

A.K. Anto Vs. Municipal Commissioner, Chalakkudy Municipality, Trichur and ors.

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Court : Kerala

Decided On : Feb-23-1994

Reported in : AIR1994Ker390

Judge : K.J. Joseph, J.

Acts : Kerala Town Planning Act, 1108 - Sections 6, 12 and 33; Land Acquisition Act

Appeal No. : O.P. No. 5075 of 1990-D

Appellant : A.K. Anto

Respondent : Municipal Commissioner, Chalakkudy Municipality, Trichur and ors.

Advocate for Def. : Khandir Kunj, Govt. Pleader and; K.P. Vijayan, Adv.

Advocate for Pet/Ap. : P. Vijaya Bhanu, Adv.

Judgement :

K.J. Joseph, J.

1. The petitioner owns four cents land within the Chalakkudy Municipality in Sy. No. 528 of Mukundapuram Taluk. He wanted to construct a building in the said

property for which he submitted an application on 27-8-1987 to the Commissioner of the Municipality -- the first respondent in this petition. The said application was rejected on the ground that the place over which the construction is proposed to be carried on is an area covered in detailed Town Planning Scheme for Chalakudy market area. The said area is reserved for constructing a road and expansion of the Bellmouth. The said application was rejected by the Commissioner as per Ext. P2 order dated 10-9-1989. In the said communication also, the Commissioner had said that the property over which the building is proposed to be constructed is included in the D.T.P. Scheme for development of Chalakudy market and the area is included among the lands sought to be acquired for a public purpose under the Land Acquisition Act. She has filed Ext. P 3 application again for sanction.

2. The D.T.P. Scheme published by the Municipality is evidenced by Ext. P 1. That is a notification issued under Section 8 of the Town Planning Act 4 of 1108 which enables the Municipality to publish by way of a notification, the resolution of the Municipality to make or adopt a scheme in Ext, P1, the Chairman of the Chalakudy Municipality has invited objections for the scheme and ultimately they have published a draft scheme under Section 9 of the said Act.

3. Thereafter the said draft scheme was submitted to the Government for its sanction under Section 12 of the Act, Government considered the matter and gave sanction for the said scheme as per their order dated 5-11-1983. It is on the basis of the said sanctioning of the scheme, the Municipality has rejected the request of the petitioner, for construction of a building in Sy. No. 528 in Mukundapuram Taluk.

4. Under Section 15 of the Act, after publication of a notification under Section 8 or 10 of the Act no person within the area included in the scheme can erect or proceed with any building in respect of a notified area unless such persons has applied for and obtained necessary permission from the responsible authority. Since Government had sanctioned the scheme, the Municipality is justified in not granting permission to construct any building in the property.

5. It is the case of the petitioner that Ext. P 1 notification was published as early as on 1-11-1975 and sanction was granted as early as on 5-11-1983. In spite of such

a sanction the Municipal authorities had not taken any steps to implement the provisions in the scheme even after a long lapse of more than 10 years and at the same time the petitioner and other land owners were not able to make any construction in their properties. He therefore filed a reminder to the 1st respondent dated 29-9-1989 requesting the authorities to give him sanction to make construction of his building in his property. In Ext. P4 representation he has also pointed out that sanction was given, to some other land owners whose lands are also included in the scheme area for the purpose of construction of building, but the same was denied to the petitioner. In spite of receipt of Ext. P4 representation, the respondents did not give any sanction to the petitioner and therefore he is constrained to move this Court in this proceedings praying for the issuance of a writ of certiorari or other appropriate writ, order or direction to quash Ext. P 2 order passed by the 1st respondent and to issue a writ of mandamus or other appropriate writ, direction or order directing the 1st respondent to permit the petitioner to construct a building in Sy. No. 528 of Chalakkudy village in Mukundapuram Taluk. This Court issued notice to the respondents. The respondents entered appearance and on behalf of the 1st respondent a statement was filed before this Court on 28-6-1990, wherein they have stated that the 3rd respondent, State Government had issued a notification wherein G.O.(MS) 192/83/LA&SWD; dated 5th November, 1983, sanctioning detailed Town Planning Scheme for the market area, Chalakkudy under Section 12 of the Town Planning Act 1108. They have also stated that the property belonging to the petitioner comprised in Sy. No. 528 of Chalakkudy village is right in the middle of the proposed road connecting the present Market Road and Vettukadavu Road. Therefore, they justified Ext. P 2 order rejecting the application of the petitioner for construction of a building on the proposed site. It is also stated in the counter-affidavit that construction of a building in the property which is specifically earmarked for construction of public road under the Town Planning Scheme could defeat the very purpose of the scheme. They have also stated that under Section 16 of the Town Planning Act, no building can be constructed or reconstructed in any area in which building is specifically forbidden under the provisions of the scheme. But in the counter-affidavit they specifically stated that Municipality had already requested the Revenue authorities to initiate action for the acquisition of

land required for the proposed road including the property owned by the petitioner and the proceedings in this connection have already been initiated.

6. I heard the learned counsel appearing on behalf of the petitioner and the learned counsel for the 1st respondent. According to the learned counsel, under Section 33 Of the Act, the Scheme sanctioned under Section 12 of the Act had been elapsed and therefore the restrictions under Sections 15 and 16 of the Act also cease to have any effect in the substance of his contention. He has placed reliance on the decision of this Court reported *Thankamma v. G. C. D. A.*, 1985 Ker LT 35, where in this Court said that after expiry of the period of 3 years mentioned in Section 33, the Scheme is no longer in force and therefore the learned counsel submits that the petitioner is entitled to get sanction for construction of the building in his land at the proposed site even though the said land also was included in the Scheme.

7. A reading of Section 33 of the Act would not support the contention raised by the petitioner:

'Section 33: Notification under Section 12 to have effect as declaration under Section 6 of the Land Acquisition Act:-- Notwithstanding anything in the Land Acquisition Act, XI of 1098, a notification under Section 12 shall operate in respect of any land required for the purposes of the scheme as a declaration under Section 6 of the said Act and no further declaration be necessary, but it shall not be incumbent on our Government or Officer authorised in that behalf, to take immediate steps for the acquisition of such lands. Provided that if the land is not acquired within three years from the date of the notification, it shall cease to have effect as a declaration under Section 6 of the Land Acquisition Act, XI of 1098'.

8. Therefore, a notification under Section 12 shall operate in respect of any land sought to be acquired for the purpose of the scheme as declaration under Section 6 of the said Act and no further declaration is necessary under the Land Acquisition Act. But the said section provided that if the land is not acquired within 3 years from the date of notification, shall cease to have the effect as a declaration under Section 6 of the Land Acquisition Act. Therefore, it is not the scheme that is being lapsed under the provisions of Section 33 in case within the 3 years period

the land was not acquired but the notification under Section 12 shall cease to have the effect as a declaration under Section 6 of the Land Acquisition Act. The meaning of the said section is that in case the authority wanted to proceed with the Land Acquisition Act they will have to start de novo proceedings under the provisions of the Land Acquisition Act for acquiring the land for the purpose under Town Planning Scheme.

9. Under the provision of the Town Planning Act, there is no provision that the scheme being lapsed or the scheme being no longer in force as found in the decision referred to above. Under Section 13 of the Act, a Town Planning Scheme sanctioned under Section 12 may at any time be revoked or varied by subsequent scheme published or sanctioned in accordance with the Act provided that the Municipal Council shall be competent to modify a scheme after it has been sanctioned by the Government under Section 12 of the Act by an agreement entered into with the persons interested in the scheme and with the concurrence of the Government. The Government also by notification in the Gazette at any time vary or revoke a scheme sanctioned under Section 12, subject to satisfying the conditions mentioned in Section 12(2)(b) of the Act. Therefore, there is no provision in the Act which would have the effect of nullifying the scheme sanctioned under Section 12 of the Town Planning Act.

10. Against the decision reported in *Thankamma v. G.C.D.A.*, 1985 Ker LT SN 35, a writ appeal has been filed by the respondents G.C.D.A. before this court as W.A. No. 296/1985 wherein the Division Bench of this court has set aside a judgment passed by learned single Judge in so far as it related to the quashing of the scheme in question.

11. In the light of the various provisions contained in the Act, it cannot be legally held that the scheme is no longer in force after the same is sanctioned under Section 12. In so long as the scheme is in force, the prohibition contained in Ss. 15 and 16 of the Act also is in force, thereby the petitioner is not entitled to get any permission to construct any building in the land, earmarked for construction of a road.

12. But I see no justification for the respondents in not finalising or completing the land acquisition proceedings, which they have stated in the counter-affidavit that the same is in progress. Even though the statement has been filed before this Court as early as on 28-6-1990, wherein they have stated that the Municipality has requested the Revenue authority to initiate action for the acquisition of lands required for the said proposed roads including property owned by the petitioner and proceedings in this connection have already been initiated, so far the proposed acquisition has not been completed. Admittedly, the valuable right of the petitioner to enjoy his land has been curtailed by the promulgation of the scheme. Therefore, in the interest of justice, it is necessary to issue a direction to the respondents to complete the acquisition proceedings already initiated by the respondents as early as possible, at any rate, least the land acquisition proceedings in respect of the petitioners property is concerned shall be completed within a maximum period of 6 months from the date of receipt of a copy of this judgment. In case, the land acquisition proceedings could not be completed within the said time, the Municipality shall consider the question of taking advance possession of the petitioner's property after paying compensation for the same. If the respondents could not finalise the matter within the said period in the manner directed above, the respondents shall then consider the question of variation of the scheme in respect of the petitioner's property as contemplated under Section 13 of the Act within a further period of two months thereafter and consider the application of the petitioner for construction of the building in his property afresh and pass appropriate orders on the said application of the petitioner in accordance with law.

With the above direction, the original petition is disposed of but without any order as to costs of this proceedings.