

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 6TH DAY OF NOVEMBER 2015/15TH KARTHIKA, 1937

WP(C).No. 10353 of 2006 (G)

PETITIONER(S):

**M. BHASKARAN, S/O. UNNIYATHAN,
AGED 54 YEARS, AROTTIPARAMBA, THIRUNAVAYA
MALAPPURAM DISTRICT.**

**BY ADVS.SRI.BABU S. NAIR
SRI.JIJO PAUL
SMT.SMITHA BABU
SMT.DEEPTHI S.MENON
SRI.ABRAHAM SAMSON
SRI.P.A.RAJESH
SMT.S.L.SYLAJA**

RESPONDENT(S):

- 1. THE STATE OF KERALA,
REPRESENTED BY THE LAND REVENUE COMMISSIONER
TRIVANDRUM.**
- 2. THE DISTRICT COLLECTOR, MALAPPURAM.**
- 3. THE THIRUNAVAYA GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY, THIRUNAVAYA
MALAPPURAM DISTRICT.**

*** ADDL.R4 IMPEADED**

- 4. ZAMORIN RAJA OF CALICUT,
MANANGING TRUSTEE,
THIRUNAVAYA NAVAMUKUNDA TEMPLE, THIRUNAVAYA.**

ADDL.R4 IMPEADED AS PER ORDER DATED 22/5/2006 IN IA.5823/2006.

**R1 & 2 BY ADV. GOVERNMENT PLEADER SRI.SOJAN JAMES
R4 BY ADVS. SRI.M.P.SREEKRISHNAN
SMT.SHAHNA KARTHIKEYAN**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

WP(C).No. 10353 of 2006 (G)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXHIBIT P1: TRUE COPY OF THE NOTIFICATION, APPEARED IN CHANDRIKA DAILY
DATED 11/5/2003**

**EXHIBIT P2: TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE
PETITIONER BEFORE THE R3 DATED 28/3/2006.**

RESPONDENT(S)' EXHIBITS

**EXT.R4A: COPY OF JUDGMENT DATED 30/7/04 IN WPC.23652/03 OF THIS
HONOURABLE COURT**

**EXT.R4B: COPY OF JUDGMENT DATED 31/3/2005 IN WA.2103/04 OF THIS
HONOURABLE COURT.**

**EXT.R4C: COPY OF JUDGMENT DATED 18/11/05 IN WPC.19258/2005 OF THIS
HONOURABLE COURT.**

**EXT.R4D: COPY OF JUDGMENT DATED 24/3/2-006 IN WA.492/06 F THIS
HONOURABLE COURT.**

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.10353 of 2006

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Dated this the 6th day of November, 2015

JUDGMENT

This writ petition is filed against the decision of providing a parking place for vehicles close to the Temple premises after acquiring the properties on the northern side of Nava Mukunda Temple, Thirunavaya without following any of the statutory requirements as provided under the Kerala Panchayat Raj Act and the Rules framed thereunder.

2. The petitioner alleges that he is very much affected by the above decision of the respondents as he is also residing very near to the property sought to be acquired for the purpose of providing a halting place for vehicles. Therefore, he made Ext.P2 representation before the third respondent. Thereafter the respondents 1 and 2 have taken steps to acquire the property and declared the same as a public parking place without complying with any statutory formalities provided under the Kerala Panchayat

Raj (Landing Places, Halting Places, Cart Stands and Other Vehicle Stands) Rules, 1995; it is alleged.

3. The petitioner further alleges that as a matter of fact, in the matter of providing halting place for vehicles, the third respondent has not even consulted with the respondents 1 and 2, representing the Government. The petitioner points out that providing of public parking place for vehicles is a mandatory duty of the Panchayat. Section 166(1) says that, it shall be the duty of the Village Panchayat to meet the requirements of the Village Panchayat area in respect of matters enumerated in the third schedule. It is with this background, the petitioner has come up before this Court.

4. In the counter affidavit filed by the first respondent it is contended as follows:-

It is true that a public notification is published in Chandrika daily on 11.5.2003. Section 4(1) notification under Central Land Acquisition Act, 1894 is published for acquiring properties near Thirunavaya Nava Mukunda temple for the purpose of development

work of Navamukunda Temple and for providing a parking place. The occupant of the land under acquisition is Sri.VM.Gopakumar. The occupant approached this Court with W.P(C) No.23652/03 praying to quash the notification under Sections 4(1) and 17(4) of the Land Acquisition Act issued by the State regarding the proposal to acquire the property, which was dismissed on 30.7.2004. Against that judgment, a writ appeal was filed by the occupant of the land under acquisition praying to set aside the judgment. After the filing of the writ appeal, a memo has been filed by the counsel for the appellant VM.Gopakumar seeking permission to withdraw the appeal. He also prayed for making a request to give him liberty to approach the State Government for relief. The Division Bench pronounced the order in W.A No.2103/04 on 11.3.2004 and granted permission to the appellant, liberty to move the Government for relief and thus the WA was dismissed as withdrawn. The statements in the 3rd paragraph that nothing was proceeded further as understood by the petitioner, as there were litigation between the Government, the owner of the land sought to be acquired and the managing trustee of the Temple regarding the acquisition proceedings are not fully correct. The acquisition is for

the development work of Navamukunda Temple. All formalities and acquisition proceedings as per the Land Acquisition Act were strictly observed and followed in this matter.

5. The 4th respondent has filed a counter affidavit wherein it was contended as follows:

Sree Nava Mukunda Temple in Thirunavaya is one of the Temples of which Zamorin Raja is the managing trustee. The Temples come under the purview of Madras High Religious and Charitable Endowment Act, 1951. The managing trustee had requested the District Collector, Malappuram to acquire a total extent of 35 cents in Sy. Nos.385/5 and 389/1 of Thirunavaya for future development activities of Nava Mukunda Temple and for providing parking facilities. On the request of the Commissioner, HR&CE department, the Government accorded sanction by order dated 2.12.2001 for acquisition of property. The Land Acquisition Officer inspected the property and pointed out that substantial buildings have already been put up in Sy. No.389/1 and so the cost of acquisition of that property would be very high. Hence the acquisition was confined to the land in Sy. No.385/5 which is nearest to the Temple and most suitable for the

purpose. A combined notification under Sections 4(1) and 17(4) dated 1.1.2003 was published. Challenging the acquisition proceedings, one V.M.Gopakumar, the owner of the property filed W.P(C) No.23652/2003 before this Court which was dismissed the learned single Judge by Ext.R4A judgment of this Court dated 30.7.2004. Against the said judgment, Gopakumar filed W.A No.2103/04. When the appeal came up for hearing, Gopakumar filed a memo seeking permission to withdraw the appeal and praying further to give liberty to move the Government for relief. The Division Bench fully realising the motive for making the prayer allowed the withdrawal of the appeal. However, rejected the prayer for liberty to move the Government. Copy of the judgment is produced as Ext.R4B. Due to the influence exerted by Gopakumar, the Principal Secretary of the Government (Revenue A Department) sent a letter to the District Collector to find out some other place for the purpose of development of the Temple after discussing with Zamorin Raja. The direction was given in spite of the stand taken by the Government in W.P(C) No.23652/03 that the land sought to be acquired in R.S No.385/5 was the most suitable land for the Temple purposes and nearest to the Temple. When the direction

was issued by the Principal Secretary to the District Collector to find out some other place, this respondent approached this Court by filing WQ.P(C) No.19258/05 to compel the State Government to complete the acquisition proceedings. This Court by judgment dated 18.11.05 allowed the writ petition and directed the State Government to complete the land acquisition proceedings. Copy of the judgment dated 18.11.2005 in W.P(C) No.19258/2005 is produced as Ext.R4C. Sri.VM.Gopakumar again filed W.A No.492/06 against the judgment in W.P(C) No.19258/2005. The writ appeal was dismissed by Ext.R4D judgment dated 24.3.06. Against Ext.R4D, Sri.Gopakumar filed Special Leave Petition SLP(civil) No.6220 of 2006 before the Apex Court which was also dismissed on 17.4.2006. The learned single Judge and the Division Bench of this Court had observed that the attempt to withdraw from the acquisition proceedings was at the tremendous influence exerted by Sri.Gopakumar and the order was vitiated by mala fide. It has to be noted that the Division Bench had dismissed the writ appeal on 24.3.06. The award was to be passed on 7.4.06. The above writ petition was filed by Sri.Bhaskaran on 3.4.2006 claiming to be a resident of Thirunavaya and residing very

near to the Temple. Yet he has not impleaded the Zamorin Raja who is the requisitioning authority in the writ petition. He has suppressed all the facts stated above and approached this Court as if the acquisition is for the purpose of providing public handling place or halting place governed by Section 227 of the Kerala Panchayat Raj (Landing Places, Halting Places, Cart Stands and Other Vehicle Stands) Rules, 1995. Even though the petitioner was fully aware that the rules have no application, suppressing true facts and making distorted facts in the petitioner has stated that Section 166(1) of the Panchayat Raj Act is applicable and Government can only issue guidelines. The petitioner has proceeded as if the Government is acquiring the land for a public parking space. The petitioner is fully aware of the fact that the land is being acquired only for the development of the Temple activities and providing parking space for the devotees coming to the Temple and on the requisition of Devaswom. It is stated that the petitioner has filed the above writ petition at the instance of Sri.V.M. Gopakumar who had approached this Court earlier and this Court has already issued directions to the State Government to complete the land acquisition proceedings. It is further stated that the 4th respondent on enquiry has

not been able to find out that Sri.Bhaskaran is residing any where near the Temple.

6. Arguments have been heard.

7. The proposed acquisition was undertaken as the land adjacent to the Temple compound was essential for future development activities as well as for parking of the vehicles of the worshipers coming to the Temple every day from distant places. It is the definite case of the respondents that it is only a parking place. There is no road beyond the land which is being acquired except the Temple property. At present, the vehicles coming to the Temple are being parked in the space available near the Temple and on the Kuttippuram-Tirur road, causing obstruction to the worshipers and public. Therefore, the averment that parking of the vehicles near the Temple would disturb the peaceful atmosphere prevailing in the premises cannot be countenanced.

8. Though the land is being acquired near the Temple property, by parking vehicles, no disturbance would be caused to the atmosphere of the Temple. It is not a public parking place. On

a specific query by me during the course of argument to the learned counsel for the petitioner as to what is the *locus standi* of the petitioner, the learned counsel for the petitioner could not give a cogent reply. The Temple comes under the purview of the HR&CE and the land is being acquired by the Temple for providing development activities and for providing parking space for the vehicles of the worshipers only and it does not come under the duty of the Village Panchayat under Section 166 of the Kerala Panchayat Raj Act. Therefore, the decision reported in **Valanchery Service Co-operative Bank Ltd. v. State of Kerala** [2006 (1) KLT 425] has no application.

9. It is submitted that one Sri.V.M.Gopakumar, who is the owner of the property, has challenged the proceedings before this Court in previous writ petition i.e. W.P(C) No.23652/03 which was dismissed. The writ appeal filed by him was also dismissed. Though he tried to prevail upon the Government to withdraw the acquisition, the 4th respondent approached this Court with W.P(C) No.19258/05 for a direction to the Government to complete the

land acquisition proceedings which was allowed. Though a writ appeal as W.A No.492/06 was filed by the aforesaid Gopakumar, the same was also dismissed. The petitioner has sent Ext.P2 to the respondent panchayat after the dismissal of the writ appeal.

10. It is also relevant to note that the first notification was issued invoking the provision under Section 17(4) of the Land Acquisition Act. As the acquisition proceedings are almost over, this Court finds no reason to interfere with the matter, at this point of time.

In the result, the writ petition is dismissed.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

krj

//true copy//

P.A to Judge