

Devadas, vs the Palakkad Municipality,

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SooperKanoon Citation : sooperkanoon.com/1445550

Court : Kerala

Decided On : Jun-28-2022

Judge : Honourable Mr. Justice T.R.Ravi

Appeal No. : WP(C)/2562/2022

Appellant : Devadas,

Respondent : The Palakkad Municipality,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE T.R.RAVI TUESDAY, THE 28TH DAY OF JUNE 2022 / 7TH ASHADHA, 1944 WP(C) NO. 2562 OF 2022 PETITIONER: DEVADAS, AGED 51 YEARS S/O.SUBRAMANIAN, PULIKKAL HOUSE, KOTTEKAD P.O., MALAMPUZHA, PALAKKAD DISTRICT, PIN-678 732. BY ADVS. SRI JACOB SEBASTIAN SRI K.V.WINSTON SMT.ANU JACOB RESPONDENTS:

1 THE PALAKKAD MUNICIPALITY, REPRESENTED BY ITS SECRETARY, MUNICIPAL OFFICE, PALAKKAD DISTRICT, PIN-678 001. 2 THE SECRETARY, PALAKKAD MUNICIPALITY, MUNICIPAL

OFFICE, PALAKKAD DISTRICT, PIN-678 001. 3 THE DISTRICT TOWN PLANNING OFFICER, PALAKKAD, DISTRICT TOWN PLANNING OFFICE, PALAKKAD, CIVIL STATION, PALAKKAD DISTRICT, PIN-678 001. 4 THE STATE OF KERALA, REPRESENTED BY ITS SECRETARY, DEPARTMENT OF LOCAL SELF GOVERNMENT, SECRETARIAT, THIRUVANANTHAPURAM DISTRICT, PIN-695 001. BY ADV SHRI.BINOY VASUDEVAN, SC, PALAKKAD MUNICIPALITY SRI RAJEEV JYOTHISH GEORGE, GOVT.PLEADER THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY

HEARD ON, THE COURT ON 28.06.2022 DELIVERED THE FOLLOWING:

T.R. RAVI, J.

Dated this the 28th day of June, 2022

JUDGMENT

The petitioner had applied to the 1st respondent for a building

permit. By Ext.P2 order dated 27.8.2019, the application was rejected stating that as per the approved DTP Scheme, the area is to be acquired for the widening of the road. Another reason stated is that the property is included in the data bank as paddy land. The petitioner was directed to submit a fresh plan by leaving out the area required for the acquisition. Since Ext.P2 stated that the land is to be acquired, the petitioner issued Ext.P5 purchase notice under Section 67 of the Kerala Town and Country Planning Act, 2016 (2016 Act for short). The notice is dated 7.9.2019 and is seen to have been received on 16.9.2019. Copies of the notice had been issued to the Town Planning Officer of the Municipality as well as the Secretary to Government in the Local Self

Government Department. By Ext.P3 dated 17.6.2020, the Revenue Divisional Officer, Palakkad ordered the removal of the property from the data bank.

Thereafter, by Ext.P4, the Revenue Divisional Officer permitted the user of the land for other purposes under Section 27A of the Kerala Conservation of Paddy Land and Wetland Act, 2008 on payment of the requisite fee. The petitioner resubmitted the application after curing the defects as can be seen from Ext.P7 dated 23.12.2020. Alleging refusal to reconsider the application, the petitioner moved this Court by filing W.P.(C)No.135 of 2021 which was disposed of by Ext.P8

judgment directing the 1st respondent to consider the application for

building permit afresh in the light of the directions contained in Ext.P6

judgment of this Court and taking note of Ext.P5 purchase notice that

was not responded to by the Municipality within the time permitted under the Statute. The Municipality was directed to consider the application untrammelled by the stipulations in the DTP Scheme and pass orders within three weeks. Ext.P8 judgment was taken up in appeal in W.A.No.847 of 2021 which was disposed of by Ext.P9

judgment by a Division Bench of this Court. The appeal was allowed in

part and the judgment was modified. The Division Bench directed the Municipality to consider the building permit application submitted by the petitioner at the earliest, if the time prescribed under Section 67 of the Act has expired or else within one month from the expiry of the time period so fixed, after providing notice of hearing to the petitioner and taking into consideration the Scheme if any, existing and applicable to the property in question, purchase notice issued by the writ petitioner under Section 67, and also taking into consideration Section 113 and other relevant provisions of the 2016 Act and the Building Rules in force. Thereafter, by Ext.P10, the 2nd respondent directed the petitioner to make necessary changes in the plan leaving provision for the widening of the road by

providing 9.5 meters of open space from the road

margin. Ext.P10 did not refer to Ext.P5 purchase notice issued under Section 67 of the 2016 Act. On 22.12.2021, the 2 nd respondent issued an order stating that 9.5 meters of land belonging to the petitioner is required for the widening of the Kalmandapam-Sekharipuram-Calicut Bypass Road which is included in the sanctioned DTP Scheme. It is stated that pursuant to the notice issued by the petitioner under Section 67 of the 2016 Act, the Municipal Council has by Decision No.58 dated 4.12.2021 decided to acquire the land, and hence his request for a

building permit cannot be considered. Ext.P12 is the copy of the resolution said to have been taken. A reading of Ext.P12 would show that the Council had granted approval for forwarding the Section 67 notice demanding acquisition, to the Government. The petitioner contends that what is decided is only to forward the Section 67 notice

and no decision as such to acquire the land has been taken. This contention is contested by the Municipality stating that a decision has already been taken and what has been forwarded to the Government is only the proposal which has to be concluded by the Government by

issuing acquisition proceedings. The petitioner has also produced Ext.P13 which is the decision regarding the zoning exemption to be granted to persons whose lands are to be acquired for the purpose of widening the existing road from 20 Meters to 24 Meters. It is submitted that even though the initial proposal was for widening up to 30 Meters,

it was reduced to 24 Meters. On 8.5.2006, it appears that the 1 st respondent had taken a decision based on Ext.P13 treating the required width as 24 Metres, with respect to an application submitted by one Krishnanunni. The writ petition has been filed challenging Ext.P2, P10, P11, and P12 and seeking a direction to the 1 st respondent to issue a building permit to the petitioner. There is also a prayer for quashing the DTP Scheme and approved master plan of the 1 st respondent insofar as it relates to the property of the petitioner and for a declaration that the petitioner is entitled to make constructions in the plot without leaving any additional

set back for future acquisition.

2. A statement has been filed on behalf of respondents 1 and 2 wherein it is stated that the DTP Scheme is a sanctioned scheme and going by Section 113 of the 2016 Act, till a new Scheme is framed the earlier Scheme must prevail. It is further stated that by Ext.P12, the Council had decided to acquire the property and it is also decided to

forward the said proposal to the Government for further action. It is further contended that the Government has not issued any orders reducing the width from 30 Metres to 24 Metres and as such, the contention of the petitioner cannot be countenanced. The statement does not however say anything about the statutory time fixed for consideration of notice under Section 67 of the 2016 Act.

3. Heard Sri Jacob Sebastian on behalf of the petitioners, Sri Binoy Vasudevan on behalf of respondents 1 and 2 and Sri B.S.Syamanthak, Government Pleader on behalf of respondents 3 and 4.

4. The only objection that remains as far as grant of building

permit is concerned is the requirement for widening of the road. As far as the said requirement is concerned, the objection is based on the DTP Scheme. It is admitted that Ext.P5 notice has been received. There is also no dispute regarding the date of receipt of the said notice. Section 67 of the 2016 Act is extracted below;

67. Obligation to acquire land in certain cases. -

(1) Where any land is designated for compulsory acquisition in

a Master Plan or Detailed Town Planning Scheme sanctioned under this Act and no acquisition proceedings are initiated for such land under the Land Acquisition Act in force in the State within a period of two years from the date of coming into operation of the Plan, the owner or person affected may serve on the Municipal Corporation, Municipal Council, Town Panchayat or Village Panchayat concerned, within such time and

in such manner, as may be prescribed, a notice (hereinafter referred to as "the purchase notice") requiring the Municipal Corporation, Municipal Council, Town Panchayat or Village Panchayat concerned to purchase the interest in the land in accordance with the provisions of this Act;

(2) On receipt of any purchase notice under sub- section (1),

as soon as possible, but not later than sixty days from the date of receipt of the purchase notice, the Municipal Corporation, Municipal Council, Town Panchayat or Village Panchayat, as the case may be, through a resolution decide to acquire the land, where the land is designated for compulsory acquisition for the purpose of the Municipal Corporation, Municipal Council, Town Panchayat or Village Panchayat.

(3) Where the land is designated for compulsory acquisition for

the purpose of any Government Department or Quasi- government Agency, the Municipal Corporation, Municipal Council, Town Panchayat or Village Panchayat shall forward such notice to the Government.

(4) In case the Municipal Corporation, Municipal Council, Town Panchayat or Village Panchayat concerned decides not to acquire the land, it shall initiate variation of the plan suitably in accordance with this Act.

(5) In case the land acquisition could not be effected within a

period of two years from the date of resolution to acquire the land, the Municipal Corporation, Municipal Council, Town Panchayat or Village Panchayat concerned shall initiate variation of the plan suitably in accordance with this Act.

(6) On receipt of a purchase notice under sub-section (3), the

Government shall in consultation with the Government Department or Quasi-government Agency concerned, not later than six months from the date of receipt of the purchase notice, confirm the purchase notice. In

any other case, Government may require the Municipal Corporation, Municipal Council, Town Panchayat or Village Panchayat concerned to vary the plan suitably in accordance with this Act: Provided that in case the land acquisition could not be effected within a period of two years from the date of confirmation of the purchase notice, the Municipal Corporation, Municipal Council, Town Panchayat or Village Panchayat concerned shall initiate variation of the plan suitably in accordance with this Act under intimation to the Government.

(7) If no order has been passed by the Government within a

period of six months from the date of receipt of the purchase notice, the Municipal Corporation, Municipal Council, Town Panchayat or Village Panchayat concerned shall, suo moto initiate variation of the plan suitably in accordance with this Act: Provided that where variation proceedings of the Plan are initiated under this section, the Secretary of the Municipal Corporation, Municipal Council, Town Panchayat or Village Panchayat concerned shall, in consultation with the Chief Town Planner, take suitable decision on any application for land development permit received under Section 64."

5. Section 67(2) says that on receipt of any purchase notice, the Municipal Corporation must decide to acquire the land through a resolution, within sixty days. The period of sixty days fixed statutorily expired in November, 2019. Admittedly, Ext.P12 decision has been

taken only on 4.12.2021. Even if Ext.P12 is to be considered as a decision taken by the Municipality to acquire the land by means of a resolution, as stipulated in Section 67 (2), the same cannot be treated as a decision taken within the time fixed by the Statute. In Ext.P8 judgment, this Court specifically found that the purchase notice was not responded to by the respondent Municipality within the time permitted

under the Statute. In Ext.P9 judgment also this Court specifically held

that Municipality has to consider the building permit application if the time period prescribed under Section 67 of the Act has expired. The Division Bench did not render any finding on the fact whether the period has expired. The Division Bench answered the question only from the perspective of the primacy of the DTP Scheme. The operation of Section 67 itself is based on such a scheme that provides for the acquisition of lands. As such, Ext.P9 judgment cannot in any way be understood to mean that this Court permitted respondents 1 and 2 to reconsider the application for building permit on the basis of the DTP Scheme, de hors the notice under Section 67 of the 2016 Act. In fact the Division Bench

specifically stated that the said notice has also to be considered. In view of the specific requirement under Section 67, Ext.P12 resolution cannot be treated to be a resolution taken within the time fixed by the Statute. As such, respondents 1 and 2 cannot reject the application for building permit for the reason that they have decided to acquire the land pursuant to a notice under Section 67 of the 2016 Act. The obligation to

issue the building permit is hence not taken away. This Court has in several decisions held that if no decision is taken either way by means of a resolution, pursuant to a notice under Section 67, the Municipal Corporation was obliged to issue a building permit if the petitioner is otherwise entitled. In view of the settled position, the petitioner is entitled to succeed.

6. The writ petition is allowed. There will be a direction to

respondents 1 and 2 to consider the application for building permit submitted by the petitioner and to grant the same if the petitioner is otherwise entitled. Ext.P12 resolution shall not be a reason for rejecting

the application for building permit. Exts.P10 and P11 insofar as they reject the request for building permit on the ground of the decision taken for acquiring the land are set aside. In view of the above, there is no requirement to quash Ext.P12

resolution except to observe that the said resolution will not in any way be considered as a resolution passed pursuant to Ext.P5 notice under Section 67. Necessary orders shall be issued within one month from the date of receipt of a copy of this

judgment.

Sd/- T.R. RAVI JUDGE dsN APPENDIX OF WP(C) 2562/2022 PETITIONER EXHIBITS Exhibit P1 A TRUE COPY OF THE POSSESSION CERTIFICATE NO.41717455 DATED 22.07.2019 ISSUED BY THE VILLAGE OFFICER, PALAKKAD III VILLAGE, PALAKKAD TALUK & DISTRICT.

Exhibit P2 A TRUE COPY OF THE ORDER DATED 27.08.2018 ISSUED BY THE SECRETARY, PALAKKAD MUNICIPALITY. Exhibit P3 A TRUE COPY OF THE ORDER DATED 17.06.2020 ISSUED BY THE REVENUE DIVISIONAL OFFICER, PALAKKAD. Exhibit P4 A TRUE COPY OF THE ORDER DATED 20.10.2020 ISSUED BY THE REVENUE DIVISIONAL OFFICER, PALAKKAD. Exhibit P5 A TRUE COPY OF THE PURCHASE NOTICE DATED 07.09.2019 ISSUED BY THE PETITIONER ALONG WITH POSTAL ACKNOWLEDGEMENT. Exhibit P6 A TRUE COPY OF THE JUDGMENT DATED 22.11.2019 IN WPC NO.30841 OF 2017 OF THIS HONOURABLE COURT. Exhibit P7 A TRUE COPY OF THE LETTER DATED 23.12.2020 ISSUED BY THE PETITIONER., Exhibit P8 A TRUE COPY OF THE JUDGMENT DATED 18.01.2021 IN WPC NO.133/2021 OF THIS HONOURABLE COURT. Exhibit P9 A TRUE COPY OF THE JUDGMENT DATED 05.08.2021 IN WA NO.847/2021 OF THIS HONOURABLE COURT. Exhibit P10 A TRUE COPY OF THE ORDER DATED 08.09.2021 ISSUED BY THE SECOND RESPONDENT. Exhibit P11 A TRUE COPY OF THE ORDER DATED 22.12.2021 ISSUED BY THE SECOND RESPONDENT. Exhibit P12 A TRUE COPY OF THE RESOLUTION NUMBER 58 DATED 04.12.2021 REFERRED TO IN EXHIBIT P11. Exhibit P13 A TRUE COPY OF MINUTES OF THE MEETING

HELD IN THE CHAMBER OF THE SECRETARY TO

GOVERNMENT, LOCAL SELF GOVERNMENT DEPARTMENT ON 31.08.2005. Exhibit P14 A TRUE COPY OF THE DECISION OF MUNICIPAL COUNCIL

DATED 08.05.2006.

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