IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

FRIDAY, THE 24TH DAY OF JULY 2015/2ND SRAVANA, 1937

WA.No. 1247 of 2015 ()

(AGAINST THE JUDGMENT IN WP(C).NO. 28364/2012 DATED 24-02-2015)

APPELLANT/PETITIONER:

AUGUSTY.C.P., AGED 46 YEARS,
CHERANGHADAN HOUSE, KODALY, PADY P.O.,
THRISSUR, KERALA.

BY SRI.K.JAYAKUMAR,SENIOR ADVOCATE
ADVS.SRI.LAL K.JOSEPH
SRI.A.A.ZIYAD RAHMAN

RESPONDENT(S)/RESPONDENTS:
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1. STATE OF KERALA,
   REP. BY THE CHIEF SECRETARY,
   THIRUVANANTHAPURAM. PIN-695 001

2. MATTATHUR SPECIAL GRADE GRAMA PANCHAYATH,
   P.O.MATTATHUR, THRISSUR,PIN-688 011,
   REP. BY ITS SECRETARY.

3. THE SPECIAL TAHASILDAR (LA) GENERAL,
   THRISSUR. PIN-688 011

4. PRINCIPAL SECRETARY,
   LOCAL ADMINISTRATION DEPARTMENT GOVERNMENT OF KERALA,
   THIRUVANANTHAPURAM. PIN-695 001

5. REVENUE DIVISIONAL OFFICER, THRISSUR. PIN-688 011

R1,R3 TO R5 BY SR GOVERNMENT PLEADER SRI.P.I.DAVIS
R2 BY ADVS. SRI.M.R.VENUGOPAL
SMT.DHANYA P.ASHOKAN

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD
ON 17-06-2015 , ALONG WITH WA.NO. 1254 OF 2015, THE COURT
ON 24-07-2015 DELIVERED THE FOLLOWING:

sts

W.A.NO.1247/2015

APPENDIX

PETITIONER'S ANNEXURES:

ANNEX A1 COPY OF THE REPLY NO.A1 2152/15 DATED 18/3/2015 ISSUED BY THE 2ND RESPONDENT IN THE APPLICATION DATED 28/2/2015 FILED BY THE 1ST PETITIONER UNDER THE RIGHT TO INFORMATION ACT, 2005 WITH ENGLISH TRANSLATION.

ANNEX A2 COPY OF THE PROPERTY TAX RECEIPTS NO.7 DATED 29/3/1999 AND 16 DATED 31/3/1999 EVIDENCING THE EXISTING OF THE BUILDINGS NOS II/1 97 A TO 1 WITH ENGLISH TRANSLATION.

RESPONDENT'S ANNEXURES: NIL

/TRUE COPY/

P.A.TO JUDGE

sts

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

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W.A.Nos.1247 & 1254 of 2015

Dated this the 24th day of July 2015

J U D G M E N T

Shaffique, J

These appeals are filed against the common judgment dated 24/02/2015 in W.P.C.No.28364 of 2012 and 19412 of 2011 respectively.

2. The issues raised in these appeals are with reference to acquisition of land initiated at the instance of Mattathur Grama Panchayat. The purpose of acquisition was for establishment of a taxi stand and for providing a bypass road to Kodaly town. Notification under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') was published in various modes and the last of which was on 16/12/2009. Enquiry was conducted under section 5A of the Act, and orders were passed by the Land Revenue Commissioner rejecting the objections, pursuant to which declaration under section 6(1) of the Act was published.

3. W.P.C.No.28364 of 2012 was filed challenging the notices issued intimating about fixation of compensation and taking possession of the land.

4. W.P.C.No.19412 of 2011 was filed challenging Ext.P3 decision taken by the Panchayat to acquire the land and the requisition to the Government, the decision of the Government permitting acquisition of land and Ext.P15 notification issued under section 4(1) of the Act. Petitioner further prayed for reopening the proceedings of enquiry under section 5A of the Act.

5. Though several contentions were raised on behalf of the petitioners before the learned Single Judge, the petitioners confined their contentions with reference to two specific issues. One contention was that the declaration under Section 6 of the Act was made after the expiry of one year period from the date of publication of the notification under Section 4(1) and therefore the entire proceedings has lapsed. The second contention urged was in relation to the decision of the Grama Panchayat at the time of initiating the process of acquisition. It is stated that a false report was submitted by the Panchayat to the Government stating that the land sought to be acquired is barren land. The contention

is that the proposed land had buildings belonging to the petitioners in W.P.C.No.19412 of 2011. Those were shop buildings and they were carrying on business in the said premises. Therefore, while informing the Government that it is barren land, the Panchayat acted with mala fides and hence the entire process of acquisition, being not in good faith, is liable to be quashed. The learned Single Judge, after evaluating the legal and factual issues involved in the respective contentions, dismissed the writ petitions.

6. While impugning the judgment, Sri.K.Jayakumar, learned Senior counsel appearing on behalf of the appellants, submits that the entire factual issues involved in the writ petitions clearly disclose mala fides on the part of the requisitioning authority, which by itself would go to the root of the matter and for that reason itself, the acquisition proceedings are liable to be quashed.

7. For easy reference, we may refer to the documents produced in W.P.C.No.19412 of 2011. Ext.P3 dated 06/10/2008 is a letter issued by the Grama Panchayat to the Principal Secretary, Local Self Government Department of Government of Kerala

requesting for acquiring land, not exceeding 80 cents for the purpose of bypass road and taxi stand. It is stated that there are no buildings in the land proposed and it is lying as a barren land, except in respect of 7.91 cents, in which there are fruit bearing trees. Further it is stated that the property having an extent of 26 cents alone has road frontage and the fair value fixed by the Government is about Rs.6 lakhs. The resolution dated 03/05/2008 passed by the Panchayat was also enclosed along with the said letter. In the resolution also it is stated that the land was lying barren, without any improvements for the last 10 years and that there are no buildings in the said property. Ext.P13 is the decision taken by the Gvernment on 22/12/2008 permitting the Panchayat to proceed with the acquisition. Ext.P15 is the Gazette notification dated 20/11/2009 issued under Section 4(1) of the Act. Ext.P9 is the proceedings of the Land Revenue Commissioner dated 09/12/2010. Several persons had filed objections to the notification under Section 4(1) and one main objection raised was the existence of buildings and other structures in the property. The land acquisition authorities had taken a contention that at the time of initiating the acquisition proceedings, there were no buildings in the property. After having considered the same, Land Revenue Commissioner has rejected the objections. Ext.R2(a) is the declaration dated 13/12/2010, under Section 6(1) of the Act.

8. Counter affidavit was filed by the Secretary, Grama Panchayat interalia stating that the very purpose of acquisition is for construction of a bypass road and for a taxi stand to park around 50 taxis. It is stated that there is no taxi stand in the Panchayat and the taxis are parked in front of the shop rooms causing great inconvenience to the smooth functioning of the business establishments and the traffic in general. It is contended that the property was lying as a barren ground at the time when the resolution dated 03/05/2008 was passed by the Panchayat. The last of the date of section 4(1) notification was 16/12/2009, when notice was published in the locality. The declaration was published on 13/12/2010 after conducting the enquiry, which was within time.

9. Counter affidavit is filed by the third respondent stating that Government has sanctioned acquisition of 80 cents of land in survey numbers 592/2, 592/1, 593, 593/2 of the Mattathur village for construction of taxi stand and for providing a

bypass. The requisition was submitted to the District Collector, who, by proceedings dated 30/03/2009 has appointed the third respondent as Special Tahsildar LA (General) for initiating acquisition proceedings. A joint inspection was conducted by the third respondent along with the requisitioning authority on 08/10/2009 and notification under Section 6(1) of the Survey and Boundaries Act was published on 09/10/2009. It is thereafter that notification under Section 4(1) of the Act was published. Thereafter, objections were heard in the enquiry under Section 5A, which are overruled by the Land Revenue Commissioner and thereafter declaration was published.

10. The fifth respondent has filed a counter affidavit reiterating the aforesaid facts. It is stated that the declaration under Section 6(1) of the Act was published on 13/12/2010.

11. As far as the validity of the declaration under Section 6 (1) of the Act is concerned, Section 4(1) clearly indicates that the last of the dates of publication have to be taken into consideration, as the date of notification. Public notice in the locality is also a mandatory procedure and when public notice is issued only on 16/12/2009, making of declaration on 13/12/2010

is well within time. Hence the learned Single Judge was justified in rejecting the said contention.

12. The other contention urged on behalf of the appellants is that the existence of several buildings in the property was deliberately not disclosed in the requisition, Ext.P3. According to the appellants, Ext.P10 certificate issued by the Grama Panchayat on 30/12/2010 under the Right to Information Act, would disclose that there were buildings in existence in the property as XII/197 A, B, C, D, E, and F under the ownership of Mohammed Moideen and he had remitted tax from the financial year 1997-1998 and thereafter building No. XII/197F was demolished. In Ext.P11 dated 30/12/2010, it is stated that, in the property tax register maintained by the Panchayat during 2009-10, it is indicated that buildings bearing numbers XXII/533A, B, C and D were constructed as per plan and they were assessed for property tax on 23/07/2009.

13. The contention of the Grama Panchayat is that there were no buildings or structures at the time when the resolution was passed by the Panchayat on 03/05/2008. All the constructions were made subsequent to the same and the building permit was

issued by the Panchayat only on 21/03/2009 as directed by the Tribunal for Local Self Government Institutions. Further, it is contended that though some of the petitioners applied for building permit, the same were rejected as the land was proposed to be acquired. The said decision was challenged before the Tribunal and as per the directions issued by the Tribunal, building permits were issued incorporating a condition that if the building is constructed and is demolished based on land acquisition proceedings, the Panchayat will not take the responsibility.

14. The learned Single Judge observed that merely on the basis of an information furnished by the Grama Panchayat in terms of Ext.P11 indicating that there was an assessment of building tax during 1997-98, there is no material to indicate that the Panchayat had misrepresented the matter before the Government and since the petitioners could not establish the said fact, the Court cannot interfere with the acquisition proceedings.

15. Along with the writ appeal, the appellants produced certain Annexures which include a reply dated 18/03/2015 under the Right to Information Act, wherein it is stated that details regarding acquisition of land in survey number belonging to the

construction of taxi stand and bypass road is not available. However, it is stated that the land came under Ward No.6 during the period 2010-2015, Ward No.22 during the period 2005-2010, Ward No.20 during the period 2000-2005 and Ward No.12 during the period 1995-2000. A receipt is also produced for the period 1998-99 in the name of Mohammed Moideen in respect of building Nos.197/A, 197/B, 197/C, 197/E, 197/F, 197/H and 197/I. It is therefore argued that the additional materials now produced clearly indicates the existence of buildings at the time when the resolution was passed, which also has to be considered in the appeal.

16. On the basis of additional documents now produced as Annexure A1, it is argued that the finding of the learned Single Judge with reference to Ward No.XII is wrong. In fact, in paragraph 12 of the judgment, the learned Single Judge referred to three specific aspects. One is that there is no material to indicate that the buildings covered by Ext.P10 reply given by the Panchayat are situated in the property which is sought to be acquired. Further it is found that those buildings were assessed during 1997-98, and it is not known whether the said buildings are

situated in the property sought to be acquired. It is also observed that acquisition is with reference to the properties situated in Survey Nos. 592/1, 592/2 and 593/2. Ext.P2 is the partition deed by which certain shares were allotted to petitioners 1 to 6. The schedule to the sale deed does not contain any recital regarding existence of any buildings in the property covered by the aforesaid survey numbers. Hence the learned Single Judge found that materials available on record were not sufficient to prove that certain buildings were in existence in the property at the time of passing the resolution which forms part of Ext.P3.

17. The question, therefore is whether Annexure A1 now produced would, in any way, come to the aid of the petitioners. Even assuming for the argument sake that certain buildings were in existence in the property coming under Ward No.12 during 1997-98, the question is whether any buildings existed in property covered by the land sought to be acquired coming under Survey Nos.592/1 592/2, 593 and 593/2 as on 03/05/2008, when the Panchayat resolved to acquire the land. As already held by the learned Single Judge, in the partition deed Ext.P2, which is of the year 2005, there is no specific mention of the existence of any

buildings in the aforesaid survey numbers. Whereas, there was reference to certain buildings in the schedule to the document with reference to Sy.Nos.514 and 303. Under such circumstances there is justification on the part of the learned Single Judge to come to a finding that there was no material to indicate the existence of buildings at the time when the Panchayat issued Ext.P3 requisition to the Government. Annexure A1 does not make any difference to the factual issue involved in the matter. Hence we are of the view that the allegation of mala fides alleged against the requisitioning authority is unfounded and liable to be rejected. Under such circumstances, we do not think that the appellants have made out any ground to interfere with the above judgment.

Hence these appeals are dismissed.

(sd/-)

(ASHOK BHUSHAN, CHIEF JUSTICE)

(sd/-)

(A.M.SHAFFIQUE, JUDGE)

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