannot be taken to be the last date of publication of Section 4(1) notification, in so far as the publication in the locality has been made on 11/05/2010 and the declaration is made on 09/05/2010, it is well within time. The learned Government Pleader also placed reliance on the judgment of the Division Bench of this Court in **Greater Cochin Development Authorities v. Victoria Xavier** [2001(1)KLT 830].

7. As far as the public purpose behind acquisition of land is concerned, there cannot be any dispute. The property is being acquired for the purpose of a Community Health Centre. In Ext.P14 order passed by the Land Revenue Commissioner, it is stated that the public purpose is bona fide and thousands of people will be benefited by the proposed acquisition.

8. The main reason urged on behalf of the appellants is that the declaration under Section 6 of the LA Act is published after the period specified under the Act.

9. There is no doubt about the proposition laid down by the Supreme Court in the cases cited above as it has been held that the statutory period prescribed in terms of Clause (ii) of the proviso to Section 6 of the LA Act being couched in negative language, it is regarded as mandatory in nature. Therefore, if the declaration is made beyond one year from the date of Section 4(1) notification, definitely the declaration will be invalid and the Land Acquisition Authority cannot proceed with the acquisition.

Section 4(1) of the LA Act reads as under:

"4. Publication of Preliminary notification and powers of officers thereupon.-

(1) Whenever it appears to the appropriate Government or to the Board of Revenue or to the Collector that land in any locality in the State of Kerala or within the jurisdiction of the collector is needed or is likely to be needed for any public purpose or for a company, a notification to that effect shall be

published in the Official Gazette and in two daily news papers circulating in that locality of which at least one shall be in the regional language and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality (the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the notification.”

Going by the aforesaid statutory provision, it is clear that the last of the dates of such publication and giving of the public notice will be treated as the date of publication of the notification. In fact, the aforesaid provision had been incorporated by virtue of Amendment Act 68 of 1984. Hence what is to be looked into is what is the last date of such publication. The statute imposes a duty on the District Collector to give public notice of the substance of the notification at convenient places in the locality in addition to publication in official gazette and in two daily newspapers. This statutory provision has been considered by the Division Bench in **GCDA** 's case (supra) wherein this Court held that

Section 4 deals with three kinds of publication, publication in the gazette, publication in the newspaper and publication by giving notice in the locality. In that case, it was held that since one of the publications of notification was on 25/08/1987, the declaration of Section 6 published in the gazette on 16/08/1988 was well within time.

10. In the present case, Land Acquisition Authorities contended that publication in the Village Office was made on 10/05/2010 and in the Tahsildar's office on 11/05/2010. This, according to them, is the last date of publication. The file in this connection has also been placed for our perusal. It is seen that notice dated 07/05/2010 has been published in the Village Office on 10/05/2010 and in the Tahsildar's office on 11/05/2010. However, it is argued by the learned counsel or the appellants that the publication has to be considered to be made only on 07/05/2010. It is also contended that no materials were produced before the learned Single Judge to substantiate the aforesaid

contentions. Though it is a fact that no materials were produced before the learned Single Judge, the files in this connection have been produced before us and we are convinced about the fact that public notice has been given regarding Section 4(1) notification only on 10/5/2010 and 11/05/2010, which has to be taken as the “last of the dates of such publications and giving of such public notice” in terms of Section 4(1) of the LA Act.

11. It is not in dispute that declaration was made on 09/05/2011 and it was published on 10/05/2011. Section 6 (1) of the Act reads as under:

“6. Declaration that land is required for a public purpose,- (1) Subject to the provisions of Part VII of this Act, when the appropriate Government or the Board of Revenue is satisfied, after considering the report, if any made under Section 5-A, sub-section (2), that any particular land is needed for a public purpose, or for a Company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorised to certify its orders or of the Secretary of the Board or Revenue, as the case may be, and different

declarations may be made from time to time in respect of different parcels of any land covered by the same notifications under Section 4, sub-section (1), irrespective of whether one report or different reports has or have been made (wherever required) under Section 5-A, sub-section (2):

Provided that no declaration in respect of any particular land covered by a notification under section 4, sub-section (1),-

(i) xxxxx

(ii) published after the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of one year from the date of the publication of the notification."

It cannot be disputed that the words "*shall be made after the expiry of one year*" refers to the declaration to be made and the words "*from the date of publication of the notification*" refers to the notification under Section 4(1) of the LA Act. Therefore, as far as declaration under Section 6 is concerned, the date of publication is not the relevant date, whereas the relevant date is the date when the declaration is made which is on 09/05/2011. This legal position is clear

from the judgments of the Supreme Court in **Srinivas Ramnath Khatod [(2002) 1 SCC 689]** and **S.H.Rangappa v. State of Karnataka [(2002) 1 SCC 538]**.

12. In **Sreenivas** 's case (supra) it is held that the declaration must be made within one year from the date of last publication of the notification under Section 4. The publication under Section 6(2) may take place at a later date as it is a ministerial act. Paragraphs 12 and 13 are relevant which reads as under:

“12. In our view the wordings of Sections 4, 6 and 11-A leave no room for doubt that the Land Acquisition Act made a distinction between a “declaration” and “publication”. To be noted that under Section 4 the notification has to be published. Again under Section 11-A the period of two years has to be computed from the date of “publication of the declaration”. As distinct from this under the first proviso to Section 6(1) a “declaration” cannot be made after the expiry of one year from the date of “publication of the notification under Section 4”. The word “published” in clauses (i) and (ii) of the first proviso to Section 6(1) refers to the publication of

notification under Section 4. A plain reading of Section 6 shows that a distinction is made between a "declaration" and a "publication". Viewed from this angle the wording of the first proviso to Section 6(1) becomes important. The proviso lays down that no declaration (under Section 6) shall be made after expiry of three years [under clause (i)] where the notification under Section 4 is published before the commencement of the Land Acquisition (Amendment) Act, 1984 and after expiry of one year [under clause (ii)] where notification under Section 4 was published after commencement of the Land Acquisition (Amendment) Act, 1984. Thus the proviso clearly talks of "publication" in respect of notification under Section 4 and then provides a time for "making of declaration" under Section 6. The legislature is purposely omitting to use the words "publication of declaration" in the proviso to Section 6.

13. *In our view, it is clear that the "declaration must be made" within one year from the date of "last publication of the notification" under Section 4. Thereafter the publication under Section 6(2) may take place at a later date as it is merely a ministerial act."*

13. Now coming to the facts of the case, we are satisfied that the last date of Section 4(1) notification being 10/05/2010 and 11/05/2010, on which dates notification was published in the locality namely in the Village Office and also in the Tahsildar's office, the declaration made on 09/05/2011 under Section 6 of the LA Act was well within time.

In the result, we do not find any ground to interfere with the judgment of the learned Single Judge and accordingly this writ appeal is dismissed.

(sd/-)

(ASHOK BHUSHAN, CHIEF JUSTICE)

(sd/-)

(A.M.SHAFFIQUE, JUDGE)

jsr

