

(2009) 09 KL CK 0057
In the High Court Of Kerala
Case No : WA. No. 1930 of 2009

K.V. Narayanan and Others	Vs	APPELLANT
The State of Kerala and Others		RESPONDENT

Date of Decision : 07-09-2009

Acts Referred:

Citation : (2009) 09 KL CK 0057

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

Bench : Division Bench

Advocate : K. Jayakumar, for the Appellant; No Appearance, for the Respondent

Final Decision : Dismissed

Judgement

S.R. Bannurmath, C.J.—Aggrieved by the rejection of the writ petition, WP(C) No. 27106 of 2008, the writ petitioners have approached this Court in the present appeal.

2. Claiming to be the residents of the Madayi Village, Vengara Desom, Kannur District, the petitioners have come before this Court inter alia contending that the proposed alignment by the Department for Muttom - Ettikulam H.S. Road is not proper and alternate alignment as submitted by the petitioners should be considered. Following are the main prayers in the writ petition:

- i. call for the entire records relating to Ext. P11 order of the 3rd respondent including all the reports referred to therein, and quash the said order Ext. P11 by the issue of a writ of certiorari or any other writ or order;
- ii. Hold that the alternate alignment for the ROB referred to and indicated in Ext.P13 sketch and Ext. P11 order suggested by the petitioners is liable to be accepted by the respondents;
- iii. Order stay of all proceedings pursuant to Ext. P11 order of the 3rd respondent including proceedings for taking possession of any land belonging to the petitioners and as indicated in Ext.P1 notification.

3. It is to be noted that the petitioners had approached this Court in an earlier occasion by filing WP(C) No. 31135 of 2007. This Court had directed the authorities to have a fresh look into the matter as to the technical feasibility or otherwise of the proposed change of alignment. The learned Single Judge had also directed the District Collector to give notice to the petitioners and to conduct a joint inspection and a decision to be taken. In pursuance to the same, the District Collector directed a technical study and survey of the alignment proposed by the Department and also to consider the alternate proposal submitted by the petitioners and its feasibility. After such inspection, Ext.P11 report has been filed. Considering the opinion of the authorities that the alternate alignment is technically not possible, the learned Single Judge deemed it proper to reject the writ petition. Hence the present appeal.

4. Though the learned Counsel for the petitioner tried to point out the alleged mistakes in the report Ext.P11, we were not impressed by the same. At the outset, it is to be noted that the report is prepared by the technical experts, namely, Executive Engineer and Chief Engineer, that too after giving opportunity to the petitioners and holding survey in their presence. Ultimately, the Chief Engineer has opined thus:

The approved alignment is more technically feasible option considering the IRC guidelines for the design of horizontal curves. The approved alignment has two 90 m radii horizontal curves at chain age 2/280 and at 2/490, whereas the alternate alignment proposed by the petitioners has a sharp bend at chain age 2/370 after a curve at chain age 2/280. An acute bend after a curve, within a span of 90 m will adversely affect the sight distance required for the vehicles plying in high speed. In the approved alignment efforts have been made to utilize the existing road to reduce the cost of construction. As per alternate alignment excess land is to be acquired and cost of formation of the ROB embankment will increase. But in the alternate alignment proposed by the petitioners, the number of buildings to be acquired is less. The alignment proposed by the department crosses the railway track portion at right angle, whereas the petitioners alignment crosses the railway track portion at a skew. As such ROB will have longer span. The land acquisition process along the approved alignment is in a final stage and the effected persons are mentally prepared for shifting their establishment to suitable places of their choice. Also if the alignment is changes there is a possibility of fresh litigations by the newly affected persons. Any change in the alignment will delay project further and it may cause difficulties since the Naval Academy is going to be fully commissioned in the beginning of 2009. In the light of the above it is seen that the proposal put forwarded by the department is the more suitable and feasible one from the technical point of view.

Considering this opinion, as the same is of a technical expert, over which we cannot express our opinion. In our view, the learned Single Judge was justified in declining to give relief to the appellant. Hence, we find no merit in the Writ Appeal and the same is dismissed.