

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

TUESDAY, THE 24TH DAY OF FEBRUARY 2015/5TH PHALGUNA, 1936

WP(C).No. 34916 of 2009 (H)

PETITIONER :

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

BY ADVS.SRI.P.V.SREENIJIN
SMT.K.B.SONY
SRI.SANU.S.PANICKER
SRI.K.T.BOSCO
SRI.PAUL MATHEW
SRI.PRASUN.S

RESPONDENT(S):

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1. THE STATE OF KERALA,
REP.BY ITS PRINCIPAL SECRETARY,
LOCAL SELF GOVERNMENT DEPARTMENT,
THIRUVANANTHAPURAM.
 2. DEPUTY DIRECTOR, DISTRICT PANCHAYAT,
THRISSUR.
 3. THE SECRETARY,
MATTATHUR GRAMA PANCHAYAT,
MATTATHUR P.O.- 680 692, THRISSUR, KERALA.

***ADDL.R4 & R5 IMPEADED**

***ADDL.R4: THE SPECIAL TAHSILDAR (L.A. GENERAL), THRISSUR.**

***ADDL.R5: THE DISTRICT COLLECTOR, THRISSUR.**

***ADDL.R4 & R5 ARE IMPEADED AS PER ORDER DATED 24-02-2015
IN I.A.NO.4413/2010**

**R1 & R2,ADDL.R4 & R5 BY GOVERNMENT PLEADER SRI.P.V.ELIAS
R3 BY ADV. SRI.M.R.VENUGOPAL
SMT.DHANYA PASHOKAN**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 24-02-2015, ALONG WITH WPC.NO. 19412/2011 AND WPC.NO. 28364/2012,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

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APPENDIX

PETITIONER'S EXHIBITS:

- P1 COPY OF THE RESOLUTION PASSED NO.5 DATED 3/05/2008 BY THE 3RD RESPONDENT**
- P2 COPY OF THE REQUEST DATED 6/10/2008 BY THE 3RD RESPONDENT TO THE 1ST RESPONDENT**
- P3 COPY OF THE ORDER DATED 22/12/2008 PASSED BY 1ST RESPONDENT**
- P4 COPY OF THE INFORMATION DATED 16/12/2008 RECEIVED FROM THE PUBLIC INFORMATION OFFICER.**
- P5 COPY OF THE COMPLAINT DATED 21/1/2009 FILED BY THE PETITIONER TO 1ST RESPONDENT**
- P6 COPY OF THE COMPLAINT DATED 21/1/2009 FILED BY THE PETITIONER TO THE DISTRICT COLLECTOR, TRICHUR.**
- P7 COPY OF THE LIST OF NAMES OF OWNERS AND EXTENT OF PROPERTY.**
- P8 COPY OF THE NOTIFICATION DATED 8/12/2009 ISSUED BY THE 4TH RESPONDENT**
- P9 COPY OF THE OBJECTION FILED BY THE PETITIONER BEFORE THE 4TH RESPONDENT**

RESPONDENT'S EXHIBITS:

- R3(A) COPY OF THE ORDER NO.R 5866/2008/K.DIS DATED 23/09/2008 OF THE DEPUTY DIRECTOR OF PANCHAYAT**
- R3(B) COPY OF THE APPLICATION SUBMITTED BY THIS DEPONENT BEFORE THE SECRETARY TO LOCAL SELF GOVERNMENT DEPARTMENT THROUGH LETTER NO.A7-90/07 DATED 06/10/2008**
- R3(C) COPY OF THE LETTER NO.12899/B2/2009/REVENUE DATED 11/03/2009 OF THE 1ST RESPONDENT**
- R3(D) COPY OF THE FORM OF REQUISITION SUBMITTED BY THIS DEPONENT BEFORE THE DISTRICT COLLECTOR, THRISSUR DATED NIL**
- R3(E) COPY OF THE LETTER NO.899/B2/09/REVENUE DATED 17/03/2009 OF THE 1ST RESPONDENT**
- R3(F) COPY OF THE NOTIFICATION UNDER SECTION 4(1) OF THE KERALA LAND ACQUISITION ACT WAS PUBLISHED IN THE KERALA GAZETTE DATED 23/11/2009**

WP(C).NO.34916/2009

R3(G) COPY OF THE REPLY ISSUED BY THE ROAD TRANSPORT AUTHORITY DATED 03/01/2011 TO THIS DEPONENT.

R3(H) COPY OF THE PLAN PREPARED BY THE SURVEY AUTHORITIES

R3(I) COPY OF THE CHALAN DATED 04/12/2010 ISSUED FROM THE THRISSUR TREASURY

R3(J) COPY OF THE DECLARATION BY THE LAND REVENUE COMMISSIONER DATED 13/12/2010.

/TRUE COPY/

P.A.TO JUDGE

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C.K. ABDUL REHIM, J.

W.P.(C)No.34916 OF 2009

W.P.(C)No.19412 OF 2011

&

W.P.(C)No.28364 OF 2012

DATED THIS THE 24th DAY OF FEBRUARY, 2015

J U D G M E N T

Challenge in all these three writ petitions is against a land acquisition proceedings initiated based on the request of Mattathur Grama Panchayat. Since the issue involved is connected they were heard together and disposed of through this common judgment. There are 15 petitioners in WP(C) 19412/2011. The petitioner in WP(C)34916/2009 and 28364/2012 is one and the same person. Reference to exhibits contained in this judgment is made in the order in which they are produced in WP(C) 19412/2011.

2. The impugned proceedings of land acquisition was initiated based on a request made by the Mattathur Grama Panchayat, who is a party respondent in all these cases (hereinafter referred to as the 'Grama Panchayat' for short). The purpose of the acquisition is for establishment of a Taxi Stand and for providing a By-pass road, at Kodaly town.

The Grama Panchayat took Ext.P3 resolution on 03/05/2008 to acquire land for the said purposes and decided to request the District Collector as well as the Deputy Director of Panchayats to take necessary steps for acquisition. A request was made to the Government on 06/10/2008 to accord permission for the acquisition. In the said letter it was mentioned that there exists no buildings in the land to be acquired and there are yielding trees only in a small extent of 7.91 cents. It is mentioned that the balance land remains without any agriculture, covered with waste plants. Based on reports submitted by various authorities, by virtue of Ext.P13 proceedings, dated 22/12/2008 the Government have accorded sanction for the acquisition. Notification under Section 4(1) of the Land Acquisition Act (for short 'the Act') dated 23/11/2009 was published on the Official Gazette on 20/11/2009 and it was published in two daily news papers on 22/11/2009 and 25/11/2009, respectively. Substance of the Notification was published at the site on 16/12/2009. Thereafter the Commissioner of Land Revenue

had considered objections raised by certain persons, including the petitioners, under Section 5(a) of the Act. Ext.P9 is the order passed by the Land Revenue Commissioner rejecting those objections. Subsequently, declaration as contemplated under Section 6(1) of the Act was published and land belonging to persons other than the petitioners were already acquired on payment of due compensation.

3. WP(C)34916/2009 was filed challenging the resolution passed by the Grama Panchayat and the approval granted by the Government. Subsequently the very same petitioner had filed WP(C)28364/2012 challenging notices issued intimating about the fixation of compensation and for taking over possession of the land belonging to him.

4. In WP(C) 19412/2011 the petitioners are seeking to quash Ext.P3 decision of the Grama Panchayat, Ext.P13 decision taken by the Government and Ext.P15 Notification issued under Section 4(1) of the Act. Inter alia the

petitioners are seeking declaration that the entire land acquisition proceedings is illegal and vitiated by colourful exercise of power by the respondents. It was also requested to direct re-opening of the proceedings under Section 5(a) by directing a fresh enquiry.

5. Common contention raised in all these cases is that, the declaration under Section 6(1) was made after expiry of one year period from the date of publication of the Notification, which is prohibited under the proviso to Section 6(1). Therefore the land acquisition proceedings could not be proceeded, is the contention. The petitioners placed reliance on a statement contained in the counter affidavit filed by the Special Tahsildar, land acquisition, wherein it is admitted that the Notification under Section 4 (1) was issued on 20/11/2009 and it was published in the Gazette on 23/11/2009. According to the 3rd respondent the draft declaration under Section 6 was prepared on 13/12/2010. Learned Senior Counsel appearing for the petitioners contended that, the declaration was made after

expiry of the one year period, calculated from the date of publication of the Notification. But the matter was more explained in the affidavit filed on behalf of the Grama Panchayat in WP(C)19412/2011. Draft declaration prepared under Section 6 (1) was produced as Ext.R2(a). It indicates that the Notification in question was published in the Official Gazette on 23/11/2009. It was published in two Malayalam dailees having circulation in the area, on 22/11/2009 and 25/11/2009 respectively. Subsequently, an Erratum Notification was published on 'Mangalam Daily' news paper on 02/12/2009 and public notice of the substance of the Notification was published at the site on 16/12/2009. It is contended on behalf of the Grama Panchayat that the last date of publication of preliminary Notification under Section 4(1) has to be construed as 16/12/2009, the date on which public notice about substance of the Notification was published at the site. Even assuming that the draft declaration was made on 13/12/2010, the same is within the limitation period of one

year stipulated under Section 6 of the Act. Therefore the contention based on the question of limitation put forth by the petitioner is strongly refuted.

6. The proviso to Section 6(1) prescribes that, no declaration under Section 6(1) in respect of any particular land covered by a Notification under Section 4(1) shall be made after expiry of one year from the date of publication of the Notification. But it is clarified in Section 4(1) that the date of publication of the Notification shall be the last of the dates of such publication and giving of such public notice. In the case at hand it is evident that the public notice with respect to the substance of the Notification was given only on 16/12/2009. The declaration was made on 13/12/2010. Therefore it is to be held that the declaration was made within the one year period stipulated. In this regard, learned counsel appearing for the Grama Panchayat had placed reliance on various decisions rendered by the hon'ble Supreme Court and this court, such as, **Bihar State Housing Board v. State of Bihar [2003**

KHC 1178], Kolkata Metropolitan Development Authority v. Gobinda Chandra Makal and Another [(2011) 9 SCC 207] and Padmadas v. State of Kerala [1991 (2) KLT 636]. In view of the specific provisions contained in Section 4(1) and in view of the legal position remaining settled in the above said rulings, this court is of the opinion that the contentions raised based on the bar of limitation cannot be sustained.

7. Learned Senior Counsel appearing for the petitioner had raised vehement contentions that the decision of the Grama Panchayat itself is vitiated and hence the entire proceedings for acquisition itself is unsustainable. It is contended that the Grama Panchayat had made a false report to the Government that the land sought to be acquired is a waste land, by suppressing factual situation prevailed on the land. It is argued that there was dishonest intension and lack of bonafides on the part of the Grama Panchayat in making such a representation. It is contended that the property in question contained buildings belonging

to petitioners 1 to 6 in W.P.(C)19412/2011, wherein they had constructed a shop building and carried on business activities. It is argued that, in the matter of land acquisition the state is exercising power of eminent domain, which is having the effect of depriving rights of the citizens. When there is dishonesty committed, there exists legal malafides. It is also contended that, fundamental decision of the Grama Panchayat in choosing the property in question for acquisition itself was vitiated because the land was considered as a waste land, against the real factual situation prevailed. Learned Senior Counsel had cited various decisions in support of the above proposition. In the decision of the hon'ble Supreme Court in the **The Collector (Distt. Magistrate) Allahabad and Another v. Raja Ram Jaiswal [AIR 1985 SC 1622]** it is held that where power is conferred on an authority to achieve certain purposes, exercise of such power has to be restricted only to achieve the said purpose and the power must be exercised reasonably in good faith to effectuate such

purpose. In exercise of such power, good faith for legitimate reasons should be established and extraneous or irrelevant considerations or reasons will render the exercise as colourable. The power to acquire land should be exercised in a bonafide manner for statutory purposes and for none other. If it is exercised on extraneous, irrelevant or non-germane considerations the acquiring authority can be charged with legal malafides.

8. In the decision in **Patasi Devi v. State of Haryana and Others [(2012) 9 SCC 503]** the hon'ble Supreme Court observed that, if the acquisition of land is with any malafide intension, rather than for the statutory purpose, the exercise of power will amount to misuse. The hon'ble Supreme Court in **Radhy Shyam (dead) through Lrs. and Others v. State of Uttar Pradesh and Others [(2011) 5 SCC 553]** observed that in the matter of acquisition the respondents could not invoke the doctrine of equality merely on the facts that land of other persons have already been acquired and other land owners have not

come forward to challenge the acquisition of their land. Another decision of the hon'ble Apex court in **Gurbinder Kaur Brar and Anohar v. Union of India and Others [2013 KHC 4573]** was cited to contend that, illegality if any existing at the time of initiation of the land acquisition proceedings cannot be saved by virtue of any declaration under the relevant provisions of the Land Acquisition Act. Few more decisions were also cited in order to contend that exercise of the statutory powers vested under the Act must be based on reasonable grounds and cannot lapse into arbitrariness or caprice, and also to contend that notification issued under the Act, if found to be illegal on the grounds of malafide exercise of power, then it cannot be cured and the State Government cannot be allowed to proceed further with acquisition in such case, which will amount to colourable exercise of power vested on the authority.

9. Factual basis pleaded in support of the above contention is that, description of the land was not truly

represented by the requisitioning authority in a correct manner. It is contended that existence of buildings in the property was suppressed by the Grama Panchayat. Further it is contended that there were alternate lands available which are more suitable for establishment of the public need. But the Grama Panchayat had malafidely taken a decision to acquire the land belonging to the petitioners. The above contentions were raised pointing out the fact that the petitioners 1 to 6 in W.P.(C)No.19412/2011 had their buildings situated in the property in question and that they were carrying on business activities in the said buildings. In support of the said contention the petitioner had produced Exts.P10 and P11 certificates issued by the Grama Panchayat.

10. Contention is that the petitioners 1 to 6 in W.P (c) No.19412/2011, who are brothers, had put up various buildings in their respective share of properties, derived by virtue of Ext.P2 partition deed. In Ext.P11 certificate issued by the Grama Panchayat, dated 30-12-2010 it is mentioned

that, as per the 'Property Tax Assessment Register' kept by the Panchayat during the year 2009-2010, buildings bearing Nos.XXII/533A, B, C & D were constructed as per the plan, B.P No.923/ 21-03-2009 and it was assessed for property tax from 23-07-2009 onwards. The said certificate was issued as reply to a request made under the RTI Act by the 5th petitioner. In Ext.P10 reply given to the very same petitioner it is mentioned that, as per the old 'Property Tax Assessment Register' of the Grama Panchayat building Nos.XXII/197A, B, C, D, E, D & F, which are in the ownership of Sri. Mohammed Moideen was assessed from the year 1997-1998 onwards, and out of that, building bearing Nos.XXII/197F was demolished during 2008-09. Admittedly Sri. Mohammed Moideen is the father of the petitioners 1 to 6.

11. Contention of the Grama Panchayat in the counter affidavit filed in W.P (c) No.28364/2012 is that there was no building structures existed in the property in question at the time when Ext.P3 resolution was adopted by the Grama

Panchayat, on 03-05-2008. All the constructions made in the property sought to be acquired are new ones, which were constructed on the basis of the building permit issued by the Grama Panchayat on 21-03-2009, in compliance of an order passed by the Tribunal for Local Self Government Institutions, Thiruvananthapuram. It is contended that the petitioners 1, 3, 4 & 5 have applied for building permit in the property in question which was rejected by the panchayat on the basis that the land in question is proposed for acquisition. But the said decision was challenged before the Tribunal. The Tribunal had set aside the order and directed the Grama Panchayat to reconsider the matter. On that basis Ext.R2 (a) building permit was issued incorporating a condition that if the building constructed is to be demolished based on the land acquisition proceedings, the above said petitioners alone will be responsible. From Ext.P11 reply furnished by the Grama Panchayat it is evident that the building bearing Nos.XXII/533, A, B, C & D are constructed only on the basis of Ext.R2 (a) permit which

was issued long after the panchayat had taken resolution for acquisition of the land in question.

12. Learned senior counsel appearing for the petitioners contended that, buildings covered under Ext.P10 reply, bearing Nos.XXII/197A, B, C, D, E, D & F are buildings which existed in the property even prior to Ext.P3 decision. But it is pertinent to note that Exts.P11 & P10 replies were issued by the Grama Panchyat on the very same date. Exhibit P11 relates to building situated in ward No.XXII. There is nothing to show that the building covered under Ext.P10 are situated in the property which is sought to be acquired under the impugned proceedings. However going by Ext.P10 it is evident that those buildings were assessed during 1997-98 in the name of the predecessor in interest of petitioners 1 to 6. But question remains as to whether those buildings are situated on the property sought to be acquired. It is evident from Ext.P15 notification under Section 4 (1) that the properties sought to be acquired are comprised in Sy. Nos.592/1, 592/2 & 593/2. From Ext.P2

partition deed it is revealed that properties under Sy.Nos. Nos.592/1, 592/2 & 593/2 were assigned to respective shares of petitioners 1 to 6. But the schedule of the sale deed does not contain any recital to the effect that there exists any buildings in the properties assigned to petitioners 1 to 6 comprised in Sy.Nos.592/1, 592/2 & 593/2. Merely on the basis of Ext.P10 information furnished by the Grama Panchayat, it is not established that there existed buildings constructed by the predecessor in interest of the petitioners or by the petitioners 1 to 6 in the property sought to be acquired, at the time when the panchayat had resolved to acquire the said land. Under such circumstances allegation that the Grama Panchayat had suppressed material facts and misrepresented before the Government for seeking permission for the acquisition, cannot be accepted.

13. Since the petitioners could not establish any factual aspects regarding the above said allegation, this court is not in any manner impressed to accept the contentions in this regard. Further, it is to be noticed that

all these contentions were adjudicated before the Commissioner of Land Revenue during the time when enquiry under Section 5(a) was conducted. There also, the findings contained in Ext.P9 would indicate that, the petitioners have failed to establish that there existed any buildings in the property in question at the time when it was resolved by the Grama Panchayat to acquire the said land. Hence this court is of the considered opinion that the contentions raised based on misrepresentation made by the Grama Panchayat does not deserve merit.

14. Under the above mentioned circumstances this court is of the opinion that the challenges raised in all these writ petitions against the land acquisition proceedings could not succeed. Resultantly these writ petitions fail and the same are hereby dismissed.

Sd/-
C.K. ABDUL REHIM
JUDGE

MJL/AMG

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P.A. to Judge