

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

WEDNESDAY, THE 25TH DAY OF MARCH 2015/4TH CHAITHRA, 1937

WP(C).No. 3507 of 2015 (K)

PETITIONER:

MUHAMMED SUBAIR, AGED 49 YEARS,
S/O.MAMMU, 25/1102, KOLAVANTHAZHAM,
KOMMERI (POST), KOZHIKODE-673107.

BY ADV. SRI.K.K.JAYARAJ NAMBIAR

RESPONDENT:

CORPORATION OF KOZHIKODE
KOZHIKODE DISTRICT-673101
REPRESENTED BY ITS SECRETARY.

BY ADV. SRI.P.V.SURENDRANAT

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
25-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WP(C).No. 3507 of 2015 (K)

PETITIONER'S EXHIBITS:

EXHIBIT-P1: TRUE COPY OF THE BUILDING PERMIT NO.E/TP8/19712/13 DATED 2.7.2013 ISSUED TO THE PETITIONER BY THE RESPONDENT.

EXHIBIT-P2: TRUE COPY OF THE ORDER NO.TP8/19712/13 DATED 25.11.2014 ISSUED BY THE RESPONDENT.

EXHIBIT-P2(a): TRUE ENGLISH TRANSLATION OF EXHIBIT-P2 ORDER NO.TP8/19712/13 DATED 25/11/2014.

RESPONDENT'S EXHIBITS: NIL.

/TRUE COPY/

P.S. TO JUDGE

Dama Seshadri Naidu, J.

W.P.(C)No.3507 of 2015 K

Dated this the 25th day of March, 2015

JUDGMENT

Initially, the petitioner was granted Exhibit P1 building permit, but later it was cancelled through Exhibit P2 order. Impugning Exhibit P2 order of cancellation, the petitioner has filed the present writ petition.

2. The learned counsel for the petitioner has submitted that the respondent Corporation has initially granted Exhibit P1 building permit after following the due process. But, later cancelled it through Exhibit P2 order. He has contended that ostensibly what weighed with the authorities to issue Exhibit P2 order of cancellation is a proposed acquisition, regarding which steps are yet to be taken.

3. Placing reliance on **Nasar v. Malappuram Municipality** (2009 (3) KLT 92), **Padmini v. State of**

Kerala (1999 (2) KLT 465) and **Giri v. State of Kerala** (2013 (2) KLT 443), the learned counsel has contended that substantial property rights of the petitioner, which have been constitutionally recognised, cannot be defeated on a mere proposal on the part of the authorities to acquire the said property. Accordingly, he has urged this Court to allow the writ petition.

4. The learned Standing Counsel for the respondent Corporation, on instructions, has submitted that the respondent Corporation has been taking all steps to see that the acquisition proceedings are completed at the earliest. According to her, if any building permit is granted pending acquisition of the very land on which the petitioner proposes to construct, it leads to unnecessary and avoidable complications. Contending thus, the learned Standing Counsel has strenuously defended Exhibit P2.

5. Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondent, apart from perusing the records.

6. Indeed, through Exhibit P1 the petitioner had been granted building permit. Later, through Exhibit P2 it was cancelled evidently based on a mere proposal of acquisition, which, in fact, has been recorded in Exhibit P2 as a matter of justification for cancelling Exhibit P1 permit. It is profitable to extract the Corporation's reasoning, which is as follows:

“On verification of the above facts in details, it is understood that Sri.Muhammed Subair has obtained the building permit by misleading the Corporation authorities. As the Council has decided to speed up the acquisition process of Kommeri play ground, it is hereby ordered cancelling the building per (TP8/19712/13 dated 2.7.13) obtained by Sri.Muhammed Subair unauthorizedly. This order will come into force with immediate effect. Therefore it is informed to stop all construction activities in the site and report the matter in writing and also to surrender the above referred building permit.”

7. To a specific query from this Court, the learned Standing Counsel has submitted that so far no notification has been issued, though steps are being taken in that regard. In other words, it can safely be concluded that the proposal of acquisition may be under active consideration of the respondent Corporation, but no steps in furtherance thereof have begun, as yet. We can hold without fear of contradiction that proceedings for acquisition usually begin with the issuance of a notification.

8. Firstly, this Court in **Hassan v. Corporation of Calicut** (1996 (2) KLT 839) considered the issue whether the rejection of the application submitted by the Appellants therein for permission to construct can be sustained in view of Clause (vii) of Sub-section (1) of Section 393 of the Kerala Municipality Act. In that case also, the Corporation of Calicut had the as only ground for rejection of the application, that it was proposing to acquire the land where

the buildings were proposed to be constructed. This Court, per P.A.Mohammed, J., has held thus:

“5. It must be recalled that every citizen has the freedom to enjoy his land in a manner he likes of course subject to the prevailing laws in the country, the right to hold land and enjoyment thereof though is not a fundamental right, is a civil right protected by Chapter IV of the Constitution. Article 300A mandates that no person shall be deprived of his property save by authority of law. When a person is restrained from enjoyment of his land it may amount to deprivation of his property. But such deprivation can be made only by authority of law. That means all restrictions for enjoyment of land must be in accordance with the procedure authorised by law. It also envisages strict compliance of such procedure in all matters restraining the enjoyment of land.”

9. Later, a learned Division Bench of this Court, quoting Hassan (supra) with approval, has held in **Padmini & Ors v. State of Kerala** (1999 (2) KLT 465), that the Municipality cannot freeze the land for an indefinite period on the pretext that they are taking steps to acquire the land. Their Lordships have further held that the owners of the

property have got every right to put their land for a beneficial and profitable use of their own. In the end the conclusion is to the effect that the rejection of permission to construct a residential building on the pretext of proposed acquisition is tantamount to deprivation of the property of the owners without the authority of law, which is in violation of Article 300A of the Constitution of India.

10. In **Nasar v. Malappuram Municipality** (2009 (3) KLT 92), a learned Single Judge of this Court, following the ratio of *Padmini* (supra), has observed that in so far as the owner of the land is concerned, the acquisition affects his interest only from the issuance of notifications and declarations under the Land Acquisition Act; therefore, any attempt to curb the rights of the owners of lands, until the publication of those statutory notifications and declarations, would result in infraction of the right to property under Article 300A of the Constitution. It is further opined that

any infraction of that nature would also result in the violation of the equality principle in the matter of enforcement of laws as is enshrined in Article 14 of the Constitution. It is, in the end, emphatically held that any demand to create a rider over the title of the owner of the property under the pretext of a Town Planning Scheme which has not become operational by acquisition would, essentially, be oppressive and would not be countenanced in the face of Article 14 of the Constitution.

11. It can be seen that in terms of the ratio laid down in the decisions referred to above, no property right can be interdicted and ipso facto no building permit can be refused on a mere proposal to have certain lands acquired. In other words, contemplation on the part of the officials cannot be a substantive ground to defeat the constitutional right of a person who wants to enjoy his property in the manner he desired fit, albeit, subject to legal limitations.

12. In the facts and circumstances, I do not see any justification in Exhibit P2 and accordingly set it aside. Consequentially, Exhibit P1 stands revived.

In the manner indicated above, the writ petition is allowed. No order as to costs.

Dama Seshadri Naidu, Judge

tkv