

(2025) 06 KL CK 0917
In the High Court Of Kerala
Case No : Writ Appeal No. 227 Of 2025

K.J.James

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 30-06-2025

Acts Referred:

Constitution of India, 1950 — Article 300A
Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Section 4, 7, 7(1), 7(2b), 8

Citation : (2025) 06 KL CK 0917

Hon'ble Judges : Dr. A.K. Jayasankaran Nambiar, J; P.M. Manoj, J

Bench : Division Bench

Advocate : P.K. Suresh Kumar, K.P. Sudheer, Anjali Menon, Vinitha B., Reshmita R. Chandran, S. Biju, Binu Mathew, Justine Jacob, Sheeja Soman P.

Final Decision : Dismissed

Judgement

Dr. A.K. Jayasankaran Nambiar, J

1. The petitioners in W.P(C).No.18680 of 2021 are the appellants before us, aggrieved by the judgment dated 06.01.2025 of a learned Single Judge dismissing the writ petition. The brief facts necessary for a disposal of this writ appeal are as follows;

The appellants herein had approached the writ court aggrieved by the land acquisition proceedings that had been initiated under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 [hereinafter referred to as 'the 2013 Act'] by which lands belonging to them stood compulsorily acquired by the State for the purposes of constructing a Railway Overbridge and its approach roads at Kuruppanthara in Kottayam District. The challenge to the acquisition proceedings were premised primarily on the contention that the procedural safeguards that were put in place in the 2013 Act were honoured more in breach by the authorities who were entrusted to discharge their statutory functions with due diligence. In particular it

was pointed out that while under Section 8 of the 2013 Act, the appropriate Government [in this case 'the District Collector'] had to take a decision as to whether there was a legitimate and bona fide public purpose for which the acquisition was proposed, and the decision had to be taken after looking into the report of the expert group constituted under Section 7 of the 2013 Act, no such decision was taken by the District Collector. It was contended therefore that the notification issued under Section 11 of the 2013 Act had to be seen as invalid. It was the further case of the appellants that the authorities under Sections 4 and 7 of the 2013 Act had not addressed the question as to whether any public purpose was served through the proposed acquisition more so when there was an existing railway overbridge that was constructed in the year 2017 within a distance of 250 metres of the proposed site, and yet another newly constructed Railway Overbridge within one kilometre from the proposed site.

2. The learned Single Judge, who considered the matter, referred to the counter affidavits filed on behalf of the respondents to find that there had been sufficient compliance with the substantive and procedural provisions of the 2013 Act and hence there was no necessity to interfere with the acquisition proceedings that were now in an advanced stage where awards had been passed determining the compensation payable to the affected persons. The learned Judge also took note of the fact that while there were many persons who were affected by the acquisition proceedings, only two persons had chosen to challenge the same, and therefore the overriding public interest lay in allowing the acquisition proceedings to go ahead.

3. Before us, it is the submission of the learned Senior Counsel Sri. Suresh Kumar P.K., assisted by Adv.Sri.K.P.Sudheer that the learned Single Judge failed to take note of the importance of the particular procedural provisions under the 2013 Act, that were not there under the earlier enactment, and were inserted therein to ensure a first-level protection to citizens against an arbitrary deprivation of their property rights. In particular, he points to the fact that there was no decision taken by the District Collector in terms of Section 8 of the 2013 Act, as indeed he could not have, since the material he was to rely upon for taking an informed decision was the report of the expert group under Section 7 which itself had not considered relevant facts while submitting its report. He refers to the report of the expert group to show that there was no consideration of the issue of whether or not there was a legitimate and bona fide need for another Railway Overbridge in the area when there were two other such overbridges in the vicinity.

4. Per contra, it is the submission of the learned Senior Government Pleader Smt.Vineetha, as well as the learned counsel appearing on behalf of the other respondents, that the acquisition proceedings having progressed to a stage where awards had been passed in favour of many of the affected persons, and the objection to the acquisition was raised only by the two appellants herein, there was no necessity to stall a project conceived in public interest. It is their

contention that the private interests of the two appellants have to yield to the overriding public interest that was in favour of the acquisition proceedings for a much-awaited overbridge in the area.

5. We have considered the rival submissions and perused the pleadings and precedents cited before us. Before we embark upon an analysis of the legal submissions, we deem it apposite to refer to a few salient features of the 2013 Act, in the backdrop of the emerging trend in property rights jurisprudence in our country.

6. The preamble to the 2013 Act indicates that it was enacted to replace the earlier expropriatory legislation by providing for a humane, participative, informed and transparent process for land acquisition. The intentions are to acquire land with least disturbance to the owners and other affected families, provide just and fair compensation to the affected persons, make adequate provisions for their rehabilitation and resettlement, and ensure that the cumulative outcome of the compulsory acquisition should be that affected persons become partners in development leading to an improvement in their post-acquisition social and economic status. It is therefore that detailed provisions were made in the 2013 Act to ensure the participation of the affected persons in all the stages of the acquisition. The Act also introduced for the first time, provisions for social impact analysis and a mode of acquisition requiring consent of the displaced. The social impact analysis is intended to ensure that there is a clear perception, through a careful quantification of the costs and benefits that will accrue to society at large, of the desirability and justifiability of each project. Towards this end, the adverse impact on affected families – economic, environmental, social and cultural – has to be assessed in a participatory and transparent manner. In recognition of the importance of the right being taken away from the affected persons – one that is traceable to Article 300-A of the Constitution of India – Section 7 of the 2013 Act requires the appropriate Government to ensure that the social impact assessment report is evaluated by an independent multi-disciplinary expert group and still thereafter, in terms of Section 8 of the 2013 Act, to further apply its mind to the report of the expert group and ensure that there is a legitimate and bona fide public purpose for the proposed acquisition, which necessitates the acquisition of the lands identified. Thus, a three-tier mechanism was put in place solely for the purpose of ensuring that the acquisition proceedings are indeed for a legitimate and bona fide public purpose. The procedural provisions contained in Sections 7 and 8 of the 2013 Act are therefore intended to be strictly and scrupulously adhered to with a view to safeguard the constitutional guarantee against an arbitrary deprivation of the property rights of a citizen.

7. Highlighting the importance of procedure in matters relating to the compulsory acquisition of property, the Supreme Court in *Urban Improvement Trust, Bikaner v. Gordhan Dass (D) through Lrs. & Ors.* – [MANU/SC/1175/2023], observed as follows:

"89. The Supreme Court in a recent judgment had the occasion to look at the process of compulsory land acquisition where the landowners had practically no means to oppose the proposed acquisition. A two judge bench in *Vidya Devi v. State of H.P.*¹⁴ speaking through Indu Malhotra J. made the following significant observation:

"12.2. The right to property ceased to be a fundamental right by the Constitution (Forty-fourth Amendment) Act, 1978, however, it continued to be a human right (*Tukaram Kana Joshi v. Maharashtra Industrial Development Corpn.* [(2013) 1 SCC 353 : (2013) 1 SCC (Civ) 491]) in a welfare State and a constitutional right under Article 300-A of the Constitution. Article 300-A provides that no person shall be deprived of his property save by authority of law. The State cannot dispossess a citizen of his property except in accordance with the procedure established by law. The obligation to pay compensation, though not expressly included in Article 300-A, can be inferred in that Article [*K.T. Plantation (P) Ltd. v. State of Karnataka* [*K.T. Plantation (P) Ltd. v. State of Karnataka*, (2011) 9 SCC 1 : (2011) 4 SCC (Civ) 414]].

12.3. To forcibly dispossess a person of his private property, without following due process of law, would be violative of a human right, as also the constitutional right under Article 300-A of the Constitution.

9 0. The significance of complying with procedural requirements cannot, therefore, be overstated.

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9 4. It logically follows from above that dispossession without following prescribed statutory process such as giving proper notice, is not only highly prejudicial but it is also a violation of constitutional rights and would thereby vitiate the entire process of land acquisition. Law is well-settled that strict adherence to the mandatory procedural requirements outlined in the legislation is sine-qua-non for the compulsory acquisition of land. Legally conducted acquisition procedures minimize the potential for arbitrary action by the concerned Authority. The findings to this effect by the Appellate Court and the High Court would therefore merit our approval. In other words, land acquisition proceedings for the entire 3 bighas of land is held to be void-ab-initio."

8. More recently, in *Kolkata Municipal Corporation & Anr v. Bimal Kumar Shah & Ors* – [(2024) 10 SCC 533], the court while rejecting the contention of the Corporation that it had effectively acquired the property of a citizen, drew a distinction between a statutory provision that confers a power of acquisition to the Corporation and other provisions that dealt with the procedure to be followed in the exercise of that power. The court found that Article 300-A of the Constitution, that prohibited the deprivation of property of a citizen save as authorized by law, conferred on a citizen seven sub-rights viz. (i) the right to a notice of the proposed acquisition, (ii) the right to be heard on the objections if

any to such proposal (iii) the right to a reasoned decision thereon (iv) the right to insist that the acquisition could only be for a public purpose (v) the right to restitution or fair compensation (vi) the right to an efficient and expeditious process and (vii) the right to a conclusion of the proceedings. In essence, the court saw the concepts of substantive and procedural due process as integral aspects of the phrase 'authority of law' in Article 300-A of the Constitution.

9. A Division Bench of this Court in *State of Kerala & Ors. v. Abdul Manaf P.M & Ors.* – judgment dated 14.02.2024 in W.A.No.195 of 2024, considered the legality of a report submitted by an expert group that was not constituted in accordance with the mandate of Section 7 of the 2013 Act. While setting aside the acquisition proceedings in that case, this Court found as follows at para 8 of its judgment:

"8. Section 7 (2b) of the Act makes it mandatory that the Expert Group constituted under Sub Section (1) of Section 7 shall include two representatives of Grama Panchayat, Grama Sabha, Municipality or Municipal Corporation, as the case may be. Therefore, we are of the considered opinion that when land within a Panchayat is sought to be acquired there shall be two representatives from that Panchayat. Similarly, in the case of Municipality or Municipal Corporation, two representatives from the local body concerned shall be included in the Expert Group. It cannot be said that, in the case of a joint acquisition, in which land from the Panchayat, Municipality or Municipal Corporation area is being acquired, two representatives of any of the local body is sufficient. In that case, two representatives each from the Panchayat, Municipality or Municipal Corporation are required to be included in the Expert Group. This requirement cannot be met by the representatives of the Panchayat being heard at the stage of preparation of social impact assessment report. It is settled law that when the statute mandates something to be done in a particular manner, it shall be done in that manner alone. In the present case, it is clear that no members from any of the Panchayats were included in the Expert Group constituted under sub Section (1) of Section 7. Therefore, subsequent consideration and approval of the the recommendation made by the Expert Group, would not also suffice. For the purpose of acquisition proceedings, when an Expert Group is constituted for evaluating the report, two representatives of the local bodies affected by the acquisition proceedings shall be included in the Expert Group. In the present case, members of the Chirakkal and Valappattanam Panchayats which are also affected, are not included in the Expert Group. Therefore, the learned Single Judge, after considering the relevant provisions of law, has committed no error in allowing the petition. The decision relied on by the learned Government Pleader deals with the situation where principles of natural justice are violated, whereas, in the instant case, the violation is of a statutory mandate. Being so, the question whether the petitioners are prejudiced by the violation has no relevance."

The law as it stands today, therefore, frowns upon procedural lapses occasioned

by authorities under the 2013 Act who are entrusted with the task of safeguarding the constitutional protections offered to our citizens. It is against the backdrop of that understanding that we must consider the submissions of the learned counsel on either side.

10. On going through the files relating to the acquisition proceedings that were made available for our perusal, we find that the office notes do not indicate whether or not the District Collector, who was the appropriate government for the purposes of the present acquisition, actually applied his mind to the report of the expert group. While there is no endorsement in the digital office notes, the District Collector appears to have put his signature on the notes/reports placed before him by his subordinate authorities. When the above aspects were pointed out to the learned Government Pleader, an additional affidavit was filed on behalf of the District Collector wherein the explanation given reads as follows:

"10. On 09.04.2025, this Hon'ble Court opined that there appear to be merits in the petitioners' claims of non-application of mind on the part of the Appropriate Government (District Collector) . It may kindly be noted that the Appropriate Government (District Collector) who issued Exhibit R2(i) has since retired, complicating efforts to obtain an affidavit attesting to the thoroughness of his review process as contested by the petitioners. The undersigned respondent is now officiating in the same post and similar capacity. I affirm from an administrative perspective that all relevant documentation was meticulously examined and validated before the issuance of the order.

11. The legal presumption is that individuals in positions such as District Collector are fully aware of their responsibilities and the powers granted to them by the Government. When they sign documents, these officials demonstrate their commitment and careful use of their cognitive abilities.

12. The operations of the collectorate and various government offices are governed by procedures established by the Government over time. As outlined in the Manual of Office Procedures, documentation aspects such as file notices, enclosures, drafts, the use of current files, and communication methods are detailed. Specifically, Chapter 6 of this manual addresses the noting process. It is mandated that the notes are brief and precise, intended solely for the smooth functioning of the office.

13. In this case, the subordinate officers responsible for preparing and submitting notes for the District Collector's endorsement prepared the notes and submitted the file for the Collector's signature after verification. The Collector has the authority to require the rewriting or resubmission of notes to correct any deficiencies in the drafts if deemed necessary. The purpose of maintaining note files is strictly for these processes. A District Collector is expected to sign documents only after thoroughly examining the file. Given that this is the established practice, there should be no doubt regarding the conduct of the District Collector. It is expected that the Collector performs his duties diligently,

and have been able to do so in every aspect.

14. In the Collectorate, the clerk first receives the correspondence and subsequently organises the file along with relevant notes. Next, the Junior Superintendent review the materials and adds his observations. Following this, the Deputy Collector examines the file and submits it to the appropriate authority for further action. Hence the entire process undergoes strict scrutiny in the Collectorate.

15. It is also significant to note that the file was under the District Collector's custody from January 13 to January 16, 2020, for an in-depth study of the matter before issuing Exhibit R2(i). Note file system ensured formal compliance with the office procedures. The nuances of noting within the file, or its absence, should not be interpreted as a lack of analytical engagement. Attempts by the National Informatics Centre (NIC) and Kerala State IT Mission to retrieve relevant data were unsuccessful. As a result, identifying the activity log has become infeasible. The principle of "lex non cogit ad impossibilia" emphasizes that the law does not require the performance of impossible tasks. This respondent asserts that we are obligated to fulfil our responsibilities diligently, and my predecessor did engage in thorough consideration of the mandates of S.8(1) of the Act when issuing Exhibit R2(i)."

11. We do not think the afore-extracted averments from the affidavit filed on behalf of the District Collector indicate that the statutorily required obligations of the appropriate Government were satisfactorily discharged in the instant case. That apart, we do not find any discussion in the social impact assessment report, or in the report of the expert group that was forwarded to the District Collector, that addresses the concerns raised by the appellants herein as regards the need for another Railway Overbridge in the locality when there was another one in the near vicinity. While it may be a fact that the proposed overbridge was in fact a felt necessity of a majority of people in the locality, and by that yardstick, a legitimate and bona fide public purpose justifying the acquisition proceedings, we are of the view that those considerations cannot outweigh the public interest sought to be served by requiring the statutory authorities to scrupulously and meticulously adhere to the procedural requirements of the 2013 Act. The lackadaisical approach of the statutory authorities in the instant case has necessarily to be deprecated, and we do so.

12. While our findings above would have sufficed to set aside the acquisition proceedings, there are a couple of factors that yet dissuade us from doing so. Firstly, there is evidence on record that clearly points to the proposed railway overbridge offering a solution to the traffic problems that afflict the locality. The proposal also appears to be supported by most of the affected persons, as well as the people's representatives in the locality. We are also told that the acquisition proceedings have progressed to a stage where awards have been passed, and compensation disbursed, to most of the affected landowners. Halting the acquisition proceedings now would not be in the socio-economic interests of

the general public. We therefore feel that it would not be in the interests of justice to set aside the proceedings at this belated stage. That said, we also feel that the appellants here should be duly compensated for the costs incurred by them in the pursuit of this litigation.

Accordingly, while we dismiss the Writ Appeal for the reasons stated above, we also direct the State Government to pay Rs.1,00,000/-[Rupees One Lakh] each to the two appellants, within a month from today, towards the costs incurred by them while instituting and pursuing this litigation before this Court.