

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE AG.CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE**

TUESDAY, THE 10TH DAY OF MARCH 2015/19TH PHALGUNA, 1936

WA.No. 1293 of 2014 ()

(AGAINST THE JUDGMENT IN WP(C).NO. 30138/2013 DATED 03-09-2014)

APPELLANT(S)/PETITIONERS IN WPC :

- 1. GEORGE JOSEPH, AGED 68 YEARS,
S/O.K.V. JOSEPH, KOYICKAL HOUSE, CHERPUNKAL,
PULIYANOOR, KOTTAYAM.**
- 2. LISAMMA JOSEPH,W/O. GEORGE JOSEPH,
KOYICKAL HOUSE, CHERPUNKAL,
PULIYANOOR, KOTTAYAM.**

**BY SRI.K.RAMAKUMAR,SENIOR ADVOCATE
ADVS. SRI.S.M.PRASANTH
SRI.M.MANOJKUMAR (CHELAKKADAN)
SRI.G.RENJITH
SMT.ASHA BABU
SMT.AMMU CHARLES**

RESPONDENT(S)/RESPONDENTS:

- 1. STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY,
GOVERNMENT SECRETARIAT,
THIRUVANNATHAPURAM - 695 001.**
- 2. THE PRINCIPAL SECRETARY,
DEPARTMENT OF REVENUE, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.**
- 3. THE DISTRICT COLLECTOR, KOTTAYAM- 686 001.**
- 4. THE EXECUTIVE ENGINEER,
PUBLIC WORKS DEPARTMENT (R & B), BRIDGES DIVISION,
KOTTAYAM - 686 001**
- 5. THE TAHSILDAR (LA),
MEENACHIL TALUK, KOTTAYAM - 686 589.**

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6. THE VICAR,
MAR SLEEBA CHURCH, CHERPUNKAL P.O.,
KOTTAYAM - 686 584.

*7. MATHEW, S/O. MATHEW,
ARAMPULICKAL HOUSE, CHERPUNKAL P.O.,
MEENACHIL TALUK, KOTTAYAM DISTRICT. (DIED)

*LEGAL HEIRS OF R7 IS IMPEADED

*R8: SMT. ANNAMMA MATHEW ALIAS OMANA, AGED 60 YEARS,
WIFE OF MATHEW, ARAPURACKAL HOUSE,
CHERPUNKAL.P.O., PIN-686 584, KOTTAYAM DISTRICT.

*R9: MR. ANISH, S/O. MATHEW, AGED 38 YEARS,
ARAPURACKAL HOUSE, CHERPUNKAL.P.O., PIN-686 584,
KOTTAYAM DISTRICT.

*R10: MR. AJISH, S/O. MATEW, AGED 38 YEARS,
ARAPURACKAL HOUSE, CHERPUNKAL.P.O., PIN-686 584,
KOTTAYAM DISTRICT.

*ADDL. RESPONDENTS R8, R9, R10 ARE IMPEADED AS THE LEGAL HEIRS
OF R7 AS PER ORDER DATED 1/12/14 IN IA.NO.1103/2014.

R1 TO R5 BY SR GOVERNMENT PLEADER SRI.C.S.MANILAL
R6 BY ADV.SRI.P.CHANDRASEKHAR
ADDL.R8 TO R10 BY ADV. SRI.SUNIL CYRIAC

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD
ON 18-02-2015, THE COURT ON 10-03-2015 DELIVERED
THE FOLLOWING:

sts

W.A.NO.1293/2014

APPENDIX

PETITIONER'S ANNEXURES:

ANNEX A COPY OF THE ORIGINAL SKETCH.

RESPONDENT'S ANNEXURES:

ANNEX R4(A) COPY OF THE SKETCH

ANNEX R4(B) COPY OF THE ROUGH SKETCH

/TRUE COPY/

P.A.TO.JUDGE

sts

ASHOK BHUSHAN, Ag.CJ

& A.M.SHAFFIQUE, J.

*** * * * ***

W.A.No.1293 of 2014

Dated this the 10th day of March 2015

J U D G M E N T

Shaffique,J

This appeal is filed by the petitioners challenging the judgment dated 03/09/2014 in W.P.C.No.30138 of 2013.

2. The writ petition was filed by the appellants who are hereinafter referred to as the petitioners seeking to quash Exts.P12 and P13 and for other consequential reliefs. The writ petition was amended later and they sought to challenge Ext.P19 as well. Ext.P12 & P13 are individual notices issued to the petitioners calling upon them to submit their objections to a notification issued under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as the 'LA Act'). Petitioners submitted their objections in respect of the proposed acquisition inter alia contending that there was no necessity for acquiring the said land. According to them, the original proposal was to construct a bridge on the

western side of the existing bridge which was known as Cherpungal bridge in the year 1986. According to the petitioners, 87 cents of vacant Government land is available on the western side of Kozhuvanal - Cherpungal road which was enough for the purpose of constructing the additional new bridge. The proceedings initially prepared by the authorities also reflected such a move which was finalised. But later, at the instance of the 6th respondent, the alignment was shifted, which ultimately resulted in the present Section 4(1) notification and the proposal for acquisition of land. Petitioners submitted a revision petition before the Government as Ext.P16, pointing out the infirmities in the acquisition proceedings. In the meantime, the District Level Purchase Committee issued notice to the petitioners to fix the value of land. The enquiry under Section 5A of the LA Act was disposed by the Land Revenue Commissioner as per order dated 29/10/2011 which is produced as Ext.P19 in which the contentions urged by the

petitioners have been rejected. Hence the writ petition was filed raising three pertinent issues. One is that initially there was no proposal to acquire any private land. Appropriate study was conducted by various departments including PWD which indicated that the bridge can be constructed without acquiring any private land. The said alignment has been subsequently changed at the instance of the 6th respondent, as a result of which, petitioners' property were proposed to be acquired. Secondly it is contended that the change in alignment was not made after conducting a proper study in the matter and there was no eventuality to change the alignment. Thirdly, petitioners were not heard before Ext.P19 order was passed by the Land Revenue Commissioner which clearly amounts to violation of the principles of natural justice.

3. A statement is filed on behalf of the State contending that the land is acquired for a public purpose and that the alignment had to be changed to the other side

of the road to straighten the curve. It was indicated that the Chief Engineer had visited the site and he had personally verified the techno-economic and practical feasibility of the project and having convinced about the same, the present alignment has been fixed. Further it is contended that the petitioners were heard at the time of 5A enquiry and there is no mandate that a hearing should be given at the time when the Land Revenue Commissioner considers the matter.

4. Counter Affidavit is filed by the 6th respondent controverting the stand of the petitioners that there is mala fides in the acquisition by changing the alignment.

5. The learned Single Judge dismissed the writ petition inter alia finding that the change in alignment has been made after conducting appropriate study in the matter which cannot be challenged by the petitioners.

6. Adv.Sri.Ramakumar, learned senior counsel appearing on behalf of the appellants submits that the Government did not conduct proper study in the matter

before changing the alignment. It is pointed out that the first alignment was confirmed by all the authorities and there was no reason for shifting the alignment at all. Reference is made to Ext.P11, a letter dated 27/10/2009 sent by the Superintending Engineer to Chief Engineer which reads as under:

“Above reference Executive Engineer report that the foundation stone laying ceremony for the construction of the above bridge is over on 1/8/2009. As per Exe.Engineer Roads Division, Kottayam office records the bridge is to be constructed on the western side of the present bridge utilising the PWD land available and land agreed to be surrendered by the Cherpunkal church. But on the day of inauguration the church authorities opined that the land on eastern side of southern approach also belonged to them and they prefer to surrender that portion of land. But then the land on the northern side approach is private land and this will have to be acquired.

In this context, Exe.Engineer has reported that there was a court case regarding this, and at that time an affidavit is filed on behalf of the Govt. stating that the bridge will be constructed on the western side of the existing bridge and no land will be acquired.

If a change in location is done now, that will be against the affidavit given by the Govt. and this may again lead to litigation thereby delaying the construction.

Hence I request that the matter may please be taken up at the appropriate level and consensus arrived at."

7. On this basis, it is contended that there is material to indicate that the Church authorities had offered to surrender land on the eastern side. This by itself indicates the interference by the 6th respondent. Once the alignment has been finalised, there is no other material to indicate that a further study has been conducted for changing the alignment. This, according to the learned senior counsel, is clearly mala fide. That apart, without feasibility study being conducted for changing the alignment, expending large amounts for acquisition of land, is clearly an arbitrary exercise of power.

8. It is argued that proper opportunity was not granted to the petitioners at the time of 5A enquiry.

Reference is made to the judgment of the Supreme Court in **Kamal Trading (P) Ltd v. State of West Bengal** [(2012) 2 SCC 25] to contend that an enquiry under Section 5A of the LA Act is not a formality. Reference is made to paragraph 28 which reads as under:

“28. By no stretch of imagination, can it be said that the Second Land Acquisition Officer had applied his mind to the objections raised by the appellant. The above quoted paragraphs are bereft of any recommendations. The Second Land Acquisition Officer has only reproduced the contentions of the officers of the acquiring body. The objections taken by the appellants are rejected on a very vague ground. Mere use of the words “for the greater interest of public” does not lend the report the character of a report made after application of mind. Though in our opinion, the declaration under Section 6 of the LA Act must be set aside because the appellant was not given hearing as contemplated under Section 5-A(2) of the LA Act, which is the appellant’s substantive right, we must record that in the facts of this case, we are totally dissatisfied with the report submitted by the Second Land Acquisition Officer. His report is utterly laconic and bereft of any recommendations. He was

not expected to write a detailed report but, his report, however brief, should have reflected application of mind. Needless to say that as to which report made under Section 5-A(2) could be said to be a report disclosing application of mind will depend on the facts and circumstances of each case."

9. Importance of Section 5A enquiry is considered in another judgment relied upon by the learned counsel for the petitioners in **Raghubir Singh Sehrawat v. State of Haryana** [(2012) 1 SCC 792]. Paragraphs 32 to 35 are relevant which reads as under:

"32. *The next issue which merits consideration is whether the acquisition of the appellant's land is vitiated due to violation of Section 5-A(2) and the rules of natural justice. A careful scrutiny of record reveals that the Land Acquisition Collector had fixed 29-10-2006 as the date for hearing the objections. He issued notices dated 2-11-2006 to inform the objectors that hearing will take place on 29-11-2006 at 11 a.m. in PWD Rest House, Rai and asked them to appear either in person or through their agent. The notices were delivered to some of the landowners, who acknowledged the receipt thereof. However, the notices issued to the appellant and his wife were not*

served upon them. This is evident from the fact that the other objectors had acknowledged the receipt of notices by putting their signatures, the notices allegedly served upon the appellant and his wife do not bear their signatures and no explanation has been offered by the respondents about this omission.

33. *The Land Acquisition Collector proceeded to decide the objections by assuming that the notice has been delivered to all the objectors. Not only this, someone in the office of the Land Acquisition Collector forged the appellant's signature to show his presence in PWD Rest House, Rai on 29-11-2006. A bare comparison of the signatures appearing against the appellant's name at Serial No. 90 (p. 184 of the paper book) and those appearing on the vakalatnama and affidavit filed in support of the special leave petitions shows that there is no similarity in the two signatures. Not only this, in the list, appended with Annexure R-3, the appellant's wife has been shown as widow of Raghbir Singh. It is impossible to believe that a woman who knows how to sign a document would put signatures against her name showing her as a widow despite the fact that her husband is alive.*

34. *When the Court pointed out to the learned counsel for the respondents that the signatures appearing against Serial No. 90 at p. 8 of Annexure R-3 (p. 184 of*

the paper book) do not tally with the signatures of the appellant on the vakalatnama and the affidavit filed in support of the special leave petitions, the learned counsel expressed his inability to offer any explanation. He also expressed helplessness in defending the description of the appellant's wife Smt Moorti Devi as widow of Raghbir Singh.

35. *From what we have stated above, it is clear that the appellant had not been given opportunity of hearing as per the mandate of Section 5-A(2). The importance of Section 5-A(2) was highlighted by this Court in Munshi Singh v. Union of India in the following words: (SCC p. 342, para 7)*

"7. ... Sub-section (2) of Section 5-A makes it obligatory on the Collector to give an objector an opportunity of being heard. After hearing all objections and making further inquiry he is to make a report to the appropriate Government containing his recommendation on the objections. The decision of the appropriate Government on the objections is then final. The declaration under Section 6 has to be made after the appropriate Government is satisfied, on a consideration of the report, if any, made by the Collector under Section 5-A(2). The legislature has, therefore, made complete

provisions for the persons interested to file objections against the proposed acquisition and for the disposal of their objections. It is only in cases of urgency that special powers have been conferred on the appropriate Government to dispense with the provisions of Section 5-A....”

10. Another judgment relied upon is **Usha Stud and Agricultural Farms Private Limited and Others v. State of Haryana** [2013(4) SCC 210] which also highlights the requirement of 5A inquiry. Paragraph 30 is relevant which reads as under:

“30. *The ratio of the aforesaid judgments is that Section 5-A(2), which represents statutory embodiment of the rule of audi alteram partem, gives an opportunity to the objector to make an endeavour to convince the Collector that his land is not required for the public purpose specified in the Notification issued under Section 4(1) or that there are other valid reasons for not acquiring the same. That section also makes it obligatory for the Collector to submit report (s) to the appropriate Government containing his recommendations on the objections, together with the record of the proceedings held by him so that the*

Government may take appropriate decision on the objections. Section 6(1) provides that if the appropriate Government is satisfied, after considering the report, if any, made by the Collector under Section 5-A(2) that particular land is needed for the specified public purpose then a declaration should be made. This necessarily implies that the State Government is required to apply mind to the report of the Collector and take final decision on the objections filed by the landowners and other interested persons. Then and then only, a declaration can be made under Section 6 (1)."

11. On the other hand, Sri.Manilal, the learned senior Government Pleader, appearing on behalf of the State and its authorities argued that the change in alignment has been made after detailed study in the matter. He also placed the files relating to the matter for reference. Specific reference has been made to letter dated 12/03/2010 sent by the Executive Engineer to the Chief Engineer which reads as under:

"On 08/02/2010 Chief Engineer, Roads & Bridges has inspected the above bridge site. The Executive Engineer, Asst.Executive Engineer, Assistant Engineer

were present at the site. In order to lessen the curve at the joining points of bridge with approaches, it was decided to construct the proposed bridge at the upstream side (eastern side) of the existing bridge. Based on the above decision, the alignment proposal for the new bridge is submitted herewith. As per this proposal, the property belonging to the church and property of Sri.George Joseph, Koyickal House have to be acquired, if they are not willing to surrender the land at free of cost. Sri.George Joseph is already in litigation with the department regarding the alignment.

I may also point out that an alignment was already approved through the western side of the existing bridge by the then Chief Engineer during 2004. Site plan cum new alignment proposal is enclosed herewith for favour of further action."

12. This, according to him, would indicate the change in proposal which was accepted by the Chief Engineer as evident from letter dated 25/02/2010 sent by the Executive Engineer to Superintending Engineer, Roads and Bridges. In the said correspondence, it is clearly stated that on 08/02/2010, the Chief Engineer had visited the site and

directed to sent the proposal for construction of the bridge on the eastern side of the existing bridge. It is argued that it is pursuant to the said visit of the Chief Engineer that, decision has been taken and a proper estimate has been prepared by the Assistant Executive Engineer, PWD Bridges Sub Division which was forwarded to the Executive Engineer, Roads Division.

13. The learned Government Pleader also relied upon the statutory provisions to contend that the requirement of hearing at the time of Section 5A enquiry is given by the Land Acquisition officer and the Land Revenue Commissioner passes an order only after verifying the said report based on the enquiry. Further it is argued that there is no mala fides in the acquisition.

14. Sri.P.Chandrasekhar, learned counsel for the 6th respondent argued that there is no mala fides in the matter as they are not involved in the issue relating to change in alignment. They are not interested in the matter and they

had only supported the acquisition process which is for a public purpose.

15. Learned Government Pleader also placed on record the reason for change in alignment, which according to him, is to straighten the curve which is at about 35 degrees, if the bridge passes through the western side of the existing bridge. It is to avoid accidents on account of such a curve that a decision has been taken to change the alignment.

16. It cannot be disputed that construction of the bridge is for a public purpose. Whether the alignment should be on the western side or on the eastern side also are matters to be decided by expert agencies. It is true and as rightly contended by the learned counsel for the petitioners that once the alignment has been fixed on a particular route, in the absence of sufficient materials to indicate the necessity to change the alignment, the authorities will have to explain under what circumstances such a change in

alignment came to be considered.

17. It is evident from Ext.P11, relied upon by the petitioners, that the original proposal was for constructing the bridge on the western side of the present bridge utilising PWD land and the land agreed to be surrendered by Cherpungal church. The letter also indicates that the church authorities had opined that they could surrender the land on the eastern side. The Superintending Engineer opined that in such an event private lands have to be acquired. He also refers to an affidavit filed on behalf of the Government stating that the bridge will be constructed on the western side of the existing bridge and no land will be acquired. Therefore, the Superintending Engineer had requested the Chief Engineer to take up the matter at the appropriate level. Therefore, one has to see that the proposal for change in alignment was in fact at the instance of Cherpungal church. But the respondents have a case that it was not at the instance of the Church that the alignment has

been changed. But, it is to avoid a 35 degree curve that the change in alignment has been made. If the Chief Engineer had arrived at such an opinion based on a technical study of the matter, it may not be proper for this Court to take a different view. It is clear that the proposal to change the alignment has been mooted at different levels and ultimately the Chief Engineer had inspected the site and approved the change in alignment. This being the factual situation, we do not think that the petitioners are justified in contending that no feasibility study has been conducted in the matter. For that reason itself, we are unable to arrive at a conclusion that there is any mala fides in changing the alignment.

18. In regard to the allegation of violation of the principles of natural justice, the Statute only provides for an enquiry by the Collector/Land Acquisition Officer. Section 5A (1) and (2) of the LA Act reads as under:

“5A. Hearing of objections.- (1) Any person interested in any land which has been notified under

Section 4, sub-section (1), as being needed or likely to be needed for a public purpose or for a Company may, within thirty days from the date of the publication of the notification, object to the acquisition of the land or of any land in the locality, as the case may be.

(2) Every objection under sub-section (1) shall be made to the Collector in writing and the Collector shall give the objector an opportunity of being heard either in person or by any person authorised by him in this behalf or by counsel and shall, after hearing all such objections and after making such further enquiry, if any, as he thinks necessary, either make a report in respect of the land which has been notified under sub-section (1) of S.4 or make different reports in respect of different parcels of such land, -

(i) to the Government where the notification under sub-section (1) of S.4 was published by the Government.

(ii) to the Board of Revenue, where the notification under sub-section (1) of S.4 was published by the Board of Revenue or by himself containing his recommendations on the objections, together with the record of the proceedings held by him, for the decision of the Government or the Board of Revenue, as the case may be. The decision of the Government or the Board of Revenue, as the case may be, shall be final.

(3) xxxxx"

19. The power of the Board of Revenue is now exercised by the Land Revenue Commissioner. There is no mandate that the Land Revenue Commissioner should hear the petitioners. The hearing is conducted by the Land Acquisition Officer. A report in that regard is sent to the Land Revenue Commissioner to finally take a decision in the Section 5A enquiry. We do not think that the judgments relied upon by the learned counsel for the petitioners would in any way help them. Petitioners do not have a case that they were not heard by the Land Acquisition Officer during the Section 5A enquiry. Hence, we do not think that there is any violation of the principles of natural justice.

20. A perusal of Ext.P19 also indicates that the Land Revenue Commissioner has considered the entire matter along with the reports given by the Collector and other authorities and had arrived at a possible finding. In the absence of any illegality or arbitrariness in the said decision making process, we do not think that we will be justified in

interfering with Ext.P19.

Having said so, we do not think that any interference is required to be made to the judgment of the learned Single Judge by exercising the appellate jurisdiction. This writ appeal is therefore dismissed.

**(ASHOK BHUSHAN,
ACTING CHIEF JUSTICE)**

(A.M.SHAFFIQUE, JUDGE)

jsr

