

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE V. CHITAMBARESH

WEDNESDAY, THE 15TH DAY OF JULY 2015/24TH ASHADHA, 1937

WP(C).No. 2534 of 2015 (N)

PETITIONERS:

1. SONY MATHEW, AGED 37, S/O V.J. MATHEW,
VALLANATTU HOUSE, PACHALAM P.O., COCHIN-12.
2. V.J. MATHEW, AGED 84, S/O JOSEPH
VALLANATTU, VALLANATTU HOUSE,
PACHALAM P.O., COCHIN-12.
3. LOURDH MARY MATHEW, AGED 73,
W/O. V.J. MATHEW, VALLANATTU HOUSE,
PACHALAM P.O., COCHIN-12.

BY ADVS. SRI. JOY GEORGE
SMT. TANYA JOY

RESPONDENTS:

1. THE STATE OF KERALA
REPRESENTED BY THE SECRETARY
DEPARTMENT OF LAND ACQUISITION AND REVENUE
STATE SECRETARIAT, THIRUVANANTHAPURAM-695 001
2. THE DISTRICT COLLECTOR, COLLECTORATE,
KAKKANAD-682030, ERNAKULAM
3. THE DELHI METRO RAIL CORPORATION - KOCHI METRO,
REPRESENTED BY ITS PROJECT DIRECTOR
DELHI METRO RAIL CORPORATION LTD.
EASTERN ENTRY TOWER, SOUTH RAILWAY STATION
KOCHI-682016.
4. THE GENERAL MANAGER (CIVIL),
KOCHI METRO RAIL LTD., 8TH FLOOR,
REVENUE TOWER, PARK AVENUE, KOCHI-682011

R4 BY ADV. SRI. K. JAJU BABU (SR.)
R4 BY ADV. SMT. M. U. VIJAYALAKSHMI, SC, KOCHI METRO RAIL LTD.
R3, R4 BY ADV. SRI. K. ANAND (SR.)
R3, R4 BY ADV. SMT. LATHA KRISHNAN, SC, DELHI METRO RAIL CORPN.
BY GOVERNMENT PLEADER SRI. THOMAS JOHN AMBOOKEN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15-07-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1 : TRUE COPY OF THE ORDER IN W.P.(C) NO. 29262/2009 OF THIS COURT DATED 3.11.2009
- EXHIBIT P2 : TRUE COPY OF THE NOTIFICATION DATED 20.11.2012
- EXHIBIT P3 : TRUE COPY OF THE NOTIFICATION DATED 24.7.2013 PUBLISHED IN THE KERALA GAZETTE
- EXHIBIT P4 : TRUE COPY OF THE QUESTIONARE ISSUED BY THE 1ST PETITIONER DATED 28.5.2014 TO THE PUBLIC INFORMATION OFFICER OF KOCHI METRO RAIL PROJECT
- EXHIBIT P4(a) : TRUE COPY OF REPLY SUBMITTED TO EXHIBIT P4
- EXHIBIT P5 : TRUE COPY OF THE PLAN SHOWING THE LOCATION OF SEEMATTI TEXTILES, THOMSON TOWER JOSCO JEWELLERY,VALLANATT BUILDING (BELONGING TO THE PETITIONERS AND THE CAR PARKING FACILITY)
- EXHIBIT P5(a) : TRUE COPY OF THE PLAN PREPARED BY DELHI METRO RAIL CORPORATION
- EXHIBIT P6 : TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONERS TO THE PROJECT DIRECTOR OF THE 3RD RESPONDENT DATED 19.3.2013
- EXHIBIT P7 : TRUE COPY OF THE ORDERS PASSED BY THE GENERAL MANAGER,(CIVIL) OF KOCHI METRO RAIL LIMITED
- EXHIBIT P8 : TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONERS BEFORE THE 2ND RESPONDENT DATED 30.7.2014

RESPONDENT(S)' EXHIBITS

- EXHIBIT R4(a) : COPY OF THE LOCATION PLAN
- EXHIBIT R4(b) : COPY OF THE LOCATION PLAN
- EXHIBIT R4(c) : COPY OF THE LETTER DATED 09.01.2015 ALONG WITH SKETCH AND DETAILS ISSUED BY OTHER 3RD RESPONDENT

/TRUE COPY/

P.A. TO JUDGE.

V. CHITAMBARESH, J

WP(C) NO. 2534 OF 2015

Dated this the 15th day of July, 2015

JUDGMENT

The request of the petitioners is to limit the acquisition to 12 metres when it reaches their property. This is obviously to salvage the automated car parking facility from acquisition. The Kochi Metro Rail Ltd. has expressed its inability to consider the request. This is because such alteration in the alignment is not possible at the eleventh hour.

2. The counter affidavit of the fourth respondent inter alia states as follows:

“But in the case of the petitioner, the car lift structure infringes the metro viaduct by an extent of 1.60 to 2.40 metres. The petitioner's car lift projects for an extent of 1.60 to 2.40 metres infringing the metro viaduct.”

The minimum width of 1.5 metres of working space is required in between the viaduct structures and the building of the petitioners. This will not be available if the lift structure of the petitioners are exempted from acquisition.

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3. Moreover the petitioners are bound by Ext.P1 interim order in WP(C) No. 29262/2009. The petitioners constructed the building at their own risk. The Kochi Metro Rail Project was in contemplation even at the time of construction. No relief could be granted to the petitioners therefore at this juncture.

The Writ Petition fails and is dismissed. No costs.

**V. CHITAMBARESH
JUDGE**

ncd