

Dr.Jayapradeep, vs the State of Kerala,

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Court : Kerala

Decided On : Jan-03-2023

Judge : Honourable Mr.Justice V.G.Arun

Appeal No. : WP(C)/18286/2021

Appellant : Dr.Jayapradeep,

Respondent : The State of Kerala,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE V.G.ARUN TUESDAY,
THE 3RD DAY OF JANUARY 2023 / 13TH POUSHA, 1944 WP(C) NO.
18286 OF 2021 PETITIONERS:

1 DR.JAYAPRADEEP, AGED 52 YEARS S/O. KUTTAN NAIR, PUTHEN
MARATHU, KALLATTUMKARA, MUKUNDAPURAM TALUK,
THRISSUR DISTRICT., REPRESENTED BY POWER OF ATTORNEY
HOLDER, PROF. R.BHASKARAN NAIR, S/O. RAMAN KUNJI, AGED 75
YEARS, RESIDING AT SURABHI, PERUMBAVOOR P.O, ERNAKULAM
DISTRICT. 2 DR. REKHA JAYAPRADEEP, AGED 47 YEARS W/O. DR.
JAYAPRADEEP, 'SURABHI', PERUMBAVOOR P.O, ERNAKULAM

DISTRICT, REPRESENTED BY POWER OF ATTORNEY HOLDER, PROF. R. BHASKARAN NAIR, S/O. RAMAN KUNJI, AGED 75 YEARS, RESIDING AT 'SURABHI', PERUMBAVOOR P.O, ERNAKULAM DISTRICT. 3 INDIRA DEVI, W/O. VELAYUDHAN PILLAI, SREYAS, MARUTHU ROAD, PERUMBAVOOR P.O, ERNAKULAM DISTRICT. BY ADVS. N.ANAND NISHA GEORGE GEORGE POONTHOTTAM (SR.)

RESPONDENTS:

1 THE STATE OF KERALA, REPRESENTED BY ITS CHIEF SECRETARY, OFFICE OF CHIEF SECRETARY, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001 2 THE SECRETARY, DEPARTMENT OF PUBLIC WORKS, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM- 695 001 3 THE SECRETARY, DEPARTMENT OF REVENUE, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001 4 THE DISTRICT COLLECTOR, COLLECTORATE, CIVIL STATION, KAKKANAD, ERNAKULAM-682 5 THE SPECIAL TAHSILDAR, (LA GENERAL), CIVIL STATION, KAKKANAD, ERNAKULAM-682 030 6 THE ROADS AND BRIDGES DEVELOPMENT CORPORATION OF KERALA LIMITED, II FLOOR, PREETHI BUILDING, MAHAKAVI VALIOPPILLI ROAD, KOCHI- 682 025, ERNAKULAM DISTRICT, REPRESENTED BY ITS MANAGING DIRECTOR. BY ADVS. GOVERNMENT PLEADER SHRI.K.V.MANOJ KUMAR, SC, ROADS AND BRIDGES DEVELOPMENT CORPORATION OF KERALA LTD.

OTHER PRESENT: GP N.SUDHA DEVI THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON . 11.08.2023, THE COURT ON 03.01.2023 DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 3rd day of January, 2023

Petitioners are the owners in possession of landed properties with residential buildings in Sy. No. 2 and 3 in Block No. 112 of Perumbavoor Village in Kunnathunad Taluk. They are aggrieved by the steps taken to acquire their properties and demolish the residential houses for constructing the Perumbavoor bye-pass road. The writ petition is filed seeking to quash Ext. P8 Notification issued under Section 11(1), Ext. P15 proceedings rejecting the petitioners' objection filed under Section 15(1) and Ext. P18 declaration under Section 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('the Fair Compensation Act').

2. The essential facts are as under;

With the objective of reducing traffic congestion in Perumbavoor town, the Government decided to construct a bye-pass starting from Palakkattuthazham and ending at the Maruthukavala Junction on the Aluva-Munnar road. Construction of the proposed bye pass was entrusted with the PWD as per G.O.(Rt) No. 1045/09/PWD dated 14.01.2009. Subsequently, the work was entrusted with the Kerala State Construction Corporation Limited(KSCC Ltd) vide G.O.(Rt) No.

requisition on 04.01.2011, indicating that an extent of 1002.46 ares of land would be required for the construction. Accordingly, notification under the Land Acquisition Act was published on 20.07.2011. While so, the Government appointed the Roads and Bridges Development Corporation Kerala Limited (RBDCK Ltd)/6th respondent as the Special Purpose Vehicle to implement the project under the supervision of the Public Works Department. The Kerala Infrastructure and Investment Fund Board (KIIFB) was appointed as the funding agency. Thereupon, the 6th respondent prepared a Detailed Project Report (DPR) in KIIFB format. The report was given administrative sanction as per G.P.O.(Rt) No. 1088/2017/PWD dated 25.07.2017. The KIIFB required the 6th

respondent to cut down the cost of the project by reducing the width of the right of way from 45 metres to 25 metres and by reducing the height of the embankment. Accordingly a modified DPR, estimating the cost at Rs.133.24 Crores, was submitted on 16.12.2017. Based on the modified DPR, the 6th respondent submitted land acquisition requisition on 22.02.2018. Pursuant to the requisition, Section 6(1) notification under the Surveys and Boundaries Act was published on 30.11.2018. The requisition was granted administrative sanction vide Order No. C5/5746/2019 dated 10.08.2019. Thereafter, preparation of the Social Impact Assessment was entrusted with the Youth Social Service Organization (YSSO), Kothamangalam as per Government Order dated 19.11.2019 and the YSSO submitted Ext. P7 final report on 19.1.2020. As envisaged under Sect. 7 of the Fair Compensation Act an Expert Committee reviewed the social impact assessment report and unanimously recommended the suggestions on 22.02.2020. Thereafter, Ext. P8 notification under Section 11(1) of the Act was issued on 07.08.2020. As the properties of the petitioners fell within the proposed alignment, they were issued with notices under Rule 20(3) of the Fair Compensation Kerala Rules, requiring them to file objections, if any, against the proposal. Accordingly, the petitioners filed Exts. P10 and P10(a) objections and the 6th respondent submitted Ext. P11 reply to the objections raised by the petitioners. By Ext. P15 dated 01.12.2020, the 5th respondent rejected the objections, primarily based on the 6th respondents reply. The petitioners challenged Ext. P15 before this court in W.P.(C) No. 3102 of 2021. While that writ petition was pending, the Government issued Ext. P18 declaration under Section 19 on 17.08.2021. Aggrieved, this writ petition is filed seeking the following reliefs;

- i. Issue a writ, order or direction declaring that acquisition process leading to Exts. P8, P15 and P18 are void for not being transparent and in accord with the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013; ii. Issue a writ of

certiorari calling for records leading to Exts.P8, P15 and P18 and quash the same; iii. Issue such other writ, order or direction as this Hon'ble Court may deem fit in facts and circumstances of the case.

3. Adv. N. Anand, learned Counsel for the petitioners, put forth the following contentions in support of prayers;

In its requisition the KSSC Ltd had indicated that an extent of 1002.46 ares would be required for constructing the bye pass. Accordingly, the required area was demarcated and alignment prepared. That alignment did not take in the properties of the petitioners. The proposal of the KSSC Ltd. was challenged by certain persons in W.P.(C) No. 1494 of

2012. In that writ petition, the Government and the requisition

authority opposed any deviation to the alignment. The writ petition was disposed of directing the Principal Secretary, Public Works Department to take appropriate decision after considering the objections. In compliance of the direction, Ext. P3 order was passed holding that only one house, which is situated in poramboke land, will be affected under the proposed alignment. It was observed that changes will affect the geometrics of the alignment, resulting in sharp bends on the road leading to more accidents.

4. Ext. P3 was challenged before this court by the Perumbavoor General Marketing Federation in W.P.(C) No.

22442 of 2012. That writ petition was disposed of by judgment

dated 01.10.2012, directing to conduct a local inspection at the proposed site. Accordingly, site inspection was conducted and a revised plan proposed, as per which an elevated road was to be constructed over the Perumbavoor market instead of constructing the bye-pass cutting across the market and dividing it into two. The above proposal was accepted

and Ext. P4 Government Order issued. Ext. P4 was challenged in W.P.

(C) No. 10477 of 2013. Therein, counter affidavits were filed

by the Public Works Department and the 6th respondent, ruling out any alternative proposal and reiterating their stand against deviations. According to the petitioners, even during the Social Impact Assessment they were made to believe that there is no proposal to acquire any portion of their land. Surprisingly, in Ext. P8 notification, a large portion of the petitioners' properties were included. By such inclusion, petitioners 1 and 2 were to lose 0.009 hectares of their land and almost the entire residential building and the 3rd petitioner, 0.7770 hectares of land and a large portion of her residential building. Even though the sketch and requisition made by the 6th respondent is stated to be in continuation of the earlier proposal, the petitioners' properties have somehow been included now.

5. Learned Counsel contended that, in view of the definite

stand taken before this Court that the original requisition prepared by the KSCC Ltd is the best and no deviation can be permitted, since only one residential building, that too in the canal puramboke, will be affected by the acquisition, the respondents are estoppel from deviating from that stand. It is contended that an admission made by the respondents is admissible against them *proprio vigore*. In support of this contention reliance is placed on the decision of the Supreme Court in *Gautam Sarup v. Leela Jetly and Ors.* [(2008) 7 SCC 85], wherein the Apex Court held that the admission in a pleading differed from an admission in a document and the former binds the party making it by its own force independently.

6. The other ground of challenge is premised on the

manner in which the petitioner's objections were considered under Section 15 and declaration under Section 19 issued. It is contended that Section 15 requires the Collector to independently consider the objections and make a report to the Government. The Government should thereupon pass an order, after considering the report. Instead of complying with this formality, the Collector/5th respondent rejected the petitioners' objection based on the reply submitted by the requisitioning authority. Referring to Exts. P13 and P14 communications of the 5th respondent, it is contended that the 5th respondent had a doubt as to whether there is deviation from the original proposal. Surprisingly, without clearing the doubt, the 5th respondent proceeded to issue Ext. P15 communication, succumbing to the pressure tactics of the Government and the 6th respondent. In order to buttress the contention that failure to follow the procedure prescribed under Section 15 of the Act would render the acquisition proceedings illegal, reliance was placed on the decision in Shiv Singh and Ors. (supra).

7. Finally it is contended that Exts. P4 to P6 would show

that there was a definite alignment and the petitioners' house was not included in it. As per Section 4(4)(e) of the Act, in the Social Impact Assessment the aspect whether land acquisition at alternative place was found not feasible should also be looked into. Here, the Social Impact Assessment team failed to consider the alternative route and submitted that no alternative route is in existence. In view of these serious infirmities, the respondents should be allowed to proceed with the construction of the bye-pass only in accordance with the original proposal, by excluding the petitioners' properties.

8. Replying to the contentions, Adv. N Sudhadevi, learned Special Government Pleader and K.V. Manojkumar, learned Standing Counsel for the 6th respondent put forth the following common arguments;

9. The petitioner cannot rely on Exts. P3 to P6 to contend

that their properties were not included in the proposed acquisition, since those proceedings are superseded by Ext. P8. It is true that in the counter affidavit filed in W.P.(C) No. 10477 of 2013, the PWD Superintending Engineer had stated that only one family residing in the canal puramboke will have to be evicted. The property of the 3rd petitioner is situated just south of the above puramboke shed and the property of petitioners 1 and 2 are on the southern boundary of the 3rd petitioners' property. The properties of the petitioners are thus situated in the same area and line, at the beginning of the alignment at Maruthukavala junction. It is submitted that from the stage of preparation of the first alignment, the petitioners' properties were included. In the Social Impact Assessment report it is specifically pointed out that the petitioners land and residential buildings will be affected by the project. Therefore it is evident the petitioners are seeking realignment which is impermissible. In order to highlight the limited scope for judicial review in matters relating to construction/ alignment of roads, the decisions in NDP Yogam v. State of Kerala and Ors. (2017 KHC 624), Venugopalan P.V. And Ors. v. Union of India and Ors. (2021 (3) KHC 193), and Balakrishna Pillai and Ors. v. Union of India and Ors. (2021 (4) KHC 282) were referred.

10. Going by the undisputed facts, the 6th respondent

had prepared the DPR in KIIFB format based on the alignment approved by the PWD. At least from that stage onwards, the property of the petitioners falls within the alignment. As per Ext. P7 Social Impact Assessment Report the affected area has three houses, one among which is built in a wasteland. In Table 4.1 of the report containing the details of persons who had donated their land and are demanding compensation, the petitioners names are included. The petitioners properties are included in Ext. P8 notification issued under Section 11(1),

based on the Social Impact Assessment Report and other relevant factors.

11. Although learned counsel for the petitioners relied

on the decision in Shiv Singh & Ors. (supra) to contend that non-compliance of Section 15(2) will vitiate the acquisition proceedings, a perusal of that judgment shows that, therein the District Collector had not given opportunity to the appellants as contemplated under Section 15(2) nor submitted any report to the Government. In the case at hand, sufficient opportunity was given to the petitioners as evidenced by Exts. P9 to P11, before rejecting the objections as per Ext. P15. The Government having passed Ext. P15, after the proceedings under Section 15(2) was completed, the challenge on the premise that certain queries were raised by the 5th respondent regarding change alignment can only be rejected.

12. As regards the contention based on Exts. P3 to P6, I

find the explanation offered by respondents 5 and 6 to be plausible. Even though in Exts. P3, P5 and P6 it is stated that the alignment takes in only a house situated in canal puramboke, the sketch produced by the respondents shows otherwise. Moreover, the 6th respondent having come out with a fresh requisition, reliance cannot be placed on the counter affidavits filed at an earlier stage to contend that the petitioners' property ought to be excluded from the alignment. The law is well settled that in the absence of mala fides or patent illegality, acquisition proceedings cannot be interfered with by the writ courts. As held by the in Union of India v. Kushala Shetty and Ors. [(2011) 12 SCC 69], the question is whether the acquisition is ex facie contrary to the mandate of law or tainted by malafides. In spite of the assertive submissions put forth by the learned Counsel for the petitioners, I am unable to find any patent illegality in the acquisition proceedings.

For the aforementioned reasons the writ petition is dismissed. Sd/- V.G.ARUN
JUDGE sb APPENDIX OF WP(C) 18286/2021 PETITIONER EXHIBITS Exhibit
P1(A) TRUE COPY OF THE NOTICE DAD 03.09.2004 DEMANDING BUILDING
TAX FROM PETITIONERS 1 AND 2. Exhibit P1(B) TRUE COPY OF THE
RECEIPT DATED 05.03.2019 ISSUED FROM PERUMBAVOOR VILLAGE.
Exhibit P2 TRUE COPY OF THE PHOTOGRAPHS OF THE PETITIONERS'
HOUSES. Exhibit P3 TRUE COPY OF THE G.O(RT) NO. 1360/12/PWD DATED
01.08.2012. Exhibit P4 TRUE COPY OF THE G.O(RT) NO. 373/13/PWD DATED
16.03.2013. Exhibit P5 TRUE COPY OF THE COUNTER AFFIDAVIT DATED

20.06.2013 FILED BY RESPONDENT NO. 6 BEFORE THIS HON'BLE COURT IN
W.P.C NO. 10477/2013 ALONG WITH C.M.APPLICATION. Exhibit P6 TRUE
COPY OF THE COUNTER AFFIDAVIT DATED 01.06.2015 FILED BY PUBLIC
WORKS DEPARTMENT IN W.P.C NO. 10477 OF 2013, WITHOUT ITS EXHIBIT.
Exhibit P7 TRUE COPY OF THE SOCIAL IMPACT ASSESSMENT REPORT.
Exhibit P8 TRUE COPY OF THE NOTIFICATION BEARING G.O (P) NO.
52/2020/RD DATED 12.08.2020 ISSUED BY RESPONDENT NO. 3 AND
PUBLISHED IN THE KERALA GAZETTE ON 12.08.2020.

Exhibit P8(A) TRUE COPY OF THE SKETCH ISSUED ALONG WITH EXHIBIT P8
NOTIFICATION Exhibit P9 TRUE COPY OF THE NOTICE NO. C4/1398/2016
DATED 29.09.2020 ISSUED BY RESPONDENT NO.5. Exhibit P10 TRUE COPY
OF THE OBJECTION FILED BY PETITIONERS BEFORE RESPONDENT NO. 4
DATED 03.09.2020. Exhibit P10(A) TRUE COPY OF THE OBJECTION FILED Y
3RD PETITIONER BEFORE RESPONDENT NO. 5 DATED 07.10.2020. Exhibit
P11 TRUE COPY OF THE REPLY ALONG WITH COVERING LETTER NO.
RBDCK/LA/T 72/2018/1733 DATED 06.10.2020 ISSUED BY RESPONDENT
NO.6 TO RESPONDENT NO.5. Exhibit P12 TRUE COPY OF THE
COMMUNICATION NO. C4-1398/16 DATED 02.11.2020 ISSUED BY
RESPONDENT NO. 5 TO RESPONDENT NO.6. Exhibit P13 TRUE COPY OF
THE HEARING REPORT ALONG WITH COVERING LETTER NO. C4-1398/16
DATED 10.11.2020 FORWARDED BY RESPONDENT NO. 5 TO RESPONDENT
NO.4. Exhibit P14 TRUE COPY OF THE HEARING REPORT OF THE
RESPONDENT NO. 5 DATED 10.11.2020. Exhibit P15 TRUE COPY OF THE

COMMUNICATION NO. C4-1398/16 DATED 01.12.2020 ISSUED TO THE PETITIONERS. Exhibit P16 TRUE COPY OF THE TOPOGRAPHIC ALIGNMENT PLAN PUBLISHED BY RESPONDENT NO.6. Exhibit P17 TRUE COPY OF THE SKETCH SHOWING ALL THREE ALIGNMENTS. Exhibit P18 TRUE COPY OF THE NOTIFICATION BEARING G.O(P) NO. 115/2021/RD DATED 17.08.2021 ISSUED BY RESPONDENT NO.3. RESPONDENT EXHIBITS Exhibit R5(e) TRUE COPY OF THE SKETCH WITH RESPECT TO BLOCK NO.112. Exhibit R5(f) A TRUE COPY OF THE 2 PAGES OF FORM NO.7 PREPARED AND APPROVED BY THE HEAD SURVEYOR.

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