(1986) 02 KL CK 0040

High Court Of Kerala

Case No: W.A. No. 136 of 1984 and O.P. No. 3279 of 1982

R. Rajagopalan Nair and Others		APPELLANT
	Vs	
The Kerala State Housing Board and Others		RESPONDENT

Date of Decision: Feb. 19, 1986

Acts Referred:

- Constitution of India, 1950 - Article 226
- Kerala Land Acquisition Act, 1961 - Section 2, 24, 25, 26, 27
- Kerala State Housing Board Act, 1971 - Section 159, 163, 40, 50, 55
- Land Acquisition Act, 1894 - Section 3(1)

Hon'ble Judges: V.S. Malimath, C.J; K. Sukumaran, J

Bench: Division Bench

Advocate: P. Sukumaran Nair, A.K. Chinnan and M.I. Joseph, for the Appellant; George Varghese Kannamthanam, P.C. Joseph, Kurien George Kannamthanam and Government Pleader, for the Respondent

Judgement

K. Sukumaran, J.

The common question raised in the two cases relates to the validity of acquisition proceedings initiated by the Kerala State Housing Board. The question involves an analysis of the scheme of the Kerala State Housing Board Act, 1971 (hereinafter referred to as ''the Act'') and a consideration of its impact on and interplay with the provisions of the Kerala Land Acquisition Act. 1961 (hereinafter referred to as the ''Acquisition-Act''). A Single Judge of this Court has rendered a decision on the question P. Rajagopalan Nair and Others Vs. State of Kerala and Others, . The decision is challenged in writ appeal No. 136 of 1984.

2. When on a subsequent occasion, another writ petition O.P. No. 3279 of 1982 came up for hearing, another learned Judge (M.P. Menon J.), referred that case for decision by a Division Bench. The two cases have been heard together.

3. The question involved indubitably of considerable importance both for the Housing Board and for the persons who are likely to be affected by the execution of the schemes and projects of the Housing Board.

4. The bare facts necessary for appreciating the questions of law may now be indicated.

5. The writ appeal concerns acquisition proceedings started in Trivandrum. The Housing Board came into being in the Trivandrum Taluk with effect from 5-3-1971. The Housing Board at its meeting held on 26-8-1978 decided to acquire a fairly extensive area within the Trivandrum city. It is admitted that barring the resolution at the meeting dated 26-8-1978, no tangible steps had been taken by the Board for the framing or finalisation of the Housing Accommodation Scheme. On the basis of a requisition sent by the Housing Board, a notification under the Kerala Land Acquisition Act was published in the Gazette on 12-12-1978. The objections filed before the Land Acquisition Authority were rejected and a declaration u/s 6 was published on 15-2-1981 in a local newspaper. Notice u/s 9(3) of the Acquisition Act was thereafter issued on 17-2-1981. It was at that stage that the petitioner approached this Court seeking reliefs under Article 226 of the Constitution.

6. The steps under the Housing Board Act were being taken in a leisurely pace in the meanwhile. Nearly one year after the notification u/s 9(3) of the Acquisition Act, the Board issued notice regarding the publication of the housing scheme u/s 50 of the Housing Board Act. That notice was published in a newspaper on 27-12-1979. That was objected to by the petitioner on 16-1-1980 on diverse grounds. It is an admitted fact that the proceedings under the Housing Board Act have not been processed and finalised, as envisaged under the scheme of that Act. Yet, the acquisition proceedings under the Acquisition Act have been virtually completed and finalised. The Board of Revenue has also rejected the objection of the petitioner filed in the course of the proceedings under the Acquisition Act.

7. The second case deals with an acquisition in Ernakulam District for what is termed as ''Suburban Accommodation Scheme.'' The Secretary of the Housing Board by his letter dated 24-8-1977 sought acquisition of about 120 acres of land. The land acquisition proceedings have been initiated pursuant to the proceedings of the Collector dated 5-12-1977 Section 3(1) notification was published on 20-12-1977. The draft declaration was approved by the Board on 20-10-1979 and published in the Gazette dated 4-12-1979. According to the petitioner, even the first step of a notice u/s 50 of the Housing Board Act has not been issued. Even so, the acquisition is almost a fait accompli, with the publication of the declaration in the Gazette. Here also, the contention of the petitioner is that having regard to the omission to take any tangible steps under the Housing Board Act for framing or finalisation of a scheme, it is impermissible for the Board to set in motion the machinery of compulsory acquisition under the Land Acquisition Act.

8. The learned single Judge who dealt with the matter in O. P. No. 1363 of 1981 took the view that acquisition authority under the Acquisition Act was only concerned with requirements of Section 3 of the Acquisition Act. If that authority felt that the land was needed or was likely to be needed, the acquisition proceedings could be pursued and finalised, according to the learned Judge. According to the learned Judge, the public purpose arises the moment a scheme is framed, irrespective of the fact that scheme itself or the purpose behind it is defensible. It is the correctness of the view that is challenged in the appeal and is canvassed in the writ petition.

9. The answer to the question would depend upon a careful and detailed examination of the scheme of the two enactments, the Kerala Housing Board Act and the Kerala Land Acquisition Act. In so doing the balancing of the rights of the citizens on the one hand and a planned programme of public relevance on the other has to be undertaken. An undue emphasis on the one or the other, would generate unjust results. The scheme of the Housing Board Act would in that context require closer scrutiny.

10. This Court had occasion to examine the background of the housing schemes in advanced countries and in India in Kumaran v. Chairman Kerala State Housing Board, 1984 KLT 668. The scheme of the enactment with particular emphasis on provisions which are relevant for the question under consideration can be examined bearing in mind the background of legislation so dealt with in the above decision.

11. Spread over sixteen chapters the Act contains 163 sections. The last one. Section 163 deals with the Savings provision necessitated by the repeal of the Kerala State Housing Board Ordinance, 1970, to replace which the Act has been enacted. u/s 1(3), the Act is deemed to have come into force in the Trivandrum District on 5-3-1971. It will be effective in other areas on the days to be notified in that behalf. There is only one more section in Chapter I, namely, Section 2, dealing with ''Definitions''. Chapter II contains provisions relating to the Constitution of the Board. The transfer of the assets and liabilities of the City Improvement Trust or Town Planning Trusts to the Board is dealt with in Chapter III. Provisions relating to the officers and Members of the Staff of the Board form the subject matter of Chapter IV. Conduct of Business of the Board and its Committers is dealt with under Sections 24 to 28 contained in Chapter V. Chapter VI deals with the Powers of Board. Chairman and Secretary to incur expenditure on schemes and inter into contracts. The next chapter. Chapter VII, is an important one. That deals with the Housing or Improvement Schemes. The provisions of that chapter Would require detailed scrutiny. In brief, Chapter VII deals with the various schemes starting from the conception, and ending up with the finalisation and ultimately reaching the stage of its implementation. Acquisition and Disposal of Land are provided for in Chapter VIII, Section 71 contained in that Chapter is of direct relevance in the present case. The other chapters in the Act deal with Levy, Assessment and Recovery of Betterment Fee (Chapter IX), Constitution of Tribunal and its functions (Chapter X), Power to evict persons from Board premises

(Chapter XI), Finance (Chapter XII), Penalties and Procedure (Chapter XIII), Miscellaneous (Chapter XIV) and Rules and Regulations (Chapter XV). One section which merits special mention in this connection is Section 159 whereunder the Board is deemed to be a ''local authority'' for the purposes of the Kerala Land Acquisition Act, 1961 (2) of 1962 Section 143 details the manner in which public notices to be given under the Act are to be made known to the public If could be done by affixing copies in conspicuous public places within the locality, or by publishing the same by beat of drum or by advertisement in leading daily newspapers

12. Chapter VII. as noted earlier, refers to a variety of schemes envisaged under the Act. The different types of housing or improvement schemes are enumerated u/s 41. A scheme can be any one of the types or combination of any two or more of such types as referred to therein Such schemes include a house accommodation scheme, a land development scheme, a general improvement scheme, and accommodation scheme with emphasis on, office, educational institution, health institution or tourism

13. We are concerned in this case with a house accommodation scheme. That is specifically dealt with u/s 42 The first step to be taken in the direction is the framing of a scheme by the Board when the Board is of opinion that it is expedient or necessary to meet the need for house accommodation in any area. The scheme may provide for the construction of houses and for the disposal of such houses by sale, leasing or otherwise. Amenities such as roads, streets, drainage, water supply, street lighting and other could be provided by the Board. After the framing of the scheme u/s 42, the Board is to proceed with the further steps contemplated u/s 50. Such steps include the preparation of a notice about the framing of the scheme specifying the boundaries of the area comprised therein and the places at which particulars of the scheme a map of the area and the details of the land which is proposed to be acquired, and of the land in regard to which betterment fee is proposed to be recovered, could be seen at reasonable hours By an amendment introduced by the Housing Board Amendment Act, Act 21 of 1981, an obligation is cast on the Board to cause the notice to be published in the Gazette or in two daily newspapers having wide circulation in the locality in which the area comprised in the scheme is situate. That notice has to mention among other things, the period upto which the objections would be received. A copy of the notice is to be sent to the local authority concerned. Any person desirous of obtaining copies of the documents concerning the scheme could obtain the same front the Secretary.

14. After the above formalities are complied with, the stage is reached when the finalisation of the scheme is processed. If the local authority wishes to make any representation regarding the scheme, it is entitled to do so within a period of sixty days from the receipt of the notice. Objections raised and representations made have to be considered u/s 54. The Board has also to hear those who have either

objected or made representations, if they so desire. It is thereafter that the Board has to take a final decision. The Board can abandon or modify or sanction the scheme. If the cost of the scheme exceeds ten lakhs of rupees, it can apply to the Government for sanction with such modifications, if any. as the Board may consider necessary. The Government also has a meaningful role to play in this process. u/s 54(2), the Government is conferred the power 10 sanction the scheme with or without modification. The Government is equally entitled either to refuse sanction the scheme or to return it for reconsideration, if in the opinion of the Government such re-examination is necessary. In the event of such a scheme being sent back to the Board for reconsideration, if the scheme is so modified by the Board, such modified scheme has to be re-published in accordance with Section 50 subject to the limitations contained therein. If ultimately the Board or Government sanctions a scheme, that has to be announced by notification in the Gazette. In the case of sanctioning of a scheme with modifications, special publicity is necessary. The publication shall be made weekly, for two consecutive weeks, in the Gazette and in two leading daily newspapers in the State. The matter does not assume finality even at that stage. A person aggrieved by the decision of the Board sanctioning a scheme is conferred a right a valuable right - of appeal to the Government. The appeal has to be filed within thirty days from the date of last publication of the scheme in the Gazette. Section 55(4) declares that the scheme shall come into force and shall have effect either on and from the expiry of thirty days from the last publication of the scheme in the Gazette or from the date of the decision of the Government, if there is an appeal from the scheme. The Board is empowered to proceed to execute the scheme u/s 56 soon after the scheme has thus come into force.

15. Notwithstanding the finalisation of the scheme, in certain specified and limited contingencies, the Board is given a power to alter or cancel the scheme. This power has, however, to be exercised before the scheme has been carried into execution No alteration will be permitted if, as a result thereof the estimated net cost of the execution of the scheme exceeds ten percent of the total cost.

16. Section 69 confers in the Government power for modifying or annulling such schemes. This again is subject to rigorous statutory trammels. The representations of the Board and the local authority concerned should be considered before such action is taken. Not only that, a reasonable opportunity of being heard has also to be given to persons likely to be adversely affected by the order of the Government under this Section. A scheme so modified in exercise of the powers under this Section is deemed to be one duly sanctioned by the Board u/s 54, and it has to be published in accordance with the provisions of Section 55. The modified scheme shall come into force and shall have effect, on such publication.

17. It is after such an exhaustive and detailed enumeration of the various steps to be taken for a finalised scheme, that chapter VIII dealing with acquisition and disposal of land appears Two sections deal with acquisition of land and one section (Section

73) with the disposal thereof. Private transactions for obtaining land by purchase, lease or exchange is dealt with in Section 72. The power of purchase by private negotiation of land is not, however, unlimited or uncontrolled Such purchase can be made only of any land which may be acquired u/s 71. Thus, the power of the Board under this Act for the purchase of land is hedged in by the conditions and constraints as contained in Section 71. Section 71 is therefore very crucial, significant and important. The section relates to the power to acquire land under the Land Acquisition Act, 1961. That section reads:

71. Power to acquire land under the Land Acquisition Act:--Any land or any interest therein required by the Board for any of the purposes of this Act may be acquired under the provisions of the Kerala Land Acquisition Act, 1961, (Act 21 of 1962).

(emphasis supplied)

18. On an analysis of the scheme of the Act, it is very clear that acquisition of land either by private negotiation or by pressing into service the machinery of the Land Acquisition Act, arises only at that point of time when land is required by the Board for the purposes of the Act. We cannot omit to notice the emphasis as contained in the word required'' occurring in Section. 71. That word conveys a necessity more pressing and more forceful than one in other and different situations In Nafeesu v. Land Tribunal, 1984 KLT 899, this Court discountenanced an attempt to equate the word ''require'', to more wish or desire. Even in the back ground of compulsory acquisition for a statutory scheme, the words "required".....for the purpose of carrying out.....any.....work" had been given a rigorous interpretation (vide Webb v. Minister of Housing and Local Government, 1964. 1. W.L.R. 1295(1306).

19. The requirement of the Board is, further, integrally connected with the purposes of the Act. A purpose under the Act is ordinarily and essentially linked up with the emergence of a finalised and published scheme. A finalised and published scheme in turn, envisages the observance and fulfilment of various formalities and procedural steps specifically provided in the statutory scheme. A step by step examination of all possible aspects and objections before giving the imprint of finality to the scheme appears to be the spring and fount of a sagacious policy The Board can proceed to acquire land only with the emergence of a finalised scheme ready for implementation. If any other interpretation is given, it will give rise to anomalous and arbitrary results constituting a drastic invasion into the legal and fundamental rights of the citizens. It will also result in avoidable wasteful expenditure for a statutory body which has to cater to a pressing public demand like providing accommodation for thus: without a roof. If the contentions of the Board are accepted, it would mean that acquisition proceedings u/s 3 of the Land Acquisition Act could be initiated even though the Board has no clear idea or conception about the scheme. At any rate, that is a stage at which there is a disconcerting unpredictability regarding the scheme. The authorities under the Land Acquisition Act function under a different set up and unconnected with the

administrative agencies under the Housing Board Act. It is open to the Land Acquisition authorities to proceed with the acquisition proceedings under the Land Acquisition Act. and the then to issue declaration u/s 6, to pass an award u/s 9 and thereafter to take possession of the land All these steps could be taken at a time when little or no progress is made in relation to an inchoate scheme of the Board. And if ultimately such a scheme is to be abandoned by the Housing Board itself on hearing the objections, or by the Government, on the basis of a statutory appeal from persons affected by the scheme or even suo motu by the Government on consideration of various aspects statutorily provided, the entire acquisition proceedings pursued and finalised in the meanwhile, would become a total waste of energy and expenditure. Much more than that; persons otherwise having long duration-linkage with the land would have been uprooted from their hearth and home and thrown into the rough-and-tumble of unsettled position. We are clear in our mind that such calamitous results have to be eschewed, by a reasonable, rational and harmoneous construction of the provisions of the Act. Our conclusion is that the Housing Board could set in motion the machinery under the Acquisition Act, on, and only on, the Board having with it a scheme finalised under the very statute under which the Housing Board is created. Permitting the Board to acquire the lands only on the Board reaching such a definite and clear stage of implementation of a finalised scheme under the Act, will not in any manner impede a proper working of the Housing Board. If rigorous steps are pursued in relation to the publication of the scheme, consideration of the objections of the persons affected thereby, finalisation of the same in the light of the objections, and the publication of the same as obligated under the statute, and even subjecting it to the appellate remedy, would give the scheme so emerging all the satisfactory features of acceptability, rationality and reasonableness

20. On the factual situation, there is no dispute in both the cases that at the time when the acquisition proceedings were initiated, there has not been any substantial consideration of the draft scheme much less any attainment of finality under the Act. On the proper construction of Section 71 as we have endeavoured to give above, the Housing Board does not have competence at that juncture to initiate proceedings for the acquisition of land utilising the machinery of the Land Acquisition Act, 1961. The steps taken by the Board for acquisition in the two cases are therefore unsupported by statutory sanction. They have therefore to be declared illegal and invalid.

21. Much judicial thought has been bestowed on the interpretation and implementation of schemes under various auspices like Town Planning and Improvement Trust. Apart from the large number of decisions rendered by the High Courts, the Supreme Court also had examined such schemes in the background of complaints made about the scope and ambit of such schemes or the manner of their implementation. It is unnecessary to catalogue all such decisions, as the schemes so considered have quite often substantial difference on material details.

We have, however, borne in mind the general approach of the courts in relation to the understanding and interpretation of such improvement or accommodation schemes, and the balancing of rival considerations - of the public requirement for which Housing Board acquires lands, on the one hand, and the right to protect the citizen in the enjoyment of his property, insulating him against invasions unauthorised by legal provisions or otherwise arbitrary in character.

22. Analysing somewhat similar provisions relating to a scheme under the Bihar Town Planning and Improvement Trust Act, 1951, Subba Rao, J. observed:

It is, therefore, clear that under the Act before a land is acquired by the Trust for its purposes, it has got to go through a quasi-judicial procedure for finalising the scheme. The parties affected have every opportunity to object to the scheme proposed generally or in so far as it affected their land..... This complicated procedure conceived to reconcile individual rights and social purposes cannot be short circuited by the Trust ignoring the Act altogether.....

(emphasis supplied)

(See Patna Improvement Trust Vs. Smt. Lakshmi Devi and Others, .)

23. Analysing analogous provisions of a chapter of the Punjab Town Improvement Act, 1922, the Supreme Court observed in Narain Das and Others Vs. The Improvement Trust, Amritsar and Another, :

The provisions of Chapter IV clearly disclose a keen anxiety on the part of the law-makers to see that all possible objections to the scheme are fully considered before its final sanction.

The possibility of exclusion of specified categories of lands from the scheme even on the basis of policy decisions has been indicated in that decision.

24. And on a later occasion, while analysing the Town Planning Act (Travancore Act 4 of 1108) as made applicable to Kerala, the Supreme Court noted.

....the elaborate character of the strategy, stages, contents and character of schemes for improvement and the opportunities for objections and suggestions to the public and the consultation with technical experts and Government, time and again.....

(See State of Kerala v. T M Peter AIR 1980 S.C. 1438).

25. The Calcutta Improvement Act. 1911. also contained analogous provisions. Sinha, J. spoke thus for the Division Bench about the general pattern of such a scheme:

First of all. a scheme is mooted, then objections are heard and it is then finalised, Government either sanctions the scheme or a modified scheme, and it is only thereafter that compulsory acquisition proceedings of land are taken in hand. It is

only when the Government has sanctioned the improvement scheme u/s 48, that u/s 49 the Board proceeds to ''execute'' the scheme. In other words, the execution of the scheme starts after sanction of Government. Before that, there is only a proposal. Before the scheme is sanctioned by Government, there cannot possibly be a notification u/s 4 of the Land Acquisition Act.

(emphasis supplied)

(See Muneshwar Ram and Others Vs. The Second Land Acquisition Collector and Others,). The view of Calcutta High Court accords with the interpretation we have placed on the scheme of the Housing Board Act. As regards the analysis of the scheme, the observations of the Calcutta High Court are apposite to the question for consideration in the present case The learned single Judge, in our opinion, was not correct in observing that the Calcutta decision was one rendered under an amended Land Acquisition Act. The observation extracted above had nothing to do with the provisions of the Land Acquisition Act or the amendment thereto. They were confined to the scheme-a scheme similar to the one contained under the Housing Board Act-of the Calcutta Improvement Act, 1911.

26. We may also observe in this connection that the notifications u/s 3 of the Land Acquisition Act. in the two cases, merely referred to the public purpose as implementing ''Chettivilakom Housing Accommodation Scheme'', (in W.A. 136 of 1984) and ''Thrikkakara Suburban Housing Scheme'' (in O.P. 3279 of 1982) The cryptic counter-affidavits of the Board proceed on the basis that it is open to it to set in motion the machinery of the Land Acquisition Act, even at a stage when the Board itself does not have all the relative details and materials relevant for the finalisation of the scheme. It is now well settled that vague or uncertain ideas will not justify compulsory acquisition. In Munshi Singh and Others Vs. Union of India (UOI), , the Supreme Court was more emphatic in condemning (and striking down) the attempt of the Union for acquiring land when the purpose mentioned was a vague one: "for planned development of the area". The history of the land acquisition legislation in this country was traced from very early times. The statutory development, particularly the one leading to the incorporation of Section 5A by the amendment in 1924 under Act 38 of 1923. was noted in that decision The Supreme Court observed:

.....after the insertion of section 5A the position has completely changed and it cannot be said that the owner''s wishes are not relevant and that he docs not need an opportunity to file his objections. To take such a view would render Section 5A otiose. If it has to be given its full effect the person interested in the land proposed to be acquired must have an opportunity to submit his objections and that he can do only if the notification u/s 4(1) while mentioning the public purpose gives some definite indication or particulars of the said purpose which would enable the persons concerned to object effectively if so desired. In the absence of such specific or particular purpose being seated the objector cannot file any proper or cogent objections u/s 5A which he has a right to do under that provision.

On the facts of the case, the Supreme Court noted:

There was no indication whatsoever whether the development was to be of residential and building sites or of commercial and industrial plots nor was it possible for any one interested in the land sought to be acquired to find out what kind of planned development was under contemplation i.e. whether the land would be acquired and the development made by the Government or whether the owners of properties would be required to develop a particular area in a specified way.

It is also significant that the Supreme Court indicated in that decision that if the Master Plan which came to be sanctioned later had been available for inspection by the persons interested, the situation might have been different. Ultimately the notification published by the Government at a point anterior to the sanctioning of the Master Plan was quashed by the Supreme Court "owing to the vagueness and indefiniteness of the public purpose stated in the notifications under S 4(1).....

27. The learned single Judge, in the course of his discussion in the judgment under appeal observed:

Although notification u/s 50 of the Housing Board Act had not existed at the relevant time, the fact that it was likely to be made and that a scheme was under way and that a public purpose was certain to arise pursuant to the framing of a scheme was apparently well-known to the authority.

(emphasis supplied)

With respect, we are unable to agree with the view taken by the learned Judge. Section 50 does not refer to any notification. A notification of a sanctioned scheme is referred to only u/s 55 of the Act. Section 50 deals with the very first step in relation to a housing or improvement scheme, namely, the publication of a notice in the manner specified therein. The observation of the learned single Judge is not in tune with the scheme of the Act, as explained by us above. Until and unless a scheme is finalised under the Act, it cannot be predicated that "a public purpose was certain to arise pursuant to the framing of a scheme", as assumed by the learned Judge It cannot be assumed that the valuable safeguards by way of objections to the scheme and the consideration of such objections by the Board, and the further valuable right of appeal to the Government, are all empty formalities to be followed merely as a matter of form and with no possible effect or impact on a foregone conclusion. Such an approach will sap the efficacy, reasonableness and meaningfulness of the provisions of the Housing Board Act which confer valuable rights on persons to object to such schemes, not only from their personal points of view but also from the larger angle, such as the scheme not measuring up to the requirements of providing various facilities and amenities referred to in Section 40 and the like. We find it equally difficult to agree with the learned single Judge when he observes that the arising of a public purpose "was apparently well-known to the authority." The scheme of the Act does not justify a clear or sure prediction about the arising of

such public purpose, before objections are duly considered and a proper decision is finally taken.

28. Again in paragraph 9 of the judgment, the learned single Judge observed:

Although the finality of the scheme is thus relative or qualified by subsequent events, and in that sense defensible, the scheme, is nevertheless a scheme for it is the result of serious preparation that has obviously gone into the making of it.

This approach, again, ignores the statutory safeguards provided under the Act in the matter of finalisation of a scheme. True, any draft scheme must be preceded by serious preparation when it emanates from a responsible statutory body. That is, however, only one approach. Limitations are bound to be there when officials hatch a scheme. The scheme is, after all, one intended to sub serve the public. The public have a vital say in the matter. That is conceded by the statute itself. The aspects on which attention has to be riveted are also indicated in the statute (Section 40). It is quite possible that even a scheme well thought of by the officialdom could suffer from diverse defects and deficiencies. Once they are clearly and forcefully projected for pointed attention and consideration, the authority itself may reasonably be convinced about the undesirability or inadequacy of the scheme Such a rethinking might entail a drastic modification or even a total abandonment of the scheme. The preparation of a draft scheme in such circumstances would not enable the Housing Board to pass the muster of Section 71 of the Act which clearly envisages a situation where land is required for the purposes of the Act
The learned single Judge observed:

to delay the implementation of a scheme, by postponing the acquisition of land which would be urgently needed for the scheme, merely because certain objections Were raised, not under the Acquisition Act, but under the Housing Board Act in regard to matters referred to under the latter Act, would be to defeat the very object of the relevant provisions of the Acquisition Act and thus defeat the public purpose itself.

We cannot agree. It is difficult to view the objections of persons affected in a light hearted or casual manner. The objective of evolving a satisfactory scheme under the Act itself would emerge definitely clearly and in a final form only after the finalisation of the scheme. It cannot therefore be said that compliance with the wholesome and mandatory provisions in the finalisation of a scheme would defeat the object of the acquisition or any public purpose. On a consideration of the two enactments, we are unable to infer any legislative intent of permitting acquisition proceedings being commenced and continued and even completed, even at a time when the necessity or existence of such a scheme is a doubtful proposition.

In the light of our above discussion, we allow W.A. No. 136 of 1984 and set aside the judgment of the learned single Judge in O. P. 1363 of 1981. We allow O. P. No. 1363

of 1981 and quash Ext. P1 notification, Ext. P7 proceedings, Ext. P8 declaration and Ext. P9 notice. O. P. No. 3279 of 1982 will also stand allowed and Ext. P5 will stand quashed. Having regard to the various circumstances, we do not make any order as to costs in the two cases.

Immediately after the judgment was pronounced, the learned counsel for the Kerala State Housing Board made an oral request for leave to appeal to the Supreme Court. We are not satisfied that any substantial question of law of general importance that needs to be decided by the Supreme Court is involved in these cases. Hence certificate for leave to appeal is declined.

Let photostat copies of this judgment be furnished to counsel on both sides, on usual charges.