IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

MONDAY, THE 14TH DAY OF DECEMBER 2020 / 23RD AGRAHAYANA, 1942

WP(C).No.35366 OF 2018(U)

PETITIONER:

KARUNAGAPALLY TALUK NSS KARAYOGAM UNION,
REP.BY ITS PRESIDENT NV AYYAPPAN PILLAI,
AGED 65 YEARS, S/O VELU PILLAI, 'PRASANTHI',
NORTH KARUNAGAPALLY, KARUNAGAPALLY P.O KOLLAM

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENTS:

1 THE UNION OF INDIA
REP.BY ITS SECRETARY TO THE GOVERNMENT MINISTRY OF SHIPPING ROAD TRANSPORT AND HIGHWAYS R NO 141 TRANSPORT BHAVAN PARLIAMENT STREET NEW DELHI-110001

2 THE SPECIAL DEPUTY COLLECTOR AND COMPETENT AUTHORITY, LAND ACQUISITION, NATIONAL HIGHWAY AUTHORITY OF INDIA, KOLLAM-601 021

3 THE SPECIAL TAHSILDAR
LAND AQUISITION, NHAI UNIT-4, KARUNAGAPPALLY, KOLLAM-601 021.

4 THE PROJECT DIRECTOR
LAND ACQUISITION NHIA, THIRUVANANTHAPURAM-695 001

5 THE EXECUTIVE ENGINEER
OFFICE OF THE EXECUTIVE ENGINEER, PUBLIC WORKS NATIONAL HIGHWAY SECTION, KOLLAM-601 021

R4 BY ADV. SMT.I.SHEELA DEVI
SMT A.C.VIDHYA- GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14.12.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner owns about 10 cents of land in Re-Sy.Nos.449/1 and 449/2 of Karunagappally Village. The petitioner has filed this writ petition under Article 226 of the Constitution of India, seeking a writ of certiorari to quash Ext.P5 communication dated 11.07.2018 issued by the 2nd respondent. The petitioner has also sought for a writ of mandamus commanding respondents 2 to 4 to take note of the objections raised by the petitioner as evidenced by Ext.P3 representation dated 09.05.2018, in the light of Ext.P2 possession certificate dated 09.10.2014 and objectively consider the different aspects as covered by the said objection, in relation to the fixing of alignment, in accordance to the principles contained in Section 3C of the National Highways Act, 1956, within a time limit to be fixed by this Court.

2. On 30.10.2018, when this writ petition came up for admission, this Court admitted the matter on file. The learned Assistant Solicitor General of India took notice for the 1st respondent. The learned Standing Counsel took notice for the 4th

respondent. The learned Government Pleader took notice for respondents 2, 3 and 5.

3. A counter affidavit has been filed on behalf of the 4th respondent, opposing the reliefs sought for in this writ petition.

4. On 09.07.2020, when this writ petition came up for consideration along with connected matters, this Court passed the following order;

> "In all these writ petitions, the petitioners object the survey being conducted pursuant to a notification issued under Section 3A of the National Highways Act, 1956 (for short, the Act). As contemplated under Section 3B, on the issue of notification, it is lawful for any person, authorized by the Central Government to make any inspection, survey, measurement, and to take valuation etc. The petitioners' case is that a large number of police personnel have been deputed to conduct survey in violation of COVID-19 norms and conduct of survey should be postponed in the wake of the pandemic. It is submitted that hearing of objection also be postponed to enable the persons who are objecting the notification to appear in person.
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> 2. Regarding the survey is concerned, the authorities are free to conduct such survey. According to the learned Government Pleader, it is on account of the objection

raised by the local people, the police personnel have been deputed. No person is having an authority to physically obstruct the survey being conducted. It is only after the survey, the landowners will be in a position to raise objection regarding the notification. It is for the survey authorities and other authorities to ensure that such action will not violate COVID-19 restrictions. They are also bound to follow any restrictions imposed by the Government regarding their activities.

3. The learned counsel for the petitioners further pointed out the difficulty in appearing before the competent authority to substantiate their objection through personal hearing. I find there is a formidable ground for such persons to seek adjournment, if they cannot appear on account of COVID-19 restrictions before the competent authority for a personal hearing. If any of the persons raised objection and requested for adjournment on account of COVID-19 restrictions, that shall be granted unless the authorities' form an opinion that such persons would be able to appear in person notwithstanding the COVID-19 restrictions. The competent authority shall advert to the request of such persons for adjournment and shall accommodate their request for adjournment taking note of the COVID-19 restrictions. The matter is adjourned for further consideration on 27.07.2020."

5. On 06.10.2020, when this writ petition came up for

further consideration, the learned Standing Counsel for the National Highway Authority of India was directed to make available for the perusal of this Court the relevant plan showing the alignment and boundaries of the proposed four-lane National Highway and also the report of the Project Director of the National Highway Authority of India, on the objections raised in the hearing conducted under Section 3C of the National Highways Act, 1956.

6. On 11.11.2020, an additional statement has been filed on behalf of the 4th respondent. Paragraph 2 of that statement reads thus;

> "2. It is respectfully submitted that this Hon'ble Court directed me to produce Chainage 470/000 to 470/100 in respect to the Sy.Nos.449/1 and 449/2 of Karunagappilly Village prepared by the National Higway Authority of India. The alignment plan for DPR for widening of Oachira to Kadambattukonam in Kollam District Km.460/700 to 517/200 was approved by the Government of Kerala on 01.02.2017. No charge has been made in that alignment between Km.460/700 to 517/200 and on the basis of the approval received from the Government of Kerala, the National Highway Authority of India has published 3A

notification of National Highways Act, 1956 in the Government of India gazette as per SO.No.602(E) dated 08.02.2018. Due to technical reasons, the notification was |Denova on 08.02.2019. After completing all technical formalities, the National Highway Authority of India has published 3A notifications against in the Government of India Gazette dated 25.06.2019 as per SO No.2113(E) for an extent of 80.2273 hectares. But no alignment changes were made in the stretch and the approved alignment is in force. A true copy of the Chainage 470/000 to 470/100 in respect to Sy.Nos.449/1 and 449/2 of Karunagappilly Village prepared by the National Highway Authority of India is produced herewith and marked as Annexure-R4(A)."

(emphasis supplied)

7. Heard the learned counsel for the petitioner, the learned ASGI appearing for the 1st respondent, the learned Government pleader appearing for respondents 2, 3 and 5 and also the learned Standing Counsel for the 4th respondent.

8. The specific stand taken by the 4th respondent in the additional statement filed on 11.11.2020 is that the alignment plan for the widening of National Highway from Oachira to Kadambattukonam in Kollam District, Km.460/700 to 517/200, was approved by the Government of Kerala on 01.02.2017. No

charge has been made in that alignment, between Km.460/700 to 517/200, and on the basis of the approval received from the Government of Kerala, the National Highway Authority of India has published notification under Section 3A of the National Highways Act. The document marked as Annexure-R4(a) is a true copy of the alignment from chainage 470/000 to 470/100 in Sy.Nos.449/1 and 449/2 of Karunagappilly Village.

9. The learned counsel for the petitioner would submit that if there is no change in the alignment, as stated in the additional statement filed on 11.11.2020, the grievance of the petitioner stands redressed. Therefore, this writ petition may be disposed of recording the aforesaid stand taken in the additional statement of the 4th respondent; without prejudice to the right of the petitioner to raise its grievance in case there is any attempt on the part of the 4th respondent to change the said alignment.

In such circumstances, this writ petition is disposed of recording the stand taken in the additional statement by the 4th respondent that the alignment plan for the widening of National Highway from Oachira to Kadambattukonam in Kollam District,

Km.460/700 to 517/200, was approved by the Government of Kerala on 01.02.2017, and no charge has been made in that alignment, between Km.460/700 to 517/200, while publishing Section 3A notification under the National Highways Act; however without prejudice to the right of the petitioner to raise its grievance in case there is any attempt on the part of the 4th respondent to change the said alignment.

Sd/-
ANIL K. NARENDRAN
JUDGE

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APPENDIX

PETITIONERS' EXHIBITS:

EXHIBIT P1	**A TRUE COPY OF THE PROPERTY TAX REGISTER RECEIPT ISSUED BY THE KARUNAGAPALLY MUNICIPALITY DATED 6.1.2014**
EXHIBIT P2	**A TRUE COPY OF THE POSSESSION CERTIFICATION ISSUED BY THE VILLAGE OFFICER, KARUNAGAPALLY DATED 9.10.2014**
EXHIBIT P3	**A TRUE COPY OF THE REPRESENTATION OF THE PETITIONER DATED 9.5.2018**
EXHIBIT P4	**A TRUE COPY OF THE REPRESENTATION OF THE PETITIONER DATED 23.3.2018**
EXHIBIT P5	**A TRUE COPY OF THE COMMUNICATION OF THE SECOND RESPONDENT DATED 11.7.2018**
EXHIBIT P6	**A TRUE COPY OF THE COMMUNICATION OF THE EXECUTIVE ENGINEER, PWD NATIONAL HIGHWAY SECTION, KOLLAM DATED 10.8.2018**
EXHIBIT P7	**A TRUE COPY OF THE NOTIFICATION PUBLISHED IN THE MALAYALA MANORAMA DAILY DATED 10.3.2018**

RESPONDENTS' EXHIBITS:NIL

TRUE COPY

P.A. TO JUDGE