

Kerala High Court

E.N.Nishad vs Special Secretary on 27 July, 2010

IN THE HIGH COURT OF KERALA AT ERNAKULAM

WP(C).No. 14957 of 2009(L)

1. E.N.NISHAD, S/O.ISMAIL PILLAI,
... Petitioner

Vs

1. SPECIAL SECRETARY,
... Respondent

2. SECRETARY,

3. CHIEF TOWN PLANNER,

4. THE TOWN PLANNING OFFICER,

5. STATE OF KERALA - REPRESENTED BY CHIEF

For Petitioner :SRI.N.N.SUGUNAPALAN (SR.)

For Respondent :SRI.N.NANDAKUMARA MENON (SR.)

The Hon'ble MR. Justice T.R.RAMACHANDRAN NAIR

Dated :27/07/2010

O R D E R

T.R. RAMACHANDRAN NAIR, J.

W.P.(C) Nos.14957, 20608, 23574,
24229, 29325 & 33926 OF 2009
& 1450 OF 2010

Dated this the 27th day of July, 2010.

J U D G M E N T

All these writ petitions concern the challenge against the orders passed by the Corporation rejecting the applications for building permits. In W.P.(C) No.14957/2009, the order has been produced as Exhibit P4. The reason stated for rejection is that the property is earmarked under the Medical College Area Development Scheme as the land for Medical College Staff Quarters, which is the common reason shown in other cases also.

2. Heard the learned counsel appearing for the petitioners, learned Senior Counsel appearing for the Corporation and the learned Government Pleader.

3. Mainly it is contended that the scheme in question was notified way back in the year 1976 and thereafter, nothing was done by the respondents to implement the scheme. It is also W.P.(C) No.14957/2009 & conn. cases 2 pointed out that permits have been issued to different parties pursuant to the directions issued by this Court in Exhibits P1, P2, P3, P5 and P7 judgments. Therein, reliance is placed on an earlier decision of this Court in Padmini vs. State of Kerala (1999 (3) KLT 465) and that of the Apex Court in Raju S.Jethmalani vs. State of Maharashtra [(2005) 11 SCC

222).

4. Learned Senior Counsel appearing for the Corporation submitted that the dictum laid down in the above cases will apply only in cases where acquisition for implementing the schemes are necessary and they may not apply in cases where restrictions are made on the basis of zoning regulations.

5. It is pointed out that this Court in R.P.No.1073/2009 has clarified the above legal position. The question, therefore, is whether for implementing the scheme as envisaged herein acquisition will be necessary. The scheme in question is named as 'Medical College Area Development Scheme'. Evidently, the details of the scheme could be worked out only by making W.P.(C) No.14957/2009 & conn. cases 3 available the land that also from persons occupying different plots in the area in question. In that view, proceedings under the Land Acquisition Act will have to be initiated by the Corporation evidently to implement the scheme.

6. In the counter affidavit filed by the 3rd respondent, in paragraph 3, it is mentioned that as per the scheme the Survey Number 920(part) of Cheruvakkal village is earmarked for land proposed for acquisition, for Medical College Staff quarters. Mention has been made about the major projects to be implemented in accordance with the scheme.

7. Of course, if the objection is taken only on the ground of zoning regulations, the stand taken by the Corporation that the zoning regulations do not require proceedings under the Land Acquisition Act will have to be accepted. But, herein the position is different. The scheme itself was considered by a learned Single Judge of this Court in O.P.Nos.24089 and 34791/2001. Therein this Court held that even after 14 years, no action has been taken to modify the scheme and the scheme remains W.P.(C) No.14957/2009 & conn. cases 4 without implementation for the last 30 years, causing great prejudice to the petitioners therein. The said dictum applies herein also.

8. I am not called upon to decide the validity of the scheme in these writ petitions. But, still the question is whether without acquiring the properties the scheme can be implemented. Evidently, only by resorting to proceedings under the Land Acquisition Act or by negotiated purchase, the Corporation could make available the required land for the implementation of the scheme. So far no action has been taken, even after the lapse of 34 years.

9. In that view of the matter, the dictum laid down in *Padmini vs. State of Kerala* (1999 (3) KLT 465) and in *Raju S.Jethmalani vs. State of Maharashtra* [(2005) 11 SCC

222) will apply squarely to the facts of these cases.

Therefore, the impugned orders are quashed. There will be a direction to the Corporation to reconsider the applications for building permits in accordance with the Kerala Municipality W.P.(C) No.14957/2009 & conn. cases 5 Building Rules and take appropriate decision without reference to the Scheme and pass final orders within a period of two months from the date of receipt of a copy of this judgment.

These writ petitions are allowed as above. No costs.

T.R. RAMACHANDRAN NAIR JUDGE smp