

(2009) 05 KL CK 0079

High Court Of Kerala

Case No: Writ Petition (C) No. 21506 of 2008 (I)

Karthiayani and P.V. Omana

APPELLANT

Vs

The State of Kerala and Others

RESPONDENT

Date of Decision: May 5, 2009**Acts Referred:**

- Land Acquisition (Kerala) Rules, 1990 - Rule 8
- Land Acquisition Act, 1894 - Section 17(4), 4(1), 5A, 6

Hon'ble Judges: Pius C. Kuriakose, J**Bench:** Single Bench**Advocate:** Mohan Pulikkal, for the Appellant; Government Pleader, for the Respondent

Judgement

Pius C. Kuriakose, J.

These writ petitions are filed by owners of land in Thaliparamba Village being aggrieved by the proceedings initiated at the instance of the Thaliparamba Municipality for acquisition of land for the purpose of construction of a new sophisticated bus stand and auto, taxi, lorry stand and vegetable market. It is substantially the same allegations which are raised in all these petitions and the prayers are also substantially the same. I therefore propose to advert to the pleadings in WP(C) No. 21575 of 2008 only. The respondents in this writ petition are the State of Kerala (R1), the Special Tahsildar (LA) (R2), District Collector, Kannur (R3), Thaliparamba Municipality (R4), Chairman of the Thaliparamba Municipality (R5) and the Land Revenue Commissioner (R6).

2. Ext.P1 produced along with the writ petition is copy of the proceedings dated 17-2-2006 issued by the Government according administrative sanction for acquiring the properties in question under the urgency provisions of the Land Acquisition Act. Ext.P2 is the combined notification dated 13-4-2007 issued u/s 4(1) read with Section 17(4). Ext.P3 is copy of the judgment of this Court by which this Court directed conduct of an enquiry u/s 5A. It is alleged that without conducting a

proper enquiry as contemplated u/s 5A, declaration u/s 6 has been issued. Ext.P4 is the copy of the declaration u/s 6 issued by the Land Revenue Commissioner. Ext.P5 is the judgment of this Court in WP(C). 17605/08 filed by the petitioner reserving the petitioner's right to challenge the declaration u/s 6 on all available grounds. The petitioner submits that a large portion of his properties is paddy field. Petitioner refers to the Kerala Protection of Paddy Fields and Water Course Act, 2007 and submits that the policy of the Government is not to acquire paddy fields. It is contended that the present acquisition proceedings is actuated by mala fides and extraneous considerations. According to the petitioner, there is no public purpose justifying the acquisition of the land of the petitioner as proposed. The proposed bus stand will be the 4th one in Thaliparamba Municipality. It was only on 30-11-2006 that the existing third bus stand was renovated with shopping complex in an extent of 1.4 acres of land. This third bus stand is hardly 500 metres away from the land proposed to be acquired. Some 200 kms. Away from the above third bus stand there is another bus stand by name Kakkathode bus stand which has an extent of 1.5 acres. At some distance away from that bus stand exists another bus stand at Parasinikkadavu. Petitioner submits that the traffic in Thaliparamba Town is not so dense warranting construction of a fourth bus stand. Petitioner claims that he is an octogenarian aged 85 years. He has produced as Ext.P6 true copy of plan detailing the nature and lie of his landed properties. Petitioner's tarwad house was constructed 200 years ago. It was renovated in 1967 and was reconstructed in the year 2003. Ext.P7 copy of building permit is relied on in this context. Petitioner submits that on the strength of Ext.P8 another building permit he constructed building having door No. 869A-TMC XIII in 1962 which was renovated after obtaining permit. He has produced Ext.P9 by which Municipality permitted him to construct additional plinth area of 73 M2. It is submitted that under Ext.P2 notification an extent of 3.7308 hectares of land (9.2375 Acres) are to be acquired. Since petitioner is unaware of the proposal by the Thaliparamba Municipality as regards the plan, alignment, estimate, necessity of having new bus stand the petitioner submitted Ext.P10 representation seeking relevant information. It is submitted that no reply has been given to the petitioner to Ext.P10. Petitioner has produced Ext.P11 true copy of the agenda pertaining to the resolution adopted by the Municipality (resolution No. 14) to acquire 10.07 acres of land. The petitioner submits that the resolution was forwarded to the Government and the Government accepted resolution and accorded sanction to the Municipality to acquire and take advance possession of 10.07 acres of land mentioned in the resolution. Petitioner complains that neither the Government Order nor the resolution of the Municipality has been communicated to him despite request. The petitioner points out that 80% of the Councillors in the Thaliparamba Municipal Council owed their allegiance to Communist Party of India (M) which is the leading partner in the left democratic front. Some of the land owners who were likely to be dispossessed and are active workers of CPI (M). They in confabulation with the local MLA and other political leaders exerted influence over the councillors to see that their lands are exempted

from the purview of acquisition proceedings. It is alleged that the council on 29-7-2005 resolved to review earlier decision dated 22-2-2003 and decided to exempt certain items of lands. It is submitted that the above decision was taken overruling the objection raised by 11 councillors. 159.25 cents of land belonging to persons named in the writ petition were thus exempted. It is said that by the same resolution it was resolved to include total extent of 75 cents inclusive of 12.37 cents of land belonging to the petitioner in the acquisition. Exts.P12 and P12(a) are true copies of the notice dated 23-7-2005 and the resolution dated 29-7-2005. It is alleged that the Chairman of the Thaliparamba Municipality with the connivance of the local MLA and by exerting influence over officers in the Local Self Government Department to get the proposal contained in Ext.P12 proceeding approved. It is pointed out in this manner that the Local Administration Department is controlled by CPI(M) Minister and accordingly revised order has been passed by the Government according sanction to the Municipality to acquire 25.5 cents of land with two residential building belonging to the petitioner. It is submitted that the Municipal Council in its meeting held on 7-3-2006 endorsed Ext.P1 order and resolved to acquire land including those of the petitioner by invoking urgency provision. Ext.P13 is copy of the agenda. Ext.P2 notification was issued close on the heels of Ext.P13. Petitioner submitted Ext.P14 representation to the Tahsildar and the District Collector seeking exemption of his land from the acquisition. Ext.P14 was returned by the Tahsildar to the petitioner stating that exemption is to be ordered only by the requisitioning authority. Ext.P15 is the proceedings of the Tahsildar. By Ext.P16 notice issued in form No. 4(b) it is ordered to take possession of the petitioner's land. Exts. P17, 81, 19 and 20 are copies of the objections raised by affected parties published in the local dailies making the unscientific approach and malafides tainting the municipal action. It is submitted that pursuant to Ext.P3 judgment the acquisition proceeded under the ordinary provisions and the petitioner submitted Ext.P21 objection raising serious objections. In the enquiry the petitioner sought to adduce oral and documentary evidence and for that purpose filed a list of witnesses who are government officials along with a petition to issue summons to the witnesses. The petition was rejected by two word order "not allowed" scribbled on the petition itself. Ext.P22 is copy of the petition. It is alleged that no proper enquiry was held as regards public purpose and necessity to have a 4th bus stand and the suitability of the land for the purpose. The petitioner further alleged that though the petitioner wanted to have a copy of the report prepared by the L.A. officer overruling the objections filed by him, he is yet to be served with a copy. The petitioner points out that the newly renovated bus stand inaugurated on 30-11-2006 in Thaliparamba Municipality is adjacent to the highway. The said bus stand was constructed by utilizing the funds allotted under the IDSMT Scheme by the State as well as Central Government. Ext.P23 is a true extract of the budget presentation of the Municipality for the years 2002-03 and 2003 -04. It will show that by utilizing the fund the existing bus stand in the heart of the Thaliparamba Town was renovated and major chunks of the funds were utilized for constructing

shopping complex numbering 37 shops and 8 halls in the renovated bus stand. It is submitted that these shops and halls were auctioned to the business community by accepting nearly Rs. 25 lakhs each from them. It is alleged that the dominant intention of the Municipality is to advance private entrepreneurship and not to promote large public interest. At a distance of less than 100 metres another shopping complex at Market Road is being set up and the construction is being completed. Yet another shopping complex at Dharmasala estimating Rs. 60 lakhs is hearing completion. Ext.P24 is the extract of the budgetary provision regarding this. Ext.P25 copy of the budgetary provision for the Municipality for the year 2007-08 is produced and it is highlighted that the total amount provided for the proposed acquisition and the construction of the project is only Rs. 4.5 crores. This amount, petitioner alleges will not be sufficient to pay even the compensation for 1 acre of land to be acquired. The petitioner submits that most of the lands proposed to be acquired are paddy fields which are quite unsuitable for the construction of bus stand and shopping complex. It is submitted that heavy expenditure will have to be incurred for converting the land as building site. The petitioner points out the existence of other lands which can be utilized for expansion of the existing bus stand rather than constructing a brand new bus stand as now proposed. The petitioner points out that there are lands available in the Municipality to freely acquire for the purpose of vegetable market. On these averments petitioner has raised several grounds and filed this writ petition seeking a writ of certiorari to quash Exts.P1, P2, and P4. Ext.P4 is the declaration u/s 6.

3. Counter affidavits raising identical contentions have been filed by the Municipality in all these cases. The Secretary of the Municipality denies all the allegations in the writ petitions and refutes the grounds raised therein. According to the counter affidavit there is no illegality or irregularity in the order passed by the Land Revenue Commissioner accepting the report submitted by the L.A. Officer on the objections filed by the land owners in the 5A enquiry to the acquisition. It is submitted that the application Ext.P8 submitted before the LA Officer is not maintainable in as much as it has been filed by the petitioner for adducing evidence in the 5A enquiry. Section 5A enquiry is not to be treated as regular civil proceedings before a civil court. If the objector wants to adduce evidence, it is for the objector to produce evidence. The order passed by the LA Officer rejecting Ext.P8 request is legal and valid since P8 was filed without bonafides. It is alleged that Ext.P8 was filed with the oblique motive to protract and to frustrate the land acquisition proceedings in toto. It is pointed out that as per the direction of this Court 5A enquiry will be confined to the petitioners and the petitioners were given two weeks time to raise all the objections and the L.A. Officer was directed to consider and dispose of those objections in accordance with law within one month from the date of filing of the objections. Petitioners submitted their objections on 13-4-2008 and they were issued with notice to appear before the authority on 29-4-2008 for 5A enquiry. On that day though the petitioners appeared through their advocate, they did not adduce any

evidence. As per Rule 8 of the Land Acquisition (Kerala) Rules, 1990 it is up to the objector to adduce evidence in support of the objections. Nobody objected in giving oral evidence by the objector. But what the petitioners did was to protract the matter by seeking adjournment. As per their request hearing was adjourned to 8-5-2008. On that day also they did not adduce any evidence. On 8-5-08 the petitioners filed a long witness list requiring the land acquisition officer to issue notices to them to appear before the authority with documents required by the objector and to give evidence in the enquiry. This was thoroughly without any bonafides. The petitioners objectors are not entitled to insist for issuing summons to witnesses when they refused to adduce any evidence despite ample opportunities given to them. The intention of the petitioners is only to protract the matter and to frustrate the L.A. proceedings. The delay in finalizing the land acquisition proceedings would be totally against public interest. It is claimed in the counter affidavit that Thaliparamba Municipality is a fast developing municipality, but lacking in sufficient infrastructure for its necessary developments, civic amenities, transportation facilities etc. Thaliparamba is the head quarter of Thaliparamba Taluk. The total population of Thaliparamba Municipality is 67441 as per 2001 census and the total area is 43.36 sq. kms. Daily more than 450 buses are conducting services through this town. About 100 taxies, 500 autorikshaws, 150 lorries, mini lorries, tempos etc. in addition to many jeeps and other transport vehicles are conducting their daily services in this town. The existing town bus stand is not sufficient to accommodate all the buses. It can only accommodate 21 buses at a time. Kakkathode Mini stand has only 1.4 acres of land and is now used for parking of private buses originating from Thaliparamba. Since there is one temple, one mosque and one hospital near this bus stand, further expansion of this stand is not possible. There have been several complaints and representations from various authorities to make adequate facilities for parking taxies, autorikshaws etc. in Thaliparamba Town. Different individuals, associations, merchant associations etc. preferred writ petitions before the High Court of Kerala on different occasions against the illegal parking and non-availability of parking facilities in Thaliparamba Town. One of such representations /complaints submitted by Thaliparamba Merchant Association dated 29-6-2003 is produced as Ext.R4(a). There have been directions from this Court to find substitute parking facilities to taxies in O.P. No. 23240/02, WP(C) No. 34053/03, WP(C) No. 26402/05, WP(C) No. 15591/05 etc. R4(b) is the copy of judgment in O.P. No. 23240/02. R4(c) is the copy of judgment in WP(C) No. 34053/03. R4(d) is the copy of judgment WP(C). No. 26402/05. R4(e) is the copy of the judgment in WP(C). No. 15591/05. Under these circumstances there is no other alternative for the Municipality to find out some spacious and convenient area for parking space and to request the Government for acquisition of such property for the use of the Municipality for the aforesaid purpose. To accommodate all the buses touching Thaliparamba and all the other vehicles mentioned already, a new sophisticated bus stand and auto, taxi, lorry stand with all modern facilities with abundant parking area is absolutely essential. The counter affidavit proceeds to

contend that the Municipality does not have a vegetable market. This is also causing severe inconvenience to residents and taxpayers of the Municipality. A convenient vegetable market with sufficient access is also a dire need of the Municipality. This was why the proceedings have now been initiated for acquisition. The counter affidavit stoutly denies the allegation of malafides attributed. All the grounds raised in the writ petition are also dealt with detail and denied strongly. It is contended ultimately that the grounds taken up in the writ petition are all unsustainable in law and the need of the Municipality is a dire need and that the proposed acquisition would cause only minimum inconvenience to the land owners.

4. On behalf of the land acquisition officer counter affidavit has been filed in WP(C) No. 21575 of 2008 and a memo adopting this counter affidavit has been filed in the other writ petitions also. According to this counter affidavit 5A enquiry was conducted by the L.A. Officer after giving sufficient opportunities to the objectors to establish their case and the enquiry was concluded and the report was forwarded to the competent authority. Everything has been done strictly in accordance with the rules. Ample opportunity was given to the petitioners for adducing evidence. L.A. Officer rejected the objections raised by the petitioners and the report was forwarded to the competent authority for issuing a declaration u/s 6. It is pointed out in the counter affidavit that none of the property owners except a few have challenged the acquisition proceedings. The entire acquisition proceedings involve about 9 acres of land. In the earlier writ petition filed by the petitioners this Court quashed the emergency clause and directed to conduct 5A enquiry. Thaliparamba Municipality lacks sufficient infrastructure for its necessary developments, civic amenities, transportation facilities etc. More than 450 buses are conducting services through this town. This counter affidavit endorses the stand taken by the Municipal Secretary in his counter affidavit and submits that the purpose is a genuine public purpose and the need of the Municipality is a genuine need. It is also pointed out in this counter affidavit that on the basis of the report submitted by the land acquisition officer in the 5A enquiry the Land Revenue Commissioner has passed declaration u/s 6. The proceedings are now going on and at this stage interference by this Court will ruin the entire project.

5. Very extensive submissions were addressed before me by the learned Counsel for the petitioners in the writ petitions, viz., Mr. P.V. Mohanan, learned Counsel for the petitioner in WP(C) No. 21575 of 2008, Sri. V.T. Madhavanunni, learned Counsel for the petitioner in WP(C) No. 22405 of 2008, Sri. Mohan Pulickal, learned Counsel for the petitioner in WP(C) No. 21506 of 2008 and Sri. Abilash K.N., learned Counsel for the petitioner in WP(C) No. 23111 of 2008.

6. The submissions of the learned Counsel for petitioners were founded on the grounds raised in the writ petitions filed by them and the various documents placed on record by them. My attention was drawn by the learned Counsel to the statutory provision including the relevant rules dealing with conduct of 5A enquiry by the land

acquisition authority. The submissions of the learned Counsel for the petitioners would be met to a very considerable extent by Mr. P.V. Surendranath, learned standing counsel for the Municipality who would argue forcefully that the public nature of the purpose of the acquisition cannot be serious dispute. The submissions of Mr. Surendranath were supported by the learned Senior Govt. Pleader Sri.Basant Balaji. Having considered the submissions addressed at the Bar I am of the view that the land acquisition officer was justified in rejecting the applications submitted by some of the petitioners seeking issuance of summons to the witnesses mentioned in the witness list which they had submitted in the enquiry u/s 5A. At the same time I feel that the petitioners did not get an effective opportunity for raising their arguments upon conclusion of the enquiry u/s 5A by the land acquisition officer. I would have ordinarily directed the land acquisition officer to hear the petitioners once again before he submits his report incorporating his recommendations regarding the objections raised by the petitioners to the Land Revenue Commissioner. But he has already submitted his recommendations before the Land Revenue Commissioner and those recommendations have been accepted by the Land Revenue Commissioner leading to the promulgation of the declaration u/s 6. In the above circumstances in order to reduce the delay I am inclined to direct the Land Revenue Commissioner to reconsider his decision to accept the recommendations of the L.A. Officer after hearing all the petitioners. It will be open to the petitioners to urge the various grounds they have raised in these writ petitions before the Land Revenue Commissioner and the Land Revenue Commissioner will pass fresh orders after the hearing is over. The declaration already passed u/s 6 will naturally stands set aside and promulgation of a declaration u/s 6 afresh will depend on the fresh decision taken by the Land Revenue Commissioner.

7. The result is that all these writ petitions will stand allowed to the following limited extent:

The order of the Land Revenue Commissioner on the recommendations forwarded by the land acquisition officer regarding the objections raised by the various petitioners to the acquisition of their lands and the consequent declaration u/s 6 are set aside. Land Revenue Commissioner is directed to take a fresh decision on the question whether the recommendations forwarded to him by the land acquisition officer should be accepted after hearing the petitioners in all these writ petitions. Hearing will be conducted and fresh decision will be taken by the Land Revenue Commissioner at the earliest and at any rate within six weeks of receiving copy of this judgment. Transmit a copy of this judgment to the Land Revenue Commissioner forthwith.

In order that the relief given as above to the petitioners is more meaningful the L.A. Officer is directed to issue copies of the report submitted by him to the Land Revenue Commissioner, if applications are given by them in that regard.

The parties are directed to suffer their respective costs.