

Tomy Peter Vs. State of Kerala

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Court : Kerala

Decided On : Aug-04-2006

Reported in : 2006(3)KLT880

Judge : Thottathil B. Radhakrishnan, J.

Acts : [Land Acquisition Act, 1894](#) - Sections 3, 4(1), 6, 9(3), 17 and 17(4); Town Planning Act, 1108 M.E.; Kerala High Court Rules; [Constitution of India](#) - Articles 243W and 254

Appeal No. : W.P. (C) No. 21377 of 2005

Appellant : Tomy Peter

Respondent : State of Kerala

Advocate for Def. : Venganoor Chandrasekharan Nair, Addl. Adv. General,; Aloysius Thomas, Sr. Government Pleader,;

Advocate for Pet/Ap. : T.P. Kelu Nambiar, Sr. Adv.,; Jacob (Jose) and; Reena Ab

Disposition : Appeal dismissed

Judgement :

Thottathil B. Radhakrishnan, J.

1. Petitioner challenges Ext.P8, a composite notice issued under Sections 4(1) and 17(4) of the [Land Acquisition Act, 1894](#), and Ext.P10 declaration made under Section 4(1) of the said Act, to the extent it relates to the petitioner's property and his building thereon alleging that they are issued in violation of the Detailed Town Planning Scheme (hereinafter, 'DTP Scheme', for short) and Plan. He also seeks a declaration that the proposed widening of the Sahodaran Ayyappan Road ('SA Road', for short) , by respondents 4 to 6, by resorting to the Land Acquisition Act, should only be in consonance with the DTP Scheme as sanctioned by the first respondent State as per Ext.P6 order. A writ in the nature of mandamus is also sought for to ensure prevention of respondents 4 to 6 from acquiring any portion of the petitioner's property or demolishing his building either in part or full for widening the SA Road, except in accordance with the DTP Scheme and Plan sanctioned by the first respondent State as per Ext.P6 order.

2. After he purchased 8 cents of land in Sy. No. 674/1-2 of Elamkulam Village in Kanayannur Taluk located on the southern side of the SA Road, which lies east-west, the petitioner submitted an application on 22-8-1977 to the fourth respondent for requisite permit to construct a building. Such permission was granted as per Ext.P1 order dated 2-9-1977. According to the petitioner, he received a letter, dated 14-9-1981, from the fifth respondent directing him to stop construction on the ground that draft schemes were being prepared under the Town Planning Act, which is Act IV of 1108 M.E. as amended from time to time. The said Town Planning Scheme is the Elamkulam East Scheme and the Elamkulam East Extension Scheme. Petitioner, accordingly, stopped construction and according to him, on being directed to submit an application for permission for the said construction, he did so by submitting an application before the fifth respondent on 12-10-1981. That application was rejected by the fifth respondent. The petitioner, therefore, addressed Ext.P2 letter dated 13-1-1982 to the second respondent, Chief Town Planner, stating his grievances. The fourth respondent issued an order dated 19-2-1982 directing the petitioner to stop construction activities. He replied to it as per letter dated 26-6-1982 stating that the construction was fully authorised. The second respondent, Chief Town Planner addressed Ext.P3 letter dated 18-6-1982 to the fourth respondent Corporation stating that the DTP Scheme was yet to be finalised and that if licence for the building of the petitioner

is granted, such construction would not be affected on the finalisation of the draft scheme. This letter is Ext.P3 and the map appended thereto is Ext.P4. Pursuant to Exts.P3 and P4, the fourth respondent provisionally revoked the stop memo and issued communication dated 22-9-1982 granting permission to the petitioner to continue the construction, subject to certain conditions, as evidenced by Ext.P5. Petitioner completed the construction and is paying tax and is occupying the building. Ext.P6 is a Government Order by which the DTPS for Elamkulam East was approved. Thus, Ext.P4 lay out and plan was accepted and approved by the first respondent State. According to the petitioner, the width of the SA Road at Elamkulam was to be 22 meters as per Ext.P4 lay out and as per Ext.P5, he was permitted to continue construction on the basis of the said lay out and as indicated in Ext.P3, he has front open space of 3 meters to 4 meters from the then existing road boundary of which only 80 cms. to 1 meter width was required for road widening, going by Ext.P4. It is the case of the petitioner that certain portions of the front open space were also annexed to the existing road with the passage of time and he did not raise any objections to such widening. He has also no objection to the existing front open space being utilised for the road widening, if his building is not required to be demolished.

3. According to the petitioner, respondents 4 and 5 have a legal obligation to acquire lands from the northern side of the road in accordance with Ext.P4 approved plan and instead of doing that, they have permitted constructions of buildings and different permits have been issued in violation of the DTP Scheme and that on account of the deviations from the approved plan, the petitioner is facing threat of demolition of his building to provide 22 meters' width for the SA Road. Petitioner states that this is wholly unauthorised and the northern boundary of the SA Road has to be fixed strictly in accordance with the alignment of the road prescribed in the DTP Scheme for Elamkulam East, which is a statutory one. This, in essence, was his contention in Ext.P7 petition made by him.

4. It was in the meanwhile that the impugned notification and declaration have been issued after an earlier notification dated 1-7-1996, which proposal stood dropped. Petitioner had submitted Ext.P9 objections to Ext.P8 composite notification and Exts.P12 and P13, following Exts.P10 and P 11. Thereafter, the

petitioner received Ext.P14 communication from the third respondent directing him to take up his grievances with the authorities of the Corporation.

5. Respondents 3,4 and 5 have placed counter-affidavits on record. The counter-affidavit on behalf of the third respondent is sworn to by the sixth respondent. The petitioner has also filed a reply affidavit.

6. Having regard to the submissions made on behalf of the petitioner, it is appropriate that I quote the following interim orders to ensure continuity:

(a) By order dated 20-7-2005, it was recorded, inter alia, as follows:

The Standing Counsel for the GCDA submits that he has been telephonically instructed to submit that instead of Ext.P6 Scheme, another scheme has been brought into force. The respondents 4 and 5 will file counter-affidavits or statements within 10 days. In the mean while, I record an undertaking from the Kochi Corporation as well as the OCDA that the building of the petitioner will not be demolished. (b) On 25-7-2006, it was, inter alia, ordered as follows: The GCDA has stated in Para 4 of its counter affidavit that though the land was covered by the Elamkulam East Extension Scheme and was included in the first notification and Draft Scheme, thereafter the said scheme was dropped. The interim order dated 20/7/2005 was issued after recording a submission on behalf of the GCDA that yet another Scheme has been brought into force instead of Ext.P6 Scheme. The learned Counsel for the GCDA submits that all the files regarding the said scheme and acquisitions have been handed over to the Corporation of Kochi and that it is for them to state regarding the scheme, if any. The counter affidavit filed on behalf of the 3rd respondent states, among other things, that the Elamkulam Scheme and the Elamkulam East Extension Scheme have been dropped by the GCDA. The counter affidavit filed by the fourth respondent Corporation of Kochi, however does not refer to any of the Schemes under the Town Planning Scheme. In this situation, the learned Counsel for the 4th respondent seeks a short adjournment to place on record any scheme under the Town Planning Act, which has a bearing on the issue in hand.

7. The learned senior counsel appearing for the petitioner took exception to what has been produced along with a memo filed by the counsel for the Corporation on 31-7-2006 and urged that the said document is to be treated as worthless since it is not supported by an affidavit and not sought to be placed following any procedure prescribed in that behalf in the Kerala High Court Rules.

8. The learned senior counsel for the petitioner urged before me that paragraph 4 of the counter affidavit of the fifth respondent refers to Elamkulam East Scheme and Elamkulam East Extension Scheme, however stating that the SA Road is not included in the DTP Scheme and therefore, the reference of the fifth respondent in paragraph 4 of its counter affidavit that the DTP Scheme has been dropped is only to be eschewed as irrelevant because, it is not for the fifth respondent to come forward with any such contradicting statement when neither the Chief Town Planner nor the State has produced any such decision. To contend so, reference is made by the learned senior counsel to paragraph 6 of the counter affidavit of the fourth respondent Corporation, as also the stand taken by the GCDA that the file relating to the scheme is with the Corporation. On behalf of the petitioner, it is urged that in terms of Ext.P6, it is impossible for the respondents to contend that the DTP Scheme has been dropped unless such a decision is shown to have been taken and brought into effect in terms of the statutory provisions contained in the Town Planning Act. With reference to Ext.P4, it is urged that the SA Road, which is shown as 'Tripunithura Road' in Ext.P4, can be widened only to the extent of the proposal which is shown using pink shade on both the sides of the said road and that such extension is that which is permissible under the DTP Scheme and nothing more. It is urged that if the acquisition is confined to such extent only, the building of the petitioner will not be affected.

9. On behalf of the State, the District Collector and the Tahsildar, the learned Additional Advocate General urged that the issuance of the impugned notification is an action taken under the Land Acquisition Act for a public purpose, to wit, the widening of the SA Road and that the said action taken, including by invoking the emergency clause under Section 17(4) of the Land Acquisition Act, cannot be impeached or whittled down in any manner with reference to any DTP Scheme under the Town Planning Act. He further urges that the Land Acquisition Act, being

a Central Act, the action taken therein does not have to be in consonance with the DTP Scheme under the Town Planning Act.

10. The learned Counsel for the GCDA submitted that Elamkulam East Scheme and Elamkulam East Extension Scheme are two different Schemes and that while there was a scheme that was finalised as DTP Scheme for Elamkulam East, in so far as the Elamkulam East Extension, is concerned, nothing followed after the first draft notification and that it is the DTP Scheme for Elamkulam East, that was dropped and it is the dropping of the said DTP Scheme that has been pleaded in paragraph 4 of the counter-affidavit of the fifth respondent.

11. The learned Counsel for the Corporation, apart from supporting the contentions of the other respondents, urged that the building of the petitioner is, as of now, the bottle-neck in the widening of the SA Road and that there is no rhyme or reason why the said building cannot be demolished, following acquisition in exercise of authority under the Land Acquisition Act.

12. Ext.P4 is the plan relied on by the petitioner. It shows a DTP Scheme by name Elamkulam East and a DTP Scheme for Elamkulam East Extension. The DTP Scheme for Elamkulam East lies on the north of the SA Road, while the DTP Scheme for Elamkulam East Extension lies on the south of the SA Road which, as already noticed, runs east-west. The DTP Scheme for Elamkulam East covers only the land lying on the north of the SA Road. The DTP Scheme for Elamkulam East Extension covered only the land lying on the south of the SA Road. The SA Road, going by paragraph 2 of the counter affidavit of the fourth respondent Corporation, was a PWD Road and that was transferred to the Cochin Corporation, following G.O.(Rt).14/20/96/PW & T dated 16-10-1996. So much so, it is clear that the SA Road, as such, was not part of either among the two DTP Schemes, even if I were to assume that the DTP Scheme for Elamkulam East Extension was also a finalised scheme in spite of the contention of the GCDA to the contrary.

13. To resolve the issue in hand, in my considered view, a reference to the DTP Schemes may not be necessary. This is because, the Town Planning Act, IV of 1108 M.E., which is an Act to regulate development of towns to secure to their

present and future inhabitants, sanitary conditions, amenity and convenience and other matters which fall under the provisions of the said Act, cannot be treated as the yardstick that should be applied in the instant situation by the competent authority under the Land Acquisition Act to decide whether there is a public purpose to invoke the provisions of the Land Acquisition Act. The provisions of the Land Acquisition Act are, in no manner, controlled by the provisions of the Town Planning Act. The Land Acquisition Act is one that provides for acquisition of land for public purposes. The provisions of the Land Acquisition Act can be resorted to even for the purpose of the Town Planning Act, which provides for such recourse, but, the availability or not of a DTP Scheme has absolutely no relevance when acquisition is resorted to under the provisions of the Land Acquisition Act.

14. The Land Acquisition Act would fall among the subject 'Acquisition and Requisitioning of Property', which is Entry 42 in List III in the Seventh Schedule to the Constitution. After the 74th amendment to the Constitution, introducing Part IX-A, including Article 243W, the Twelfth Schedule introduced as per the said amendment enumerates the matters on which the Municipalities may be endowed with power by law made by the State Legislature. This includes urban planning, including town planning. Therefore, the continued validity of the Town Planning Act, IV of 1108 M.E. would be referable to such provision. The Land Acquisition Act is a Central Act. The Town Planning Act is a State Act. Article 254 of the Constitution advises me to hold that even if I were to find any repugnancy between the Town Planning Act and the Land Acquisition Act, the latter among them will prevail. The issue is viewed in this angle also to conclude that the Land Acquisition Act can be resorted to even in relation to lands which are covered by any DTP Scheme under the Town Planning Act and the mere fact that a particular parcel of land falls within a DPT Scheme is no sustainable ground of opposition to an acquisition under the Land Acquisition Act for a public purpose. It is so held.

15. So much so, any contention as to the continued existence of the DTP Elamkulam Scheme or the DTP Elamkulam Extension Scheme is of no relevance and such an issue is no ground to impeach the acquisition made pursuant to the impugned notifications.

16. The expression 'public purpose' as defined in Section 3(f) of the Land Acquisition Act would apply even in relation to town and rural planning, as also for planned development of land and for different other purposes. It is beyond challenge that the widening of a road is a public purpose. In this context, I may profitably refer to the decision of the Division Bench of this Court in *Kaloor Joseph v. District Collector*, 2001 (1) KLT 672 : 2001 (1) KLJ 539, wherein this Court had taken note of the requirement to widen the SA Road. Section 4(1) notification, evidenced by Ext.P8, is dated 8.10.2004. Considering the importance and urgency of the purpose of the acquisition, the Government invoked provisions under Section 17 of the Land Acquisition Act. Section 4(1) notification was followed by Ext.P10 declaration dated 3-3-2005, under Section 6. The Corporation of Cochin had requested the Government for acquisition of property on either side of the SA Road. The District Collector, who received requisition in Form No. II, initiated proceedings for acquisition of land for the public purpose of widening the SA Road, which is one of the important roads in the City of Cochin connecting the southern districts with the City of Cochin. This is a long stretch of road commencing from Valanjambalam leading to Vyttila Junction terminating at the point where NH 47 is passing through the Vyttila Junction. This junction has also become very busy with the increase in the volume of traffic. This is also said to be one of the busiest junctions within the State of Kerala. The survey works have been completed. The Sub Division Records have been approved by Superintendent of Survey and Land Records and actions have been proceeded to take possession of the land duly approving the basis valuation report, detailed valuation statement, Section 9(3) notice and finally the draft award. In view of the aforesaid facts stated in the counter affidavit of the third respondent, as regards the acquisition proceedings and the requirement to widen the SA Road, no further elaboration is necessary to hold that the acquisition is for a public purpose.

In the aforesaid circumstances, the Writ Petition fails. The same is accordingly dismissed. No costs.