

(2015) 01 KAR CK 0213

In the Karnataka High Court

Case No : Writ Petition Nos. 34971 to 34972/2013 (GM-RES)

C.S. Rajesh

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 14-01-2015

Acts Referred:

Citation : (2015) 01 KAR CK 0213

Hon'ble Judges : S. Abdul Nazeer, J.

Bench : Single Bench

Advocate : T.R. Subbanna, Senior Advocate for B.V. Vidyulatha, for the Appellant; V.K. Narayana Swamy, CGC, Advocates for the Respondent

Final Decision : Allowed

Judgement

S. Abdul Nazeer, J.—Though these matters are listed for Further Orders, by consent of the learned Counsel for the parties, they are taken up for final hearing, heard and disposed of by this order.

2. The petitioners contend that they along with their father are the absolute owners in possession and enjoyment of the agricultural lands bearing Sy. Nos. 52, 54, 56/1, 56/2, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66 and 68 of Pattasomanahalli Village, Pandavapura Taluk, Mandya District having purchased the same under a registered sale deed dated 29.3.1990 from Sri. R.N. Rao and his family members. The petitioners are also owners in possession and enjoyment of the land bearing Sy. No. 55 and certain other lands. They are residing in a portion of the above said lands. They have created a Charitable Trust called "Shri Shivashaila Educational and Charitable Trust (R)" in a portion of the said lands. The Trust is maintaining four temples, a Sanskrit School, an auditorium and student quarters on a portion of the said lands. Rest of the lands are cultivated by the petitioners.

3. It is further contended that the Bangalore-Mysore railway track passes through the middle of these lands dividing the lands into two portions. The

owners of the land have to pass through railway track to go the lands situated on the southern side of the railway track as they do not have any other road/access to reach the said lands. Therefore, the erstwhile owner of the land requested the railway board to provide an unmanned "C" Cross level crossing. An order was passed by the Railway Board providing for an unmanned "C Cross bearing No. 91 at mile 281/17-18 on the Bangalore-Mysore-Section of Railway near Lokapavani railway bridge in the portion of lands bearing Sy. Nos. 52, 59, 63 and 64. Subsequently, considering the fact that there is a sharp blind curve near the said level crossing obstructing the view of the train on the tracks and also in view of the risk involved to the owners and other users of the unmanned level crossing, on the request of the erstwhile owner, the Railway Board provided a Gateman to the said gate at the said level crossing No. 91. A room for the gateman at the level crossing was also constructed.

4. It is the case of the petitioners that on 25.5.2004, the respondents closed and locked the Railway Gates at the above level crossing without notice whatsoever. It appears that this was done on the basis of the Joint Circular bearing No. B/T/157/XVI/3 Vol. VII dated 19.5.2004 issued by respondent Nos. 4 to 6. Therefore, the petitioners filed a writ petition before this Court in W.P. No. 25628/2004 challenging the aforesaid circular.

5. Respondent Nos. 2 to 6 had entered appearance and opposed the writ petition. This Court by order dated 23.11.2005 allowed the writ petition. Since Para-924 of the Indian Railways Permanent Way Manual (for short "Railway Manual") has not been followed, the respondents therein were directed to conduct a fresh survey and to take action in terms of Para-924 of the Railway Manual. The petitioners contend that the respondents have failed to obey the order of this Court. Now, they have done doubling work of the railway line between Bangalore-Mysore, which includes the section of line where level crossing No. 91 is situated. Therefore, the petitioners have filed these writ petitions for a mandamus directing the respondents to provide manned Railway Level Crossing as it existed prior to its closure and to permit the petitioners to use the said level crossing as has been done prior to the year 2004.

6. Respondent Nos. 2 to 4 have filed their statement of objection contending that they have carried out a detailed census in accordance with the prescribed procedure in determining that manning the said level crossing was no longer required. It is further contended that the respondents have acted bonafide and in a reasonable manner keeping in mind that the infrastructure provided free of cost and availed by the petitioners for more than ten years was no longer necessary and would be better to be deployed at more suitable level crossings requiring urgent attention. It is contended that unmanned level crossing on Rajdhani and Shatabdi routes where maximum speed is 120 kmph or more should be manned on priority, whereas, sectional speed of the Mysore-Bangalore section is only 100 kmph. Bangalore-Mysore section is in Group "D" and maximum permissible speed is 100 kmph. Therefore, the petitioners cannot

insist upon having a manned level crossing and that the same can be granted on deposit terms. The entire cost has to be borne by the petitioners.

7. I have heard Sri. T.R. Subbanna, learned Senior Counsel for the petitioners and Smt. H.C. Kavitha, learned counsel appearing for respondent Nos. 2 to 6.

8. Learned Senior Counsel appearing for the petitioners submits that the level crossing No. 91 was installed on Bangalore-Mysore section of railway as per the order of the Railway Board long ago. Thereafter, taking into consideration the various factors that there is a sharp blind sharp blind curve near the said level crossing obstructing the view of the train on the tracks and also in view of the risk involved to the owners and users of the unmanned level crossing on the request of the erstwhile owner, the Railway Board has installed a gate and a gateman was appointed to guard the said gate at the level crossing. Since the railway gate was locked, a writ petition was filed by the petitioners in W.P. No. 25628/2004. This Court allowed the said writ petition on 23.11.2005 and has directed to hold a fresh survey and action has to be taken in accordance with Para-924 of the Railway Manual. This order has attained finality. However, the respondents have failed to implement the directions contained in this order. He draws my attention to Para-924 of the Railway Manual and in particular, clause (c) of Para-924 and submits that existing manned level crossing should not be demanded . However, the detailed review/survey of the existing level crossings both manned and unmanned to be carried out with a view to eliminate them by either passing the road through an existing bridge or by constructing link roads to combine two or more level crossings. The removal of the railway level crossing by the respondent/authority is totally illegal and violative of clause (c) of Para-924 of the Railway Manual.

9. On the other hand, learned Advocate appearing for the respondents submits that the authorities are of the view that the Railway Level Crossing in question was no longer required. Therefore, keeping in view that infrastructure provided free of cost and availed by the petitioners for more than ten years was no longer necessary and would be better to be deployed at more suitable level crossings requiring urgent attention, the level crossing in question has been removed. Sectional speed of the Bangalore-Mysore is only 100 kmph. It is Group "D" route. Therefore, the petitioners cannot insist upon the Railway Board for having a manned level crossing.

10. I have carefully considered the arguments of the learned Counsel made at the Bar and perused the materials placed on record.

11. It is clear from the materials on record that R.N. Rao @ R. Nanjundara Rao and his family members were the owners of the properties bearing Sy. Nos. 52, 54, 56/1, 56/2, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66 and 68 of Pattasomanahalli Village, Pandavapura Taluk, Mandaya District. After the old stone railway bridge built across the Lokapaniriver collapsed in the year 1948, the present metal railway bridge was constructed by the respondents on the

down stream side of the river by permanently diverting the railway line on the portions of the above said lands. The said diversion of railway line has caused bifurcation of the above said lands. In order to mitigate the inconvenience caused to the owners of the land after bifurcation, on the request of R.N. Rao, the Railway Board had provided an unmanned C-Class level crossing bearing No. 91 at mile 281/17-18 (also known as at KM. 113/900-114/000) on the Bangalore-Mysore section of railway near Lokapavani railway bridge in the portions of the land bearing Sy. Nos. 52, 59, 63 and 64. Thereafter, considering the fact that there is a sharp blind curve near the said level crossing obstructing the view of the train on the tracks and also in view of the risk involved to the owners and other users of the unmanned level crossing, on the request of R.N. Rao, the Railway Board had installed a gate and provided a gateman to guard the said gate at the above said level crossing. A room was also constructed by the respondents for the gateman at the level crossing and put up necessary instructions with timings of the opening and closing of the gates. Separate Gate Working Rules dated 10.12.2002 was also issued to the level crossing in question.

12. The petitioners and their father purchased the said property from R.N. Rao under a registered, sale deed dated 29.3.1990. They have created a Charitable Trust called "Shri Shivashaila Educational and Charitable Trust (R)" in a portion of the said land. The Trust is maintaining four temples, a Sanskrit school, an auditorium, student quarters, etc., on a portion of the above said land and in the other portions of the land, they are growing sugar cane, paddy, areca, coconut, banana along with other subsidiary crops. After the bifurcation of the land on account of the laying of the railway track, the petitioners did not have any other road/access to reach the other side of their land. On account of the improvements made by the petitioners over the lands, it has substantially increased the number of persons using the said manned gate manifold. Not only persons residing on the said land use the gate, but also other visitors, students, devotees, labourers, etc., are using the said crossing either on vehicles or otherwise to go from one side of the track to other side of the track.

13. It is also clear that on 25.5.2004, the respondents closed and locked the railway gates at the above said level crossing. The repeated request of the petitioners to open the said gate was not favourably considered by the Railway Board. Therefore, the petitioners filed a writ petition before this in W.P. No. 25628/2004 challenging the circular at Annexure "C dated 19.5.2004 issued by respondent Nos. 4 to 7 closing the gate. This Court has passed an interim order on 1.7.2004. After hearing the matter, the writ petition was allowed on 23.11.2005 by observing as under:

"9. It is not in dispute that the petitioners after purchasing the property have created the public charitable trust for the benefit of the general public. It is also not in dispute that the petitioners have constructed four temples and have also established a Sanskrit school, an auditorium, student quarters and other facilities for the benefit of pilgrims and devotees. When children, devotees and pilgrims

who visits temple, Sanskrit school and other charitable institutions, which are constructed by the trust, it may not be proper for the respondents to close main level crossing without considering para-924 of the Manual.

10. After arguments made for some time., the learned Counsel for both the parties submit that when survey has been conducted with the knowledge of the petitioners and that the survey was conducted long back in the year 2003 and after 2003, the use of level crossing by the general public is increased due to the popularity of the educational and charitable institution established by the trust in question. Therefore, the learned Counsel appearing for the petitioners submit fresh survey has to be conducted and action has to be taken in accordance with Para-924 of the Railway Manual. Since Para-924 has not been considered while passing the order in question, this Court is also of the opinion that in the interest of general public, fresh survey has to be conducted by the Railway Board and take action giving due regard to Para-924 of the Railway Manual.

11. In the result, the writ petition is allowed. Annexure "P" dated 19.5.2004 is hereby quashed. It is open for the respondents to take action in the light of the observations made in the earlier paragraphs."

14. The above order has become final and binding on the parties. It is clear from the said order that the circular at Annexure "C" has been issued without following Para-924 of the Railway Manual. It is also clear that the respondents have not taken any action in terms of the said order. On the contrary, the Railway Gates have been removed while doubling the railway track.

15. Para-924 of the Railway Manual provides for new level crossings/manning/de-manning/elimination. Para-924(c) provides for elimination of level crossing, which is as under:

"924(c): De-manning/Elimination of the Level Crossing: The existing manned level crossings should not be de-manned. However, the detailed review/survey of the existing level crossings both manned and unmanned to be carried out with a view to eliminate them by either passing the road through an existing bridge or by constructing link roads to combine two or more level crossings, etc."

16. It is evident that the existing manned level crossing should not be de-manned. The existing level crossing can be eliminated by providing a road passing through an existing bridge or by constructing link roads to combine two or more level crossings, etc. This can be done after a detailed review/survey of the existing level crossing. The authorities have not done this exercise before eliminating the existing level crossing. Thus, the respondent-authorities have not only disobeyed the order of this Court but also have not followed the procedure prescribed in Para-924(c) of the Railway Manual, while eliminating the Railway Level Crossing bearing No. 91.

17. There is no merit in the contention of the respondents that the Railway Level Crossing was no longer required. The respondents cannot come to such a

conclusion without conducting a survey as provided in Para-924(c) of the Railway Manual. No material has been produced to show that review/survey has been conducted in accordance with the aforesaid para of the Railway Manual, which is binding on them. They are bound by the order of this Court wherein the circular dated 19.5.2004 closing the level crossing has been quashed reserving liberty to take action in terms of Para-924 of the Railway Manual.

18. I am of the view that the respondents have to restore the manned level crossing bearing No. 91 at mile 281/17-18 on the Bangalore-Mysore section of Railway near Lokapavani railway bridge.

19. In the result, the writ petition succeeds and it is accordingly allowed. I direct respondent Nos. 2 to 4 to restore the manned level crossing bearing No. 91 at mile 281/17-18 on the Bangalore-Mysore section of Railway near Lokapavani railway bridge in the portions of the land bearing Sy. Nos. 52, 59, 63 and 64 of Pattasomanahalli Village, Pandavapura Taluk, Mandya District, within a period of three months from the date of receipt of a copy of this order. After its restoration, liberty is reserved to the respondents to consider de-manning/elimination of level crossing strictly in accordance with Para-924(c) of the Indian Railways Permanent Way Manual.

20. In view of the disposal of the writ petitions as above, I.A. No. 4/2014 does not survive for consideration. It is accordingly dismissed. No costs.