



2024:KER:2605

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

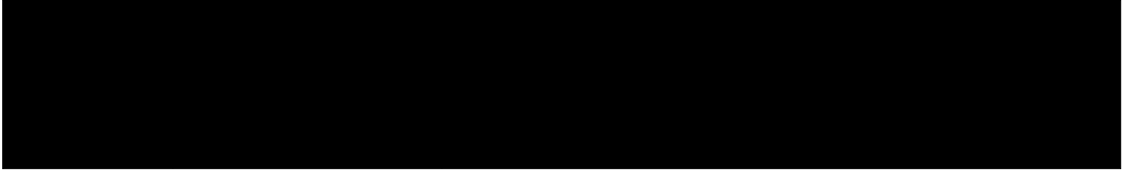
THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

TUESDAY, THE 9TH DAY OF JANUARY 2024 / 19TH POUSHA, 1945

WP(C) NO. 14680 OF 2019

PETITIONER:

SIVAPRAKASHAN



BY ADV. C.CHANDRASEKHARAN

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY THE PRINCIPAL SECRETARY,
REVENUE DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695001.
- 2 THE DISTRICT COLLECTOR,
COLLECTORATE, AYYANTHOLE, THRISSUR-680003.
- 3 THE SUPERINTENDENT OF POST OFFICES,
IRINJALAKUDA, THRISSUR DISTRICT, PIN-680121.
BY ADVS.
SRI.P.VIJAYAKUMAR
SRI.S.MANU, DSGI
SRI. B.S. SYAMANTAK, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
09.01.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



"C.R."

P.V.KUNHIKRISHNAN, J.

W.P.(C)No. 14680 of 2019

Dated this the 09th day of January, 2024

JUDGMENT

The short point to be decided in this case is that, if land is acquired for a specific purpose under the Land Acquisition Act, and if there is unnecessary delay in using the land for the purpose for which it is acquired, whether the acquisition proceedings can be quashed for that reason.

2. The petitioner was the owner in possession of 0.1241 hectares of land in survey No.291/8-9 of Perinjanam Village in Kodungalloor Taluk. The above property was acquired for the construction of a Post Office and Staff Quarters building for the postal department at the instance of the Superintendent of



Post Offices, Irinjalakuda Division, Thrissur District. The land acquisition proceedings were initiated on 05.08.1983. The Land Acquisition Officer has awarded Rs.1,24,418.25/- towards the land value, Rs.5,435.20/- towards the value of improvements and structures, Rs.38,956.04/- towards solatium, and Rs.57,184/- towards 12% annual enhancement as per award dated 03.04.1987. The total amount of compensation was Rs.2,25,423.30/-. Accordingly, the initial payment was given to the petitioner on 28.03.1987. Thereafter, the property was taken into possession on 04.05.1987.

3. Dissatisfied by the compensation awarded by the Land Acquisition Officer, the land owner applied for reference under Section 18 of the Land Acquisition Act. Accordingly, the case was referred to the Sub Court, Irinjalakuda. The Sub Court, Irinjalakuda, as per Judgment dated 31.07.1991 enhanced the compensation to Rs.12,500/- per Are. Based on the



enhancement of compensation by the reference court, an amount of Rs.81,773/- was credited at Sub Court, Irinjalakuda. Subsequently, the further amounts were also credited in the Sub Court, Irinjalakuda on 10.09.1997 and 29.02.2000. Ext.P1 is the judgment in L.A.R. No.42/1988. Aggrieved by the same an appeal was filed before this Court and this Court disposed of the same as per Ext.P2 judgment. This Court enhanced the land value to Rs.20,000/- per Are. Based on the enhancement, payment was credited at the Sub Court, Irinjalakuda by the authority concerned on 18.10.2001. Accordingly, an amount of Rs.5,91,724.30/- was paid to the petitioner and the execution petition was also closed.

4. It is the case of the petitioner that the original notification in the case as per the Land Acquisition Act was in the year 1983 and the property was taken possession for the construction of post office and staff



quarters. It is submitted that the acquired property is in an important locality of Perinjanam Panchayath and very near to the Perinjanam centre. The property was taken into possession, about 40 years back is the submission. Even after this long period, the post office or staff quarters are not constructed is the grievance of the petitioner. It is the case of the petitioner that the acquired property is lying vacant. According to the petitioner, he is ready to remit the entire compensation and other statutory benefits received by him with interest as demanded by the State. Hence, the petitioner submitted Ext.P3 for the return of the property. Since there was no response to Ext.P3, the petitioner submitted Ext.P4 to the 2nd respondent as evident by Ext.P4(a) acknowledgment. Thereafter, the petitioner filed WP(C) No.12169/2017 before this Court and this Court disposed of the same directing the 2nd respondent to consider Ext.P3 and P4 on merit as per



Ext.P5 judgment. But, the 2nd respondent without considering the real facts rejected the claim of the petitioner for re-conveyance of the property as per Ext.P6 is the submission of the petitioner. The petitioner challenged the same by filing WP(C) No.13416/2018. The said case was disposed of by this Court as per Ext.P7 judgment directing the petitioner to submit a representation to the State Government explaining the factual aspects of the matter and further directing the Government to pass orders in it. Accordingly, the petitioner submitted Ext.P8 representation. Ext.P8 is also dismissed as per Ext.P9 order. Aggrieved by the same, this writ petition is filed with the following prayers;

i.) Issue a writ of certiorari quashing Exhibit-P9 as not legally sustainable.

ii.) Issue a writ of mandamus or any other appropriate writ, order or direction directing respondents 1 to 3 to reconvey the acquired property having an extent of 0.1241 hectares in Sy.No.291/8-9



of Perinjanam Village in Thrissur District to the petitioner within a time frame as fixed by this Hon'ble Court.

iii.) Issue a writ of mandamus or any other appropriate writ, order or direction directing respondents 1 to 3 not to transfer or alienate the property to any other person other than the petitioner.

iv.) Declare that the land acquisition proceedings with regard to the acquired property having an extent of 0.1241 hectares of land in Sy.No.291/8-9, Perinjanam Village belonged to the petitioner is invalid as the same was not used for the purpose for which it was acquired even after 35 years if its taking possession.

v.) To quash the acquisition of the petitioner's property by issuance of a writ of certiorari or other appropriate writ, order or direction as this Hon'ble Court deem fit and proper.

vi.) Grant such other appropriate writ, direction or order as this Hon'ble Court may deem fit and proper in the fact and circumstances of the case;" (SIC)

5. Heard the learned counsel appearing for the petitioner, the learned Government Pleader, and the learned Deputy Solicitor General of India (DSGI).

6. The learned counsel for the petitioner



reiterated the contentions raised in this writ petition. The counsel for the petitioner submitted that the land acquisition proceedings were initiated in the year 1983 and even now the property is not used for the purpose for which it was acquired. The counsel for the petitioner also submitted that the petitioner is ready to pay the compensation received by him with interest. It is the case of the petitioner that if a property is acquired for a specific purpose and if there is unnecessary delay in using the property for the purpose for which it is acquired, the petitioner is entitled to re-conveyance of the property if the amount received as compensation with interest is repaid. The petitioner submitted that, since the property is not used for the purpose for which it is acquired, and the property is kept vacant, that amounts to a violation of Article 300 A of the Constitution of India. The petitioner relied on the judgment of the Apex Court in **Royal Orchid Hotels**



Limited and Another v. G. Jayarama Reddy and Others [(2011) 10 SCC 608], Northern Indian Glass Industries v. Jaswant Singh and Others [(2003) 1 SCC 335], Laxman Lal (dead) through LRs and Another v. State of Rajasthan and Others [(2013) 3 SCC 764] and Ram Dhari Jindal Memorial Trust v. Union of India and Others [(2012) 11 SCC 370].

7. The DSGI submitted that a detailed counter affidavit and statement are also filed in this case. The DSGI submitted that the petitioner received the entire compensation for the property and the Postal Department is taking steps to construct the building. It is also submitted that the Department could not plan and forecast funds for construction due to litigation in connection with the proceedings from 1987 to 2004. Now it is submitted that the building permit has already been obtained from the local authorities and construction has already started. In such



circumstances, the contention of the petitioner that, the property is not used for the purpose for which it is acquired, is not correct. The DSGI also relied on the order dated 10.11.2023 in Civil Appeal No.7634/2023 of the Apex Court. The Government Pleader also supported the contentions raised by the DSGI.

8. This Court considered the contention of the petitioner and the DSGI. The short point to be decided in this case is whether the petitioner is entitled to reconveyance of the property acquired for the purpose of the construction of a hostel, post office, and staff quarters for the reason that the construction of the post office and staff quarters is not started. It is an admitted fact that the land owner received the compensation awarded by the Land Acquisition Officer. It is also an admitted fact that the land owner requested for reference under Section 18 of the Land Acquisition Act and the case was referred to the court. Thereafter, the



reference court, as per Ext.P1 judgment, enhanced the compensation. It is also an admitted fact that the petitioner challenged Ext.P1 judgment before this Court by filing an appeal and this Court also enhanced the compensation as per Ext.P2 judgment. Admittedly, the enhanced amount of compensation ordered by this Court in Ext.P2 and by the reference court as per Ext.P1 are paid by the respondents. It is also admitted that the land acquired is not used for any other nonpublic purpose as of today. In such circumstances, the petitioner has no right to ask for reconveyance of the property acquired, for the simple reason that, there is a delay in constructing the building for which the property is acquired, on the part of the respondents.

9. The above issue is considered by the Apex Court in the order dated 10.11.2023 in Civil Appeal No.7634/2023. The relevant portion of the above order is extracted hereunder:



“11. In our considered view, the High Court would be extremely circumspect to issue a mandamus in the exercise of its extra- ordinary jurisdiction under Article 226 of the Constitution, directing to release a lawfully acquired land only on the premise that such land has not been utilized for the public purpose for which it was acquired. There is no gainsaying that once the land vests in the State or its authorities, the public purpose of its acquisition can be changed at a later stage. All that is required is that such land should be utilized for public purposes only. In fact, there cannot be a time limit within which the authorities are expected to utilize the acquired land. The Municipalities or such other agencies are expected to have long-term plans for regulated development of urban areas and for that purpose, certain pockets of land are required to be kept vacant as reserve pool to cater the future needs.”

10. From the above order it is clear that this Court cannot exercise the power under Article 226 of the Constitution to release a lawfully acquired land only on the premise that such land has not been used for the public purpose for which it was acquired. The Apex



Court also goes to the extent of saying that there is no gainsaying that once the land vests in the State or its authorities, the public purpose of its acquisition can be changed at a later stage. The Apex Court observed that all that is required is that such land should be utilized for public purposes only. It is also held that there cannot be a time limit within which the authorities are expected to utilize the acquired land. The same is the situation herein. It is true that the acquisition proceedings were started in the year 1983. Now about four decades over. The construction of the post office building is not completed as of now. That is not a reason for re-conveying the property to the petitioner. I am of the considered opinion that once the land is acquired for a public purpose and the compensation is paid to the land owner, the land owner has no right to the property. The only restriction on the part of the requisitioning authority is that the land should be used only for public



purposes. In this case, a perusal of Annexure A photographs produced by the DSGI along with a memo in the writ petition would show that the construction of the post office building has already started. Moreover, there is no case to the petitioner that the property is used not for public purposes. In such circumstances, I am of the considered opinion that the petitioner has no right to get back the property for the simple reason that there is a delay in using the land for the purpose for which it was acquired.

11. The learned counsel appearing for the petitioner relied on the judgment of the Apex Court in **Ram Dhari Jindal's** case (supra). This Court perused the above judgment. The dictum laid down in the above judgment does not apply to the facts of this case. That was a case in which the Apex Court was discussing about the invocation of the urgency clause and dispensation of enquiry under the Land Acquisition Act.



The Apex Court observed that the invocation of the urgency clause and dispensation of enquiry is an exception and the authority has to form an opinion that land for a stated public purpose was urgently needed and that the urgency was such that it necessitated dispensation of enquiry under S. 5-A. The said decision does not apply to the facts of the case. Counsel for the petitioner also relied on the judgment of the Apex Court in **Laxman Lal's** case (supra). The above decision also says about the urgency clause and dispensation of enquiry. Therefore, that decision is also not applicable to the facts and circumstances of this case. Counsel for the petitioner also relied on the decision of the Apex Court in **Royal Orchid Hotels Limited and Another v. G. Jayarama Reddy and Others** [2011 (10) SCC 608]. That was a case in which the land acquired for public purpose was transferred to private parties and corporate entities. In such a situation, the Apex Court



quashed the acquisition proceedings. It will be better to extract the relevant portion of the above judgment:

“36.The next question which merits examination is whether the High Court was justified in directing restoration of land to respondent 1. In *Behroze Ramyar Batha and others v. Land Acquisition Officer*, the Division Bench of the High Court categorically held that the exercise undertaken for the acquisition of land was vitiated due to fraud. The Division Bench was also of the view that the acquisition cannot be valid in part and invalid in other parts, but did not nullify all the transfers on the premise that other writ petitions and a writ appeal involving challenge to the acquisition proceedings were pending. In *Annaiah and others v. State of Karnataka*, the same Division Bench specifically adverted to the issue of diversification of purpose and held that where the landowners are deprived of their land under the cover of public purpose and there is diversification of land for a private purpose, it amounts to fraudulent exercise of the power of eminent domain.

37.The pleadings and documents filed by the parties in these cases clearly show that the Corporation had made a false projection to the State Government that land was needed for execution of tourism-related projects. In the meeting of officers held on 13.1.1987, i.e. after almost four years of the issue of declaration under Section 6, the Managing Director of the



Corporation candidly admitted that the Corporation did not have the requisite finances to pay for the acquisition of land and that Dayananda Pai, who had already entered into agreements with some of the landowners for purchase of land, was prepared to provide funds subject to certain conditions including transfer of 12 acres 34 guntas land to him for house building project. After 8 months, the Corporation passed a resolution for transfer of over 12 acres land to Dayananda Pai. The Corporation also transferred two other parcels of land in favour of Bangalore International Centre and M/s. Universal Resorts Limited. These transactions reveal the true design of the officers of the Corporation, who first succeeded in persuading the State Government to acquire a huge chunk of land for a public purpose and then transferred a major portion of the acquired land to private individual and corporate entities by citing poor financial health of the Corporation as the cause for doing so.

38. The Courts have repeatedly held that in exercise of its power of eminent domain, the State can compulsorily acquire land of the private persons but this proposition cannot be over-stretched to legitimize a patently illegal and fraudulent exercise undertaken for depriving the landowners of their constitutional right to property with a view to favour private persons. It needs no emphasis that if land is to be acquired for a company, the State Government and the company is bound to



comply with the mandate of the provisions contained in Part VII of the Act. Therefore, the Corporation did not have the jurisdiction to transfer the land acquired for a public purpose to the companies and thereby allow them to bypass the provisions of Part VII. The diversification of the purpose for which land was acquired under Section 4(1) read with Section 6 clearly amounted to a fraud on the power of eminent domain. This is precisely what the High Court has held in the judgment under appeal and we do not find any valid ground to interfere with the same more so because in *Annaiah v. State of Karnataka*, the High Court had quashed the notifications issued under Sections 4(1) and 6 in their entirety and that judgment has become final.

39. The judgment in *Om Parkash v. Union of India* on which reliance has been placed by Shri Naganand is clearly distinguishable. What has been held in that case is that quashing of the acquisition proceedings would enure to the benefit of only those who had approached the Court within reasonable time and not to those who remained silent. In this case, respondent 1 independently questioned the acquisition proceedings and transfer of the acquired land to M/s. Universal Resorts Ltd. In other words, he approached the High Court for vindication of his right and succeeded in convincing the Division Bench that the action taken by the Corporation to transfer his land to M/s. Universal



Resorts Limited was wholly illegal, arbitrary and unjustified.

40. In the result, the appeals are dismissed. Respondent 1 shall, if he has already not done so, fulfil his obligation in terms of the impugned judgment within a period of 8 weeks from today. The appellants shall fulfil their obligation, i.e. return of land to respondent 1 within next 8 weeks.”

12. If a land is acquired for a public purpose and thereafter the property and the land is transferred to private parties or corporate entities for some other purpose, it is a serious lapse in which case the court may be justified in quashing the acquisition proceedings. But that is not the issue in this case. Admittedly, the land is going to be used for the purpose for which it is acquired. Simply because there is a delay in using the land for the purpose for which it is acquired, the acquisition proceedings can not be set aside. In such a situation, the refusal to reconvey the property is not illegal. The Apex Court in



Commissioner, Corporation of Chennai v. R. Sivasankara Mehta and another [2011 (13) SCC 285] considered a similar point. It will be better to extract the relevant portion of the above judgment:

“10. Under the provisions of Section 48 of the principal Act, we are afraid, the respondent(s) has no right of asking for reconveyance in 1995 inasmuch as it is an admitted case of the parties that possession of the property was taken over by the State as early as in 1949 when the award was passed and the land vested in the State Government in 1962. Thereafter it was transferred to the Corporation. This aspect of the case, which goes to the root of the question, was totally missed by the High Court. Even if we accept, for the sake of argument, that Section 48-B was available in 1995 when reconveyance was ordered even then the respondent(s) has no case.

11. In a recent judgment rendered by this Court in T.N. Housing Board v. L. Chandrasekaran, it has been held that before an order of release can be made under Section 48-B, the Government must be satisfied that the land which is sought to be released is not required for the purpose for which it was acquired or for any public purpose. Admittedly, in the instant case, such condition has not been satisfied in view of the



representation of the appellant Corporation that they need the land for utilising it as parking space in view of ever increasing growth of car population in the city of Chennai. This is certainly a public purpose.

12. The learned counsel for Metro Rail has filed an affidavit to the effect that the Government is contemplating the use of the said land for its ongoing project which is again, very much a public purpose.

13. The second question is that the land is no longer vested in the Government as it divested itself by giving it over to the Corporation. Therefore, the conditions stated in L. Chandrasekaran are not satisfied herein. So the exercise of power by the State Government in cancelling its previous order of reconveyance cannot be faulted.

14. No case of mala fides or perversity has been made out in the writ petitions. The learned counsel for the respondent(s) stated that its only case of alleged mala fides has been made out in Ground (c) at p. 35 of the paper book. The said ground is set out hereinbelow:

"Cancellation of reconveyance order is colourable exercise of power. All materials have been considered including the views of the Corporation in detail in GOMs No. 48 dated 10-3-1995. The Corporation stated that there is a proposal to construct a fully air conditioned office-cum-shopping complex. However, the Government has rejected the proposal and



ordered reconveyance. As per the impugned order, the Corporation has given a proposal for using it as parking space. It is submitted that the above proposal is dated 5-6-1998, long after bankers' pay order has been received from the petitioner. It is submitted that facts set out above make it very clear that the impugned order is based on extraneous considerations and purely colourable exercise of power."

15. Unfortunately we are of the opinion that the said ground does not make out any case of mala fide exercise of power by the Government. Specific pleadings with particulars must be there to make out a case of mala fides and the person against whom mala fides is alleged must be impleaded. No such pleadings are at all present in this case.

16. Apart from the aforesaid question, in L. Chandrasekaran, this Court held that if any reconveyance is to be made that has to be done on the basis of the present market value. The purported order of reconveyance initially made by the Government was not made on that basis either.

17. In the facts of this case there can be no question of promissory estoppel which is an equitable doctrine. In the context of the clear provision of Section 48 of the principal Act which was governing its field in 1995, when reconveyance was purportedly ordered,



equity has no application. Nor is there any scope for the principle of natural justice to operate when the person complaining of its infraction cannot show any right of his which has been violated. In the given facts of the case and the clear mandate of Section 48 of the principal Act, we do not discern any right of the landowners to apply for reconveyance in respect of a land which had vested in the Government long ago.”

The upshot of the above discussion is that there is nothing to interfere with the impugned land acquisition proceeding. Consequently, the writ petition is to be dismissed.

Accordingly, the Writ petition is dismissed.

nvj/JV/DM

Sd/-
P.V.KUNHIKRISHNAN
JUDGE

**APPENDIX OF WP(C) 14680/2019**

PETITIONER EXHIBITS

- EXHIBIT P1 TRUE COPY OF THE JUDGMENT DATED 31.07.1991 IN LAR NO.42/1988 OF THE ADDITIONAL SUB COURT, IRINJALAKUDA.
- EXHIBIT P2 TRUE COPY OF THE JUDGMENT DATED 3.12.1998 IN LAA NO.304/1994 OF THE HON'BLE HIGH CURT OF KERALA
- EXHIBIT P3 TRUE COPY OF THE NOTICE DATED 2.1.2017 SENT BY THE PETITIONER TO THE 2ND RESPONDENT.
- EXHIBIT P4 TRUE COPY OF THE REPRESENTATION DATED 23.1.2017 SENT BY THE PETITIONER TO THE 2ND RESPONDENT.
- EXHIBIT P4 TRUE COPY OF THE ACKNOWLEDGEMENT CARD DATED 20.02.2017 FOR RECEIPT OF EXT-P8.
- EXHIBIT P5 TRUE COPY OF THE JUDGMENT DATED 6.4.2017 IN WPC NO.12169/2017(U) OF THE HON'BLE HIGH COURT OF KERALA,
- EXHIBIT P6 TRUE COPY OF THE ORDER NO.E3-9449/2017 DATED 15.10.2017 OF THE 2ND RESPONDENT.
- EXHIBIT P7 TRUE COPY OF THE JUDGMENT IN WPC NO.13416/2018 DATED 5.7.2018 OF THE HON'BLE HIGH COURT OF KERALA.
- EXHIBIT P8 TRUE COPY OF THE REPRESENTATION DATED 17.7.2018 SUBMITTED BY THE PETITIONER BEFORE THE RESPONDENT NO.7.
- EXHIBIT P9 TRUE COPY OF THE GO.NO.910/2019 REV. DATED 15.3.2019 OF REVENUE(L) DEPARTMENT ISSUED TO THE PETITIONER.

RESPONDENT EXHIBITS

- EXHIBIT R3(C) TRUE COPY OF BUILDING PERMIT RECEIVED FROM PERINJANAM PANCHAYATH NO.A-3-BA(256093) 2021 DATED 23/10/2021.



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EXHIBIT R3(D) TRUE COPY OF THE ADMINISTRATIVE
APPROVAL FROM CPMG DATED 29/11/2021.

PETITIONER EXHIBITS

EXHIBIT R1(F) TRUE COPY OF DIRECTORATE LETTER NO.
BDG-27/20/2022-BUILDING -DOP DATED
04.05.2022

RESPONDENT ANNEXURES

ANNEXURE A COLOUR PHOTOS OF ONGOING CONSTRUCTION
AT THE ACQUIRED PROPERTY

RESPONDENTS EXHIBITS : NIL

//TRUE COPY//

PA TO JUDGE