

(2022) 03 KL CK 0242

In the High Court Of Kerala

Case No : Writ Petition (C) Nos. 23554, 24973 Of 2021

M.V.Chackochan

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 29-03-2022

Acts Referred:

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Section 105, 105(3)

Railways Act, 1989 — Section 2, 2(1), 2(20), 2(25), 2(37A), 3(o), 11, 20A, 20B

Citation : (2022) 03 KL CK 0242

Hon'ble Judges : N.Nagaresh, J

Bench : Single Bench

Advocate : Babu Joseph Kuruvathazha, M.G.Sreejith, K.S.Archana, N.K.Subramanian, A.Dinesh Rao, T.B.Hood, K.Gopalakrishna Kurup

Final Decision : Dismissed

Judgement

N. Nagaresh, J

1. The petitioners in W.P.(C) Nos.23554/2021 and 24973/2021, who are holding land in Kanakkary, Njeezhoor and Kuravilangad Villages of Meenachil and Vaikom Taluks in Kottayam District, are before this Court aggrieved by Ext.P4 Government Order dated 18.08.2021 whereby sanction has been accorded by the Government of Kerala for the acquisition of 955.13 Hectares of land of various Villages of Thiruvananthapuram, Kollam, Alappuzha, Pathanamthitta, Kottayam, Ernakulam, Thrissur, Malappuram, Kozhikode, Kannur and Kasaragod Districts for Semi High Speed Railway Line (Silver Line) Project by invoking the provisions contained in LARR Act, 2013.

2. The petitioners state that they are in absolute possession and ownership of pieces of land in Kanakkary, Njeezhoor and Kuravilangad Villages of Meenachil and Vaikom Taluks in Kottayam District. The 2nd respondent-State of Kerala and the 4th respondent-Railway Board entered into a Memorandum of Understanding for the formation of a Joint Venture Company on the equity partnership of 51:49,

for infrastructure development of Railway in Kerala. The MOU was intended to improve and strengthen the railway traffic facilities in Kerala by establishing a High Speed Rail Corridor.

3. The 3rd respondent-Kerala Rail Development Corporation Limited (KRDCL) floated Ext.P3 tender for carrying out Environment Impact Assessment study/ field work and preparation of comprehensive Environment Impact Assessment Report, Environment Management Plan, Detailed Social Impact Assessment, Resettlement Action Plan and Indigenous People Plan, for the proposed Silver Line Semi High Speed Railway Line between Thiruvananthapuram and Kasaragod. The length of the proposed corridor is 532 Km.

4. In pursuance of the proposal, the 2nd respondent-State of Kerala issued Ext.P4 order dated 18.08.2021 establishing 11 offices of Special Tahsildars for land acquisition, in 11 Districts. This was with a view to acquire 955.13 Hectares of land for the purpose of Semi High Speed Railway Line. In Ext.P4, sanction was accorded for acquisition of 955.13 Hectares of land situated in various Villages.

5. The petitioners state that in view of Section 105 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (LARR Act, 2013), the provisions of the Act are not applicable to railway projects. The projects under the Union of India and Railway Board are specifically excluded / exempted in view of the 4th Schedule to the LARR Act, 2013.

6. The petitioners would contend that in the 4th Schedule to the LARR Act, 2013, the 13th entry is the Railways Act, 1989. Therefore, the LARR Act, 2013 cannot be applied for acquisition of lands for Railway. Acquisition of land for Railway would fall within the domain of the Railways Act, 1989.

7. The petitioners would further state that in view of Section 20-A and 20-B of the Railways Act, 1989, the 1st respondent-Union of India alone is competent to issue notification for any purpose of any Railway Project in India, including notifications for making inspections, surveys, measurements, valuation, enquiry, to take levels, to set out boundaries, alignments, placing marks, etc. Flouting Sections 20-A and 20-B of the Act, 1989, the 2nd respondent has issued Ext.P4.

8. The learned counsel for the petitioners asserted that the power vested in law to acquire land for the purpose of Railway, is with the 1st respondent. The 1st respondent has to issue a notification contemplated in Chapter IV-A of the Railways Act, 1989. The 1st respondent has not issued any such notification. Ext.P4 amounts to usurping the power and jurisdiction vested with the 1st respondent.

9. The learned counsel for the petitioners further urged that Ext.P4 order is void ab initio since respondents 2 and 3 have no right to act in furtherance of the said order. The officials under the 2nd respondent are deliberately misusing law and they have trespassed into the properties of the petitioners in October, 2021 for

the purpose of illegal fixation of boundaries of the proposed High Speed Railway Line of the 3rd respondent.

10. The 2nd respondent-State of Kerala resisted the writ petition filing counter affidavit. The 2nd respondent stated that the arguments of the petitioners are legally untenable. The Silver Line Project is not a Special Railway Project as contemplated under Section 2(37-A) of the Railways Act, 1989. The procedure for the land acquisition envisaged in the Railways Act, 1989 is applicable only for the Special Railway Projects notified as such, under the Railways Act, 1989. The Act, 1989 is hence not applicable.

11. The 2nd respondent further stated that under Section 105(3) of the LARR Act, 2013, the Central Government may, by notification within one year from the date of commencement of the Act, make provisions of the Act relating to determination of compensation, rehabilitation and resettlement applicable to cases of land acquisition under the enactments specified in the 4th Schedule to the LARR Act, 2013. In the light of Ext.R2(a) order of the Government of India, the provisions of LARR Act, 2013 relating to the determination of compensation, rehabilitation and resettlement in accordance with the 2nd Schedule and infrastructure amenities in accordance with the 3rd Schedule, were made applicable to all cases of land acquisition under the enactments specified in the 4th Schedule to the LARR Act, 2013.

12. The learned Advocate General representing the 2nd respondent pointed out that the proposed Thiruvananthapuram-Kasaragod Semi High Speed Rail Corridor project is a major infrastructure project being implemented by the joint venture undertaking of the Central and State Governments. The proposed project would substantially decongest the National Highways and the State Highways and facilitate faster connectivity. The Ministry of Railways, Government of India has already accorded in principle approval for pre-investment activities. The writ petitions filed by the petitioners are without any bona fide and are liable to be dismissed.

13. I have heard Sri. Babu Joseph Kuruvathazha, the learned counsel for the petitioners, the learned Advocate General Sri. K. Gopalakrishna Kurup and the Special Government Pleader Sri. T.B. Hood representing the 2nd respondent, Sri. A. Dinesh Rao, counsel for the 3rd respondent and Sri. N.K. Subramanian, Standing Counsel representing the 1st and 4th respondents.

14. The issue urged by the petitioners is as to the legal sustainability of the sanction accorded as per Ext.P4 Government Order for the acquisition of 955.13 Hectares of land for the Semi High Speed Railway Line (Silver Line) Project by invoking the provisions contained in LARR Act, 2013. The forceful argument of the petitioners is that land acquisition for the Railway Project can be made only by the Union Government and invoking the provisions of the Railways Act, 1989. A careful examination of the provisions of the LARR Act and the Railways Act, 1989 is therefore necessary.

15. The land acquisition has been ordered by the 2nd respondent exercising powers under the LARR Act, 2013. The Act, 2013 is intended for land acquisition for industrialisation, development of essential infrastructure facilities and urbanisation with least disturbance to the owners of the land and other affected families and provide just and fair compensation to the affected families whose land has been acquired or proposed to be acquired or affected by such acquisition and make adequate provisions for such affected persons for their rehabilitation and resettlement and for ensuring that the cumulative outcome of compulsory acquisition should be that affected persons become partners in development leading to an improvement in their post-acquisition social and economic status. The Act came into force on 01.01.2014.

16. Section 2 of the Act, 2013 states that the provisions of the Act relating to land acquisition shall apply for infrastructure projects. The term 'infrastructure project' is defined under Section 3(o) as to include any one or more of the items specified in clause (b) of sub-section (1) of Section 2. Section 2(1) reads as follows:

2. Application of Act - (1) The provisions of this Act relating to land acquisition, compensation, rehabilitation and resettlement, shall apply, when the appropriate Government acquires land for its own use, hold and control, including for Public Sector Undertakings and for public purpose, and shall include the following purposes, namely:-

(a) for strategic purposes relating to naval, military, air force, and armed forces of the Union, including central paramilitary forces or any work vital to national security or defence of India or State police, safety of the people; or

(b) for infrastructure projects, which includes the following, namely:-

(i) all activities or items listed in the notification of the Government of India in the Department of Economic Affairs (Infrastructure Section) number 13/6/2009-INF, dated the 27th March, 2012, excluding private hospitals, private educational institutions and private hotels;

(ii) projects involving agro-processing, supply of inputs to agriculture, warehousing, cold storage facilities, marketing infrastructure for agriculture and allied activities such as dairy, fisheries, and meat processing, set up or owned by the appropriate Government or by a farmers' cooperative or by an institution set up under a statute;

(iii) project for industrial corridors or mining activities, national investment and manufacturing zones, as designated in the National Manufacturing Policy;

(iv) project for water harvesting and water conservation structures, sanitation;

(v) project for Government administered, Government aided educational and research schemes or institutions;

(vi) project for sports, health care, tourism, transportation of space programme;

(vii) any infrastructure facility as may be notified in this regard by the Central Government and after tabling of such notification in Parliament.

The notification dated 27.03.2012 made mention in Section 2 (1)(b) gives a Harmonised Master List of Infrastructure Subsectors. Railway track, tunnels, viaduct and bridges are included under the category "transport", in the said notification. Therefore, going by Section 2 of the LARR Act, 2013, it would apply to the infrastructure project in question.

17. The learned counsel for the petitioners would rely on Section 105 of the LAAR Act, 2013 to contend that the provisions of the Act are not applicable to railway projects. Section 105 of the LARR Act, 2013 reads as follows:

105. Provisions of this Act not to apply in certain cases or to apply with certain modifications -

(1) Subject to sub-section (3), the provisions of this Act shall not apply to the enactments relating to land acquisition specified in the Fourth Schedule.

(2) Subject to sub-section (2) of section 106, the Central Government may, by notification, omit or add to any of the enactments specified in the Fourth Schedule.

(3) The Central Government shall, by notification, within one year from the date of commencement of this Act, direct that any of the provisions of this Act relating to the determination of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules, being beneficial to the affected families, shall apply to the cases of land acquisition under the enactments specified in the Fourth Schedule or shall apply with such exceptions or modifications that do not reduce the compensation or dilute the provisions of this Act relating to compensation or rehabilitation and resettlement as may be specified in the notification, as the case may be.

(4) A copy of every notification proposed to be issued under sub-section (3), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses of Parliament.

18. The argument is that Section 105 states that the provisions of the Act shall not apply to the enactments relating to land acquisition specified in the Fourth Schedule. The Fourth Schedule gives a list of enactments regulating land acquisition and rehabilitation and resettlement. Serial No.13 of the Fourth Schedule is "the Railways Act, 1989 (24 of 1989)". Since the Railways Act, 1989 stands excluded from the purview of the LARR Act, 2013, the notification issued

for land acquisition for railway projects invoking the LARR Act, 2013 is unsustainable, contends the counsel for the petitioners.

19. To weigh the sustainability of the above argument, one must read the relevant provisions of the Railways Act, 1989 also. The Railways Act, 1989 makes a clear distinction between Government Railway and non-Government Railway. As per Section 2(20) of the Act, 1989 "Government Railway" means a railway owned by the Central Government. As per Section 2(25), "non-Government Railway" means a railway other than a Government Railway. Since the proposed Semi High Speed Railway Line (Silver Line) is not owned by the Central Government, the proposed Railway line would fall within the ambit of non-Government Railway as defined under Section 2(25) of the Railways Act, 1989.

20. Chapter IV of the Railways Act, 1989 makes provisions for construction and maintenance of works. Section 11 relating to the power of Railway Administration to execute works, reads as follows:

11. Power of railway administrations to execute all necessary works -

Notwithstanding anything contained in any other law for the time being in force, but subject to the provisions of this Act and the provisions of any law for the acquisition of land for a public purpose or for companies, and subject also, in the case of a non-Government railway, to the provisions of any contract between the non-Government railway and the Central Government, a railway administration may, for the purposes of constructing or maintaining a railway—

(a) make or construct in or upon, across, under or over any lands, or any streets, hills, valleys, roads, railways, tramways, or any rivers, canals, brooks, streams or other waters, or any drains, water-pipes, gas-pipes, oil-pipes, sewers, electric supply lines, or telegraph lines, such temporary or permanent inclined-planes, bridges, tunnels, culverts, embankments, aquaducts, roads, lines of railways, passages, conduits, drains, piers, cuttings and fences, in-take wells, tube wells, dams, river training and protection works as it thinks proper;

(b) alter the course of any rivers, brooks, streams or other water courses, for the purpose of constructing and maintaining tunnels, bridges, passages or other works over or under them and divert or alter either temporarily or permanently, the course of any rivers, brooks, streams or other water courses or any roads, streets or ways, or raise or sink the level thereof, in order to carry them more conveniently over or under or by the side of the railway;

(c) make drains or conduits into, through or under any lands adjoining the railway for the purpose of conveying water from or to the railway;

(d) erect and construct such houses, warehouses, offices and other buildings, and such yards, stations, wharves, engines, machinery apparatus and other works and conveniences as the railway administration thinks proper;[(da) developing any railway land for commercial use;]

- (e) alter, repair or discontinue such buildings, works and conveniences as aforesaid or any of them and substitute others in their stead;
- (f) erect, operate, maintain or repair any telegraph and telephone lines in connection with the working of the railway;
- (g) erect, operate, maintain or repair any electric traction equipment, power supply and distribution installation in connection with the working of the railway; and
- (h) do all other acts necessary for making, maintaining, altering or repairing and using the railway.

It is therefore evident that the power of Railway Administration to execute necessary works under Section 11 is subject to the provisions of any law for the acquisition of land for a public purpose.

21. It is relevant and is to be noted that the Central Government had no special power to acquire land for construction of rail roads, other than the general land acquisition laws till 2008. In the year 2008, Chapter IV-A was inserted in the Railways Act, 1989 as per the Railways (Amendment) Act, 2008 with effect from 31.01.2008. Section 20-A empowered the Central Government to acquire land invoking the Railways Act, 1989 for "Special Railway Projects".

22. Special Railway Project is defined under Section 2(37-A) of the Railways Act, 1989 as follows:

2(37-A) "special railway project" means a project, notified as such by the Central Government from time to time, for providing national infrastructure for a public purpose in a specified time-frame, covering one or more States or the Union territories.

23. The 2nd respondent has categorically stated that the Semi High Speed Railway Line (Silver Line) Project has not been declared as Special Railway Project, by the Central Government so far. As the Semi High Speed Railway Line (Silver Line) Project is not declared as a Special Railway Project as defined under Section 2(37-A) of the Railways Act, 1989, the respondents cannot invoke the provisions of the Railways Act, 1989 for land acquisition. In the circumstances, the 2nd respondent is justified in invoking the provisions of the LARR Act, 2013 for the purpose of the proposed Semi High Speed Railway Line (Silver Line) Project.

24. In view of the facts and reasons stated above, it is held that:

(1) The Railways Act, 1989 does not expressly or impliedly prohibit the 2nd respondent-State of Kerala from invoking the provisions of the LARR Act, 2013 for land acquisition for the proposed Semi High Speed Railway Line (Silver Line) Project.

(2) Power of the Central Government to acquire land invoking the provisions of

the Railways Act, 1989 can be exercised only for the purpose of executing a Special Railway Project as defined under Section 2(37-A) of the Railways Act, 1989 and

(3) There is no illegality in the 2nd respondent issuing Exts.P4 and P4(a) orders.

The writ petitions therefore fail and are consequently dismissed.