
(2010) 01 KL CK 0006
In the High Court Of Kerala
Case No : WA. No. 2144 of 2008

Sreedevi Pillai

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 13-01-2010

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 9(1)

Citation : (2010) 01 KL CK 0006

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

Bench : Division Bench

Advocate : T. Krishnan Unni, for the Appellant; S.P. Aravindakshan Pillay, for the Respondent

Final Decision : Dismissed

Judgement

Basheer, J.—Since a common issue viz., the alignment of the road in the 4th reach of Changanacherry bye pass is involved in these three cases, they are being heard and disposed of by this common judgment, as agreed by learned counsel on either side. The case of the three land owners whose properties have been acquired for the purpose of construction of the bye pass is that the alignment of the road has to be changed in such a way that their properties are excluded from acquisition. The above contention raised by the appellant in W.A. No. 2144/08 was repelled by a learned single Judge. Hence the appeal. The two writ petitions raising similar contentions were therefore tagged along with this appeal as agreed by the learned counsel for the parties.

2. Changanacherry bye pass was proposed in the year 1984, about quarter of a century ago. It appears that the Government gave sanction for the above project in 1994. The bye pass, having a total length of 4.2 kms. has been divided into 4 reaches. The work on the first and second reach was completed some time back. Problem arose when some of the land owners in the third and 4th reaches raised objection. They alleged that the proposed alignment will cause extensive damage to several buildings and properties situated on the stretch of land within a

distance of 800 meters. Pursuant to a direction issued by this Court in O.P. No. 30321/2000 and 30258/2000, the Government examined the question whether the Chief Engineer had changed the alignment that had been approved by the Government in 1994. After considering the matter the Government passed an order that the construction of the bye pass would be in accordance with the originally approved alignment.

3. But still, objection from land owners persisted. Captain P. Sreedharan Nair (retired), the father of the appellant and some others, approached this Court alleging that the original alignment would lead to a sharp bend and that the proposed change in the course of the bye pass was intended to protect some building owners.

4. By a common judgment dated January 15, 2004 in W.P. No. 35301/2003 and connected cases this Court disposed of the writ petitions directing the Executive Engineer (Roads Division), Public Works Department, Kottayam to inspect the site pertaining to 800 meters of road under reach 3 and 4 about which the dispute persisted, and prepare a detailed sketch showing the properties of the respective owners through which the road is to pass. The Engineer was further directed to give a copy of the sketch to the parties concerned and the District Collector was directed to hear the parties and take a decision after conducting inspection. A copy of the above common judgment is available on record as Ext. P1 in WA. No. 2144/2008.

5. Appellant in her writ petition contended, inter alia, that even in spite of the specific direction issued by this court in Ext. P1 judgment, the authorities concerned had refused to consider the alternate route suggested by her father without any justifiable reasons. According to the appellant, if only the said alternate route (Ext. P3) had been accepted, three residential buildings including that of her own, would have been saved.

6. However the appellant conceded that her father had been heard by the District Collector. She was served with notices to vacate her building bearing No. 366 in RS. No. 240/40 and hand over possession to the land acquisition authorities before 5 p.m. on December 12, 2007 (Exts. P9 and P9(a)). She alleged that the alignment of the road was shifted in such a way as to give undue advantage to some neighbouring property owners. Therefore in the writ petition she prayed for issue of a writ of certiorari to quash Exts. P9 and P9(a) notices. She further prayed for issue of a writ of mandamus or such other appropriate writ or direction to the Land Acquisition Officer "to conduct survey and measurement in the properties within the disputed area of about 100 meters on either side of appellant's house in the alignment of 4th reach of Changanacherry bye pass road.

7. As mentioned earlier, the learned single Judge repelled all the above contentions raised by the appellant and declined to give her any relief. However the learned Judge directed the Land acquisition Officer to entertain the

application if any that may be submitted by the appellant u/s 18 of the Land acquisition Act for enhancement of compensation if such an application was filed within 7 days from the date of receipt of a copy of the judgment. The writ appeal is directed against the above judgment.

8. Petitioner in WP. No. 22795/2008 who is the owner of a residential building and appurtenant land having an extent of 4.25 Ares (10 cents) situated in Block No. III of R.S. No. 239, also challenges the alignment of the bye pass road alleging that it has been finalised by the District Collector without giving notice to the parties who are likely to be affected and also in violation of the directions contained in Ext. P1 judgment referred to above. She further alleges that the attempt of the officials is obviously to save the property of some other persons in whom they are interested. She impugns Ext. P12 order of the District Collector, Kottayam informing her that any change in alignment as requested by her would affect the whole process of land acquisition proceedings. There is a further prayer for issue of a direction to consider the feasibility of the alternate route proposed by the petitioner and to review the entire project. It is further prayed to resist from taking any further action in furtherance of the notification issued for the purpose of acquisition of land.

9. Petitioner in W.P. No. 13666/2009 prays for issue a writ of certiorari to quash Ext. P4 notice issued by the Land Acquisition Officer u/s 9(1) of the Land Acquisition Act, 1894. She also prays for issue of a direction to the authorities to review the proposed alignment and "to conduct proper survey of the 4th reach of Changanacherry bye pass for about 420 meters near to the house of petitioner". According to the petitioner, her son's property having an extent of 0.0145 Hectres situated in R.S. No. 235 of Changanacherry village is liable to be excluded from acquisition by effecting a minor change in the alignment when the road reaches the property of the petitioner's son.

10. The case of the respondents in a nutshell is that the writ petitions are aimed at creating obstacles in completing the project. Changanacherry bye pass road is a long cherished dream of, not only the residents of Changanacherry municipal town, but also of the entire motorists passing through the town and thereby of the entire State of Kerala. The construction of the bye-pass road is almost complete and all other land owners except the petitioners in these cases have surrendered their lands and buildings. The directions issued by this Court in the earlier round of litigation was strictly complied with. The alignment was fixed by technically qualified and competent officers after careful study.

11. In the separate counter affidavits filed by the respondents, the contentions raised by the petitioners have been squarely dealt with and answered. It is pointed out that the attempt of the petitioners is only to try to save their respective properties without having any concern or regard about the properties of others which may have to be acquired if the alignment is changed to suit their convenience. Moreover, any change in alignment would result in extensive and wide ranging shift in the alignment over the entire reach. Almost 95% of the

work has been completed and holdings from all other land owners have been taken possession of. Construction of the road is completed over the entire stretch, except the area covered by the holdings of the petitioners in these three cases.

12. It may at once be noticed that during the pendency of these three cases, the authorities were permitted to continue with the work on the eastern side of the present alignment pending consideration of the suggestions made by the Advocate Commissioner who was appointed during the pendency of the writ appeal. It was noticed by us in one of our interim orders dated July 8, 2009 that the residential building of the appellant in any case will have to be demolished. Since even going by the proposed shift in alignment her house would be affected. It was also noticed that the house belonging to the other petitioners had already been demolished. In short, the authorities were given the green signal to proceed with the work so that the long pending project is not held up in any way.

13. We have heard learned senior counsel Sri. Krishnanunni and Sri. Johnson P. John who appear for the petitioners, at length. We have also perused the voluminous record made available before the Court by both sides. The Engineers connected with the project have also assisted us extensively with the aid of a large number of sketches, reports etc.

14. As has been noticed already, the three petitioners in these cases want the alignment of the bye pass to be changed in such a way as to save their three respective plots. While the petitioner in WP. No. 22795/2008 wants to confine the change in alignment to a distance of 100 meters on either side of her property so as to save her residential building from acquisition, the petitioner in W.P. No. 13666/09 prays for a direction to the respondents to re-do the proposed alignment and to conduct proper survey of the 4th reach of the bye pass for about 420 meters near to her residence. The grievance of the petitioner in WA. No. 2144/2008 is that her residential building could have been saved if only a fresh measurement and survey in respect of the disputed area of about 100 meters on either side of her house is carried out. Apparently these three petitioners are oblivious of the consequences or aftermath of the change in alignment that may follow if a "slight modification" - as they would put it - is made in the alignment when the road reaches their respective properties. Similarly they also do not seem to be bothered about the fresh acquisition proceedings that may have to be initiated on the other side of the road if their respective properties are to be excluded.

15. Admittedly all the other land owners except the three in these cases, have surrendered their properties long time ago. It is also beyond controversy that more than 95% of the work on either side of the properties involved in these cases had already been completed. Even during the pendency of these cases the work has been going on.

16. Learned senior counsel made a persuasive plea before us to accept the

suggestion made by the Advocate Commissioner and a retired Engineer whose assistance the petitioners had sought, so that the property of the appellant would be saved from acquisition. Though it had been contended in the writ petitions and the writ appeal that the authorities had not complied with the directions issued by this Court in the earlier round of litigation, those contentions were not seriously really pursued by the learned senior counsel at the time of hearing.

17. As indicated by us earlier, we have perused various sketches, reports etc. carefully. This Court cannot boast of any expertise or technical know how in matters pertaining to fixation of alignment and such other matters. The Engineers who appeared before us have explained to us the entire gamut of the process of fixation of the alignment.

18. In any acquisition proceedings there will be some heart burn for one or the other property owner. In the case of the appellant she is forced to lose her residential building. Appellant's father had unsuccessfully attempted to suggest an alternate route to save his daughter's property. But, as noticed by the District Collector in Ext. P5 order, shifting of the alignment as suggested by appellant's father would have affected other residential buildings and resulted in an inconvenient alignment. Appellant's father had espoused appellant's cause in the earlier round of litigation. This Court in Ext. P1 judgment had directed the authorities to consider the objections raised by appellant's father in this regard. The authorities had also considered the alternate proposal. However the alternate route suggested by appellant's father was found to be impracticable.

19. Having carefully perused the materials available on record, we are totally satisfied with the view taken by the learned single Judge in the impugned judgment. As far as the prayers in the two writ petitions are concerned, we are of the considered opinion that the contentions raised by the petitioners are wholly untenable in the facts and circumstances of the case. In our view, the alignment fixed by the competent departmental officials does not appear to be objectionable in any manner. More importantly, more than 95% of the work on the bye pass is completed. All the land owners except the three petitioners have surrendered their respective plots.

Therefore the writ appeal and writ petitions are liable to be dismissed. We do so.