

Afsal vs Union of India

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Court : Kerala

Decided On : Feb-29-2024

Judge : Honourable Mr. Justice Devan Ramachandran

Appeal No. : WP(C)/32758/2023

Appellant : AFSAL

Respondent : Union of India

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE DEVAN
RAMACHANDRAN THURSDAY, THE 29TH DAY OF FEBRUARY 2024 /
10TH PHALGUNA, 1945 PETITIONERS:

1 AFSAL AGED 42 YEARS S/O. HASSAN, POKATTUPARAMBIL
HOUSE, THENNALA GRAMA PANCHAYATH, VALAKULAM
P.O.,TIRURANGADI TALUK, MALAPPURAM DISTRICT,, PIN - 676508
2 LIBAS MOIDEEN , AGED 56 YEARS S/O. KUNHAPPU,
PALAYAKKODAN HOUSE, VALAKULAM, PERUMANNA KLARI
GRAMA PANCHAYATH, VALAKULAM P.O., TIRUR TALUK,
MALAPPURAM DISTRICT, PIN - 676508 BY ADVS. C.M.MOHAMMED

IQUABAL P.ABDUL NISHAD KEERTHI JAYAKUMAR RAIHANATH T.H.
MUHAMMED AMEEN

RESPONDENTS:

1 UNION OF INDIA REPRESENTED BY THE SECRETARY, MINISTRY
OF ROAD TRANSPORT AND HIGHWAY, NEW DELHI, PIN - 110001 2
THE SECRETARY, MINISTRY OF ROAD TRANSPORT & HIGHWAYS
TRANSPORT BHAWAN, 1, PARLIAMENT STREET, NEW DELHI, PIN -
110001 3 THE DISTRICT COLLECTOR, MALAPPURAM,
COLLECTORATE, MALAPPURAM, PIN - 676505 4 THE TAHSILDAR,
TIRURANGADI TALUK OFFICE, TIRURANGADI P.O., MALAPPURAM
DISTRICT, PIN - 676306 5 THE TAHSILDAR, TIRUR TALUK OFFICE,
TIRUR P.O., MALAPPURAM DISTRICT, PIN - 676101 6 THE
NATIONAL HIGHWAYS AUTHORITY OF INDIA - NHAI

G 5 & 6, SECTOR 10, DWARAKA, NEW DELHI , REPRESENTED BY
ITS DIRECTOR., PIN - 110075 7 THE PROJECT DIRECTOR (NHAI),
COCHIN, VII/511B, NETHELI MAVELIPURAM ROAD, MAVELIPURAM,
KAKKANAD, ERNAKULAM, PIN - 682030 BY ADV N.J.ASHWIN
SRI.SUNIL K.KURIAKOSE, GP FOR R3 TO R5 THIS WRIT PETITION
(CIVIL) HAVING COME UP FOR ADMISSION ON 29.02.2024, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioners, who are stated to be residents of the Kozhichena town, have approached this Court seeking a direction to the respondents to provide a Foot Overbridge/Vehicle Overpass at Kozhichena to solve the issue of dividing the area due to unscientific construction of the National Highway(sic). They pray that the level of the road, between chainage 283/800 and 283/900 be lowered; and assert that they have preferred Exts.P1, P4 and P7 representations before the competent Authorities for this purpose.

2. The petitioners thus pray that, either

the respondents be directed to take up the afore representations and dispose it of; or that they be ordered to construct the Foot Overbridge as requested by them.

3. In response to the afore submissions of

the petitioners - as made by their learned counsel - Sri.C.M.Mohammed Iquabal, the learned Central Government Counsel has filed a counter affidavit on behalf of respondents, wherein, the following have been stated:

5. It is respectfully submitted that with reference to the above case, all works are being executed as per IRC and MORTH guidelines. As desired by the petitioners, further inclusion of underpasses at a closer location will disrupt the entry/exit locations or make these entry/exit locations accident prone and will put an additional burden on the already scarce natural resources such as earth, aggregate as these will be required for raised profile.

6. It is also respectfully submitted that as far as matter of VOP is concerned, this office has sought report from the Independent Engineer appointed in the above

stretch and following observations was submitted:- a) The petitioners are requesting to provide Vehicular Over Pass/Foot Over Bridge in between Km.283+800 to Km. 283+900 b) Two crossing structures in form of Vehicular Over Passes have been provided as per concession agreement. 1st VOP at Km. 283+285 (515m away on northern side from the desired location) has already been constructed and being utilized by public and 2nd VOP at Km. 284+459 (559 m away on southern side from desired location) is under construction. Access has been provided through service roads on both sides and it is connecting both the Thennala and Perumama Kalari Grama Panchayaths. c) VUP at the desired location could not be accommodated without dismantling the works already constructed. d) FOB could not be provided due to non-availability of land for foundation & ramps; Further FOB's are also not necessary to be provided within 2 km of overpasses as per IRC

guidelines. Accordingly it is stated that adequate crossing structure i.e within 550m on each side has been provided for the

public use.

7. It is also submitted that currently the

works are on an advance stage of completion and it is not possible to modify the profile of the Highway and once the main highway traffic is segregated and taken over the main carriageway, there will not be any hindrance for movement of local public on the service roads as they will be safer than current conditions.

4. However, the petitioners have countered the afore counter affidavit through a reply affidavit dated 20.11.2023, wherein, they have averred as under:

It is true that there are two vehicular overpasses on the southern side and northern side as stated in the counter affidavit and it is not disputed by us. We already stated these

facts in the memorandum of writ petition. But

since Kozhichena Town is a highly populated area and the people in this are depending on the institutions on either side, either a VOP or FOB is necessary in this area If VOP could

not provide in this area, the residents will be satisfied with FOB to cross the Highway. So far as the area is concerned, construction of FOB in this area is not so costly. Since the road is going 8 meters lower from the earth level, the FOB could be constructed in a plain manner. It can be constructed from the boundary of the service road on the eastern side to the boundary of the service road on the western side. Therefore, there is no impediment in constructing FOB in this area.

5. When I consider and evaluate the afore

rival positions, it becomes evident that, even though the petitioners concede that there are two Vehicle Underpasses on the northern and southern side of the spot in question, they require a Vehicle Overpass or Foot Overbridge, asserting that Kozhichena is a very populated area and that the people on both sides are depending on institutions on either side of the Highway for their daily needs (sic). They also say that there are several educational institutions, business establishments, Government Institutions, religious institutions in the area; and that the highway would divide the town into two, incapacitating the citizens from moving across, even walking.

6. I am afraid that the afore reasons

cannot persuade this Court to issue orders as requested by them because, it is now well settled, through a catena of judgments of this Court and that of the Honble Supreme Court that, in matters relating to construction of highways and its allied facilities, it is the opinion of the experts which are paramount and cannot be substituted with that of this Court.

7. Going by the counter affidavit afore

extracted, the respondents assert that the Foot Overbridge cannot be constructed because of non availability of land to set up its foundation and that it is not necessary in any case because, it need not be provided within two kilometers of an Overpass, as per the IRC

Guidelines.

8. The petitioners, pertinently, do not

challenge this at all; and they in fact, even accede that two Vehicular Overpasses, on the southern and northern side of the area in question, have already been provided.

9. Obviously, therefore, this is not an

issue into which this Court can enter into and answer affirmatively, particularly when the construction of a Foot Overbridge is stated to be untenable because of non availability of land. If the reliefs sought for by the petitioners can be considered by this Court, it has to be first established by them that sufficient land is available for the construction of foundational ramps of the Foot Overbridge; though a further question would arise whether it is necessary under the IRC Guidelines to be constructed, even when there are two Overpasses within a distance of two kilometers from each other. In the afore circumstances, I close this writ petition, without acceding to the prayers made; however, leaving liberty to the petitioners to invoke any other remedy before other authorities including seeking that sufficient land be acquired; for which purpose, all contentions are left open.

Sd/- DEVAN RAMACHANDRAN SAS JUDGE APPENDIX OF WP(C) 32758/2023

PETITIONERS EXHIBITS: Exhibit P1 THE TRUE COPY OF THE REPRESENTATION FILED ON

BEHALF OF THE KOZHICHENA POURASAMITHI BEFORE THE HON'BLE MINISTER FOR PUBLIC WORKS DEPARTMENT DATED NIL

Exhibit P2 THE TRUE COPY OF THE RECEIPT ISSUED BY THE OFFICE OF THE MINISTER FOR PUBLIC WORKS DEPARTMENT DATED 13.06.2023

Exhibit P3 THE TRUE COPY OF THE RECEIPT ISSUED BY THE OFFICE OF THE 3RD RESPONDENT DATED 14.06.2023

Exhibit P4 THE TRUE COPY OF THE REPRESENTATION FILED BY THE 2ND PETITIONER BEFORE THE 7TH RESPONDENT DATED 25.03.2023

Exhibit P5 THE TRUE COPY OF THE MINUTES OF THE MEETING OF PERUMANNA KLARI GRAMA PANCHAYATH HELD ON 13.12.2022

Exhibit P6 THE TRUE COPY OF THE REQUEST SENT BY E.T.MOHAMMED BASHEER, M.P. OF PONNANI CONSTITUENCY DATED 06.02.2023

Exhibit P7 THE TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PRESIDENT OF THENNALA GRAMA PANCHAYATH DATED 08.03.2023

Exhibit P8 THE TRUE COPY OF THE REPRESENTATION SUBMITTED

BY THE PRESIDENT OF THENNALA GRAMA PANCHAYATH BEFORE THE MINISTER OF ROAD TRANSPORT AND HIGHWAYS OF INDIA DATED

26.08.2023

Exhibit P9 THE TRUE COPY OF THE REPRESENTATION FILED BY THE HEADMASTER OF AMUP SCHOOL, KLARI NORTH, PALACHIRAMEDU DATED 05.03.2023 Exhibit P9(a) THE TRUE COPY OF THE REPRESENTATION FILED BY THE SECRETARY OF CPI(M), PERUMANNA LOCAL COMMITTEE DATED 01.05.2023 Exhibit P9(b) THE TRUE COPY OF THE REPRESENTATION FILED BY THE MANAGER / HEADMISTRESS OF AMLP SCHOOL, KOZHICHENA DATED 14.03.2023 Exhibit P9(c) THE TRUE COPY OF THE REPRESENTATION FILED BY THE SECRETARY OF HANEEFA MEMORIAL VAYANASALA AND LIBRARY DATED 02.05.2023 Exhibit P9(d) THE TRUE COPY OF THE REPRESENTATION FILED BY THE SECRETARY OF SADANATHIL ISLAM SANGAM, KOZHICHENA DATED 17.03.2023

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