
(2009) 08 KL CK 0045

In the High Court Of Kerala

Case No : Writ Petition (C) No. 21455 of 2009 (B)

Assyst International Pvt. Ltd.

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 14-08-2009

Acts Referred:

Citation : (2009) 4 ILR (Ker) 161 : (2009) 3 KLJ 430 : (2009) 4 KLT 116

Hon'ble Judges : Thottathil B. Radhakrishnan, J

Bench : Single Bench

Advocate : N. Ratheesh and Suma Ratheesh, for the Appellant; K.R. Deepa (G.P.), for the Respondent

Final Decision : Dismissed

Judgement

Thottathil B. Radhakrishnan, J.—The petitioner, a private limited company, states that it is a 100% export-oriented STP Unit employing about 360 software professionals engaged in software development for various clients in India and overseas. It avers that its associated company is engaged in software training and imparts training to several persons in informational technology. On the ground that the alignment for the metro rail project of Ernakulam, if carried out as now proposed, in so far as the construction of the Metro Station at Muttom is concerned, will result in acquisition of land from the petitioner in such a manner as may call for the pulling down of the entire building and that such a situation could be avoided, if a particular boundary demarcated for that purpose is modified by shifting the demarcating boundary stone towards south, it made Ext. P2 representation before the District collector, Ernakulam and Ext. P3 before the Managing Director of Delhi Metro Rail corporation Limited seeking intervention. Ext. P4 is essentially a reminder, following Ext. P2. Going by Ext. P2, the petitioner states that it has a built-up/plinth area of 25000 sq.ft. in a plot admeasuring 20 cents of land.

2. In this writ petition filed seeking a direction for consideration and disposal of Exts. P3 and P4 representations, the petitioner seeks an interim order of stay of

acquisition of the petitioner's property.

3. Even going by the pleadings in this writ petition, the first respondent state of Kerala has planned to implement metro rail project in association with the Delhi Metro Rail Corporation Limited so as to reduce traffic congestion in and around Cochin. The metro rail is proposed to be, in between Aluva and Tripunithura. The petitioner pleads that the rail of the project is to pass mainly along the National Highway 47 and in the location in question, it is to run through the eastern side of the petitioner's building. The petitioner states that the second respondent Delhi Metro Rail corporation Limited plans to construct a Metro station at Muttom and that respondents 3 and 4, who are involved in the acquisition of land, have acquired a small portion of the petitioner's property. It is pleaded that the acquisition of a small portion will result in the need to pull down the entire building which also carries over it a distribution unit of BSNL, catering to the telecom needs of the residents in the vicinity. It is under these circumstances that, the directions are sought for.

4. The acquisition as such, is not, challenged. It is not disputed and it is beyond dispute, that the acquisition is for a public purpose. The limited plea is that the authorities ought to have found that in the course of acquisition of property, minimum inconvenience is to be caused to the persons suffering the acquisition and that the authorities ought to have found that the change in alignment upto 10 metre distance will substantially benefit the parties who are losing the land, it is pleaded that a small change in relocating the station will not disturb the project whereas the petitioner's building will be rendered useless by such acquisition and will result in total loss of business of the petitioner.

5. In the absence of any criticism to the state action as being arbitrary or malafide, the finalisation of the alignment of a railway line, particularly that of a metro project and the design, manner and location of the stations in that project, are not matters for judicial review. No criticism being levelled against the alignment and the design as may be attributable to malafides, colourable exercise of power or other elements which tantamount to arbitrariness in state action, as are reckonable in judicial review, it needs to be remembered and recalled, without fail, that fixing alignments in relation to roads, rail tracks, metro tracks, including their inseparable adjuncts, are matters to be left to the wisdom of those who are designated and duty bound to carry out the designing of such projects. The State Government have, essentially, requested the involvement of the second respondent, the Delhi Metro Rail Corporation Limited only because of the experience that it has, to carry out a project involving huge investments, which is, ultimately, to be used by commuters. Any interference with such a project and its alignment would only impair the project. The safety of the installation is a matter to be left exclusively to those who carry out the project and it is not for judicial intervention on ground that the alignment could be adjusted, a bit this way or that way, to accommodate private interests, such tinkering will be adverse to public interest.

6. If an entire building would be pulled down, that would be a matter to be taken care of only in the realm of awarding compensation. The issuance of writ of mandamus to consider a representation arises only in a situation where there is a clear failure or refusal to discharge a statutory or public duty. No such situation is made out. There is no public or statutory duty in the respondents to consider the request of the petitioner for change of the alignment of the Metro station at Muttom.

No situation being demonstrated in the case in hand, for judicial intervention or even to generate the necessary ingredients to issue a writ of mandamus holding that respondents 1 and 2 have failed to consider the representations of the petitioner, I find no grounds to issue any orders.

In the result, the writ petition fails and is accordingly dismissed in limine.