
(2016) 03 KL CK 0075

In the High Court Of Kerala

Case No : W.A. No. 2172 of 2015 in W.P. (C). 10608/2011 and W.A. Nos. 2212 and 2221 of 2015

Union of India and Others

APPELLANT

Vs

Vinod George and Others

RESPONDENT

Date of Decision : 23-03-2016

Acts Referred:

Land Acquisition Act, 1894 — Section 17(4), Section 4(1), Section 9 (3)

Citation : (2016) 2 ILRKerala 527 : (2016) 2 KHC 844 : (2016) 2 KLT 626

Hon'ble Judges : Ashok Bhushan, C.J. and A.M. Shaffique, J.

Bench : Division Bench

Advocate : C.S. Dias, SC, for the Appellant; C.S. Manilal, Sr. Government Pleader and M. Ajay, SC, for the Respondent

Final Decision : Allowed

Judgement

A.M. Shaffique, J.—1. These appeals have been filed against common judgment dated 19/8/2015 in a batch of writ petitions by which the learned Single Judge allowed the writ petitions and quashed the notification issued under Section 4(1) of the Land Acquisition Act 1894, and the declaration and awards passed pursuant to the said notification, to a limited extent. The respondents 1 to 3, namely Union of India representing Ministry of Railways, the General Manager, Southern Railway and the Divisional Manager, Southern Railway, Thiruvananthapuram are the appellants.

2. The short facts involved in the writ petition as can be seen in WP(C) No. 10608/2011 from which WA No. 2172/2015 has been filed are:

"The petitioners, residents near the Thiruvalla Railway Station, contended that in the year 2000, cement unloading and transporting work which was being done at Changanacherry Railway station was shifted to Thiruvalla after constructing two new tracks at the side of the second platform. According to them, the unloading of cement caused serious health hazards, air pollution etc., in the locality. The

capacity of the railway station was to hold 32 BCN wagons and by virtue of the said facility itself, which was being carried on by the Railways, substantial pollution was being caused in the locality. They came to know about a proposal to extend the facility by which decision was taken by Railways to hold 42 BCN wagons. According to them, handling of such huge quantity would cause severe harm to the petitioners as well as similarly placed persons and therefore they submitted a representation to the Station Master on 5/12/2004. Further complaints were also filed to various authorities including the State, Central Pollution Control Board, Human Rights Commission etc. In the meantime, Pathanamthitta District Railway Passengers Action Council and another filed WP(C) No. 15219/2009 before this Court against the proposal to extend the cement yard at Thiruvalla Railway Station. In the said writ petition, the Pollution Control Board filed a report pointing out that the proposal to expand cement handling in Thiruvalla railway station will cause some health problems in the residential area and therefore prior consent of the Pollution Control Board was required and necessary measures for abating pollution has to be taken. In the said writ petition, Railway authorities submitted that they have no intention to construct a cement yard at Thiruvalla railway station and recording the same, the writ petition was closed as per judgment dated 19/11/2009. Petitioners submit that by a communication dated 2/8/2010, produced as Ext. P19, the Railway has proposed to augment the facility of cement handling to 41 BCN wagons. This, according to the petitioners, was totally against the submission made in WP(C) No. 15219/2009. Apprehending that steps will be taken for augmenting the cement handling facility at Thiruvalla, direction was sought in WP(C) No. 10608/2011 not to augment the cement handling facility at Thiruvalla Railway station, to shift the existing cement handling facility at Thiruvalla to some other place and for other consequential reliefs."

3. In WP(C) No. 12995/11, from which WA No. 2212/15 has been filed, the petitioners are owners of certain item of land which has been notified for acquisition under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as the LA Act). According to the petitioners, though it is stated that the acquisition of land was for the public purpose of doubling of railway track between Chengannur-Chingavanam for the Southern Railway, the acquisition is actuated by ulterior motives, colourable exercise of power etc. According to them, sufficient land was available in the locality for widening of the railway track and even after the track is laid, there would be land still available with the Railways and therefore further acquisition of private land is not required. According to the petitioners, the acquisition is for construction of a cement yard which was situated a little far away and therefore, the acquisition is bad on the ground of malafides. Petitioners therefore sought for quashing Section 4(1) notification as well as notices issued to the petitioners under Section 9 (3) of the LA Act with reference to their properties in Sy. Nos. 539/36, 539/40 and 539/39 of Kuttipuzha Village, Thiruvalla Taluk.

4. In WP(C) No. 29211/2009, from which WA No. 2221/15 has been filed, the

petitioners are residents of Ward Nos. 9,10 and 11 of Thiruvalla Municipality and they also challenged Section 4(1) notification on almost similar grounds as raised in WP(C) No. 12995/2011. According to them, though public purpose of doubling of track between Chengannur and Chingavanam is mentioned in Section 4(1) notification, the actual purpose is for augmenting the cement yard and therefore, there is malafides in the acquisition which has to be interfered by the Court.

5. The respondents had filed counter affidavit in the matter. Their contentions are almost common in nature. In the counter affidavit filed by the appellants in WP(C) No. 10608/11, it is stated that Thiruvalla Railway Station is the only Railway Station in Pathanamthitta district in Kerala. It is a major important way side Railway Station as well. As a part of development of railway facilities in all parts of the country, there was a move for providing full rake handling facility at least for one station in each district of the country. Pursuant to the same, Southern Railway Headquarters had issued general letter dated 28/6/2010 to all Divisional Headquarters in Southern Railway enclosing a copy of letter dated 11/6/2010 of Railway Board. Ext. R1(A) are the said letters. The necessity for acquisition of land according to the Railways is for the purpose of double lining and in that process the line for goods yard has to be revamped. They have indicated that, at present, the station has only two main lines and two goods shed spur lines. After doubling, the station is expected to have four full length lines out of which three are for through trains and one would be the goods shed line. The goods shed line will be the outer line at the east. It is stated that no additional lines are being provided for goods shed whereas instead of two goods shed spur lines, Railways will reduce this to a single line in full length. This is for the purpose of constructing a full rake unloading line as per the policy of the Railway Board to provide full rake handling facility in each district as provided in Ext. R1(A).

6. With reference to the alternate suggestion suggested by the petitioners also, Railway in the counter affidavit has stated that those locations were not feasible on account of various factors. They therefore justify the exemption of goods siding on the following facts:

"The extension of goods siding is justified on the following grounds also:

i. As on date the inward loads to Thiruvalla Station is of full rake with 42 BCN capacity, and is effected in two placements 32 BCNs in first placement and balance 10 BCNs in second place.

ii. As there is no separate shunting engine is available at Thiruvalla, for effecting the second placement, engine is to be moved either from Kottayam or Kollam.

iii. With the provision of full rake unloading line at TRVL, the redundant movement of engine for placement of wagons can be avoided. The requirement in this regard is development of an addition 9-10 BCN placement capacity.

iv. The most important aspect in this regard is that by this arrangement, one of

the existing unloading spur line can be spared for the development and other coaching activities.

Hence for developing goods unloading activities at Thiruvalla, no acquisition of additional land is proposed. The acquisition is necessitated for the provision of additional facilities such as additional lines and platforms for dealing passenger trains. It is mainly intended to the benefit the passengers, as double line will speed up the train operation by avoiding train detention at enroute stations for crossing and precedence purpose."

Therefore, according to them, as far as unloading activity at Thiruvalla is concerned, additional acquisition of land was not proposed whereas the acquisition of land was for additional lines and platforms for dealing passenger trains which is mainly dealt with in the Section 4(1) notification. Therefore, according to them, there is no malafides in the acquisition. They also denied the allegation of pollution. According to them, unlike earlier days, cement bags are handled in polythene bags. The unloading of cement bags are done by parking lorries close to the wagons on the off side and cement is unloaded directly to the lorries. That apart, instructions have been issued to strictly comply with the precautionary measures while handling cement movement.

7. Counter affidavit is filed on behalf of the 6th respondent, the District Collector, Pathanamthitta. According to them, on account of the reports given by the Pollution Control Board, the railway authorities had to take immediate and precautionary measures to prevent the problems. It is stated that there are large number of residential houses within a distance of 100 metres from the cement yard. The cement yard is an open area and no preventive measures had been taken by the Railway authorities to prevent air pollution at the time of cement handling. It is stated that at the time of loading, both sides of the wagons are kept open and the crosswinds spread the dust to nearby areas leading to respiratory ailments to the nearby residents. The petitioners have filed reply affidavit as well, controverting the stand taken by the Railways.

8. In WP(C) No. 12995/11 also, counter affidavit has been filed raising similar contentions. It is stated that it was based on a Reconnaissance Engineering and Traffic Survey sanctioned by the Railway Board by letter dated 21/11/1996 that it was decided to double the railway line between Ernakulam-Kottayam-Kayamkulam sector in order to ease the traffic congestion in the present line and to avoid unnecessary and long detention of passenger as well as freight trains at the railway stations. Report of the Railway Board dated 22/3/2000 is produced as Ext. R5(1). It is based on the said report that steps had been taken for carrying out the double lining in the said stretch. On the requisition made by Railway Administration, the State Government had acquired properties in the said sector from different land owners and the same was handed over to the Railways. It is stated that the entire area from Ernakulam to Kayamkulam has been acquired by the State Government by invoking the LA Act under the urgency clause of Sec.17(4). It is stated that in regard to Thiruvalla railway station, to minimise

the extent of land to be acquired, Railway had decided to construct only one main line and to drop the plan for laying an additional loop line as suggested in the report. They have also produced a sketch showing the details of land proposed for acquisition and also the general lie and location of the area in question as Ext. R5(2). They have also denied the fact that there was sufficient land in possession of the Railways, which would be sufficient for doubling the railway line. It was stated that the existing rake unloading facility is being retained with minor changes in the alignment to accommodate an additional line and a new platform which is part of the doubling on the eastern side of the proposed third line and rake unloading line. Therefore, according to them, acquisition of the properties is absolutely necessary to maintain the existing facility. The petitioners had filed a reply affidavit controverting the allegations.

9. In WP(C) No. 29211/09 also, counter affidavit has been filed on similar terms. The 6th respondent, Special Tahsildar, has filed a counter affidavit stating that Land Acquisition Officer was convinced that the land under notification is inevitable for the doubling of railway line and for providing the existing facilities. It is stated that a joint inspection of the proposed site with Railway authorities was conducted on 17/10/2008 and 21/10/2008 and it was found that the land in the alignment area is the best suited for the purpose. Notification under Section 6 of the Survey and Boundaries Act, 1961 was published on 3/11/2008 and that the survey work was in progress. It is stated that the land is required for public purpose in terms of Sec.4(1) of the LA Act.

10. Learned Single Judge after a detailed consideration of the legal and factual circumstances involved in the matter allowed the writ petitions. It was found that the reports made available in the case especially the report of the Advocate Commissioner clearly indicates that there are several houses situated within a distance of 25 metres from the old goods platform and if a new goods platform is constructed, it will be very close to their residences. The Advocate Commissioner has also reported that as per the opinion of the Environmental Engineer, if the new platform is constructed, the distance between goods platform and the houses will be considerably reduced and the risk of health hazard will also increase considerably. Further, the learned Single Judge relied on the resolution passed by the Thiruvalla Municipal Council condemning the move of the appellants to augment and shift the goods platform. It is opined that a goods shed has to be constructed far away from the passenger platform and in the light of the judgment in WP(C) No. 15219/09, the appellants could not have taken a different stand in the matter. It is found that having undertaken in unequivocal terms that there was no proposal to construct a cement yard, they cannot indulge in the same under the guise of line doubling. Learned Single Judge referred to the pollution aspects involved in the matter and had formed an opinion that the passengers are expected to enjoy a pollution free travel and the residents cannot be tormented by open use of the goods platform. On this basis, the notification had been quashed "in so far as it related to the expansion of existing goods platform at Thiruvalla railway station". It was observed that the

doubling of railway track can go on and the present goods platform can also be shifted to another spot, provided, its activity is not augmented. Direction was also issued to respondents 4 and 5, namely, the Pollution Control Board and its officer to ensure that the existing activity does not cause any pollution or health hazards to the passengers or residents nearby. It is observed that the appellants are free to limit the area of acquisition when the dimension of the existing goods platform is not to be altered even if shifted.

11. Learned counsel for the appellants Sri. C.S. Dias while impugning the aforesaid judgment contended that the learned Single Judge had quashed the land acquisition proceedings to a limited extent alone and that too for not augmenting the cement yard. It is argued that the Railway had no intention to augment the cement yard whereas what is being done is only making changes to accommodate 42 BCN rakes whereas the existing facility is only for 32 BCN rakes. It is argued that land acquisition was necessitated for the purpose of double lining and for that purpose, necessary alignment changes are to be made with reference to the goods yard as well and in the process, the goods yard is to be made for handling 42 BCN rakes as per the policy decision of the Government as reflected in letter dated 11/6/2010 wherein the Government of India had taken a decision to confirm the existence of full rake handling facility in each district of the State. By letter dated 28/6/2010, Southern Railway had issued a communication indicating that detailed information on the existence of full rake handling facility in each district has to be provided. It is argued that the finding of the learned Single Judge that the acquisition for augmenting the cement handling facility is against the undertaking given in WP(C) No. 15219/2009 is not correct. In the said judgment, what is recorded was that there was no proposal for extension of the capacity of the existing unloading facility in Thiruvalla railway station. It is also recorded that the acquisition of additional area nearby Thiruvalla Railway Station is only to provide additional lines in connection with the doubling work. That was a case in which allegations were raised on the ground of pollution. However, this Court did not interfere with the same and it is held at para 5 as under:

"5. We do not propose to advert to the various other averments made by the officer in his counter affidavit. We have perused the report filed by the Pollution Control Board also. Having carefully perused the entire materials available on record, we are satisfied that no relief can be granted to the petitioners at this stage, since the respondents have categorically stated that they do not intend to construct a cement yard at Thiruvalla Railway Station. In that view of the matter, especially in the light of the stand taken by the Railway authorities, the Writ Petition is closed."

It is argued that even now, there is no intention to construct any cement yard augmenting the facility as alleged whereas what is being done is only increasing the length of the railway platform to have full rake with 42 BCN capacity to be placed in the railway siding. This does not indicate that there will be extension of

capacity of the existing unloading facility in Thiruvalla station. It is further submitted that the goods yard and railway siding for unloading and unloading goods are prepared in such a manner to utilize 42 BCN rakes which is a policy decision of the Railway and merely for the reason that some persons in the locality do not like it does not mean that the acquisition can be interfered by the learned Single Judge. It is submitted that for unloading 42 BCN capacity full rake, the platform has to be increased to the said length and this aspect of the matter has been completely ignored by the learned Single Judge. It is contended that this is the only Railway Station available in Pathanamthitta district to facilitate rail movement of goods to the district and if any restriction is imposed on the same by not permitting the platform to be extended, it will cause substantial hardship to the Railways. Further, it is stated that the acquisition of the entire land as notified is required for double lining works and also for works related to the same and for that reason the learned Single Judge committed serious error of law in quashing the notification even to a limited extent.

12. Learned counsel also relied upon the following judgments of the Apex Court:

"(i) Union of India v. J.D. Suryavanshi (, AIR 2011 SC 3605). In this case, the Apex Court was considering the public interest litigation wherein a prayer was sought for issuing direction to the Railways to provide certain facilities in the trains and also to complete the double lining process, rescheduling of timings and various other reliefs in connection with railway activities. The Supreme Court considered the writ petition and held at paras 8, 9 and 10 as under:

"8. Railway administration is a specialized field. It has to cater to the needs of the entire country. It has limited resources and limited number of railway engines and railway coaches, particularly AC coaches, more particularly AC-I class coaches. Railway will have to distribute and utilize the available resources and the available Rolling Stock equitably, uniformly, and appropriately to serve all the sections of the country. It is possible that in a particular section there may be hardship, inconveniences and need for introduction of more trains, better timings, and better facilities. But one sector is not India. We shudder to think what would happen if every High Court starts giving directions to the Railway to provide additional trains, additional coaches and change timings wherever they feel that there is a shortage of trains or need for better timings. Even in the State of Madhya Pradesh, we are sure that apart from Gwalior-Indore sector, there are other sectors which may be facing similar hardships and problems. The Railway does not exist to cater to a particular sector. It is for the Railway administration to decide where, how and when trains or coaches should be added or the timings should be changed. The Courts do not have data inputs, specialized knowledge or the technical skills required for running the Railways. The High Court cannot interfere in regard to only one sector without having any material or information about the requirements of other sectors available infrastructure, existing demands and constraints, safety requirements etc. Nor can the High Court direct introduction of trains or additional coaches of a

particular category or direct change in timings of a train. Changing the timing of a train is not a simple process, but requires co-ordinated efforts, as it would affect the timings of other trains. There are also different types of trains - express trains, superfast trains, passenger trains, goods trains, with different speeds and priorities. Any attempt to pick and choose one train or one sector for improving the functioning will lead to chaos involving technical snags and safety problems.

9. In *Balco Employees' Union (Regd.) v. Union of India and Ors.* [, 2002 (2) SCC 333] : (AIR 2002 SC 350) : (2001 AIR SCW 5135), this Court held:

"Judicial interference by way of PIL is available if there is injury to public because of dereliction of constitutional or statutory obligations on the part of the Government. Here it is not so and in the sphere of economic policy or reform the court is not the appropriate forum. Every matter of public interest or curiosity cannot be the subject-matter of PIL. Courts are not intended to and nor should they conduct the administration of the country. Courts will interfere only if there is a clear violation of constitutional or statutory provisions or non-compliance by the State with its constitutional or statutory duties. None of these contingencies arise in this present case."

(Emphasis supplied)

In *Federation of Railway Officers Association v. Union of India* [, 2003 (4) SCC 289] : (AIR 2003 SC 1344) : (2003 AIR SCW 1764) this Court was considering a challenge to the Government's proposal to form new railway zones. The appellant therein placed some material to demonstrate that formation of new railway zones may not increase the efficiency of railway administration. This Court refused to interfere and observes:

"Even otherwise, to meet the demands of backward areas cannot by itself be inconsistent with efficiency. When the Railways is a public utility service, it has to take care of all areas including backward areas. In doing so, providing service, efficient supervision and keeping the equipment and other material in good and workable condition are all important factors.... Further, when technical questions arise and experts in the field have expressed various views and all those aspects have been taken into consideration by the Government in deciding the matter, could it still be said that this Court should re-examine to interfere with the same? The wholesome rule in regard to judicial interference in administrative decisions is that if the Government takes into consideration all relevant factors, eschews from considering irrelevant factors and acts reasonably within the parameters of the law, courts would keep off the same."

In *Directorate of Film Festivals v. Gaurav Ashwin Jain* [, 2007 (4) SCC 737] : (AIR 2007 SC 1640) : (2007 AIR SCW 2497), this Court held:

"The scope of judicial review of Governmental policy is now well defined. Courts do not and cannot act as Appellate Authorities examining the correctness,

suitability and appropriateness of a policy, nor are courts advisors to the executive on matters of policy which the executive is entitled to formulate. The scope of judicial review when examining a policy of the Government is to check whether it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution, or opposed to any statutory provision or manifestly arbitrary. Courts cannot interfere with policy either on the ground that it is erroneous or on the ground that a better, fairer or wiser alternative is available. Legality of the policy, and not the wisdom or soundness of the policy, is the subject of judicial review".

The following observations of House of Lords setting the limits of judicial review in *Chief Constable of the North Wales Police v. Evans* 1982 (2) All ER 141, can be usefully referred:

"The function of the court is to see that lawful authority is not abused by unfair treatment and not to attempt itself the task entrusted to that authority by the law... The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches on a matter which it is authorized by law to decide for itself a conclusion which is correct in the eyes of the court."

"Judicial review, as the words imply, is not an appeal from a decision, but a review of the manner in which the decision was made..... Judicial review is concerned, not with the decision, but with the decision-making process. Unless that restriction on the power of the court is observed, the court will in my view, under the guise of preventing the abuse of power, be itself guilty of usurping power."

This court has repeatedly warned that courts should resist the temptation to usurp the power of the Executive by entering into arenas which are exclusively within the domain of the executive.

10. How many coaches should be attached, what types of coaches are to be attached, on which lines what trains should run, what should be their timings and frequency, are all matters to be decided by the Railway administration using technical inputs, depending upon financial, administrative, social and other considerations. This Court has repeatedly held that courts should not interfere in matters of policy or in the day-to-day functioning of any departments of Governments or statutory bodies. Even within the executive, the need for separation of roles has been voiced. We may usefully refer to the following observation in the Rakesh Mohan Committee Report (1998) made in a different context:

"With regard to institutional separation of roles, into policy, regulatory and management functions, these roles are currently blurred, which causes confusion about the underlying vision and mission of Indian Railway. The institutional separation of roles will mean that policy makers are limited to setting policy; regulators fix competition rules in general and pricing in particular; management

manages and is measured against clear performance indicators."

(ii) *Sundarrajan v. Union of India* [, (2013 (2) KLT SN 119 (Case No. 152) (SC)]. This case is relied upon to emphasize the sustainable development principle wherein the Apex Court held that the Court has to emphasize on striking a balance between ecology and environment on the one hand and projects of public utility on the other. It was stated that several principles had been evolved in the matter and further it is held that ouster from land or deprivation of some benefit of different nature relatively will come in the smaller public interest or certain inconveniences which has to give way to the larger public interest."

13. On the other hand, learned counsel appearing for the writ petitioners supported the judgment of the learned Single Judge. Arguments were addressed by Sri. M.S. Narayanan appearing in WA No. 2172/15, Sri. T.C. Govinda Swamy appearing in WA No. 2212/15, Sri. Alan Papali appearing in WA No. 2221/15 and Sri. Thampan Thomas, learned counsel who appeared on behalf of the additional respondents who had been impleaded in the Writ appeal.

14. The argument of the writ petitioners is that even at present when only 32 BCN wagons are being handled, the pollution is of grave nature. The report submitted by the Pollution Control Board evidences the said fact. The District Collector is also of the same opinion. Therefore, it was necessary for the Railways to ensure abatement of nuisance. The very same issue was projected by the petitioners in WP(C) No. 15219/09. At that stage, the Railway has taken a contention that they do not intend to augment the facility of the goods yard in any manner and they were only concerned with double lining of the area. Now that it is clear that they intend to augment the goods yard and a platform is being constructed to facilitate full rake which means additional facility for goods yard and more movement of goods. Having undertaken that they shall not increase the facility, it was not proper on the part of the Railways to increase the facility under the guise of double lining.

15. That apart, in Section 4(1) notification, the public purpose mentioned is only for doubling of track between Chengannur and Chingavanam. Doubling works had already been completed and therefore there is no requirement of any other land. Any further land now required is only for augmenting the cement yard which is not permissible which clearly amounts to a colourable exercise of power and malafide intention on the part of the Railway authorities. Under the guise of double lining, they are now acquiring the land for the purpose of increasing the capacity of the goods yard. The learned counsel therefore requested for dismissal of the appeals.

16. In WA No. 2172/2015, IA No. 1563/15 has been filed by the All Kerala Railway C&F Agents Association, Merchants Association, Human Rights Action Counsel and a few others to support the stand taken by the railways. Similar application for impleading has been filed as IA No. 172/16 by Kerala Vyapari Vyavasayi Samithi, District Committee, Thiruvalla and certain trade unions again

supporting the stand taken by the railways in the matter.

17. As far as acquisition of double lining is concerned, there is no dispute between the appellants and respondents that any land required for double lining can be acquired. In fact, the learned Single Judge also proceeded on the basis that land acquired for double lining need not be interfered with. That is why the notification has been quashed only to the extent of land to be utilised for the augmentation of cement yard.

18. Therefore, in these appeals, we are only concerned whether the Court can interfere with the acquisition on account of the reasons stated by the learned single Judge.

19. The principle underlying the limited scope of interference as far as land acquisition for public purpose is concerned is well settled. This is an instance where land is acquired for a public purpose namely for doubling of railway line. Nobody has a case that it is not a public purpose. Therefore, acquisition for Railway that too for doubling work is definitely a public purpose. Even an acquisition of land for the Railways to construct a goods yard or a railway platform to load and unload goods is also a public purpose. Therefore, assuming that any portion of the land notified for acquisition is utilised for railway platform and siding to accommodate the goods yard as well or a full rake of 42 wagons, the same also would be a public purpose and cannot be brushed aside merely for the reason that certain persons are residing in the nearby locality.

20. Once it is found that there is a public purpose behind the acquisition, the next question would be whether there is any malafides in the acquisition. The petitioners have a case that in the guise of acquiring land for line doubling, the intention of the Railway is to augment the facility of goods yard as well. In the counter affidavit filed by the Railways, it is clearly indicated that the rake handling facility is being increased in each district of the State as a policy of the Government. A full rake presently is 42 BCN wagons.

21. Ext. R1(a) clearly indicates the policy of the Government which cannot be brushed aside. Therefore, during the process of double lining, if the Railway had undertaken the work of providing full rake handling facility in Thiruvalla Railway Station, no malafides could be attributed nor would it amount to a colourable exercise of power. Providing infrastructural facilities by Railways for transportation of goods is a public purpose and for augmenting such facilities, if steps are being taken by Railways in any Railway Station, as the case may be, it cannot be considered as a malafide exercise of power or for collateral purposes. Therefore, the acquisition cannot be faulted on the ground that no mention has been made in the notification for facilitating additional constructions for the goods yard. The land acquired in terms of the notification can as well be utilised for the purpose of extending the platform for the goods yard as well and it cannot be stated that there is any illegality or any arbitrariness in the said action of the railways.

22. It is in this background we have to consider the two issues that have been projected by the learned Single Judge in the impugned judgment.

23. As far as the judgment in WP(C) No. 15219/2009 is concerned, learned Single Judge observed that Railway cannot take a different stand from what has been taken when the said case was pending. That was a case filed as a public interest litigation seeking for a direction to the Railway authorities to restrain from going ahead with the construction of cement yard at Thiruvalla Railway Station for the purpose of unloading cement bags from the goods wagon and transportation of the same into lorries and other transportation vehicles. It seems that the allegation in the writ petition was that a separate cement yard for loading and unloading of several thousand bags of cement by extending the railway track was proposed to be constructed which could cause damage to the life and health of the travelling public. This Court took note of the additional counter affidavit filed by Divisional Railway Manager (Works), who stated that there was no proposal for extension of the capacity of the existing cement unloading facility in Thiruvalla Railway Station. Further, it was stated that directions have already been issued to carry out regular wetting of the ground near the loading area and cement bags are being unloaded directly into lorries very close to the wagons. It was also stated that the cement was never unloaded to the platform and there is no possibility of cement dust. It was further stated that adequate precautionary measures as directed by the Pollution Control Board from time to time was also being taken. The Division Bench observed that they do not propose to advert to the averments in the counter affidavit and writ petition was closed by observing that "we are satisfied that no relief can be granted to the petitioners at this stage, since the respondents have categorically stated that they do not intend to construct a cement yard at Thiruvalla Railway Station". It is apparent from the materials placed on record that no cement yard is being constructed in the railway property at Thiruvalla. It is categorically stated in the counter affidavit that the plan pertaining to the final yard arrangements in Thiruvalla is yet to be finalised. The policy of Railway Board is to provide full rake releasing facility in all districts in the country where railway infrastructure is available. Thiruvalla being the only station in Pathanamthitta district, provision of full rake facility is mandatory and therefore, Ext. P19 communication dated 2/8/2010 was issued. Materials available on record clearly indicates that it is after the judgment dated 19/11/2009 that the Government of India, Ministry of Railways (Railway Board) has issued communication dated 11/6/2010, Ext. R1(a), to all the railway divisions to confirm whether full rake handling facility exists in each district of the State. In fact as pointed out by the learned counsel for the Railways, there was a report submitted by the Southern Railway on 22/3/2000 after Reconnaissance Engineering Cum Traffic Survey for doubling of track between Ernakulam and Kayamkulam by which the very purpose of such double lining was to ensure catering to large number of commuters as well as to handle bulk movement of freight which are presently being done by road. One of the specific requirement was provided under Clause

21 of the report which reads as under;

"21. The bulk of the freight traffic, even long distance is moved by road, except for certain commodities like food grains, cement, POL products, coal and fertilizers which are carried by rail in full train loads. Freight traffic dealt on the Ernakulam-Alleppey/Kottayam-Kayamkulam section from 1996 to 1999 has been studied to assess incremental inward and out ward goods traffic to and from the sections. Earnings accruable to both the project sections have been credited to the project."

It is submitted that it is clear from the aforesaid facts that double lining was the purpose which was being mooted and double lining also augments travelling for the public as well as movement of goods and facilities which are to be made in all Railway Stations for handling the trains which are being brought to the station and to carry on the freight movement within a short period of time. Such factual aspects cannot be ignored at all. As already observed, it is by Ext. R1(A) that instructions had been given to all the officers to ensure that full rake handling facility is available in every district. Therefore, this is not a case where the Railways have taken a different view from what has been stated at the time when WP(C) No. 15219/09 was pending. Even assuming that there was no attempt to extend the railway platform to augment the handling of full rake of 42 BCN wagons, there is nothing wrong in the Railway making changes in their policy in terms of Ext. R1 (A). Pursuant to Ext. R1(A), necessary steps have to be taken by the Railways to ensure handling of the full rake at a time. Therefore, we do not think that the learned Single Judge was justified in arriving at a conclusion that the Railway cannot take a different stand going by the principle of approbate and reprobate. The principle regarding approbate and reprobate is well settled. But each case will depend upon its own facts. The learned Single Judge proceeded on the basis that having undertaken in unequivocal terms that there is no proposal to construct a cement yard in Ext. P24 judgment, the appellants cannot indulge in the same under the guise of double lining. It is stated in the counter affidavit of Railways that presently the full rake of 42 BCN capacity is effected in two placements, 32 BCNs in the first placement and balance 10 BCNs in the second placement. Since there is no separate shunting engine for Thiruvalla in effecting the second placement, the engine is to be moved either from Kottayam or Kollam. If full rake unloading facility is made, the movement of engine for placement of wagons can be avoided. Therefore, the requirement is only of an additional 9-10 BCN placement capacity. It is also stated that by virtue of such arrangement, one of the existing unloading spur line can be spared for the development and other coaching activities. It is evident from the facts available on record that earlier, the station had only two main lines and two goods shed spur lines. After doubling, it is expected to have 4 full length lines, out of which three are for through trains and one as good shed line. The goods shed line will be the outer line at the east. Therefore, it is evident that there are no additional lines being provided for the goods handling. Instead of two goods shed spur lines, Railways will reduce the same to a single line in full

length. Apparently, this is not an activity which increases the capacity of the goods handling. Instead of handling a full rake by splitting the same to 32 and thereafter to 10, the unloading is being done in a single phase.

24. Therefore, there is no change in the handling of quantity of goods presently. Even now, full rake of wagons are arriving but it is handled in two phases and not in a single phase. By extending the goods platform, the goods could be handled without splitting the wagons. This apparently does not amount to enhancement or augmentation of the handling capacity at Thiruvalla or construction of a cement yard as contemplated in Ext. P24 judgment. Therefore, we are of the view that the learned Single Judge had not correctly appreciated the entire factual circumstances and had proceeded on the basis that Railway had enhanced the facility which is apparently not correct on the facts of the case.

25. Now the next question is whether the acquisition of land can be interfered with on the ground of pollution. As already indicated, even now full rakes are being brought to Thiruvalla Railway Station and it is being handled. There is no change in the work being handled whereas the handling of goods is being simplified by unloading goods having 41 or 42 wagons at a time and not by splitting up. Learned Single Judge has placed reliance on the Advocate Commissioner's report and that of the report of the Pollution Control Board. One relevant question is whether an acquisition of land for Railways can be curtailed on the ground of pollution. As already stated, the handling of dust of cement which is supposed to be the polluting material has been going on for the last several years. According to the Railway, there is no other facility in the alternate places suggested by the petitioners and they have stated their own reasons for the same. There cannot be any dispute that it is for the Railway to decide on the manner in which transportation of goods are to be made and cement being an essential commodity requires to be transported from one place to the other and it cannot be stated that merely for the reason that on account of some pollution, cement handling should be stopped. In fact, that is not the case of the petitioners as well. Their contention is regarding enhancement of facility. They contended that the cement handling will be more if the platform is extended. This contention is apparently baseless. As already indicated, full rake wagons are being brought and unloaded, but it is being done only in two phases. Therefore, the quantity of wagon handling has not increased. Even assuming that there is an increase in quantity of wagon handling and there is an element of pollution in the locality, it is for the Pollution Control Board and the Railway authorities to chalk out appropriate provision and methods to abate pollution. That cannot be a reason for not permitting land acquisition. When land is acquired, probably there might be some difficulty, nuisance or inconvenience to the people at large. We could see that in major parts of State of Kerala, people are residing by the side of railway lines. Therefore, existence of railway line, passage of trains, handling of goods including cement cannot be a reason for not permitting acquisition of land. Acquisition of land is being made on the request of Railways for a public purpose and even if it is for the purpose of extending the platform for facilitating

full rake handling, it cannot be quashed merely for the reason that the goods that are brought may cause pollution. Therefore, we cannot ascribe to the view that the land acquisition proceedings can be interfered merely on the ground that the facility that has to come in may cause pollution or is very near to the residence of certain persons in the locality. The learned Single Judge referred to the judgment in *Antony v. Commissioner, Corporation of Cochin* (1994 (1) KLT 169). There is no doubt about the principle of law laid down by the Supreme Court. But the fact remains that if there is any pollution on account of the additional platform being constructed and the goods being handled, necessary precautionary measures are to be taken. However it does not mean that the acquisition of land itself should be stalled or the Railways should be told not to provide additional facilities in a Railway Station. It is well within the realm of jurisdiction of Railways under what circumstances and in what manner the infrastructural facilities are to be provided. It depends upon various factors including the number of commuters, the movement of traffic, the goods that are to be transported, the facilities for unloading, transportation of goods from railway yard etc,. These are all matters which cannot be interfered by a Court under land acquisition proceedings. But when it comes to the case of pollution, which is a different issue, it has to be addressed appropriately. Merely for the reason that the acquisition is for a facility that may cause pollution can never be a reason for quashing the acquisition proceedings.

26. Therefore, we are of the view that Railways are free to make appropriate construction in the property which is sought to be acquired but they have to ensure that they handle the goods in a pollution free environment which they have to take into consideration after due consultation with the Pollution Control Board and its authorities.

Under such circumstances, we are of the view that the judgment of the learned Single Judge is liable to be set aside. Accordingly, the writ appeals are allowed. We set aside the judgment of the learned Single Judge and the writ petitions are dismissed, however, making it clear that while carrying on the facility of cement handling by the Railways, necessary steps have to be taken to abate nuisance, if any, and also to ensure that the instructions issued by the Pollution Control Board to abate pollution are complied with.