
(2008) 03 KL CK 0022

In the High Court Of Kerala

Case No : Writ Petition (C) No. 8421 of 2007 and connected cases

Chandrika Menon

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 26-03-2008

Acts Referred:

Constitution of India, 1950 — Article 215

Land Acquisition Act, 1894 — Section 17(4), 17(5), 4(1), 5A, 6

Citation : (2008) 2 KLJ 237

Hon'ble Judges : K. Padmanabhan Nair, J

Bench : Single Bench

Advocate : Pirappancode V.S. Sudhir, M. Unnikrishnan and J.S. Ajithkumar, for the Appellant; K.A. Jaleel, SC-TRIDA, Biju Manohar, GP and K.B. Pradeep, Commissioner, for the Respondent

Judgement

K. Padmanabhan Nair, J.

W.P.(C) No. 8421/2007

1. Petitioner is the owner and is in possession of 16.5 cents of property comprised in Sy. No. 191 of Madathuvilakom Village in Thiruvananthapuram City. She is residing in a two storeyed building situated in that property. The plot is situated on the eastern side of Pattom-Ulloor-Kochulloor road. As a part of comprehensive planning and development of Thiruvananthapuram City, it was decided to widen the Pazhaya Road on the west of the property of the petitioner. The existing width of the road in front of the property of the petitioner is 13.12 meters. The proposal is to widen that road to have a width of 17.30 meters. This consists of four lane carriage way of 13 meters width, Central median of 30 centimeters and two meters side walk on either side of the road. Ext.Pl, a notification u/s 4(1) of the Land Acquisition Act, (for short "the Act"), was issued on 11-11-2004. The proposal was to acquire 5.5 meters of land on the eastern side of Pazhaya road, whereas, on the opposite direction, only 0.5 meters of land was sought to be acquired.

2. Aggrieved by the notification, petitioner filed W.P.(C) No. 37763/2004 before this Court. In the counter affidavit filed in that writ petition, copy of which is marked as Ext.P2, the 4th respondent, Trivandrum Development Authority, has admitted that the width of the proposed road is 17.3 meters. It is admitted that the writ petition was dismissed. Petitioner filed W.A. No. 884/2005, which also ended in dismissal. She had filed SLP No. 24569/2005, before the Honourable Supreme Court of India. That SLP was also dismissed. It is averred that there is a solemn undertaking made by the TRIDA, which is the requisitioning authority, to the effect that the width of the road, in front of the petitioner's property is only 17.3 meters. But the 4th respondent, TRIDA, in flagrant violation of their stand taken in the affidavit, and contrary to the decision of the High Level committee, had ear marked the area for acquisition, by laying the stone, 2.17 meters in excess, inside the property of the petitioner. According to the petitioner, if the proposed plan is accepted, the width of the road on the west of the petitioner's property will be 19.45 meters, against the proposed width of 17.3 meters. It was contended that there is no justification in acquiring 2.17 meters in excess to the undertaking given by the respondents before this Court in the earlier writ petition. It is averred that though an area of 80 sq. meters of property was notified for acquisition from the petitioner, at the time of award enquiry, the area sought to be acquired was 1 Are 30 Sq. Meters. According to the petitioner, she filed a petition seeking rectification of the mistake, but there was no response to the written request. She again filed Ext.P6 representation before the fourth respondent on 23-3-2007, for which also no reply was given. It is specifically averred that if 17.3 meters of land is taken from the stone now fixed inside the property of the petitioner, that will not reach the stone now fixed on the western side of the road, and that will again lead to a situation wherein a considerable portion of the road being surrendered to the persons who are having land on the opposite side or facilitating for their encroachment into Government land. Hence the writ petition to quash Ext.P5 notice issued u/s 9(3) of the Act to the petitioner, and also for a direction to the respondents to widen the road lying in front of the petitioner's property to an extent of 17.3 meters from the existing 13.12 meters and not 19.45 meters and also for a direction to dispose of Ext.P6 representation.

3. On 28-3-2007, the Secretary of 4th respondent, TRIDA, had filed a counter affidavit, contending that 4th respondent has no intention to acquire and take any excess land from the property of the petitioner, other than what was stated in the decision taken by the High Level Committee meeting held on 21-10-2003. As per the decision of High Level Committee constituted by the Government of Kerala, it was decided to acquire land only a depth of 5.2 metres from the petitioner's property. This decision was again reconsidered and it was decided not to give any relief to the petitioner. It is admitted that the width of the existing road is only 43 feet (13.12 meters). The petitioner had stated the width of the road which lies on the west of her property alone, and she had not stated the width of the entire stretch of road. It is stated that the width of the proposed

road is 17.3 meters, stretching from GG Hospital Junction to the Medical College Junction, which has been scientifically arrived at, considering the present and anticipated traffic along this road stretch. The proposed cross section consists of four line carriage way of 13 m width and 30 Cms. central median width with 2 m side walk on either side, totaling to a width of 17.3 m. The allegation is that respondents are attempting to acquire 2.17 meters in excess of the land from inside the property of the petitioner, in violation of the earlier stand is denied. It is contended that respondent has no intention to widen the road to a width of 19.45 m against the proposed width of 17.3 meters, and, therefore, no interference is called for in this writ petition. The averment that the fourth respondent had decided to acquire 2.17 meters of land in excess than what it had undertaken in the earlier writ petition before this Court is denied. It is further contended that survey stones before this Court is denied. It is further contended that survey stones are planted as per the approved alignment and only the required land as per the decision of the High Level Committee (i.e., as per the Original alignment) will be acquired for road widening. It is further contended that the area mentioned in the notification u/s 4(1) of the Act is only approximate and the extract area was arrived only after the revenue survey which was conducted after the above notification. It is further stated that demand for equal acquisition of property from both sides of the road is not practicable in this case. The above idea is only a developments on both sides is very limited or almost nil. A workable proposal is to adopt an alignment with minimum destruction and at the same time without compromising the road geometries and other technical aspects. It is further stated that the road in question branches off from NH 47, the major spine of the road net work of the region at Pattom and later joins NH 47 at Ulloor. It is an important urban arterial road, since it passes through the area which is the seat of many eminent institutions of national and international importance, viz., the Regional Cancer Centre, Medical College, etc. It is further stated that considering the present and anticipated traffic along this road stretch, the right of way (ROW) for various stretches of this road has been proposed. The proposed ROW for the road stretch of this road has been proposed. The proposed ROW for the road stretch between G.G. Hospital Junction and Medical College Junction by the side of which the petitioner's property is located is 17.30 meters. The averment that respondents are trying to acquire more land is denied. It is contended that the respondent will acquire only 5.2 m depth of land from the petitioner. Respondents have no intention to acquire more properly as alleged in the petition.

4. On 21-9-2007, the Land Acquisition Officer has filed a counter affidavit, in which it was averred that the Secretary of TRIDA has forwarded a requisition for acquisition of land in various survey numbers of Pattom, Ulloor and Chefuvakal Village in Thiruvananthapuram Taluk and District, by invoking the urgency clause u/s 17(4) of the Act, for the widening of Pattom-Medical College-Ulloor-Kochulloor Road, under the Capital Region Development Programme. A notification u/s 4(1) of the Act was published in Kerala Kaumudi on 11-11-2004.

The lands u/s were surveyed and the survey sketches were approved by the Superintendent of Survey and Land Records, Thiruvananthapuram. The draft declaration u/s 6 of the Act was published on 24-12-2005. It is averred that the property of the petitioners is also sought to be acquired for the above purpose. As per the approved Land Acquisition Survey sketches of the Superintendent of Survey and Land Records, Thiruvananthapuram, the area under acquisition from the petitioner measures to 3.212 cents of land. It is further contended that on the earlier occasion, petitioner filed W.R(C) No. 37763/20Q4, challenging the acquisition and that writ petition was dismissed by this Court. The demand of equal acquisition is only hypothetical one. A workable proposal has been adopted as per the alignment with the minimum destruction and at the same time, without compromising the road geometries and other technical aspects. Petitioner had filed a petition before the High Level Committee and the same was rejected. It was contended that the property is situated on the eastern side of the road. Here, two junctions, viz., the Ganesh temple Junction and the Medical College Junction exist side by side, and for the improvement of these junctions, the present proposed acquisition is absolutely necessary. It is also contended that the High Level Committee had decided to acquire land only a depth 5.2 m from the petitioner. The averment that respondents are trying to acquire and planted stones encroaching into 2.17 m of land in excess from the original proposal from the property of the petitioner is denied. The allegation that the respondents are taking steps to widen the road to a width of 19.45 meters is also denied. It is further contended that the proposed ROW for the road stretch between G.G. Hospital junction and Medical College junction by the side on which petitioner's property located is 17.3 m. It is also contended that the area shown in the notification u/s 4(1) of the Act is only an approximate area.

5. On 2nd April, 2007, petitioner filed a reply affidavit to the counter affidavit filed by the 4th respondent. It is contended that when 5.2 meters of property is acquired from the property of the petitioner, which is having a width of 13.12 meters, the width will increase to 18.32 m, though the 4th respondent had admitted that width of the proposed road is only 17.3. It is also contended that if the acquisition is made in accordance with the area notified in the notification, the depth of the acquisition would be 2.66 meters and not 5.2 m as contended by the respondents.

6. A Commissioner was appointed who filed a report and plan. The Commissioner had reported that at the northern side of the property of the petitioner the width of the road by more than 18.65 meters, and for obtaining the minimum road width of 17.3 meters, the survey stone now planted has to be shifted to further west by 1.35 meters, in which case, only the portion of the open sit out (1.4 x 5.6 x 1.7m) of the petitioners building aloe need to be demolished. The Commissioner had also reported that the distance from the stone already fixed on the western side of the road to the stone now fixed in the property of the petitioner is 19 meters. He has also stated that going by the present lie of the stones, as evidenced from the plan, the portion of the petitioner's building

(lower horizontal limb of the "L" shaped building) has to be cut and removed. The southern wall is also to be demolished at 2.5 m. The report further shows that the property now proposed to be taken possession from the petitioner is not in accordance with the original alignment.

7. 4th respondent, TRIDA, has filed objection to the report of the Commissioner. It is contended that the property proposed to be acquired from the petitioner is 5.2 meters. According to the 4th respondent, the survey stones planted on the property situated on the western side of the road was shifted to 1.3 m. further west. It is contended that, that is the reason why the Commissioner had reported that more land is sought to be taken possession from the petitioner. It is further contended that alignment cannot be shifted to west by 1.3 m. as it will affect foot path. In paragraph 3 of the objection, it is specifically admitted that Assistant Engineer had reported that in some part of the stretch of the road, extent of land shown for handing over possession is more than that what actually required by TRIDA, and therefore, on 11-9-2007, a letter was sent to the District Collector detailing the facts requesting to conduct re-survey. Again on 19-9-2007, another letter was also sent to District Collector requesting to conduct an urgent enquiry regarding the matter and to rectify the defects in sketches prepared by the Revenue Department. In that letter it was also reported that an Assistant Engineer attached to TRIDA verified the land proposed to be taken possession for widening and he had noted difference from the approved alignment at 11 places.

8. The second respondent, District Collector, had also filed a counter affidavit, by way of objection to the report of the Commissioner. In paragraph 2 of the counter of the second respondent, it is unequivocally admitted that in the objection filed by the 4th respondent, serious allegations are levelled against the revenue authorities. It is contended that averments in paragraph 2, of the objection filed by the 4th respondent are incorrect. It is also contended the Land Acquisition Officer and the Requisitioning authority had jointly inspected the site, finalised the alignment of acquisition, and survey stones were planted, and the same was approved by the Superintendent of Survey and Land records. It is further contended that the Land Acquisition Officer is bound to acquire the land as per the draft declaration on the basis of the approved area within the alignment stones planted by the Requisitioning Authority without any discrimination in acquiring a particular extent of land belonging to a particular person, in accordance with the provisions of the Land Acquisition Act and Rules. Regarding the objection of the 2nd respondent that the survey stone in the property on the western side of the road was misplaced to a distance of 1.35 meters, instead of 0.2 meter, it is contended as follows: "It is respectfully submitted that in L.A.C. No. 263/2006 and L.A.C.264/2006 properties lying to the opposite side of the petitioner's property was acquired. The are acquired as per L.A. No. 263/2006 measures to 0.0020 hectares at a width of 0.5 meter and 1.2 meter at each ends and at a length of 19.9 meter and 23.9 meter in each sides. The area acquired as per L.A.C. No. 264/2006 measures to 0.0014

hectares at a width of 0.5 meter and 1.1 meters at each ends and at a length of 17.7 meters and 17.8 meters on each sides". It is also contended that TRIDA accepted the possession of that property without raising any objection regarding the measurements of the land. It is also contended that of the total area of 0.9826 Hectares of land, and extent of 0.8632 Hectares have been acquired, as per the approved sketch and possession of the same were handed over to the TRIDA. It is also contended that acquisition proceedings for the balance area of 0.1029 Hectares, except the land owned by the two petitioners in W.P.(C) Nos. 8421/2007 & 3748/2007, are in progress. While the work was in progress, it has come to the notice of the Land Acquisition Officer that the area to be acquired as per the approved sketches does not agree with the present position of the alignment stones. Accordingly, a letter was sent to the Secretary, TRIDA, asking whether there is any change in the alignment. TRIDA had informed that there is no change in the alignment. But, on 11-9-2007, TRIDA had sent a letter, raising an allegation that in some part of the road, extent of land shown for handing over possession is more than that actually required by TRIDA and requesting to conduct a re-survey of the land. It is contended that LA Sub Division sketches were approved on 3-12-2005 and all the land covered by the draft declaration has been acquired and the 4th respondent took possession of the land from the Land Acquisition Officer, without raising any objection regarding the alignment area. The objections were filed for the first time only on 24-9-2007, as an objection to the Commissioner's report. It is also contended that the petitioner in W.R(C) No. 3748/2007, one Radhakrishnan, is raising more or less similar contentions. The land situated on the northern boundary of the property of Radhakrishnan and the land on the souther side of the property of the petitioner herein have been acquired vide LAC Nos. 361 & 358 of 2006 respectively, which are lying on the opposite side of the land mentioned in LAC No. 264/06. It is further contended that the lands involved in L.A.C. Nos. 361/2006 and 358/2006 were also taken possession by the 4th respondent, TRIDA, without raising any objection. The Land Acquisition Officer had acquired land only as per the draft declaration, the objection raised by the 4th respondent against the Commissioner's report is without understanding rules and facts and the approved sketch prepared way back in 2005.

9. In view of the serious allegations levelled by respondents 2 and 4 against each other, on 2-11-2007, this Court passed an interim order, directing a joint inspection, by respondents 2 and 4, with the assistance of Superintendent of Survey and Land Records. They were also directed to counter sign the plan prepared by the Superintendent. The Superintendent was also directed to file an affidavit. It was further held that in case of any mistake is noted in the plan or affidavits, serious consequences will follow. They were also informed that in case if it is revealed subsequently that the affidavits/statements filed are false serious action will be taken against them.

10. A joint inspection as ordered was conducted and the Survey Superintendent had prepared two plans. Plan No. 1 covers the area from chainage 1 + 800 to

chainage 1 + 600 Plan No. 2 covers the area from chainage 1 + 600 to chainage 1 + 300. The property of the petitioner in W.P.(C) No. 8421/2007 shown in Plan No. 1. The properties of the petitioners in W.P.(C) Nos. 29140/2007 and 29393/2007 are located in Plan No. 2.

11. An additional counter affidavit was filed by the 4th respondent on 25-2-2008. It is contended that a joint inspection was conducted in the sketch between G.G. Hospital junction to TRIDA Centre, Medical College Junction. It is averred that the stones are seen planted as per the approved sketch, except one stone in plan No. 1, which is not in conformity with the alignment sketch. As per Plan No. 1, the actual width of land available after acquisition on south and north sides of property of petitioners in W.P.(C) No.8421/2007 is 17.8 and 17.4 meters on the south and north respectively. The width of adjacent side just north is 18.6 m, as one alignment stone opposite to petitioner's property is seen misplaced from actual position. The land proposed to be acquired from the petitioner's property as per the original alignment fixed by the Kerala Road Board is 5.2 m depth of land. As per the alignment, only 0.0m to 0.2m depth of land is required from the opposite side of petitioner's property. The dislocated stone is not just opposite side of the petitioner's property, actually it was approximately 10 m away on the opposite and northern side of petitioner's property. The alignment cannot be shifted to the west by 1.35 m, as it will affect the foot path and provision for utility lines. It is also contended that the excess land available in the opposite side cannot be utilized because the central line of the proposed alignment. But it is admitted that the land proposed to be acquired from the petitioners in W.P.(C) No. 29140/2007 is not in accordance with the original alignment. It is further averred that the land to a depth of 5.6 meters is marked for acquisition and as per the approved alignment, the land from the depth of 2 m. is from Smt. Sarqj ini Amma, whereas as per the sketch prepared consequent to the joint inspection, it is seen that land to a depth of 2.8 m to 5.0 m is marked for acquisition. As per the alignment, the land sought to be acquired from Sri. Kurian Eapen's property was to a depth of 2 m., whereas as per the sketch prepared after joint inspection the property now sought to be acquired is to an extent of 5.2 m to 5.6 m. It is further averred that on 7-6-2007, the 3rd respondent had pointed out this changed deviation from the original alignment to the District Collector and requested the District Collector to correct the survey sketches already prepared in conformity with the survey stones planted by TRIDA. Thereafter, it is unequivocally admitted that as per the report of the Assistant Executive Engineer, filed on 2-8-2007, in some part of the sketch of road, extent of land shown for handing over possession is more than what actually required by TRIDA, and therefore, on 11-9-2007, a letter was sent to the District Collector, Thiruvananthapuram, detailing the facts and requesting him to conduct a survey. Copy of that letter is produced as Ext.R4(d). It is further stated that on 18-9-2007, another letter was sent to the District Collector requesting to conduct an enquiry regarding the matter and rectify the defects and sketches prepared by the revenue authority. Along with the objection, the 4th respondent produced

a copy of the plan prepared after verification which contains the signatures of the Secretary of TRIDA alone.

12. On 27-2-2008, the second respondent has filed another counter affidavit, as per the direction of this Court. In paragraph is included in Block No. 16. It was contended that there is no change in the present lie of alignment stones from alignment fixed as per survey sketch approved on 3-12-2005. It is further stated that in respect of the property sought to be acquired from the properties of the petitioners in W.R(C) No. 29140 & 29393 of 2007, which is in Block No. 26, there is change in the alignment stones fixed, from the survey sketch approved on 3-12-2005. If the alignment change is accepted, the portion coloured rose alone need be acquired. But as per the original alignment the property shaded with rose and yellow will have to be acquired. It is also contended that when the misplacement of alignment stones came to the notice of the Land Acquisition Officer on 13-2-2007, a letter was sent to the Secretary, TRIDA, asking whether there is any change in the alignment. He had sent a reply stating that since the area of acquisition shown as per the sketch prepared by the Revenue Department is seen in excess of what they actually required for road widening, action may kindly be taken to re-survey the area and to prepare the sketches afresh as per the stone at present. It is further contended that the plan of TRIDA shows that there was challenge in the alignment. It was also contended that the declaration u/s 6 of the Act was published on 21-11-2005, and the area of shown in the declaration is the conclusive evidence that the land mentioned therein is absolutely needed for the public purpose. Along with this affidavit, a copy of the plan prepared after the joint inspection counter signed by the District Collector and the Secretary, TRIDA, is also produced.

13. The "District Survey Superintendent also filed an affidavit contending that there is a change in the alignment stone fixed in Block No. 26, from the survey plan approved on 3-12-2006, by the Superintendent of Survey and Land Records, Thiruvananthapuram. In fact, the affidavit filed by the Superintendent is a verbatim copy of the affidavit filed by the Land Acquisition Officer. He also produced a plan prepared in pursuance of the joint inspection.

14. The petitioner filed I.A. No. 3203/2008 to admit some more documents. He produced two copies of the original alignment fixed by the Road Fund Board, one issued to Mr. Radhakrishnan by the Public Information Officer, attached to TRIDA. Petitioner produced another sketch of original alignment issued by Road Fund Board to show that manipulations were made in the original alignment by TRIDA.

15. Petitioner filed a very detailed reply affidavit to the counter affidavit, dated 14-2-2008, file by the 4th respondent, in which very serious allegations are levelled against the Land Acquisition Officer. The 4th respondent filed a re-joinder to that reply affidavit which contains the following averments. The approved alignment was prepared by the Kerala Road Fund Board, during May 2003, and no changes were effected in the stretch, where the property of the petitioner lies. It is contended that Medical College Junction is located from close to the

petitioner's property, wherein, six major roads meet, including two campus roads from medical college campus. The traffic volume at this locality exceeds 6000 PCU (Passenger Car Unit) during peak hours. Thousands of pedestrians are also crossing these intersections. It is contended that the alignment cannot be shifted to westwards. The allegation that substantial changes were made in the alignment to help the owner of a Bar attached Hotel, by name "Libra" was also denied. It was again reiterated that the land proposed to be acquired from the property of the petitioner by the Kerala Road Fund Board is 5.2 m. depth of land, and from the opposite side is 0.0m to 0.2m width of land. It is admitted that Ext.P16 is a copy of the alignment issued by the Kerala Road Fund Board to the 4th respondent for giving to K.P. Radhakrishnan. It is contended that as per Exts.P 16 and p 18, there is no change in the alignment.

16. On 17-3-2008, the District Collector, and Land Revenue Commissioner had filed an additional counter affidavit. In Paragraph 4 of it, it is contended that the petitioner in this writ petition is trying to re-open the matter, which is concluded by an earlier decision of this Court. It is contended that the petitioner earlier filed W.P.(C) No. 37763/2004 before this Court challenging the very same acquisition proceedings, and the same was dismissed. The dismissal was confirmed by a Division Bench in W.A. No. 884/2005. Thereafter, the petitioner filed SLP No. 24569/2005 before the Honourable Supreme Court, which was also dismissed. It is averred that the property involved and the subject matter of both the writ petitions are one and the same, and a conscious attempt is made by the petitioner to show that present case is different from the earlier writ petition. The contention raised in the present Writ Petition were raised in the former writ petition. Hence, this second writ petition is barred. It is contended that TRIDA is the requisitioning authority and it is responsible for fixing alignment stones in accordance with the alignment. It is contended that the Engineers of the TRIDA had laid the alignment stones as per the approved sketch. It is further contended that Ext.P9 produced by the petitioner along with the reply affidavit is an engineering sketch and not an alignment sketch. The allegation that the owner of a Bar attached Hotel "Libra" exerted undue influence over the Government to exclude his land was denied. It is further contended that the documents described as Exts.P8 to PI 1 were available to the petitioner during the earlier writ petition and she is not entitled to place any reliance on those documents and the same is barred by constructive Resjudicata.

17. The petitioners in W.P.(C) No. 29140/2007 are the owners of the property which is lying on the eastern side of Pattom-Ulloor-Kochulloor road (known as Pazhaya road), sought to be widened. The main ground raised in the writ petition is also that, initially only a lesser extent of land was sought to be acquired, but subsequently, Land Acquisition Officer is trying to take possession of more land than what was notified. It is also averred that all these are done by changing the original alignment. Petitioners have produced the original alignment which is marked as Ext.P5(a). In this case also, a joint inspection was conducted, and after the joint inspection, the Secretary, TRIDA has filed a counter affidavit. It is

admitted that though as per the original alignment, a lesser area is sought to be acquired from the property of the petitioner, at present, the area for which Section 6(1) declaration is passed is an excess of what is required by TRIDA. It is further averred that as per the plan of the revenue survey, the area sought to be taken possession from the petitioners is in excess of what is required to be acquired. It is also averred that this fact was brought to the notice of the District Collector and a request was made to him to conduct an enquiry and also a re-survey, so as to rectify the mistakes. The learned Government Pleader submitted that since the averments in this writ petition and W.P.(C) No. 8421/2007 are identical, no separate counter is filed in this case, and counter filed in the other writ petition may be treated as the counter affidavit in this case also. Since the material averments in these two writ petitions are identical, the counter affidavit filed in W.P.(C) No. 8421/07 is treated as apart of pleading in this case also.

18. The petitioners in W.P.(C) No. 29393/2007 are also the owners of property situated on the eastern side of the Pazhaya road, which are sought to be acquired. In this case also, the grievance of the petitioners is that though as per the original alignment, only a lesser extent need to be acquired, as per the revenue sketch prepared, excess land than what is sought to be acquired is proposed to be taken possession of by the revenue authorities, violating the alignment. In this case also, a joint inspection was conducted, and thereafter the Secretary, TRIDA, filed a counter affidavit, virtually admitting the averments in the writ petition. It is admitted that the property now sought to be taken possession is not in conformity with the original alignment prepared and the land sought to be taken possession is excess of the area marked in the alignment.

19. In this case also, the learned Government Pleader submitted that counter affidavit filed in W.P.(C) No. 8421/2007 may be treated as part of the pleadings in this writ petition also. Since material averments in this writ petition are also same as those raised in the other two writ petitions, the counter affidavit filed in W.P.(C) No. 8421 /2007 is treated as part of pleadings in this case also.

20. The Standing Counsel appearing for TRIDA has submitted that in view of the discrepancies brought out during the joint inspection, TRIDA had placed the matter before the High Level Committee constituted by the Government under the Capital Region Development Programme for the Thiruvananthapuram City. It is further submitted that the High Level Committee discussed the matter and requested the District Collector to conduct a re-survey at this stretch.

21. The respondents 1 to 4 have admitted that the land now sought to be taken possession is not as per the original alignment. Though there is no change in the alignment, at some places, the survey stone is almost 3 meters east of the eastern boundary of the property peg marked in the original alignment. The 4th respondent had admitted in unequivocal terms that in W.P.(C) No. 29140/2007 and W.P.(C) No. 29393/2007, the Land Acquisition Officer had demarked land in excess from the original alignment. Though the respondents have contended that the land sought to be taken from the possession of the petitioner in W.P.(C) No.

8421/2007 is exactly in accordance with the original alignment, they that more land is sought to be taken possession from the property lying on the western side of the road. According to respondents 1 to 4 the width of the proposed road is 17.3 meters, but if the land now acquired is taken possession the width of the road will be 19.4 meters. There are allegations and counter allegations. According to respondents 1 to 3, the land sought to be taken possession was measured and marked in the presence of the officers of 4th respondent. The contention of the 4th respondent is that such changes were made by the revenue authorities. It is pointed out that from the G.G. Hospital Junction to the office of the TRIDA alone, at 11 places, the Land Acquisition Officer had deviated from the original measurements. Both sides had produced documents to put the balance on the other side.

22. The allegation levelled by the 4th respondent against the revenue authorities are very serious. So the Director of Vigilance and Anti Corruption Bureau was impleaded as additional 5th respondent. The Government Pleader took notice for Additional 5th respondent.

23. The Counter Affidavits filed by the respondents are silent as to the details of the expert who prepared the original alignment. Ext.P2 is the counter affidavit filed by the 4th respondent in W.P.(C) No. 27763/2004. In paragraph 4 of that counter affidavit, it was averred that the Government engaged Dr. N.S. Sreenivasan and a team of experts to identity the roads and junctions, which needs immediate widening for the first time on 2-11-2007 the counsel for the 4th respondent submitted that the alignment was fixed by the Kerala Road Front Board. The second respondent filed an additional counter affidavit on 27-2-2008 admitting that the Kerala Road Fund Board was the expert who prepared the alignment. So, the Road Front Board is impleaded as a formal party. Since no relief is sought for and no relief is proposed to be granted against the expert, notice to Kerala Road Fund Board was dispensed with. The only purpose for impleading Kerala Road Fund Board is to enable respondents 1 to 5 to seek its help if necessary, in case a re-survey is conducted.

24. Since, the main contention raised by the contesting respondents in W.P.(C) No. 8421/ 2007 is res judicata as well as constructive res judicata, I shall first consider that issue. It appears that the respondents are really afraid to contest the matter on its merits. It is argued that challenging the very same notification, the petitioner in W.P.(C) No. 8421/07 had filed W.P.(C) No. 37763/2004. Respondents have produced a copy of the writ petition in that case to impress upon the Court regarding the plea of res judicata. The prayer sought for in that writ petition is to declare that the dispensation of Section 5A enquiry was illegal and also to quash Ext.P3, in so far as it is found to be bad in law. Whereas, the prayer in the present writ petition W.P.(C) No. 8421 /2007) are as follows:

i) Issue a writ a certiorari or any other appropriate writ, order to direction calling for the records leading to Ext.P5 and quash Ext.P5 to the extent it is stated therein that the proposed acquisition of the property belonging to the petitioner

is 1 Are and 30 Sq. Meter instead of 50 Sq. meters as contained in Ext.P1.

ii) Issue a writ of mandamus or any other appropriate writ, order or direction commanding the respondents to widen the road lying, in front of the property of the petitioner to 17.3 meters from the existing 13.12 meters and not 19.45 meters as now being attempted by the respondents.

iii) Issue a writ of mandamus or any other appropriate writ, order or direction commanding the 4th respondent to consider and dispose of Ext.P6 representation expeditiously and within a time limit to be fixed by this Hon'ble Court.

iv) declare that the distance of 17.3 meters for the proposed widening, should be calculated from the stone already fixed opposite to the property of the petitioner to a point inside the property of the petitioner.

And

v) Grant such other reliefs as this Hon'ble Court deems fit and proper in the circumstances of this case including the cost of this Writ Petition.

Ext.P5 is a notice issued to the petitioner u/s 9(3) of the Land Acquisition Act for conducting an award enquiry. There is no challenge against notification issued u/s 4(1) read with Section 17(4) of the Act. The case projected in this case is that respondents 1 to 4 are attempting to take more land than what was sought to be acquired with Section 4(1) notification. So, a mere perusal of the reliefs sought for in the said two writ petition shows that the reliefs sought for in these two writ petitions are entirely different. In the earlier writ petition this Court found that the High Level Committee's decision regarding the lay out of the road is to suit with the local requirements, cannot be interfered with by this Court. In reply to the contention of the petitioner that the authorities did not consider the objections raised by her, this Court held that in view of the consideration of the objections by the High Level Committee, it was not necessary. The main relief sought for in the earlier writ petition was to quash the invocation of urgency clause u/s 17(4) of the Act. Challenging that decision, petitioner filed appeal before the Division Bench. The Division Bench also considered whether the Land Acquisition Authority is justified in invoicing Section 17 (4) & (5) of the Act, and also whether it was essential to conduct an enquiry u/s 5A of the Act. Though the Division Bench accepted the contention of the petitioner that normally Section 5A enquiry ought to have been conducted, considering the fact that only a very small portion of the building of the petitioner will be affected, confirmed the order of the learned Single Judge. The SLP filed before the Supreme Court against that decision was dismissed. The scope of enquiry in the earlier writ petition was confined to the question as to whether the revenue authorities were justified in invoking urgency clause u/s 17(4) of the Act. In this writ petition, the grievance of the petitioner is that after making a statement that the width of the road in front of the petitioner's property is 17.3 m., now the respondents are attempting to take possession of land for a road having a width of 19.4 m. So, the present contention is that the acquisition is in violation of the alignment fixed

and the revenue authorities are trying to take a larger extent of land. So, by no stretch of imagination, the principles of res judicata can have any application to the present case. It is also contended that some of the documents produced were available when the earlier writ petition was filed, and hence any arguments based on those documents are barred by Constructive Resjudicata. The petitioner is not challenging those documents, but admit those documents. So, no question of Constructive Resjudicata also does not arise in this case. The Commissioner had filed a report stating the width of the existing road, and also the area sought to be taken possession. The Commissioner had reported that if the property demarcated to be acquired is taken possession, the width of the road will be 18.65 m. and not 17.3 m. as contended by the respondents. TRIDA filed a detailed objection to the report of the Commissioner, in which it took up a stand that the alignment stone planted on the property situated on the western side of the road which lies on the west of the property of the petitioner in W.P.(C) No. 8421 /2007, is mispldced, and it is now placed at a distance of 1.53 m., instead of 0.2 m. It is also alleged that at some part of the stretch of the road, the extent of land shown for handing over possession is more than that was actually required by TRIDA. Hence, on 11-09-2007, TRIDA had written to the District Collector to conduct an enquiry regarding the matter and rectify the mistakes. To the report of the commissioner, the Land Acquisition Officer has filed an objection in the form of an affidavit. For the reasons best known to the Land Acquisition Officer, he had not offered any explanation regarding the present width of the road. All that is stated is that respondents had no intention to extent the width to 19.45 m. against the proposed width of 17.3 m. Wisdom dawned on the District Collector very late. On 2-11-2007, he filed a counter affidavit, in which objection to the Commissioner's report was also raised. In para 4 of the additional counter affidavit, it is averred that the planting of stones at a distance of 1.3 m. In the property lying on the western side of the road is pot a misplacement, but that was the actual land acquired, as per the requisition of the TRIDA, and that land was taken possession of by the Land Acquisition Officer and possession of the same was handed over to TRIDA on 30-1-2007. TRIDA had accepted the entire land without raising any objections. These two statements regarding the planting of alignment stones on the western side of the property cannot go together. The stand of the TRIDA is that only an area of 0.0 to 0.2 meters from the western side of the property need be acquired. The District Collector had filed an affidavit stating that the property to a depth of 1.35 m. on the western side was acquired, and that property was taken possession by the TRIDA. In fact, it is further reiterated that the Land Acquisition Officer has acquired the land only as per the alignment. It is further contended that 4th respondent has raised objections without understanding the rules and approved sketch prepared way back in 2005. So, the Collector had taken a stand that the Secretary of TRIDA was having no common sense, whereas, the TRIDA is raising very serious allegations against the District Collector and the Revenue Authorities. Petitioner produced the original alignment which is marked as Ext. P9. The Land Acquisition Officer has filed a counter affidavit contending that that is only an Engineering Sketch

which not a alignment plan. So, it is evidently clear that a conscious attempt was made by some of the respondents in the earlier petition as well as in the present writ petition to suppress the material facts.

25. It is settled position of law that this Court, being a Court of records, has a duty to correct its own record. It is also settled Law that when a relief is obtained by party suppressing and misrepresenting the facts, that is to be corrected exercising the powers conferred under Article 215 of the Constitution of India. In *Niyamavedi v. Union of India and Ors.* 2004 (1) KLJ 68 a Division Bench of this Court to which I was also a party, had considered this aspect. In fact, that was also a case in which an original application filed before the Forest Tribunal was allowed. That order was also confirmed by this Court in M.F.A. The SLP filed against those judgments were dismissed by the Honourable Supreme Court, as in the present case. Subsequently it was established that the petitioner in the Original Application obtained relief suppressing material facts. This Court corrected its own records by holding that the applicant was not entitled to any relief since fraud was played. The principle laid down in *Niyamavedi's* case was confirmed by the Honourable Supreme Court in *Hamza Haji Vs. State of Kerala and Another*, . The Apex Court held that possession obtained by playing fraud on the Court cannot be allowed to stand. It was also held that obtaining relief very deliberately suppressing the fact which was fundamental to the entitlement of relief sought and founding the claim on the basis of a non-existent fact, amounts to practising fraud on the Court. Going by the averments of the Land Acquisition Officer, there is unequivocal admission made by him in his counter affidavit that modification were effected from the original alignment in the year 2005 itself. The earlier writ petition was filed long thereafter. But the respondents did not point out that fact to this Court, but maintained a stand that no modifications were effected from the original alignment. In fact, in this writ petition also, every efforts were made by the TRIDA, as well as the Revenue Authorities at the initial stage to contend that the land proposed to be taken possession is exactly as fixed in the alignment. For the first time, the respondents were compelled to admit that fact only because of the report filed by the Commissioner, which was followed by the plans and statements filed by respondents 2 and 3 after joint inspection. As I have already stated, each side is trying to put the blame on the other side.

26. There is yet another aspect. A perusal of plan Nos. 1 and 2 prepared after joint inspection shows that the contention of the respondents that the attempt is to acquire land. to widen the road to a uniform width of 17.3 meters is not true. It shows that at some place, the road will have a width of about more than 20 meters and in some places more than 18 meters. The reason for this change is not explained by the respondents. The plans prepared after joint inspection shows that there are variation from the original alignment. These changes are effected according to the whims and fancies of the revenue authorities. The same can be only due to extraneous considerations. So, I am of the considered opinion that it is a case in which the respondents had played fraud on this Court, in the

earlier writ petition as well as in this writ petition. Hence, this Court has a duty to correct its own record. So, the writ petition is not liable to be dismissed on the ground of res judicata.

27. I do not think, it is necessary to repeat the contentions raised by either side in this case. It is admitted by TRIDA who is the requisitioning authority that now the land demarcated as per Section 6(1) declaration by the revenue authorities in all three cases is not in tune with the original alignment prepared by the Kerala Road Fund Board. TRIDA has written to the District Collector pointing out that there are mistakes in the revenue sketch prepared and the same is to be corrected. But all those letters were written after the inspection by the Commissioner. In Ext. R4(b), the Secretary has informed the District Collector that in the small stretch of land beginning from TRIDA junction to G.G. Hospital alone, at least at 11 places, there are variations, from the original alignment. To that objection, the Land Acquisition Officer, as well as the District Survey Superintendent has filed a counter affidavit stating that what was requested by the TRIDA was to re-survey the area and prepare the sketch as a fresh one, as per the stones at present.

28. In the Counter affidavit filed by the District Collector on 2-11-2007, it is averred that when differences were brought to the notice of the revenue authorities, the matter was taken up with the TRIDA, but the TRIDA has not taken any action in time. It is also averred that the stand taken by the TRIDA was that there was no change in the alignment and the alignment was not revised, and the survey stones planted are seen based on the alignment. The District Collector had produced a copy of the letter written by him to the Secretary, TRIDA, on 13-2-2007. He had also produced a copy of the letter written by him to the Secretary on 3-10-2007, in which the District Collector had stated that declaration was already issued and if there is any change in the area of land to be acquired, it ought to have brought to the notice of the acquisition authority before the publication of the declaration. So, materials on record clearly establish that even at the place of the road which lies in front of the petitioner in W.R(C) No. 8421/2007, the stand taken by the respondents are that they are acquiring the land to widen the road to a width of 17.4 meters is not correct. In the earlier writ petition, the Secretary of TRIDA has filed a counter affidavit stating that only a portion of a single room extended from the plinth area of the main building at a later stage will be affected. But the report of the Commissioner will indicate that larger area of the petitioner's building will have to be demolished. The Commissioner has reported that if the stone lied on the eastern side of the road is fixed as 17.4 meters from the stone on the west, only open site out of the petitioner's building need be demolished. The materials on record clearly prove that the acquisition in respect of the property of the petitioners in W.P.(C) Nos. 29140 & 29393 of 2007 is substantially different from the original alignment. The letter written by the Secretary of TRIDA to the Collector shows that in this small stretch of area alone, at least in 11 places, the acquisition was not in conformity with the alignment and the Land Acquisition

Officer had acquired the land not required by TRIDA. The only inference possible is that such acts were committed by the revenue authorities due to extraneous consideration on account of the undue influence exerted by influential persons. So, I am of the view that at least in respect of petitioners in these writ petitions, the land cannot be allowed to be acquired without correcting the mistakes. So, for that purpose, that part of the declaration relating to the petitioners in these three writ petitions are to be quashed.

29. The Director of Vigilance and Anti Corruption Bureau is suo motu impleaded in all these petitions. The facts narrated about shows that TRIDA is making allegations against the revenue authorities and the revenue authorities are making counter allegations against TRIDA. In the affidavit filed by the Collector on 2-11-2007, it is specifically averred that alignment sketch was prepared after joint inspection held by the revenue authorities with the officers of TRIDA. TRIDA had written letters to the Collector making allegations against the revenue authorities. But the fact remains that the acquisition made in these three cases are not in conformity with the original alignment at all. So, I am of the considered opinion that a thorough enquiry by a team headed by a Superintendent of Police constituted by the Director of Vigilance and Anti Corruption Bureau is absolutely essential to the conduct of each and every officers and staff connected with this acquisition. So there will be a direction to the Director of Vigilance and Anti Corruption Bureau to constitute a team headed by the Superintendent of Police to conduct a preliminary enquiry into the whole matter. The team shall conduct enquiries regarding the role of the staff and officers of the Land Acquisition Office, the office of the Superintendent and Survey of Land Records, Taluk Office, the District Collector's Office, and also the staff and officers attached to the office of the TRIDA, and file a detailed report in this matter before this Court, within three months. If necessary, appropriate action also shall be initiated against the persons responsible.

30. The admission made by the 4th respondent shows that even at a small stretch of road starting from the office to G.G. Hospital Junction, variations are made at 11 places. So for the purpose of conducting the vigilance enquiry, it is necessary to conduct a re-survey of the entire stretch of road starting from Pattom Junction to Ulloor Junction, to find out whether variations are made at other places. The team shall conduct enquiry and find out whether those variations were effected on account of money power or muscle power. I make it clear that such a re-survey is ordered only for the purpose of finding out whether any variations are made from original plan due to extraneous considerations.

31. A large number of writ petitions are filed alleging change from the original alignment. Invariably the requisitioning authority will defend the action contending that no change is made to the original alignment. The Land Acquisition Officer will maintain a stand that the acquisition is strictly in accordance with the original alignment. But the fact remains that the Land Acquisition Officer makes variations from the original alignment due to

extraneous reasons. Some time, it may not be even possible to notice the change by merely looking into the stones planted. At present there is no coordination or inter action between the requisitioning authority and the revenue authorities. After entrusting the matter with the revenue authorities, requisitioning authorities never supervise the work. It is high time to change this practice. In order to avoid the complaint of change of alignment, it is only just and proper that before issuing declaration u/s 6(1) of the Act, a joint verification is conducted by the Head of Department of the requisitioning authority, the District Collector and Superintendent of Survey and Land Records and prepare the plan and certify the correctness of the same. The work shall not be entrusted to the officers who conducted the survey already. The authorities who supervise the joint verification shall counter sign the plan and certify its correctness with reference to the original alignment. Thereafter only declaration u/s 6(1) of the Act shall be made. A copy of this judgment shall be forwarded to respondents 1 and 3 for strict compliance of these directions by all authorities hereafter. In case, it is subsequently established that the plan prepared after joint inspection is not correct, the officers who certify the same will be made personally responsible. ,

32. The Director of Vigilance and Anti Corruption Bureau shall direct the team constituted to be present while conducting the re-survey of the entire stretch to have a first hand information regarding the variations made from the original alignment. It is also open to the Director of Vigilance and Anti Corruption Bureau to seek the help of the Kerala State Road Front Board. If such a request is made, the Board shall depute a senior responsible officer to help the investigation team to find out whether any variations are made from the original alignment.

33. In the result, the writ petitions are disposed of in the following manner.

i) Section 6(1) declaration, so far as it relates to petitioners in these three writ petitions alone are quashed.

ii) There will be a direction to the respondents 1 to 4 to conduct a thorough re-survey of the entire stretch starting from Ulloor Junction till Pattom Junction. It shall be conducted in the presence of senior officers of District Collector's Office, office of the Superintendent of Survey and the senior officers of TRJJOA. It is also open to the 2nd respondent to seek the assistance of the Kerala Road Front Board, who prepared the alignment, in conducting the re-survey.

iii) Notice shall be given to the Director of Vigilance and Anti Corruption Bureau, so as to enable him to depute the team constituted by him while the resurvey being conducted.

iv) The District Collector, Thiruvananthapuram, shall take necessary steps to conduct the re-survey.

v) Petitioners shall also be given notice regarding the re-survey.

vi) There will be a direction to the respondents to complete the re-survey, in

accordance with the above directions, as expeditiously as possible, at any rate, within six months from the date of receipt of a copy of this judgment, and thereafter issue fresh declaration u/s 6(1) of the Act, so far as the petitioners are concerned in respect of land demarcated after re-survey.

vii) In case, it is revealed that the Government sustained any loss, on account of this acquisition so far effected, such loss shall be recovered in accordance with law from the officers who are responsible for it.

viii) Copies of the judgment shall be forwarded to respondents 1 and 3 who shall communicate copies of this judgment to all Heads of departments and District Collectors and Superintendent of Survey and Land Records for strict compliance, and also for necessary action. Copies of the judgment shall be forwarded to the Director of Vigilance and Anti Corruption Bureau and also to the Kerala State Road Fund Board for information and necessary action.

34. Commissioner was appointed in W.P.(C) No. 8421/2007, who was paid an amount of Rs. 10,000/- as batta. So, it is only just and proper that all the three writ petitions are allowed the costs, which is fixed as Rs. 15,000/- in W.P.(C) 8421/2007 and Rs. 5000/- each in W.P.(C) Nos. 29140/07 & 29393/07. The cost shall be paid by the State and its Officers. It is open to the petitioners to recover the costs by executing this judgment, treating it as a decree for recovery of money, before the competent Civil Court. In case, the State has to pay the cost, the same shall be recovered from the officers responsible.