

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN

THURSDAY, THE 9<sup>TH</sup> DAY OF FEBRUARY 2023 / 20TH MAGHA, 1944

WA NO. 179 OF 2023

AGAINST THE JUDGMENT DATED 01.08.2022 IN WP(C) 9667/2022 OF

HIGH COURT OF KERALA

APPELLANT/3RD RESPONDENT IN WPC:

THE TOWN PLANNER, DISTRICT TOWN PLANNING OFFICER,  
NAGAMPADAM, KOTTAYAM DISTRICT, PIN - 686 002

BY ADV GOVERNMENT PLEADER

RESPONDENTS/PETITIONERS & RESPONDENTS 1 AND 2 IN WPC:

- 1 JOSEPH JACOB, S/O JACOB ITTIYAVIRA, PULICKAL HOUSE,  
MUTTAMBALAM P.O., KOTTAYAM,, PIN - 686 004
- 2 DEEPAK JACOB JOSEPH, S/O JOSEPH JACOB, PULICKAL  
HOUSE, MUTTAMBALAM P.O., KOTTAYAM, PIN - 686 004
- 3 PRADEEP JAMES JOSEPH, S/O JOSEPH JACOB, PULICKAL  
HOUSE, MUTTAMBALAM P.O., KOTTAYAM, PIN - 686 004
- 4 KOTTAYAM MUNICIPALITY, REPRESENTED BY ITS SECRETARY,  
MUNICIPAL OFFICE, YMCA ROAD, KOTTAYAM, PIN - 686 001
- 5 SECRETARY, KOTTAYAM MUNICIPALITY, MUNICIPAL OFFICE,  
YMCA ROAD, KOTTAYAM, PIN - 686 001

BY ADV V.M.KRISHNAKUMAR

K.R DEEPA - SPL. G.P (LSGD)

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON  
09.02.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

## J U D G M E N T

### A. Muhamed Mustaque, J

The simple issue in this appeal is as to the procedure to be followed after issuing a purchase notice under Section 67(2) of the Kerala Town and Country Planning Act, 2016 (for short "Act"). The learned Special Government (LSGD), after referring to Section 67 of the Act, would submit that a land owner after issuing notice under Section 67(2) of the Act will have to wait till the variation proceedings are concluded under the approved Master Plan or the Detailed Town Planning Scheme (for short DTP Scheme).

2. The clarity of the law is required in regard to the procedure to be followed in this matter. It is appropriate to refer Section 67 of the Act, which reads thus:

***"Obligation to acquire land in certain cases. - (1) Where any land is designated for compulsory acquisition in a Master***

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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

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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:

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*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."*

3. Section 67(2) of the Act states that a purchase notice has to be issued by a land owner in respect of a land which has been earmarked for acquisition under the approved Master Plan or DTP Scheme so as to meddle with his land, which has been earmarked for public purposes. There are two sets of procedures envisaged under Section 67 of the Act. They are;

- 1) In respect of acquisition by local authority.
- 2) Acquisition by the Government or Government Agencies.

4. In respect of the local authorities, the local authority has to act within sixty days after the issuance of purchase notice for compulsorily acquiring the land for the purpose

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of the local authority. (see Section 67(2) of the Act).

5. In respect of the Government acquisition, the Government will have to act within six months for acquisition of the land for Government purposes. (see Section 67(7) of the Act).

6. The learned Special Government, placing reliance on Section 67(4) and proviso to Section 67(7) of the Act, would argue that the variation of the plan is mandatory if no action is taken for acquiring the land within the period of purchase notice. This is the question to be decided in this appeal.

7. *Per contra*, the learned Senior counsel appearing for the writ petitioner, who are the party respondents in this appeal, submits that the property owner cannot be indefinitely deprived of enjoying his property in accordance with law and he cannot be asked to wait

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indefinitely to complete the formalities relating to the variation of the Plan. It is submitted that the variations are the formalities for internal purpose of the administration and not to sustain any objectives of the Master Plan or the DTP Scheme.

8. The learned Senior Counsel placed reliance on the judgments in ***Padmini v. State of Kerala [1999 (3) KLT 465]***, ***District Town Planner, Malappuram and Others v. Vinod and Other [2019 (3) KLT 154]*** and ***Pradeep Kumar P.B and Others v. Maradu Municipality and Others [2022 (2) KLT 523]***.

9. On assimilation of the various provisions under Section 67 of the Act, it can be observed that once a purchase notice is issued and the authority is failed to act within the time as stipulated under the Statute, the right is crystalised on the land owner to use the land for any purpose in accordance with law and he is

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not bound by the approved Master Plan or DTP Scheme. It is true that the formalities have to be complied as regards to the variation. That is a procedure to be followed for logical conclusion for the public records. That cannot prevent a land owner from utilising his land in accordance with law. The procedure to be followed cannot be considered as a clog on the right of the land owner, consequent upon not acting on the purchase notice.

10. The proviso to Section 67 of the Act stipulates the local authority to act upon the applications for building permits etc. in consultation with the Chief Town Planner. This is only to ensure that Chief Town Planner is put on notice in regard, not acquiring the land which was proposed to be acquired in the Master Plan or DTP Scheme. That itself is not an embargo for the local authority in acting upon the building permit application in accordance with law.

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11. It is also to be noted that the consultation referred to in proviso to Section 67 of the Act cannot be treated as concurrence of Chief Town Planner for granting development permit. The embargo on the land would stand automatically released from the approved Master Plan or the DTP Scheme after the lapse of period mentioned in the purchase notice.

12. In such circumstances, we are of the view that the rest of the matters are only a formality to be completed for the purpose of the record of the administration of the public authorities.

13. The Chief Town Planner is free to note this variation in the approved Plan in the Master Plan or the DTP Scheme as the case may be. The local authority shall intimate the Chief Town Planner about the applications received, if any, from the writ petitioner and proceed for consideration of the building permit, if any,

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filed without awaiting the final approval of variation by the Chief Town Planner as contemplated under the statutory provision. Local authority shall consider the application for building permit within the period granted under the Statute.

This Writ Appeal is disposed of as above.

**Sd/-**

**A.MUHAMED MUSTAQUE**

**JUDGE**

**Sd/-**

**SHOBA ANNAMMA EAPEN**

**JUDGE**

**PR**