

Shersha a vs the State of Kerala

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Court : Kerala

Decided On : Aug-09-2024

Judge : Honourable Mr.Justice Basant Balaji

Appeal No. : WP(C)/20614/2020

Appellant : Shersha a

Respondent : The State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE BASANT BALAJI
FRIDAY, THE 9TH DAY OF AUGUST 2024 / 18TH SRAVANA, 1946
W.P.(C) NO.19652 OF 2020 PETITIONERS: 1 HILAL .B., AGED 49
YEARS, S/O. M. BADARUDEEN, NEELACHARAZHIKATH HOUSE,
KANNANALLOOR P.O, KOLLAM DISTRICT, PIN 691 576 2 NAVAS .B,
AGED 47 YEARS, S/O. M. BADARUDEEN, AL-BISHARA,
KANNANALLOOR P.O, KOLLAM DISTRICT, PIN 691 576 BY ADVS.
P.CHANDRASEKHAR SRI.K.K.MOHAMED RAVUF SMT.K.VIDYA
SHRI.SATHEESH V.T. RESPONDENTS: 1 THE STATE OF KERALA,
REPRESENTED BY PRINCIPAL SECRETARY, PUBLIC WORKS
DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695

001.

2 THE CHIEF ENGINEER (DESIGN), PROJECT PREPARATION UNIT, PUBLIC WORKS DEPARTMENT, THIRUVANANTHAPURAM, PIN - 695 033 3 THE EXECUTIVE ENGINEER, PUBLIC WORKS DEPARTMENT, ROAD WORKS, BEACH ROAD, KOLLAM, PIN - 691 001 4 THE DISTRICT COLLECTOR, CIVIL STATION, KOLLAM, PIN 691 013 5 THE SPECIAL TAHSILDAR (LA NO.2), MINI CIVIL STATION, KUNDARA, KOLLAM, PIN 691 501 GOVERNMENT PLEADER, SRI. RIYAL DEVASSY THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 23.09.2020,

ALONG WITH WP(C).NOS.20241/2020, 20614/2020 & 20937/202, THE COURT ON 09.08.2024 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE BASANT BALAJI FRIDAY, THE 9TH DAY OF AUGUST 2024 / 18TH SRAVANA, 1946 W.P.(C) NO.20241 OF 2020 PETITIONERS: A. NUJUMUDEEN, AGED 58 YEARS, S/O. ABDUL KADER, KUNHULABBA, RESIDING AT AR HOUSE, KANNANNALLOOR, KOLLAM 691 576. BY ADVS. P.CHANDRASEKHAR SRI.K.K.MOHAMED RAVUF SMT.K.VIDYA SHRI.SATHEESH V.T.

RESPONDENTS: 1 THE STATE OF KERALA, REPRESENTED BY PRINCIPAL SECRETARY, PUBLIC WORKS DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM - 695 001. 2 THE CHIEF ENGINEER(DESIGN), PROJECT PREPARATION UNIT, PUBLIC WORKS DEPARTMENT, THIRUVANANTHAPURAM - 695 033. 3 THE EXECUTIVE ENGINEER, PUBLIC WORKS DEPARTMENT, ROAD WORKS, BEACH ROAD, KOLLAM - 691 001. 4 THE DISTRICT COLLECTOR, CIVIL STATION, KOLLAM - 691 013. 5 THE SPECIAL TAHSILDAR (L.A. NO. 2), MINI CIVIL STATION, KUNDARA, KOLLAM

691 501. SR. GOVERNMENT PLEADER, SRI. BIMAL K. NATH THIS WRIT PETITION (CIVIL) HAS COME UP FOR ADMISSION ON 29.09.2020, ALONG WITH WP(C) NOS.19652/2020, 20614/2020 & 20937/202, THE COURT ON 9.8.2024 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE BASANT BALAJI
FRIDAY, THE 9TH DAY OF AUGUST 2024 / 18TH SRAVANA, 1946
W.P.(C) NO.20614 OF 2020 PETITIONERS: 1 SHERSHA . A, AGED 49
YEARS, D/O.ABDUL KHADER.V, THENGAZHAKATH,
KANNANALLOOR.P.O, KOLLAM DISTRICT, PIN-691576. 2 MUBEENA,
AGED 63 YEARS, W/O. IRAHIM KUTTY, SHALIMAR BHAVAN,
PANKONAM, MUKHATHALA P.O, KOLLAM DISTRICT, PIN-691 577.
BY ADV T.R.RAJAN RESPONDENTS: 1 THE STATE OF KERALA,
REPRESENTED BY PRINCIPAL SECRETARY, PUBLIC WORKS
DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM, PIN-695
001. 2 THE CHIEF ENGINEER(DESIGN), PROJECT PREPARATION
UNIT, PUBLIC WORKS DEPARTMENT, THIRUVANANTHAPURAM,
PIN-695 033. 3 THE EXECUTIVE ENGINEER, PUBLIC WORKS
DEPARTMENT, ROAD WORKS, BEACH ROAD, KOLLAM, PIN-691
001. 4 THE DISTRICT COLLECTOR, CIVIL STATION, KOLLAM, PIN-
691 013. 5 THE SPECIAL TAHSILDAR (L.A.NO.2), MINI CIVIL
STATION, KUNDARA, KOLLAM, PIN-691 501. GOVERNMENT
PLEADER, SRI. RIYAL DEVASSY THIS WRIT PETITION (CIVIL)
HAVING COME UP FOR ADMISSION ON 1.10.2020,

ALONG WITH WP(C)NOS.19652/2020, 20241/2020 & 20937/202, THE
COURT ON 09.08.2024 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE BASANT BALAJI
FRIDAY, THE 9TH DAY OF AUGUST 2024 / 18TH SRAVANA, 1946

W.P.(C) NO.20937 OF 2020 PETITIONERS: 1 MOHAMMED SHAFI .B, AGED 45 YEARS, S/O.BASHEERKUTTY, ARATTUVILAVEEDU, KANNANALLOOR P.O., KOLLAM DISTRICT, PIN-691 576 2 JUBAIRIYA SHAFI, AGED 37 YEARS, W/O.MOHAMMED SHAFI .B., SHA MANZIL, KANNANALLOOR P.O., KOLLAM DISTRICT, PIN-691 576 3 HASEENA, AGED 32 YEARS, W/O.MUHAMMED SHAJI, ARATTUVILAVEEDU, KANNANALLOOR P.O., KOLLAM DISTRICT, PIN-691 576 BY ADV T.R.RAJAN RESPONDENTS: 1 THE STATE OF KERALA, REP.BY PRINCIPAL SECRETARY, PUBLIC WORKS DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM, PIN-695 001. 2 THE CHIEF ENGINEER (DESIGN), PROJECT PREPARATION UNIT, PUBLIC WORKS DEPARTMENT, THIRUVANANTHAPURAM, PIN-695 033 3 THE EXECUTIVE ENGINEER, PUBLIC WORKS DEPARTMENT, ROAD WORKS, BEACH ROAD, KOLLAM, PIN-691 001 4 THE SPECIAL TAHSILDAR (L.A.NO.2), MINI CIVIL STATION, KUNDARA, KOLLAM, PIN-691 501 SR. GOVERNMENT PLEADER, SRI. BIMAL K. NATH THIS WRIT PETITION (CIVIL) HAS COME UP FOR ADMISSION ON 7.10.2020, ALONG

WITH WP(C). NOS.19652/2020, 20241/2020 & 20614/202, THE COURT ON 09.08.2024 DELIVERED THE FOLLOWING:

JUDGMENT

(Dated: 9th August, 2024) In view of the involvement of common questions of law and the similarity of facts in all these writ petitions, they have been heard together and are being decided by a common judgment. For the narrative purpose, the facts and the documents from W.P.(C) No. 19652 of 2020 are taken as the basis.

2. Brief facts of the case are that the writ petitioners are

businessmen owning properties at Kannanalloor Junction, Kollam, where they run businesses in their respective buildings. The 1st petitioner holds 40 square meters of land and a building on Survey No.616/21-2, located in Thrikovilvattom Village, Kollam Taluk, Kollam District. This property was acquired by the 1st petitioner

through Ext.P1 Registered Partition Deed No.3421/2010 dated 28.07.2010. The 2nd petitioner, who is the younger brother of the 1st petitioner owns 60 square meters of land (Ext. P1). The petitioners properties are situated along the Kannanalloor-Kundara main road near Kannanalloor Junction. The respondents have proposed a development plan for Kannanalloor Junction. The study for this development was initially undertaken by the 2nd respondent and assigned to M/S. Synergy, and they submitted a report as Ext.P4. This work comes under the Kerala Infrastructure and Investment Fund Board.

3. The respondents, however, did not accept the report

from M/S. Synergy, consequently, the 2nd respondent got another report prepared by their own office. Ext.P5, outlines several suggestions for reducing traffic congestion at Kannanalloor Junction, including standardized road signs, proper pavement markings, adequate drainage, wider footpaths, and one-way traffic through a residential road on the left side of Kollam-Kundara Road.

4. The petitioners' case is that if the alignment suggested

in Ext.P5 is implemented, there would be no need to acquire their lands and buildings, where the petitioners and several other shop owners conduct their businesses. Subsequently, Ext.P5 was modified by Ext.P6, and another alignment plan was prepared by the 2nd respondent. The petitioners also submitted that the buildings belonging to them are 100 meters away from Kannanalloor junction, and contend that acquiring their properties is unnecessary and that the funds could be better used elsewhere.

5. On 28.11.2019, the petitioners submitted a detailed

petition as Ext.P7 to the 4th respondent, objecting to the alignment in Ext.P6 and requesting that their properties need not be acquired and suggesting an alternative alignment. Ext.P7 was forwarded to the Honble Chief Minister, and remarks were called from the 3rd respondent. The 3rd respondent by letter dated 05.02.2020, indicated that the proposed alignment in Ext.P6 was necessary to develop the junction according to IRC norms and to complete the project within a budget of

28.42 crores. 11 suggestions made by the petitioners in Ext.P7 were not considered by the 3rd respondent in Ext.P8.

6. The petitioners came to know of Ext.P9 notification No.

C-83/2020(1) dated 08.05.2020, published in the Official Gazette on 01.07.2020, issued under Section 6(1) of Kerala Survey and Boundaries Act, 1961 (for short Boundaries Act, 1961), which announced the Survey and Demarcation of their land and other shop owners land on the side of Kannanalloor-Kundara road by the 5th respondent. The petitioners filed objections on 15.09.2020, as Exts.P10 and P11. The petitioners also submitted similar petitions to the other respondents.

7. The petitioners assert that Ext.P9 is illegal and

unauthorized, as Section 6(1) Boundaries Act, 1961, can only be invoked following an order under Sections 4 or 5 of the said Act. Since there are no such orders for surveying their lands, Ext.P9 is deemed to be invalid. Furthermore, only a Survey Officer appointed under Section 6 of the Act is authorized to perform the duties related to land survey. Therefore, the 5th respondent lacks the authority to invoke Section 6. The petitioners also point out that opposite to their properties, there is Government-owned puramboke land that could be used for road widening if necessary, avoiding the demolition of businesses and unnecessary land acquisition. Their alternative alignment proposal, submitted on 28.11.2019, was intended to address these concerns. The proposed acquisition and alignment are not in the public interest but primarily to benefit the PWD contractors and officials who support them. The petitioners believe that the actual traffic at Kannanalloor Junction is less severe than reported and that a proper Social Impact Assessment (SIA) under Sections 4 to 6 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act, 2013 (for short Act, 2013) would reveal these facts.

8. According to Sections 4 to 6 of the Act, 2013, SIA is

required before land acquisition. The petitioners claim that the required assessments, including the evaluation of public purpose, affected families,

alternative places, etc.. were not conducted, and deciding to acquire their land is unconstitutional and arbitrary. The petitioners contended that a SIA by an expert group is mandatory under the Act, 2013. Given that the Kannanalloor junction development has been under consideration since 2018, they have stated that the matter is not urgent, and proper SIA and public hearings are mandatory. Aggrieved by the same, the petitioners have approached this Court with these Writ Petitions, with the following prayers.

- i. Call for the records leading to Exhibits P8 and P9 and quash the same by issuing writ of certiorari; ii. Declare that the decision of Respondents to acquire the lands of the Petitioners and their buildings in Survey No.616 in Thrikovilvattom village, Kollam Taluk, Kollam District is illegal arbitrary and without jurisdiction; iii. Issue a writ of mandamus or any other writ,

order or direction directing the Respondents not to

acquire the land and buildings of the Petitioners without conducting social impact assessment and except in accordance with the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013; and iv. Pass such further orders as this Honourable Court may be pleased to grant on the facts and the circumstances of the case.

9. A counter affidavit filed in W.P.(C)No.19652/2020 and

W.P.(C)No.20937/2020 by Special Tahsildar and in W.P.(C) No.20241/2020 by Chief Engineer, but the Project Preparation Unit denied all allegations in the writ petitions and prayed for dismissal of the Writ Petitions.

10. A counter affidavit by the Special Tahsildar, in which it is

contended that Kannanalloor Junction Development in Kollam District is a project announced by the Government, funded by KIIFB and Kerala Road Fund Board is

designated as the Special Purpose Vehicle for executing the project. The Land Acquisition Officer has published a notice under Section 6(1) of the Boundaries Act, 1961, only for peg marking and installation of alignment stone. Rule 9 of Chapter IV of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Kerala) Rules, 2015 (for short Kerala Rules) laid down the procedure to be followed in appointing consultancy as per Section 4 of the Act, 2013. The District Collector has taken steps to appoint an expert agency for the Social Impact Study by open quotation and the same was done by selecting Ideal Consultancy as per proceedings No.LA6-

11. The acquisition process is carried out only after

obtaining a Feasible Social Impact Study Report. The Land Acquisition Officer is empowered as per Section 4 of the Boundaries Act, 1961, to survey and demarcate the land through a Gazette notification. In this case, the notice issued under Section 6(1) to peg mark the exact place to be acquired as per the requisition received and thereby installing alignment stone. As per the Act, 2013, the acquisition proceedings start only after obtaining the SIA study report. Section 12 of the Act, 2013, deals with Preliminary survey of land and the power of officers to carry out the survey. It is evident that the Special Tahsildar attached to a Land Acquisition Unit is also a Survey Officer in matters of Land Acquisition. Sections 4A and 5 of the Kerala Survey and Boundaries Act, 1961, are not applicable in this case. Since Section 12 of the Act, 2013, authorizes the Collector (Special Tahsildar & Land Acquisition Officer) to carry out the survey and demarcation of lands to be acquired, and Section 4 of the Boundaries Act, 1961, does not need to be invoked.

12. The 'Sirkar land' mentioned in the petition, opposite the

petitioners' property, is located near Kannanalloor Junction. A part of the Government land opposite to the petitioners' property also falls within the alignment. If the 'Sirkar land' is acquired, more than enough land would be available for road widening, sparing the petitioners' property, but this would create a bend, leading to a series of future accidents. The road near the Junction would remain more or less straight. To minimize accidents, the existing alignment has

been fixed and finalized.

13. A notification under Section 4 (1) of the Act, 2013 was

published in the official Gazette No.2534 dated 27.10.2020 by entrusting Ideal Consultancy to conduct an SIA study, and conducted a SIA and the Government has approved the SIA report and Social Impact Management Plan submitted by the SIA Unit and decided to proceed with the Land Acquisition. Objections to the acquisition were heard, and the process for valuation and resettlement is ongoing. All actions were taken in accordance with the law, and the petition lacks merit and should be dismissed with costs.

14. Heard Sri.P.Chandrasekhar, learned counsel for the petitioners and Sri.Riyal Devassy, learned Government pleader.

15. The main challenge in all these Writ Petitions is Ext.P9

Notification issued under Section 6 of the Boundaries Act, 1961, is illegal, arbitrary, unreasonable, and violative of Articles 14 and 21 of the Constitution of India. Section 6(1) and its proviso of the Boundaries Act,1961, reads as follows:

6. Notification to be published by Survey Officers.-

(1) When any survey is ordered under section 4 or

section 5, the Survey Officer shall publish a notification in the Gazette in the prescribed manner inviting all persons having any interest in the land or in the boundaries of which the survey has been ordered, to attend either in person or by agent at a specified place and time and from time to time thereafter when called upon for the purpose of pointing out boundaries and supplying information in connection therewith [*****] [Provided that where the survey is ordered for the purpose of, or in connection with, the acquisition of any land under the law relating to compulsory acquisition of land for public purposes for the time being in force, the notification under this sub-section may be published in the Gazette or in two daily newspapers which, in the opinion

of the Survey Officer, have wide circulation in the locality in which the land in respect of which the survey has been ordered is situated]

Thus, it can be seen that Ext.P9 notification is issued under the proviso to Section 6(1) preceding the acquisition proceedings.

16. The main argument of the counsel for the petitioners is that only if there is an order under Section 4 or Section 5 of the Act, a notification under Section 6 can be issued, therefore Ext.P9 is illegal.

17. The learned Government Pleader argued that Ext.P9

notification is in tune with Section 6 of the Boundaries Act, and without issuing a notification under Sections 4 and 5, the State is empowered under the proviso to Section 6(1) to issue a notification for the survey of any land which is sought to be acquired. The purpose of the said survey is to identify the land which is sought to be acquired under the Act, 2013 and there is no illegality in issuing Ext. P9. He also argued that subsequent to Ext.P9, a notification under Section 4 was published in the Gazette on 20.10.2020 and Ideal Consultancy was appointed as the agency to conduct SIA. Rule 9 of the Kerala Rules authorises the Government to conduct an SIA study in accordance with the provisions of the Act by individuals or organisations which have experience in the related field. Nowhere in the writ petition, a contention is raised that Ideal Consultancy is not authorised and not capable of conducting the study.

18. The study was conducted by an agency authorised and

submitted a report wherein the petitioners were also signatories as participants in the study, therefore, they cannot feign ignorance to the SIA, thereafter SIA report was considered by an expert group under Section 7 of the Act, 2013 and made a recommendation that the land is necessary for widening the junction, thereafter Ext.P22 notification issued under Section 11 (1) of the Act, 2013 and after hearing objections under Section 15 and a declaration under Section 19 is published in the Gazette dated 22.11.2023. Therefore, what remains is only enquiry and passing of land acquisition award by the Collector under section 23. The petitioners have not

challenged any of the notices issued under the Act, 2013.

19. The counsel for the petitioners argued that when Section

6 of the Boundaries Act, 1961 was challenged and once this Court entered into a finding that the said notification was bad, all subsequent notifications issued under the Act, 2013 became void and the same need not be separately challenged. He relied on the

judgment of this Court in Sree Lekshmi Narasimha Moorthy and

Another v. State of Kerala and Another [2018 (2) KHC 426] to contend the proposition of dependent orders. The relevant paragraph is extracted below:

24. The term "dependant orders" therefore can be

expressed with certitude as orders whose operation will depend on the outcome of a challenge against an earlier order. In a given case, when an order passed by an inferior Court is challenged before a superior Court and on setting aside the order, if it results in substance undoing the consequences that followed the non - compliance of the impugned order, then the order following the impugned one is said to be a dependant order. It does not make any difference even if the suit or proceedings has been finally decided pending the challenge against the earlier order, if the reversal of it has a direct bearing on the merit of disposal of the suit or proceeding.

The counsel for the petitioners further relied on Naveen Kumar v. H. P. University and Another [2017 KHC 4564] to contend the argument of the Learned Government Pleader that, unless and until the notifications under the Act, 2013 not challenged, the writ Petition is not maintainable. The relevant paragraph of this judgment is extracted below:

12. Confronted with such a situation, learned

counsel for petitioner submits that petitioner has also prayed for any other relief, which is deemed fit and proper in interest of justice and fair play and thus he prays for direction to respondent university to grant three chances to appear in Course III of MA (Economics) in old syllabus as it would be difficult to pass Course III after a long span of discontinuation of studies in the subject concerned. He also prays for awarding reasonable amount of compensation for wasting precious years of career of petitioner and causing mental pain, agony, harassment and also dragging the petitioner in litigation. Learned counsel for respondent university submits that university is not averse to grant two chances for passing Course III to petitioner but he vehemently opposed award of compensation to petitioner on the ground that

petitioner himself was negligent in pursuing his course and after 2004 he approached the University in the year 2007. According to him, in case petitioner would have acted with due diligence and care in the year 2004, his case would have been settled at that time, there and then. The counsel also relied on the judgment of the Apex Court reported in Babu Varghese v. Bar Council of Kerala [1999 KHC 194], wherein the Apex Court held that:

25. It is the basic principle of law long settled

that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all. The origin of this rule is traceable to the decision in Taylor v. Taylor (1875) 1 Ch.D. 426 which was followed by Lord Roche in Nazir Ahmad v. King Emperor 63 Indian Appeals 372 = AIR 1936 PC 253 who stated as under : "Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all." xxxx

20. Learned Government Pleader relied on the decision of the Division Bench of this Court in State of Kerala v. Binu Sebastian, [2022 SCC OnLine Ker 5091] and relevant paragraphs are extracted below:

45. Kerala Survey and Boundaries Act, 1961, is an

Act to consolidate, amend, and unify the law relating to survey of lands and settlement of boundary disputes in the State of Kerala. Section 2(vi) of the Act defines the word survey to include all operations incidental to the determination, measurement, and record of a boundary or boundaries, or any part of a boundary and includes a resurvey. The words survey mark is defined under Section 2(vii) to mean any mark or object, erected, made, employed or specified by a Survey Officer to indicate or determine or assist in determining the position or level of any point or points.

46. Section 4 under Chapter II of the Act, 1961

deals with survey of lands. As per Section 4, Government is vested with powers to direct the survey of any land or any boundary of any land. It states that Government or, subject to the control of the Government, any officer or authority authorised by the Government in this behalf, may by notification in the Gazette, order the survey of any land or of any boundary of any land or of the boundary forming the common limit of any Government land and any registered land.

47. Section 6 of the Act, 1961 speaks about

notification to be published by Survey Officers. Sub- section (1) of Section 6 stipulates that when any survey is ordered under Section 4 or Section 5, the Survey

Officer shall publish a notification in the Gazette, in the prescribed manner, inviting all persons having any interest in the land or in the boundaries of which the survey has been ordered, to attend either in person or by agent at a specified place and time, and from time to time thereafter when called upon, for a purpose of pointing out boundaries and supplying information in connection therewith.

48. Proviso to Section 4(1) is significant in the

context, which states that where the survey is ordered for the purpose of, or in connection with, the acquisition of any land under the law relating to compulsory acquisition of land for public purposes for the time being in force, notification under this sub-section may be published in the Gazette or in two daily newspapers which, in the opinion of Survey Officer, have wide circulation in the locality in which the land in respect of which the survey has been ordered is situated. In fact, the said proviso was added to Section 6 by Act 18 of 1986 on and with effect from 19.11.1983.

49. Conjoint reading of Sections 4 and 6(1) of the

Kerala Survey and Boundaries Act, 1961, along with the proviso, makes it amply clear that State Government is vested with powers to conduct survey of any lands or boundary of any land which can also be for the purpose of, or in connection with the acquisition of any land under the law relating to compulsory acquisition of land for public purposes for the time being in force. XXX

21. The second prayer in the writ petition for a declaration

is that the decision of the respondents to acquire the lands of the respondents and their buildings is illegal, arbitrary, and without jurisdiction. Without challenging the notification issued under Act, 2013, such a declaration cannot be granted.

22. It is to be borne in mind that when the writ petition was

filed on 19.09.2020 the notification under section 11 was not published. As far as the third prayer is concerned the direction sought is not to acquire the land and building without conducting SIA except in accordance with the Act, 2013. Petitioners themselves have produced Ext.P21, which is the final report of SIA, so the said prayer now becomes infructuous.

23. As contended by the learned Government Pleader is

whether the petitioners can challenge the notification issued under Act, 2013 without pleadings and without specifically challenging it by amending the writ petition. Definitely, the answer is no. In the decision reported in *Trojan & Co. Ltd. v. Nagappa Chettiar*, (1953) 1 SCC 456, it was held by the apex Court that:

38. XXX It is well settled that the decision of a case

cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be found. Without an amendment of the plaint the court was not entitled to grant the relief not asked for and no prayer was ever made to amend the plaint so as to incorporate in it an alternative case. XXX In the decision reported in *Bharat Amratlal Kothari v. Dosukhan Samadkhan Sindhi*, [(2010) 1 SCC 234], the Apex Court

held that:

29.XXX. Every petition under Article 226 of the Constitution must contain a relief clause. Whenever the petitioner is entitled to or is claiming more than one relief, he must pray for all the reliefs. Under the provisions of the Code of Civil Procedure, 1908, if the plaintiff omits, except with the leave of the court, to sue for any particular relief which he is entitled to get,

he will not afterwards be allowed to sue in respect of the portion so omitted or relinquished.

30. Though the provisions of the Code are not

made applicable to the proceedings under Article 226 of the Constitution, the general principles made in the Civil Procedure Code will apply even to writ petitions. It is, therefore, incumbent on the petitioner to claim all reliefs he seeks from the court. XXX

33. Though a High Court has power to mould

reliefs to meet the requirements of each case, that does not mean that the draftsman of a writ petition should not apply his mind to the proper relief which should be asked for and throw the entire burden of it upon the court. The issue was again examined by this Court in *M. Radhakrishna Pillai v. Collector*, 2024 SCC OnLine Ker 1414;

3. In *Bharat Singh v. State of Haryana* [(1988) 4 SCC

534] the Apex Court held that, when a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter affidavit, as the case may be, the Court will not entertain the point. The Apex Court

held further that there is a distinction between a pleading

under the Code of Civil Procedure Code, 1908 and a writ petition or a counter affidavit. While in a pleading, i.e., a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it.

4. In *Larsen and Toubro Ltd. v. State of Gujarat*

[(1998) 4 SCC 387] the Apex Court was dealing with a case arising out of the proceedings initiated for the acquisition of land for M/s. Larsen and Toubro Ltd. under the provisions of the Land Acquisition Act, 1894. The Apex Court noticed that, in the absence of any allegation that Rule 3 the Land Acquisition (Companies) Rules, 1963 had not been complied and there being no particulars in respect of non compliance of Rule 4 also, it is difficult to see as to how the High Court could have reached the finding

that statutory requirements contained in these Rules were not fulfilled before issuance of notification under Section 4 and declaration under Section 6 of the Land Acquisition Act. High Court did not give any reason as to how it reached the conclusion that Rules 3 and 4 had not been complied in the face of the record of the case. Rather, it returned a finding which is unsustainable that it was not possible on the basis of the material on record to hold that there was compliance with Rules 3 and 4. The Apex Court held that, it is not enough to allege that a particular Rule or any provision has not been complied. It is a requirement of good pleading to give details, i.e., particulars as to why it is alleged that there is non compliance with a statutory requirement. Ordinarily, no notice can be taken on such an allegation which is devoid of any particulars. No issue can be raised on a plea, the

foundation of which is lacking. Even where rule nisi is issued, it is not always for the department to justify its action when the court finds that a plea has been advanced without any substance, though ordinarily department may have to place its full cards before the court. On the facts of the case, the Apex Court found that the State has more than justified its stand that there has been compliance not only with Rule 4 but with Rule 3 as well, though there was no challenge to Rule 3 and the averments regarding non compliance with Rule 4 were sketchy and without any particulars whatsoever. High Court was, therefore, not right in quashing the acquisition proceedings.

5. In Narmada Bachao Andolan v. State of Madhya

Pradesh [(2011) 7 SCC 639] a Three-Judge Bench of the Apex Court held that, it is a settled proposition of law that a party has to plead its case and produce/adduce sufficient evidence to substantiate the averments made in the petition and in case the pleadings are not complete the Court is under no obligation to entertain the pleas. Pleadings and particulars are required to enable the court to decide the

rights of the parties in the trial. Thus, the pleadings are more to help the court in narrowing the controversy involved and to inform the parties concerned to the question(s) in issue, so that the parties may adduce appropriate evidence on the said issue. It is settled legal proposition that as a rule relief not founded on the pleadings should not be granted. Therefore, a decision of a case cannot be based on grounds outside the pleadings of the parties. The object and purpose of pleadings and

issues is to ensure that the litigants come to trial with all

issues clearly defined and to prevent cases being expanded

or grounds being shifted during trial. If any factual or legal issue, despite having merit, has not been raised by the parties, the court should not decide the same as the opposite counsel does not have a fair opportunity to answer the line of reasoning adopted in that regard. Such a judgment may be violative of the principles of natural justice.

It is to be noted that once a declaration is published under Section 19, it shall be conclusive evidence that the land is required for public purpose as mentioned earlier, unless and until the notification under Section 11 and Publication of the declaration under Section 19 of the Act, 2013, challenged the petitioners are not entitled to any of the reliefs from this Court, therefore the Writ Petitions are failed and are dismissed. Sd/- BASANT BALAJI, JUDGE ss APPENDIX OF WP(C) 19652/2020 PETITIONER EXHIBITS: EXHIBIT P1 A TRUE COPY OF THE PARTITION DEED NO. 3421/2010, DATED 28-07-2010. A TRUE COPY OF THE BASIC TAX RECEIPT ISSUED BY EXHIBIT P2 VILLAGE OFFICER, THRIKKOVILVATTOM VILLAGE FOR LAND TAX PAID BY THE 1ST PETITIONER, DATED 11-09-2020 A TRUE COPY OF BASIC TAX RECEIPT ISSUED BY VILLAGE EXHIBIT P3 OFFICER, THRIKKOVILVATTOM VILLAGE, IN RESPECT OF THE 2ND PETITIONER'S PROPERTY, DATED 10-03-2020 EXHIBIT P4 A TRUE COPY OF THE REPORT SUBMITTED BY M/S. SYNERGY TO THE 2ND RESPONDENT EXHIBIT P5

A TRUE COPY OF THE REPORT PREPARED BY THE OFFICE OF THE 2ND RESPONDENT AND SUBMITTED TO THE 1ST RESPONDENT EXHIBIT P6 A TRUE COPY OF THE MODIFIED ALIGNMENT PLAN OF EXHIBIT P5 PREPARED BY 2ND RESPONDENT EXHIBIT P7 A TRUE COPY OF THE PETITION DATED 28-11-2019 REFERRED BY THE PETITIONERS TO THE 4TH RESPONDENT EXHIBIT P8 A TRUE COPY OF THE LETTER DATED 05-02-2020 ISSUED BY THE 3RD RESPONDENT TO CHIEF MINISTERS PUBLIC GRIEVANCES CELL. EXHIBIT P9 A TRUE COPY OF THE NOTIFICATION NO. C-83/2020(1) DATED 08-05-2020 OF THE 5TH RESPONDENT UNDER SECTION 6(1) OF THE KERALA SURVEY AND BOUNDARIES ACT PUBLISHED IN THE KERALA GAZETTE DATED 01-07-2020 EXHIBIT P10 A TRUE COPY OF THE WRITTEN OBJECTION AGAINST EXHIBIT P9 SUBMITTED BY THE 1ST PETITIONER TO THE 5TH RESPONDENT, DATED 15-09-2020

EXHIBIT P11 A TRUE COPY OF THE WRITTEN OBJECTION AGAINST EXHIBIT P9 SUBMITTED BY THE 2ND PETITIONER TO THE 5TH RESPONDENT, DATED 15-09-2020 EXHIBIT P11(a) PHOTOGRAPHS SHOWING THAT THERE IS NO TRAFFIC CONGESTION IN KANNANALLOOR JUNCTION AND THE PETITIONERS BUILDINGS. EXHIBIT P12 TRUE COPY OF THE NOTIFICATION DATED 20.10.2020 OF THE DISTRICT COLLECTOR, KOLLAM. EXHIBIT P13 TRUE COPY OF THE PUBLIC NOTICE DATED 09.11.2020 OF THE TEAM LEADER, IDEAL CONSULTANCY, KOLLAM. EXHIBIT P14 TRUE COPY OF THE WRITTEN OBJECTIONS SUBMITTED BY THE 1ST PETITIONER TO THE DISTRICT COLLECTOR, KOLLAM. DATED 20.11.2020. EXHIBIT P15

TRUE COPY OF THE WRITTEN OBJECTIONS SUBMITTED BY THE 1ST PETITIONER TO THE TEAM LEADER, IDEAL CONSULTANCY, KOLLAM. EXHIBIT P16 TRUE COPY OF THE LETTER DATED 3.10.2020 SUBMITTED BY SRI.SHAJAHAN TO THE PUBLIC INFORMATION OFFICER, KERALA INFRASTRUCTURE INVESTMENT FUND BOARD. EXHIBIT P17 TRUE COPY OF THE REPLY LETTER DATED 6.11.2020 ISSUED BY THE STATE PUBLIC INFORMATION OFFICER, KERALA INFRASTRUCTURE INVESTMENT FUND BOARD TO SRI.SHAJAHAN.

TRUE COPY OF THE LETTER DATED 10.11.2020 ISSUED BY THE EXHIBIT P18 STATE PUBLIC INFORMATION OFFICER, PROJECT MANAGEMENT UNIT, KERALA ROAD FUND BOARD TO SRI.SHAJAHAN. EXHIBIT P19 TRUE COPY OF GOOGLE MAPS SHOWING THE WIDTH OF THE ROAD AT THE STARTING POINT OF KOTTIYAM-KUNDARA ROAD. EXHIBIT P20 TRUE PHOTOGRAPHS SHOWING THE WIDTH OF THE ROAD AT THE STARTING POINT OF KOTTIYAM-KUNDARA ROAD EXHIBIT P21 TRUE COPY OF THE REPORT OF M/S IDEAL CONSULTANCY EXHIBIT P22 TRUE COPY OF THE NOTIFICATION NO.DCKLM/7595/2019-LA6 DATED 17/1/2022 OF THE DISTRICT COLLECTOR KOLLAM EXHIBIT P23 TRUE COPY OF THE OBJECTION DATED 29/1/2022 OF THE PETITIONERS APPENDIX OF WP(C) 20241/2020 RESPONDENT EXHIBITS: Exhibit R2(a) True Copy of the Investigation details along with a 20m radius round about proposal. Exhibit R2(b) True Copy of the final junction design drawing is produced. Exhibit R2(c) A true copy of design drawing of CE and EE roads in all four arms of kannanalloor junction PETITIONER EXHIBITS: EXHIBIT P1 A TRUE COPY OF THE SAID REGISTERED PARTITION DEED NO. 382/2009 DATED 02.02.2009. EXHIBIT P2 A TRUE COPY OF THE BASIC TAX RECEIPT DATED 06.05.2020 FOR LAND TAX PAID BY THE PETITIONER IN RESPECT OF HIS PROPERTY. EXHIBIT P3 A TRUE COPY OF THE REPORT SUBMITTED BY M/S. SYNERGY. EXHIBIT P4 A TRUE COPY OF THE REPORT PREPARED BY THE OFFICE OF THE 2ND RESPONDENT. EXHIBIT P5 A TRUE COPY OF THE SUBSEQUENTLY MODIFIED ALIGNMENT PLAN PREPARED BY 2ND RESPONDENT. EXHIBIT P6 A TRUE COPY OF THE PETITION DATED 28.5.2020 PREFERRED BY THE PETITIONER TO THE HONOURABLE CHIEF MINISTER. EXHIBIT P7 A TRUE COPY OF THE LETTER DATED 05.02.2020 BY THE 3RD RESPONDENT TO THE PUBLIC GRIEVANCE CELL. EXHIBIT P8 A TRUE COPY OF THE NOTIFICATION NO. C-83/2020(1) DATED 08.05.2020 OF THE 5TH RESPONDENT PUBLISHED IN OFFICIAL GAZETTE OF GOVERNMENT OF KERALA. EXHIBIT P9 A TRUE COPY OF THE WRITTEN OBJECTION DATED 17.09.2020 SUBMITTED BY THE PETITIONER TO THE 5TH RESPONDENT. EXHIBIT P10 PHOTOGRAPHS SHOWING THAT THERE IS NO TRAFFIC CONGESTION IN KANNANALLOOR JUNCTION AND THE PETITIONER

BUILDING. APPENDIX OF WP(C) 20614/2020 PETITIONER EXHIBITS EXHIBIT P1 TRUE COPY OF THE SETTLEMENT DEED NO.476/1/2017 OF KANNANALLOOR SRO. EXHIBIT P2 TRUE COPY OF THE LAND TAX RECEIPT DATED 10/07/2020 ISSUED BY THE VILLAGE OFFICER, THRIKOVILVATTOM VILLAGE. EXHIBIT P3 TRUE COPY OF SALE DEED NO.4239/85 OF KANNANALLOOR SRO EXHIBIT P4 TRUE COPY OF THE SALE DEED NO.505/96 OF KANNANALLOOR SRO EXHIBIT P5 TRUE COPY OF THE DEATH CERTIFICATE DATED 31/5/2002 ISSUED BY THE REGISTRAR OF BIRTHS AND DEATHS, THRIKOVILVATTOM GRAMA PANCHAYAT EXHIBIT P6 TRUE COPY OF THE LAND TAX RECEIPT DATED 19/9/2020 ISSUED BY THE VILLAGE OFFICER, THRIKOVILVATTOM VILLAGE. EXHIBIT P7 TRUE COPY OF THE REPORT PREPARED BY M/S.SYNERGY. EXHIBIT P8 TRUE COPY OF THE REPORT PREPARED BY THE OFFICE OF THE 2ND RESPONDENT. EXHIBIT P9 TRUE COPY OF THE MODIFIED ALINGMENT PLAN PREPARED BY 2ND RESPONDENT EXHIBIT P10 TRUE COPY OF THE PETITION DATED 29/11/2019 SUBMITTED BY THE PETITIONERS BEFORE THE 4TH RESPONDENT EXHIBIT P11 TRUE COPY OF THE ORDER DATED 28/5/2020 PAST DATE 4TH RESPONDENT. EXHIBIT P12 TRUE COPY OF THE NOTIFICATION NO.C-83/2020(1)DATED

08.05.2020 U/S 6(1) OF KERALA SURVEY AND BOUNDARY ACT 1961 ISSUED BY THE 5TH RESPONDENT AND PUBLISHED IN OFFICIAL GAZETTE OF GOVERNMENT OF KERALA ON 01.07.2020

EXHIBIT P13 TRUE COPY OF THE OBJECTIONS DATED 17/9/2020 SUBMITTED BY THE 1ST PETITIONER BEFORE THE 5TH RESPONDENT EXHIBIT P14 TRUE COPY OF THE OBJECTIONS DATED 15/9/2020 SUBMITTED BY THE 2ND PETITIONER BEFORE THE 5TH RESPONDENT EXHIBIT P15 TRUE COPY OF THE OBJECTIONS DATED 17/9/2020 SUBMITTED BY THE 1ST PETITIONER BEFORE THE 4TH RESPONDENT EXHIBIT P16 TRUE COPY OF THE OBJECTIONS DATED 15/9/2020 SUBMITTED BY THE 2ND PETITIONER BEFORE THE 4TH RESPONDENT. APPENDIX OF WP(C) 20937/2020 PETITIONER EXHIBITS EXHIBIT P1 TRUE COPY OF THE PARTITION DEED NO.190/1/2017 OF KANNANALLOOR SRO

EXHIBIT P2 TRUE COPY OF THE LAND TAX RECEIPT DATED 13/8/2020 ISSUED BY THE VILLAGE OFFICER, THRIKOVILVATTOM VILLAGE. EXHIBIT P3 TRUE COPY OF THE SETTLEMENT DEED NO.1085/I/2017 OF KANNANALLOOR SRO. EXHIBIT P4 TRUE COPY OF THE LAND TAX RECEIPT DATED 20.5.2019 ISSUED BY THE VILLAGE OFFICER, THRIKOVILVATTOM VILLAGE EXHIBIT P5 TRUE COPY OF THE SETTLEMENT DEED NO.846/I/2017 OF THE KANNANALLOOR, SRO. EXHIBIT P6 TRUE COPY OF THE LAND TAX RECEIPT DATED 18/9/2020 ISSUED BY THE VILLAGE OFFICER, THRIKOVILVATTOM VILLAGE. EXHIBIT P7 TRUE COPY OF THE REPORT PREPARED BY M/S.SYNERGY EXHIBIT P8 TRUE COPY OF THE REPORT PREPARED BY THE OFFICE OF THE 2ND RESPONDENT. EXHIBIT P9 TRUE COPY OF THE MODIFIED ALIGNMENT PLAN PREPARED BY 2ND RESPONDENT. EXHIBIT P10 TRUE COPY OF THE NOTIFICATION NO.C-83/2020 (I) DATED

08.05.2020 U/S 6(1) OF KERALA SURVEY AND BOUNDARY ACT 1961 ISSUED BY THE 5TH RESPONDENT AND PUBLISHED IN OFFICIAL GAZETTE OF GOVERNMENT OF KERALA ON 01.07.2020.

EXHIBIT P11 TRUE COPY OF THE OBJECTIONS DATED 15/9/2020 SUBMITTED BY THE 2ND PETITIONER BEFORE THE 5TH RESPONDENT. EXHIBIT P12 TRUE COPY OF THE OBJECTIONS DATED 15/9/2020 SUBMITTED BY THE 3RD PETITIONER BEFORE THE 5TH RESPONDENT. EXHIBIT P13 TRUE COPY OF THE OBJECTIONS DATED 15/9/2020 SUBMITTED BY THE 1ST PETITIONER BEFORE THE 4TH RESPONDENT. EXHIBIT P14 TRUE COPY OF THE OBJECTIONS DATED 15/9/2020 SUBMITTED BY THE 2ND PETITIONER BEFORE THE 4TH RESPONDENT. EXHIBIT P15 TRUE COPY OF THE OBJECTIONS DATED 15/9/2020 SUBMITTED BY THE 3RD PETITIONER BEFORE THE 4TH RESPONDENT.

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