

(2021) 07 KL CK 0279

In the High Court Of Kerala

Case No : Writ Petition (C.) Nos. 23625, 27217 Of 2019, 24270 Of 2020, 1445 Of 2021

Balakrishna Pillai

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 23-07-2021

Acts Referred:

Constitution of India, 1950 — Article 226
National Highways Act, 1956 — Section 3A, 3C, 3C(2), 3D, 3D(1)
National Highway Authority of India Act, 1988 — Section 11
Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Section 26

Citation : (2021) 07 KL CK 0279

Hon'ble Judges : P.V.Kunhikrishnan, J

Bench : Single Bench

Advocate : P.A.Mohammed Shah, Aswin Kumar M J, Mohamed Musthafa A.K., Muhammed Janaise V, Jafar Khan Y., .K.A.Salil Narayanan

Final Decision : Dismissed

Judgement

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P.V.Kunhikrishnan, J"////////

1. National Highway is the main public road that connects different cities, towns, and even villages. It is a major and significant public road that is able and fit to carry fairly heavy traffic. Good transport infrastructure like Highway Network"////////

enhances transport system that reduces transportation fast and this in turn definitely reduces the production cost, while it increases productivity and profitability of the country. Highway Network also makes transportation schedules and"////////

deliveries more reliable and timely. Highways also contribute immensely to social

groups and even to strengthen family relationships. The citizens can visit their loved ones more often and it enhances the good relationship between family and,,,,,,,,

friends. The highway can relatively reduce travel time to villages, cities, and towns, thereby, encourage people to travel for business and trade. Highway make journeys faster, comfortable, and safer than usual while at the same time, reduce",,,,,,,,,

fuel consumption also. An American Art critic Dave Hickey once said that ""Beauty is and always will be blue skies and open highway.""",,,,,,,,,

2. National Highway Act, 1956 (hereinafter referred to as ""NH Act, 1956"") was enacted with a great object and reason. When you want better National Highways to improve the economy of the country, the land is necessary for which land",,,,,,,,,

acquisition proceedings is inevitable. Of course, that may create some problems for the citizens because they may lose the land where they and their families were staying for decades. Everybody will feel bad when their land is being bulldozed",,,,,,,,,

in connection with land acquisition. Without difficulty to a section of the citizens, no development activities can be implemented in the Country. Difficulties are part of development. When the development of the country is the object, citizens",,,,,,,,,

should neglect their minor difficulties. The legislations like National Highway Act, the old Land Acquisition Act, and also the new enactment namely, Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and",,,,,,,,,

Resettlement Act, 2013 (hereinafter referred to as ""RFCTLARR Act, 2013"") are there and it will to some extent protect the rights of the citizens, whose land is acquired. There are provisions for granting adequate compensation and also",,,,,,,,,

rehabilitation schemes in the above legislation. This may not be an alternative when one is losing his land where he was born and brought up. But, difficulties like this should be accepted to achieve the development of our great nation.",,,,,,,,,

3. The above 4 writ petitions are filed challenging the acquisition of land for the widening of National Highway-66 in the stretch from KM 499.000 to KM 501.000 situated mainly in Umayanallor Village, Thazhuthala, and adjacent villages of",,,,,,,,,

Kollam District. The main grievance of the petitioners in these writ petitions is that the National Highway Authority of India is not following the directions of the state government about the alignment of the proposed widening of National,,,,,,,,

Highway-66. According to the petitioners, the Government of Kerala with a specific intention to save religious institutions suggested some change in the

alignment. But the same is neglected. Their grievance is that to save a private Mosque," ,,,,,,

the alignment of the National Highway itself is changed and the acquisition is concentrated on the northern side(Left hand side) of the existing National Highway, where some of the petitioners are residing and some of the religious institutions" ,,,,,,

are situated. I will narrate the contentions of the petitioners separately.,,,,,,

PLEADINGS ,,,,,,

WPC Nos. 27217/2019 and 1445/2021 ,,,,,,

4. These two writ petitions are filed by the same petitioners. According to the petitioners, the original proposed alignment was to acquire land from both sides of the existing road. Â" ,,,,,,

But, the present proposal is to acquire land only from one side of the road for the expansion of the Highway. The petitioners contended that Ext.P7 produced in W.P. (C.) No.27217/2019 shows that the alignment was shifted as per the direction" ,,,,,,

of the State Government, to exclude the main structure of a place of worship. According to the petitioners, the alignment was shifted to the left hand side (northern side) to save the main structure of a mosque on the right hand side. According" ,,,,,,

to the petitioners, the same is to protect a private Masjid owned by the 9th respondent. The petitioners submit that there is a deliberate attempt to exclude the property on the Right hand side of the road for irrelevant reasons. In the writ" ,,,,,,

petition, even the provisions of NH Act, 1956 is challenged. The main challenge is against Ext.P22 notification issued under Sec.3A of the NH Act, 1956." ,,,,,,

5. In WP(C) No.27217 of 2019, a counter affidavit is filed by the 6th respondent, who is the Project Director, Project Implementation Unit, National Highway Authority of India, Thiruvananthapuram. In the counter affidavit, it is stated that the" ,,,,,,

National Highway Authority of India was entrusted by the Central Government under Sec.11 of the National Highway Authority of India Act, 1988 to develop the existing two-line structure of National Highway-47 from Cherthala to" ,,,,,,

Thiruvananthapuram (KM 379/100 to KM 559/900) into a four-line Highway under NHDP Phase-IIIA under two projects with a width of the Proposed Right of Way (PROW) of 4500 metres. The two projects were Cherthala to Oachira ,,,,,,

(KM 379/100 to KM 465/000) and Oachira to Kazhakoottam (KM 465/000 to KM 551/900). In the counter, it is stated that NHAI is not having any power to

acquire the land required for a National Highways. The land required for the" ,,,,,,
development of the National Highway is acquired by the Central Government under the provisions of NH Act, 1956. Sec. 3A notification of NH Act, 1956 was published by the competent authority appointed by the Central Government twice." ,,,,,,

But on both occasions, the said notifications lapsed since, a notification under Sec.3D of the NH Act, 1956 could not be published within the limitation period of one year, due to the ban imposed by the State Government and due to the high" ,,,,,,

resistance from the project affected people and their supporters. It is stated that in all other States of the Country, the authority completed all National Highways in a four-line configuration. There was criticism during the AG audit regarding" ,,,,,,

the expenditure without any outflow from the land acquisition units. Accordingly, the Central Government by notification in the Official Gazette dated 5.3.2014 omitted NHA1 from Chertha-Oachira-Thiruvananthapuram road (KM 379/100 to KM" ,,,,,,

559/900), and the above stretch of NH-47 was entrusted to the State PWD (National Highway) by SO No. 676 (E) dated 5.3.2014. It is stated that three religious structures are falling between Ch.50000-5000 to Ch.501/000 and the alignment" ,,,,,,

proposed is to acquire the land on both sides wherever possible. It is specifically stated in the counter that it does not mean that the acquisition of land is equally on both sides, but the proposal is for acquiring the land on either side considering" ,,,,,,

the geometric parameters of the existing Highway and also the radius of curvature to maintain a design speed of 80-100 km/hr as per the clause laid down by the IRC code of manual. According to the 6th respondent, the alignment for the" ,,,,,,

above sketch was prepared based on the revenue records available in the Revenue Department, which are the authorised Government records regarding the availability of the existing Highway width. It is also stated that the Executive" ,,,,,,

Engineer-PWD, NH, Kollam informed the 4th respondent that the Right of Way (ROW) width of the existing NH-47 from Krishnapuram to Kadambattukonam passing through Kollam District has an average width of 30.5 metre, but it is noted" ,,,,,,

that in the approved alignment of NHA1, the existing ROW width marked is not marking with the actual existing ROW in the field at certain places. According to the 6th respondent, it happened because, in the revenue records, the

average",,,,,,

ROW is shown as only 21 metres. It is also stated in the affidavit that Umayanalloor (Ch.500/000) is one of the places that is affected by the above said issue. The 4th respondent then by letter dated 15.6.2018 requested the Executive,,,,,,

Engineer to superimpose the actual existing ROW at the places, where the difference in the width was found out on to the approved alignment map so that only the actual excess land required after deducting the existing width alone be",,,,,,

included in the Sec.3D notification. It is further stated that the follow-up actions were taken. In paragraph 11 of the counter affidavit, it is stated that even though the land is being acquired under the provisions of NH Act, 1956, the petitioner",,,,,,

and similarly affected persons will be given compensation under the new Land Acquisition Act. According to the 6th respondent, there is no discrimination meted out to the petitioners and they are treated equally. The 5th respondent also filed",,,,,,

a counter affidavit, in which the details of the acquisition are narrated. That counter affidavit was dated 23.11.2019. In that affidavit, it is stated that the property of the petitioners will be acquired only after Sec.3D declaration as per NH Act,",,,,,

1956. It is also stated by the 5th respondent that the NHA ensures better compensation to the land acquired after fixing the market value and also counting the applicability of Sec.26 of the RFCTLARR Act, 2013. The petitioner in W.P.(C.)",,,,,,

No.27217/2019 filed a reply affidavit to the counter affidavit filed by respondent Nos. 5 and 6 producing some more documents. Thereafter, a memo is filed by the counsel for the 6th respondent as directed by this Court on 6.10.2020, in",,,,,,

which the notification issued by the National Highway Authority and also the objections submitted by the petitioners are produced. The reply to the objections is also produced.,,,,,,

6. Thereafter, the petitioners in W.P(C) No.27217 of 2019 filed a second Writ Petition as W.P.(C.) No.1445/2021 with the following prayers :",,,,,,

i) To call for the records relating to Ext P8, the 3(D) notification dated 9.6.2020 and quash/set aside the said notifications to the extent the said notification empowers the respondents to acquire the immovable property owned by the petitioners;",,,,,

ii) To declare that the petitioners are not bound to be displaced from the

immovable properties owned by them situated in R.S.No.260/14, Sy.No.213/12; 213/27 and 213/30 of Thazhuthala village for acquisition/expansion of the National Highway-47 (now NH66) prior to" ,,,,,,

completion of all aspects of rehabilitation and resettlement as ordained by the RFCTLARR Act read with the NH Act 1956;,,,,,

iii) To restrain the respondents from acquiring the immovable properties owned by the petitioner's in R.S.No.260/14, Sy.No.213/12; 213/27 and 213/30 of Thazhuthala village for acquisition/expansion of the National Highway-47 (now NH66) prior to completion of all" ,,,,,,

aspects of rehabilitation and resettlement as ordained by the RFCTLARR Act read with the NH Act 1956;,,,,,

iv) To declare that the immovable properties owned by the petitioner's in R.S.No.260/14, Sy.No.213/12; 213/27 and 213/30 of Thazhuthala village for acquisition/expansion of the National Highway-47 (now NH66) do not vest in the first respondent and the respondents" ,,,,,,

are not entitled in law to acquire the said properties. ,,,,,,

v) To direct the respondents to abstain from acquiring the immovable properties owned by the petitioner's in R.S.No.260/14, Sy.No.213/12; 213/27 and 213/30 of Thazhuthala village for acquisition/expansion of the National Highway-47 (now NH66) pursuant to Ext P8" ,,,,,,

notification. ,,,,,,

vi) Issue a writ of certiorari or any other writ or order quashing Ext P6, and direct the respondents to reconsider the objections raised by the petitioner;" ,,,,,,

vii) Issue a writ of mandamus or any other writ or order in the nature thereof directing Respondents to follow concentric widening of the National Highway-47 (now NH 66) after acquiring the properties equally from both sides of the present National Highway, ,,,,,,

AND, ,,,,,,

viii) award the petitioners the costs of this Writ Petition. ,,,,,,

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7. In this writ petition, Sec.3D notification issued under NH Act, 1956 which is produced as Ext.P8 is also challenged. Ext.P6 in this writ petition is the reply given by the authority to the objection raised by the petitioner in Section 3C enquiry." ,,,,,,

Ext.P6 is also challenged in the writ petition in addition to the other reliefs prayed in the writ petition. According to the petitioners during the enquiry, it was pointed out that as per the proposed alignment, there will be two or more curves

within",,,,,,

a distance of half a kilometer. Further, it is contended that the proposed plan was to acquire only from the left hand side of the road and this was done to save the main structure of the Mosque on the southern side. According to the petitioner",,,,,,

Ext.P6 order reflects that the authorities have reduced the right extended by Sec.3C to an empty formality. According to the petitioner, the reply to the objection raised in Sec.3C enquiry will show that the authorities have not applied their mind",,,,,,

before passing orders. Hence, W.P.(C.) No.1445/2021 was filed with certain additional prayers including a prayer to set aside Ext.P8 Sec.3D notification and Ext.P6, the order passed by the authority rejecting the objection of the petitioners.",,,,,,

W.P.(C.) No.23625/2019,,,,,

8. The petitioners in this writ petition are having property abutting Cherthala-Kazhakootam Highway (NH-66) (Ch.between KMS 460/700 and KMS 517/000). Ext.P10 in this writ petition is Sec.3A notification. According to the petitioners",,,,,,

during the year 2009, while fixing the alignment concerning the area between Mevaram and Umayanalloor for straightening the curve, the acquisition was proposed on the right hand side of the road based on the report submitted by the then",,,,,,

consultancy. It is the specific case of the petitioners that without considering the above proposals, on 10.3.2018, the 1st respondent issued notification under Sec.3A of the NH Act, 1956 declaring the intention to acquire property for widening.",,,,,,

According to the petitioners, the notification that decided to acquire the property from the left hand side is to protect a Mosque on the right hand side, namely, Valiyaveetil Masjid. According to the petitioners, between Mevaram and",,,,,,

Umayanalloor, two Mosques and a Temple namely, Thattamala Muslim Jama-ath, Quadisiyya Masjid, and Kadambanad temple, will be affected, while acquiring the property from the left hand side. It is also stated that acquisition affects",,,,,,

Vazhappilly LP School and Umayanalloor Service Co-operative Bank building. It is also stated in the writ petition that due to the public protest, the Executive Engineer of the PWD carried out an inspection in the areas including Umayanalloor",,,,,,

area, and suggested correction in the alignment based on the existing actual central line. According to the petitioners, it was found that by doing such corrections, the issue regarding the alignment and the acquisition can be settled.

Several" ,,,,,,

documents were produced to show the communication between the Executive Engineer concerned and the 4th respondent. Subsequently, the earlier notification has lapsed and without considering those communications, the very same land is" ,,,,,,

notified under Sec.3A of the NH Act, 1956 on 10.3.2018. Hence, this writ petition is filed with the following prayers :",,,,,,

i) To issue a writ of certiorari quashing Ext P10 notification issued by the 1st respondent with regard to the area between Mevaram and Umayanalloor, Kollam district." ,,,,,,

ii) To direct the respondents 1 to 4 to fix the alignment of the National Highway widening inconsonance with Ext P5, P6 and P7 reports." ,,,,,,

iii) To declare that the acquisition steps shall be initiated in consonance with Ext P5, P6 and P7 reports submitted by the appropriate authorities." ,,,,,,

iv) To issue a Writ of Mandamus directing the respondents 3 to 5 not to issue notification under Section 3D of the National Highway Act 1956 with respect to the property owned by the petitioner as evident from Ext P1 and P2.,,,,,,

v) Pass such any other order, direction or reliefs as this Hon'ble Court may deem fit in the interest of justice, equity and good conscience." ,,,,,,

9. In the above writ petition, a counter affidavit is filed by the 4th respondent. In the counter affidavit, it is stated that it is incorrect to say that the authorities ignored the anomalies pointed out in Exts.P5 and P6, while issuing the present" ,,,,,,

notification. It is also stated that an inspection was conducted by the NHAI and whatever corrections required, were carried out. Only thereafter, Ext.P10 notification has been issued. According to the 4th respondent, the alignment now" ,,,,,,

proposed is perfectly in consonance with the requirements prescribed by the IRC Code. As far as the specific ground in the writ petition about the religious institution, a reply is given in paragraph 4 of the writ petition. Paragraph 4 of the writ" ,,,,,,

petition is extracted hereunder : ,,,,,,

4. The petitioner has mainly adverted to the alignment from Mevarom to Umayanalloor in Kollam district. This stretch is coming under the package of 4 lining of end of Kollam Bypass to Kadambattukonam (Km 486/000 to Km 517/800). Total length of road is 31.8 Km" ,,,,,,

which is below 40 Km. At this stretch there are five religious buildings on either sides of the alignment. The structures are located so closely on either side of the

highway that a sudden change in the alignment is not possible. As alleged by the petitioner no new curve,,,,,,,,

is introduced at this location. There is an existing curve at KM 501+400. The same curve is designed to follow road geometry, design speed and by saving the religious structures nearby. Following all the design parameters conforming the IRC standards and the",,,,,,,,

direction from the State Government to save the religious structures, the said alignment was designed.""",,,,,,,,

10. The reply affidavit was filed by the petitioners against the counter affidavit filed by the 4th respondent. In the reply Exts.P12 to P14 documents were also produced. A counter affidavit is filed by the 5th respondent also raising the same,,,,,,,,

contentions raised by the 5th respondent in W.P.(C.) No.27217/2019 and 1445/2021. A reply affidavit was filed to the counter affidavit of the 5th respondent by the petitioners. A statement was also filed by the 4th respondent on 4.7.2020,",,,,,,,,

stating that Sec.3D notification in respect of the above land has been published on 9.6.2020. The same was produced as Annexure-R4(b).,,,,,,,,

W.P.(C.) No.24270/2020,,,,,,,,

11. This is a writ petition filed by a person residing on the northern side of the NH-66 in Survey No.213/10 and 213/11 in Thazhuthala Village. She has got a property with an extent of 6.27 ares. According to this petitioner, in Survey",,,,,,,,

No.213/27, 213/12 and 213/13 in Thazhuthala Village, a Temple namely, Kadampatu Manthra Moorthy Temple is situated. Almost the same contentions in the other writ petitions are raised in this writ petition also. According to the petitioner, if",,,,,,,,

the new alignment is allowed to stand, it will take away two Mosques, a Temple, which is more than 200 years old, and one 130 year old L.P.School, in which more than 600 students are studying. According to the petitioner, if the National",,,,,,,,

Highway is widened as per the original alignment drawn by the NHAI, the only sufferer will be a private mosque on the right hand side. According to the petitioner, as far as that structure is concerned, it is claimed as a Masjid and Madrassa.",,,,,,,,

It is also stated that earlier, they have got 18 cents of land, and even if the structure is taken away by the widening of the road, they can shift the structure backward inside the property. In other words, according to the petitioner, they can re-",,,,,,,,

locate the structure inside their property itself. But according to the petitioner, as

far as the Temple and other two Mosques and School are concerned, if the newly drawn alignment is allowed to stand, all these structures will have to",,,,,,,

completely go and all these religious institutions will be stranded because, they do not have any other property existing in that area, as the entire property in which the structure stands will be covered by acquisition. Hence, the above writ",,,,,,,

petition is filed challenging Ext.P2 alignment drawn by the respondent. There are other connected reliefs also, including a prayer to quash Sec.3D notification between Ch.499/500 to 501/000.",,,,,,,

12. In this writ petition also, a counter affidavit is filed on behalf of respondent Nos. 2, 6, and 7 through the Standing Counsel. A separate counter affidavit is filed by the 5th respondent also. The contentions of the respondents in their counter",,,,,,,

affidavits are similar to the contentions raised by them in the other writ petitions, which are already extracted above.",,,,,,,

ARGUMENTS,,,,,,

13. Heard Adv.R.Krishnaraj, counsel for the petitioner in W.P.(C.) No. 24270/2020, Adv.P.A.Mohammed Shah, counsel for the petitioners in W.P.(C.) Nos.23625/2019 and Adv.Sreegesh M.K., counsel for the petitioners in W.P.(C.)",,,,,,,

No.27217/2019 and W.P.(C.) No.1445/2021. I also heard Adv.Salil Narayanan and Adv.Mathews K Philip, Standing Counsel for the NHAI. I also heard the Government Pleader.",,,,,,,

14. Adv.Mohammed Shah reiterated his contentions in his writ petition. According to the counsel, Exts.P3 and P4 in his writ petition are the objection submitted by the Mosque committee. The counsel also takes me through Ext.P5 letter from",,,,,,,

the Executive Engineer, PWD NH Division, Kollam to the Project Director, National Highway Authority of India. The counsel takes me through the following sentence in Ext.P5.",,,,,,,

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