



2023/KER/73653

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

FRIDAY, THE 24TH DAY OF NOVEMBER 2023 / 3RD AGRAHAYANA, 1945

WP(C) NO. 6533 OF 2023

PETITIONERS:

1 P.H. BABU ANSARI

2 P.H. AZAD

BY ADVS.

SRI.V.V.ASOKAN (Sr.)

SRI.K.I.MAYANKUTTY MATHER

SMT.T.K.SREEKALA

SMT.S.PARVATHI

RESPONDENTS:

1 THE MUNICIPAL COUNCIL
KOTTAYAM MUNICIPALITY,
YMCA ROAD,
KOTTAYAM P.O., PIN - 686001
REPRESENTED BY ITS MUNICIPAL CHAIRPERSON

2 THE SECRETARY
KOTTAYAM MUNICIPALITY,
MUNICIPAL OFFICE,
YMCA ROAD,
KOTTAYAM P.O., PIN - 686001

3 KOTTAYAM MUNICIPALITY
REPRESENTED BY ITS SECRETARY,
YMCA ROAD,



KOTTAYAM P.O., PIN - 686001

4 STATE OF KERALA
REPRESENTED BY ITS PRINCIPAL SECRETARY
LOCAL SELF GOVERNMENT DEPARTMENT (URBAN),
SOUTH BLOCK, SECRETARIAT,
THIRUNANANTHAPURAM P.O., PIN - 695001

5 CHIEF TOWN PLANNER
OFFICE OF THE CHIEF TOWN PLANNER,
DEPARTMENT OF TOWN AND COUNTRY PLANNING,
SWARAJ BHAVAN, 2ND FLOOR,
NANTHANKODE, KOWDIAR P.O.
THIRUVANANTHAPURAM, PIN - 695003

BY ADVS.

SMT.K.AMMINIKUTTY, SR. GOVT. PLEADER
SRI.C.S.MANILAL, SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 30.10.2023, THE COURT ON 24.11.2023 DELIVERED
THE FOLLOWING:

**"C.R"****BECHU KURIAN THOMAS, J.****-----
W.P.(C) No.6533 of 2023
-----**Dated this the 24th day of November, 2023**JUDGMENT**

Writ Petitioners seek directions to exclude their property from the category of 'Park and Open space' as stipulated in the Structural Plan/Master Plan for Kottayam. Petitioners also seek for a direction to accept their applications for building permits and to grant permissions to construct buildings without reference to the Master Plan.

2. Petitioners are the owners of an extent of 137.86 Ares and another 176.52 Ares of land in Block No.18 of Muttambalam Village, Kottayam. Petitioners allege that though the total area of 314.38 Ares is earmarked as 'Park and Open Space' in the Master Plan for Kottayam, which was sanctioned on 14.05.2020, the Municipality ought to have acquired the land for establishing the said park. Despite the lapse of two years from the date the Master Plan came into operation, the Municipality failed to take any steps to acquire the property. In such a situation,



petitioners issued purchase notices under section 67(1) of the Kerala Town and Country Planning Act, 2016 (for short 'the Act'). Though the notices were served on the respondents on 02.12.2022, there has been no response and therefore, the statutory scheme contemplated under the said provision will apply. Petitioners also allege that their applications for building permits will have to be considered without regard to the Master Plan.

3. A statement has been filed on behalf of the respondents contending that the property was included in the Master Plan and is earmarked for 'Park and Open Space' and that no construction can be permitted. It is stated that if the petitioners have to carry out constructions, they have to get approval from the Chief Town Planner/the District Town Planner and that in the instant case, no such approval has also been obtained. The Municipality alleges that the notice produced in the writ petition is not a purchase notice prescribed under the Act. It was pointed out that, in the absence of a purchase notice issued in the prescribed form, as contemplated under the Statute, the Municipality has no obligation to consider such a notice. It was also submitted that the application for building permit submitted by the petitioners



was dismissed on 11.08.2022 and that the same has not been challenged.

4. I have heard Sri.V.V.Asokan, learned Senior Counsel duly instructed by Sri.Anand Geo on behalf of the petitioners as well as Sri.C.S.Manilal, the learned Standing Counsel for the Municipality apart from Smt. K.Amminkutty, the learned Senior Government Pleader.

5. Admittedly, petitioners' properties have been earmarked as 'Park and Open Space' as per the Master Plan. The scheme envisaged under the Master Plan can be implemented only by acquiring those properties. Thus, petitioners' properties are designated for compulsory acquisition under the Master Plan. Concededly, the Master Plan was notified by the Government on 14.05.2020. Therefore, steps for acquisition of the property ought to have been taken within two years from the date of coming into operation of the Master Plan. No such steps have been initiated.

6. In the decision in **P.B.Pradeep Kumar and Ors. v. Maradu Municipality and Ors.** (2022 (3) KHC 253), a Division Bench of this Court, after elaborately considering the various decisions, held that:



"23. In that view of the matter, we have no hesitation to hold that whenever a property is earmarked for acquisition for any purpose in any structural plan or Detailed Town Planning Scheme, definitely the property has to be seen as a property designated for compulsory acquisition.

xxx xxx xxx xxx
xxx xxx xxx xxx

26. Therefore, reading together the provisions of section 67 and section 50, necessary action will have to be taken, if the Government or the Municipal Corporation is not intending to acquire the property on receipt of notice under section 67 of Act, 2016. If such an interpretation is not provided to section 67, then the owner of a property, whose property is designated in any Master Plan or Town Planning Scheme, will not be in a position to develop the property to his advantage.

xxx xxx xxx xxx
xxx xxx xxx xxx

37. Now coming back to the facts of the case on hand, it is evident that a notice was issued under section 67 of Act, 2016 by the appellants, which was forwarded by the Secretary of the Maradu Municipality to the State Government. However, the State Government declined acquisition on the ground that section 67 would not come into play, thus coercing the Government to acquire the property. Therefore, on an analysis of the legal and factual circumstances, it is clear that the modalities contained under section 67 of Act, 2016 is completed and therefore, the Secretary of the Municipality is liable to consider the building permit application submitted by the appellants in accordance with the provisions of the Kerala Municipality Act, 1994 and the Kerala Municipality Building Rules, 2019, which is in force now."

7. In the instant case, on noticing that steps have not been initiated for acquiring the property set apart as a park and open space, petitioners issued a notice purporting to be under section



67(1) of the Act. Though the statutory provision requires that the purchase notice be issued 'in the manner as may be prescribed' admittedly, a format for notice has not been prescribed.

8. Two rules have been framed known as കേരള നഗര-ഗ്രാമാസൂത്രണ (വിശദ പദ്ധതി രൂപീകരണവും അനുമതി നൽകലും) ചട്ടങ്ങൾ, 2021, which translates to the Kerala Town and Country Planning Detailed Town Planning Scheme Formulation and Permission Rules, 2021 and കേരള നഗര-ഗ്രാമാസൂത്രണ (മാസ്റ്റർപ്ലാനിന്റെ രൂപീകരണവും അനുമതി നൽകലും) ചട്ടങ്ങൾ, 2021, which translates as Kerala Town and Country Planning (Formulation of Master Plan and Grant of Permission) Rules, 2021. However, no form has been prescribed for purchase notice in both the above Rules.

9. In fact, the Rules are framed only in Malayalam language and not in English. The drafters of the Rules have lost sight of the various requirements of the Statute and even the Constitution of India. Failure of the rule making Authority to prescribe a form as mandated by the Rules cannot deprive the right of an owner under the Act, especially when there is



substantial compliance of the requirements of the Statute. The substantive nature of section 67 of the Act cannot be controlled by the procedural requirement of issuing a 'notice in the prescribed manner', especially when the Rules do not prescribe a form for notice. If the form of notice as contemplated by the Statute has not been prescribed by the Rules, the parties are at liberty to issue a notice conveying the intent and purpose of a notice contemplated under the Statute. The absence of a prescribed form cannot deprive the constitutional and statutory right of an owner of a property to use his land. Failure of the rule making authority to perform their obligations under the Statute cannot be a burden on the owner of a property.

10. In this context, it is apposite to point out that the Legislature and the Rule making authority are bound to issue an English translation, simultaneous with the introduction and passing of the law and the Rules. The requirement of an English text is a Constitutional obligation and cannot be avoided. In the decision in **Thanga Dorai v. Chancellor, Kerala University** (1995 (2) KLT 663), it was held that as per Article 348(3) of the Constitution of India, the translation in English language shall be deemed to be the authoritative text of the Bill, Act or Ordinance



etc. So whenever a Bill is introduced in the Legislature, or an Act is passed by the Legislature or an Ordinance is promulgated by the Governor or any order, rule, regulation or bye-law is issued in exercise of the powers to make Subordinate Legislation English translation of the legislation should be published simultaneously. The Court noted that, of late, such English translations are not forthcoming immediately after the passing of the Act, the promulgation of the Ordinance, or the issue of order, rule, regulation, bye law etc., which is against the Constitutional provision contained in Art.348(3) of the Constitution. The Government and the Legislature cannot ignore the said constitutional mandate.

11. Again, in **Murali Purushothaman v. State of Kerala** (2002 (1) KLT 698), a Division Bench of this Court also noticed that Art.348(1)(b) of the Constitution requires that the authoritative texts of all Bills and all Acts passed by the Legislature and of all Ordinances promulgated by the Governor of a State, including all orders, rules, regulations and bye-laws issued under this Constitution or under any law made by the Legislature of a State to be in the English language. Art.348(3) of the Constitution permits usage of any local language other



than English for use in the Legislature of the State but requires that a translation of the same in the English language be published under the authority of the Governor of the State in the Official Gazette of that State which shall be deemed to be the authoritative text thereof in the English language, as required by the said Article.

12. The need for publishing statutes and rules in English language need not be reiterated. When a State like Kerala opens its invitation for people from all over the world to invest, it would be incongruous if the laws are incomprehensible to them. The importance of English as an international language of communication and comprehension within and outside the Country cannot be ignored. Parochial considerations have to be kept aside while contemplating growth and development of the State. Enacting laws in English as mandated by the Constitution in a diverse country like India, will not have any bearing on the growth of the regional language. On the other hand, it can enhance the growth potential of the State as an investment destination with better awareness about its laws. Therefore, this Court reminds the State Government to abide by the Constitutional obligation to prepare the texts of all Statutes,



Rules and other enactments in English, lest this Court be compelled to issue appropriate directions in that regard. In the instant case, this Court restrains from issuing such directions since a relief of such a nature has not been sought.

13. Be that as it may, as the form contemplated under section 67 of the Act has not been prescribed, and since petitioners have already issued purchase notices (Ext.P1 and Ext.P2), those notices are to be deemed as notices issued as per Section 67 of the Act. Since the properties of the petitioners have not been acquired consequent to the purchase notices, their applications for building permit are bound to be considered without reference to the Master Plan.

14. Hence, there will be a direction to the 2nd respondent to process the applications for building permit submitted by the petitioners, as expeditiously as possible, within the time limit prescribed under law, without reference to the Master Plan of Kottayam.

The writ petition is allowed as above.

Sd/-
BECHU KURIAN THOMAS
JUDGE

vps



APPENDIX

PETITIONER'S/S' EXHIBITS

- Exhibit P1 TRUE COPY OF THE PURCHASE NOTICE ISSUED BY 1ST PETITIONER UNDER SECTION 67 OF THE KERALA TOWN AND COUNTRY PLANNING ACT, 2016 DATED 30.11.2022
- Exhibit P2 TRUE COPY OF THE PURCHASE NOTICE ISSUED BY 2ND PETITIONER UNDER SECTION 67 OF THE KERALA TOWN AND COUNTRY PLANNING ACT, 2016 DATED 30.11.2022
- Exhibit P3 TRUE PHOTOCOPY OF THE POSTAL RECEIPTS EVIDENCING DISPATCH OF EXT. P1 AND EXT.P2 NOTICES TO RESPONDENTS 1 AND 2
- Exhibit P4 TRUE COPY OF THE RELEVANT PAGE OF THE POSTAL ACKNOWLEDGEMENT REGISTER