
(2009) 12 KL CK 0078

In the High Court Of Kerala

Case No : Writ Petition (C) . No. 5526 of 2009 (S)

K.K. Bharathan and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 08-12-2009

Acts Referred:

National Highways Act, 1956 — Section 3, 3A

Citation : (2009) 12 KL CK 0078

Hon'ble Judges : S.R. Bannurmath, C.J;A.K. Basheer, J

Bench : Division Bench

Advocate : A.X. Varghese, for the Appellant; Thomas Antony, for the Respondent

Judgement

A.K. Basheer, J.—Petitioners, 39 in number, who are stated to be residents of Chentrapinni, a small village in Thrissur district are before us in this writ petition. Their grievance is that they are likely to be dispossessed of their small holdings in connection with construction of NH 17 bypass road.

2. The primary prayer in the writ petition is to issue a writ in the nature of mandamus or such other appropriate writ or direction to the respondents "not to proceed with the present alignment of the 6th respondent private company for the proposed by-pass as it is not viable and feasible". The second prayer is to issue a writ of mandamus directing the respondents to refrain from acquiring properties of petitioners for the purpose of 4-6 line bypass in Chentrappinni-Palapetty area of National Highway 17.

3. Petitioners have highlighted their sad plight in so many words in the writ petition. It is their contention that they belong to the down-trodden stratum of the society and the present alignment, which is proposed to be implemented, will take away their valuable property from them. According to the petitioners yet another alignment which was in fact prepared by respondent No. 6 in 2006 would be the most ideal and suitable as compared to the one which is now proposed to be implemented.

4. Per contra, respondent No. 5, Project Director of the National Highway Authority, in his counter affidavit has stated that all possible efforts have been made to minimise the damage that is likely to be caused to the properties which may fall within the line of alignment. It is stated that in the case of State of Kerala it has been decided that right of way would be confined to 45 meters instead of 60 meters having regard to the peculiar situation existing in Kerala. Such a policy decision was taken by the Government of India, Ministry of Road Transport and Highways in 2006. The existing Right Of Way (ROW) of way along with NH. 17 at Chentrapinni village is between 12.571 and 25.595 meters, the average being 18.89 meters. The number of residential buildings that will be affected along the existing row will be 102, commercial 108, bunk shops 5, schools 3, one theatre, one hospital, one mosque etc. The total structures that would be affected will be 221.

5. Since local people and the elected representative requested for a by-pass at the Chentrapinni village pointing out the heavy settlement along both sides of the existing NH 17, it was decided to have a by-pass at Chentrappinni village through the shortest possible route. It was thus that the shortest route was finalised for the by-pass to start at Km 390.000 and end near Km. 391.900 passing mainly through agricultural land. Going by this alignment, the structures that would be affected along the proposed by-pass would be only 28 as against 221 if the existing Highway is widened. Out of this 28, 20 are residential buildings, 6 are commercial shops and the remaining 2 are sheds. Most of the structures are more than 25 years old. We do not propose to refer to the other aspects adverted to by respondent No. 5 in the counter affidavit.

6. Of course in the reply affidavit filed by the petitioners the above contentions have been disputed. Yet again we do not propose to refer to those contentions at this stage in view of the order that we propose to pass.

7. In the counter affidavit filed by respondent No. 6, the Project Consultant, details of the work that was carried out in the course of preparation of the alignment have been indicated. In the counter affidavit it is stated thus:

...The work commenced on 10/8/2005 and we have submitted the report on 7/10/2005 and awaiting approval from the National Highway Authorities. We have also submitted the draft feasibility report on 15/2/2006. The preliminary project report was submitted on 26/3/2007. A detailed draft project report was submitted on 18/12/2007. As per the report, 2500 families will be affected if the existing road is to be widened, the number of affected families will be only 295 if the bypass is commissioned.

It is further stated by respondent No. 6 thus:

...This respondent being the consultant, has only a limited role, that is conduct, survey and to submit the project report. There was no change in the alignment at any stage as alleged. Temporary survey stones were planted during survey by the surveyor and these points were just points of reference and does not

represent corridor of impact. In any case it is for the NHAI to approve and implement the project.

It is significant to note that respondent No. 6 has asserted in the counter affidavit that they are not aware of any old plan. According to this respondent, they have prepared only one plan, that is the present one. The allegation made by the petitioners that considerable deviation had been made in the present plan is denied by respondent No. 6.

8. The petitioners have filed reply to the above counter affidavit as well, in which various other contentions have also been raised while denying the averments made in the counter affidavit. Here again we do not propose to make any comment or observation on these contentions.

9. Having heard Sri. A.X. Varghese, learned Counsel for the petitioners and learned Counsel for the respondents, we are of the view that the scope of interference at the instance of the petitioners at this stage is very limited. Learned standing counsel for the NHAI submits that preliminary identification of the properties by the Revenue Authorities is in progress for the preparation of Section 3A notification to be brought out by the Central government under the National Highways Act 1956. After issuance of such a notification, objections from the affected parties will have to be considered and the other steps are to be followed. He points out that all the steps as contemplated u/s 3 and the Sub-sections thereof are to be complied with. In that view of the matter we are satisfied that the present writ petition is premature at this stage.

10. Sri. A.X. Varghese learned Counsel for the petitioners submits that petitioners will be satisfied if an opportunity is given to them to make a representation to the General Manager (Technical), National Highway Authority to highlight their grievances and the relevant aspects of the issue. He submits that a direction may be issued to the said authority to consider the representation that may be submitted by the petitioners and to take an appropriate decision thereon.

11. In the peculiar facts and circumstances of this case, we are satisfied that the above prayer can be granted. Therefore General Manager (Technical), National Highway Authority of India, New Delhi is impleaded as addl. Respondent No. 8. Sri. Thomas Antony accepts notice for the said respondent.

12. The Writ Petition is disposed of with a direction that the petitioners shall submit a representation before respondent No. 8 indicating all their grievances and highlighting the relevant aspects of the issue as projected in the writ petition within two weeks from the date of receipt of a copy of this judgment. Petitioners shall enclose copy of the writ petition, counter affidavits filed by respondents Nos. 5 and 6, reply affidavits etc. along with the representation. Addl. Respondent No. 8, on receipt of the representation shall consider the same and take a decision thereon in accordance with law, after affording an opportunity of hearing to petitioner No. 1 who will represent the other petitioners. A decision on

the representation that may be submitted by the petitioners shall be taken within two months from the date of receipt thereof.