

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

FRIDAY, THE 18TH DAY OF FEBRUARY 2022 / 29TH MAGHA, 1943

WA NO. 244 OF 2022

AGAINST THE ORDER IN WP(C) 975/2022 OF HIGH COURT OF

KERALA DATED 7.2.2022

APPELLANT/RESPONDENTS 2, 5, 6 & 7 in WPC:

- 1 STATE OF KERALA
REPRESENTED BY ADDITIONAL CHIEF SECRETARY
SECRETARIAT, THIRUVANATHAPURAM, PIN - 695001
- 2 SPECIAL TAHSILDAR
LAND ACQUISITION(SILVER LINE)
COLLECTORATE THRISSUR, PIN - 680001
- 3 SPECIAL TAHSILDAR
LAND ACQUISITION(SILVER LINE)
COLLECTORATE, THRISSUR, PIN - 680001
- 4 SPECIAL TAHSILDAR
LAND ACQUISITION(SILVER LINE)
COLLECTORATE, KOZHIKODE, PIN - 673001
- 5 SPECIAL TAHSILDAR
LAND ACQUISITION(SILVER LINE)
COLLECTORATE, KOTTAYAM, PIN - 686001

BY ADV
SRI. K.GOPALAKRISHNA KURUP, ADVOCATE GENERAL,
SRI.T.B.HOOD, SPL GP
SRI V.MANU, SR.GP

RESPONDENTS/PETITIONER & RESPONDENTS 1,3 & 3 IN WPC:

- 1 V.V VARMA
AGED 69 YEARS, S/O ARUMUGAN
VAZHAPPULLY HOUSE, AYNOR
PAZHANJI PO, THRISSUR, PIN - 680542

- 2 MUJEEB RAHMAN A
AGED 39 YEARS,
S/O KOYAKKUTTY
ATTIYEDATH,
CHERUVANNUR
FEROKE PO, KOZHIKODE,
PIN - 673631
- 3 M.T THOMAS
AGED 70 YEARS,
S/O MG THOMAS
MURAMTHOOKIL
MULAMKULAM SOUTH
PERUVA P.O
KOTTAYAM, PIN - 686610
- 4 V.M JOSEPH
AGED 71 YEARS
S/O MATHAI THOMAS VAREECKAL
KUNNAPILLY, PERUVA P.O
KOTTAYAM, PIN - 686610
- 5 MATHEW KURIAN
AGED 65 YEARS
S/O KURIAM MATHEW
PUTHOOR THEEKARA
KUNAPILLY, PERUVA P.O
KOTTAYAM, PIN - 686610
- 6 UNION OF INDIA
REPRESENTED BY SECRETARY
MINISTRY OF RAILWAYS
RAIL BHAVAN, 256-A
RAISINA ROAD
RAJPATH AREA
CENTRAL SECRETARIAT
NEW DELHI, PIN - 110001
- 7 KERALA RAIL DEVELOPMENT CORPORATION LIMITED
REPRESENTED BY MANAGING DIRECTOR
TRANS TOWER
5 TH FLOOR
VAZHUTHACAUD
THIRUVANATHAPURAM,
PIN - 695001

8 RAILWAY BOARD
 RAIL BHAVAN
 256-A
 RAISINA ROAD
 RAJPATH AREA
 CENTRAL SECRETARIAT
 NEW DELHI, PIN - 110001
 REPRESENTED BY CHAIRPERSON

OTHER PRESENT:

SRI.MOHAMMED SHAH FOR R1 TO R5,
SRI. MANU.S.ASG FOR R6,
SRI.RAMESH BABU(SR) AND SRI. DINESH RAO FOR R7
SRI.C.DINESH CGC FOR R8

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
18.02.2022, ALONG WITH CONNECTED CASES, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

FRIDAY, THE 18TH DAY OF FEBRUARY 2022 / 29TH MAGHA, 1943

WA NO. 245 OF 2022

AGAINST THE ORDER IN WP(C) 351/2022 OF HIGH COURT OF

KERALA DATED 7.2.2022

APPELLANT/2ND RESPONDENT IN WPC:

STATE OF KERALA REPRESENTED BY CHIEF SECRETARY
GOVERNMENT SECRETARIAT
THIRUVANATHAPURAM, PIN - 695001

BY ADV
SRI.K.GOPALAKRISHNA KURUP, ADVOCATE GENERAL,
SRI.T.B.HOOD, SPL. GOVERNMENT PLEADER,
SRI.V.MANU, SR. GOVERNMENT PLEADER

RESPONDENTS/PETITIONERS & RESPONDENTS 1, 3 & 4 IN WPC:

- 1 BINU SEBASTIAN
AGED 45 YEARS
S/O PT DEVASIA
PUNCHAYIL HOUSE
ETTUMANOOR P O
KOTTAYAM, PIN - 686631
- 2 SUNIL KM
AGED 47 YEARS, S/O BABY
THOTTAKKATTU HOUSE
PERUMBAIKAD P O
ETTUMANOOR VIA
KOTTAYAM, PIN - 686016

- 3 P E THOMAS
AGED 66 YEARS, S/O VT EAPEN
VALIYAPUNCHALPUTHENVEETIL HOUSE
ANIKKAL KAVALA, PERUMBAIKAD PO
ETTUMANOOR VIA
KOTTAYAM, PIN - 686016
- 4 MADHU J THEKKANATTU
AGED 47 YEARS, S/O MATHAI JOSEPH
THEKKANATTU HOUSE
KIZHAKKUMBHAGAM KARA, ETTUMANOOR PO
KOTTAYAM, PIN - 686631
- 5 UNION OF INDIA REPRESENTED BY SECREATARY
MINISTRY OF RAILWAYS
RAIL BHAVAN, 256-4
RAISINA ROAD, RAJPATH AREA
CENTRAL SECRETARIAT
NEW DELHI, PIN - 110001
- 6 KERALA RAIL DEVELOPMENT CORPORATION LIMITED
REPRESENTED BY MANAGING DIRECTOR
TRANS TOWER, 5 TH FLOOR
VAZHUTHACAUD, THIRUVANATHAPURAM,
PIN - 695014
- 7 THE RAILWAY BOARD REPRESENTED BY CHAIRPERSON
INDIAN RAILWAY
256-A, RAILWAY BHAVAN
RAISINA RAOD, NEW DELHI, PIN - 110001
BY ADVS.
BABU JOSEPH KURUVATHAZHA
MANU S., ASG OF INDIA
SRI. RAMESH BABU(SR) FOR R6
SHRI.SHRI.DINESH RAO A., SC, K-RAIL
SRI.S.RADHAKRISHNAN,SENIOR PANEL,RAILWAYS

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
18.02.2022, ALONG WITH CONNECTED CASES, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

FRIDAY, THE 18TH DAY OF FEBRUARY 2022 / 29TH MAGHA, 1943

WA NO. 247 OF 2022

AGAINST THE ORDER IN WP(C) 30567/2021 OF HIGH COURT OF
KERALA DATED 7.2.2022

APPELLANTS/RESPONDENTS 1, 3 & 4 IN WPC:

- 1 STATE OF KERALA REPRESENTED BY THE ADDITIONAL
CHIEF SECRETARY TO GOVERNMENT.
REVENUE DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM., PIN - 695001
- 2 SPECIAL TAHSILDAR(LA)
(SILVER LINE), KOTTAYAM, PIN - 686001
- 3 DIRECTOR GENERAL OF POLICE
POLICE HEAD QUARTERS,
THIRUVANANTHAPURAM, PIN - 695010
BY ADV
SRI.K.GOPALAKRISHNA KURUP, ADVOCATE GENERAL,
SRI.T.B.HOOD, SPL GP AND SRI.V.MANU, SR GP

RESPONDENTS/PETITIONERS & RESPONDENTS 2, 5 & 6 IN WPC:

- 1 MURALIKRISHNAN
AGED 43 YEARS
S/O M.S KRISHNAN POTTY,
MADAMANA ILLOM,
VELLUTHURUTHY, KUZHIMATTOM.P.O,
KOTTAYAM DISTRICT, PIN - 686533
- 2 KURIAN T KURIAN
AGED 54 YEARS
S/O DR.THOMAS KURIAN,
MAPPILCHERRY VILLA,
MAMOOD P O, CHANGANACHERY,
PIN - 686536

- 3 P, A. JOHNIKKUTTY
S/O ITTIAVIRA, KUNNASSERI PUTHENPURAYIL,
THOTTECADU, VAKATHANAM.P.O,
KOTTAYAM DISTRICT , PIN - 686538
- 4 KERALA RAIL DEPARTMENT CORPORATION LTD.,
TRANS TOWERS, 5TH FLOOR VAZHUTHACAD,
THIRUVANANTHAPURAM, PIN - 695054
REPRESENTED BY THE MANAGING DIRECTOR
- 5 THE RAILWAY BOARD
INDIAN RAILWAYS, RAIL BHAVAN,
RAISANA ROAD, NEW DELHI, PIN - 110001
REPRESENTED BY ITS CHAIRMAN
- 6 THE UNION OF INDIA REPRESENTED BY ITS SECRETARY
TO GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS, RAIL BHAVAN,
RAISANA ROAD, NEW DELHI, PIN - 110001
BY ADVS.
O.V.MANIPRASAD
SRI.A.DINESH RAO, SC, RAILWAYS
SHRI.C.DINESH, CGC
MANU S., ASG OF INDIA

OTHER PRESENT:

SRI. RAMESH BABU (SR) FOR R4

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
18.02.2022, ALONG WITH CONNECTED CASES, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

FRIDAY, THE 18TH DAY OF FEBRUARY 2022 / 29TH MAGHA, 1943

WA NO. 250 OF 2022

AGAINST THE ORDER IN WP(C) 1574/2022 OF HIGH COURT OF
KERALA DATED 7.2.2022

APPELLANTS/RESPONDENTS 4 & 9 IN WPC:

- 1 STATE OF KERALA REPRESENTED BY SECRETARY TO
GOVERNMENT, DEPARTMENT OF TRANSPORT,
SECRETARIAT,
THIRUVANANTHAPURAM,
PIN - 695001
- 2 SPECIAL TAHSILDAR (L.A)
N.H NO.2, ALUVA, PIN - 683101
BY ADV
SRI.K.GOPALAKRISHNA KURUP, ADVOCATE GENERAL,
SRI.T.B.HOOD, SPL GP
SRI.V.MANU, SR GP

RESPONDENTS/PETITIONER & RESPONDENTS 1 TO 3 & 5 TO 8 IN WPC:

- 1 SUNIL J ARACKALAN
AGED 47 YEARS, S/O. JOSEPH,
ARACKALAN HOUSE, ELAVOOR KARA,
PARAKKADAVU VILLAGE,
ALUVA TALUK,
ERNAKULAM DISTRICT,
PIN - 683579

- 2 UNION OF INDIA
REPRESENTED BY IT'S SECRETARY
MINISTRY OF RAILWAYS,
RAIL BHAVAN, 256-A,
RAISINA ROAD, RAJPATH AREA,
CENTRAL SECRETARIAT,
NEW DELHI, PIN - 110001
- 3 THE RAILWAY BOARD
REPRESENTED BY IT'S CHAIRMAN
RAIL BHAVAN, 256-A,
RAISINA ROAD, RAJPATH AREA,
CENTRAL SECRETARIAT,
NEW DELHI, PIN - 110001
- 4 SOUTHERN RAILWAY
REPRESENTED BY IT'S ZONAL MANAGER,
HEADQUARTERS OFFICE,
PARK TOWN,
CHENNAI, PIN - 600003
- 5 KERALA RAIL DEVELOPMENT CORPORATION LIMITED
(K-RAIL) REPRESENTED BY IT'S MANAGING DIRECTOR
5TH FLOOR, TRANS TOWER,
VAZHUTHACAUD, THYCAUD P.O,
THIRUVANANTHAPURAM,
KERALA, PIN - 659014
- 6 MANAGING DIRECTOR
KERALA RAIL DEVELOPMENT CORPORATION LIMITED
(K-RAIL), 5TH FLOOR,
TRANS TOWER, VAZHUTHACAUD,
THYCAUD P.O,
THIRUVANANTHAPURAM,
KERALA, PIN - 695014
- 7 THE UNION TERRITORY OF PUDUCHERRY
REPRESENTED BY IT'S SECRETARY
REVENUE DEPARTMENT,
CHIEF SECRETARIAT,
PUDUCHERRY, PIN - 605001

8

THE REGIONAL ADMINISTRATIVE OFFICER
OFFICE OF REGIONAL ADMINISTRATOR,
GOVERNMENT HOUSE, MAHE, PIN - 673310

BY ADVS.

A.K.PREETHA

SRI.S.RADHAKRISHNAN, SENIOR PANEL, RAILWAYS

SRI.A.DINESH RAO, SC, RAILWAYS

MANU S., ASG OF INDIA

SRI. RAMESH BABU (SR) FOR R5 AND R6

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
18.02.2022, ALONG WITH CONNECTED CASES, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:

J U D G M E N T

Dated this the 18th day of February, 2022

S.Manikumar, CJ.

Instant writ appeals are filed against the common interim order dated 7.2.2022 passed by a learned single Judge of this Court in W.P. (C). Nos.30567/2021, 351/2022, 975/2022 & 1574/2022 respectively.

2. By the impugned order, writ court, after hearing learned counsel for the Petitioners, Mr. Ramesh Babu, learned Senior Counsel appearing for KRDCL, assisted by the learned counsel Mr. Dinesh Rao, Mr. T.B. Hood, learned Special Government Pleader, Mr. S. Manu, learned Assistant Solicitor General, and on perusing the office memorandum of Ministry of Finance, Government of India dated 05.08.2016, wherein the word 'Pre-Investment Activities' is admittedly defined, ordered as under:

"15. Therefore, as I have begun this order, the relevant issue today is not whether the survey under the Survey and Boundaries Act is permissible along with the SIA, but if the SIA itself is permissible, going by the stand of the Central Government and the specific tenor of the word 'Pre-Investment Activities' as defined in the Office Memorandum of the Government of India dated 05.08.2016, which does

not, prima facie, permit land acquisition.

16. Obviously, therefore, until this Court is able to obtain specific clarifications on this from the official respondents, further survey of the properties of the petitioners would become unnecessary, particularly because, as stated by the Railways, if the alignment is to be altered, then all expenditure for the same would become superfluous and wasted.

17. Therefore, until the next posting date, I am certain that all action for survey of the properties, as presently being done, cannot be permitted on the properties of the petitioners, especially because the Government of Kerala has sought time to answer the specific queries of this Court.

Resultantly, I adjourn this matter to be called on 18.02.2022; until which time, survey of the properties of the petitioners and any acquisition steps with respect to it shall stand deferred.

I make it clear that this Court has, today, only considered the afore angle and nothing else and that all other contentions are open to be argued by the learned counsel, when the matter is next posted, so that these writ petitions can be disposed of on its merits.

It goes without saying that the earlier orders of this Court, dated 23.12.2021 and 06.01.2022, with respect to the boundary stones and the manner of its lying during survey, will continue to operate."

3. Appellants are the official respondents in the writ petitions and respondents are the writ petitioners. The writ petitions were filed aggrieved by the notifications issued by the State Government directing to conduct survey under the Kerala Survey and Boundaries Act, to facilitate Social Impact Assessment Study (SIA Study) for the proposed Semi High Speed Railway Line Project (Silver Line Project) between Thiruvananthapuram and Kasaragod districts.

4. It is the case of the writ petitioners that the survey could be conducted only in terms of the provisions under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and not by invoking the provisions of the Surveys and Boundaries Act.

5. Writ court considered the writ petitions and by a common interim order dated 20.01.2022, ordered to defer the steps for survey of the properties belonging to the petitioners till 07.02.2022.

6. Being aggrieved, by the order dated 20.01.2022 the State Government and its officials filed W.A. Nos.169, 176, 179 and 186 of 2022.

7. The writ appeals were heard together and by judgment 14.02.2022, this court allowed the writ appeals and set aside the

common interim order dated 20.01.2022 passed by the learned single Judge in the writ petitions.

8. In the meanwhile, the writ petitions were posted before the learned single Judge at 1.45 p.m. on 7.2.2022 by publishing a supplementary list on the same day. Appellants have stated that before the writ court it was submitted on their behalf that writ appeals were filed against the common interim order dated 20.01.2022 and after hearing, the matters were reserved for orders.

9. It was also submitted that since the Division Bench was seized of the matter, the common interim order may be extended. However, based on the averments in the counter affidavit filed by the Railway Board and Union of India in W.P.(C) No.30567 of 2021, writ court passed a common interim order dated 7.2.2022 directing to defer the survey of the properties belonging to the writ petitioners and any acquisition steps with respect to the same, till 18.02.2022. It is thus challenging the legality and correctness of the common interim order dated 7.02.2022, these writ appeals are preferred.

10. We have heard, the learned Advocate General Sri. K. Gopalakrishna Kurup for the State and its officials, assisted by Adv T.B.Hood, senior Government Pleader, learned counsel for the party

respondents Sri. P.A. Mohammed Shah, Mr. O. V. Maniprasad, Mr. Babu Joseph Kuruvathazha, Smt. A.K. Preetha, and learned Assistant Solicitor General of India Sri. S. Manu, and perused the pleadings and documents on record.

11. In our considered opinion an elaborate discussion of the facts is not required, basically for the reason that the issue with respect to the survey conducted by the State Government for the purpose of social impact assessment study as per the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter called 'LARR Act 2013') and other intricate aspects in respect of 'K-Rail' project was considered by us in W.A. No.169 of 2022 and other connected writ appeals; and as per a common judgment dated 14.2.2022, we interfered with the common interim order dated 20.1.2022, passed by the learned Single Judge in the writ petitions in question by setting aside the same, and held that the State Government is vested with adequate powers to conduct survey and mark the properties appropriately for conducting the social impact assessment study by virtue of the powers conferred under the Kerala Survey and Boundaries Act 1961 and the Rules 1964 thereto.

12. In fact, a detailed judgment was passed in W.A. No.169 of

2022 and the connected cases, taking into account the relevant provisions of the Kerala Surveys and Boundaries Act, 1961, Kerala Surveys and Boundaries Rules, 1964, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the State Rules, 2015 thereto, and the provisions of Railways Act, 1989, and ultimately found that the action of the State Government in conducting survey for social impact assessment study as per the provisions of the LARR Act, 2013 and the State Rules 2015, is different from the notification for acquisition under Section 11 of the LARR Act, 2013. We have also held that there is no conflict of interest between the provisions of LARR Act 2013 and the Kerala Survey and Boundaries Act 1961 in the matter of conduct of survey in connection with a proposed land acquisition.

13. The writ appeals were heard by us and reserved for judgment on 04.02.2022, and the judgment was pronounced on 14.02.2022. However, the impugned common order was passed by the learned Single Judge on 07.02.2022. In our considered opinion, the issues considered by the learned Single Judge in the common interim order dated 7.2.2022 were considered by this Court in W.A. No.169 of 2022 and the connected cases, and the action of the State Government

conducting the survey was found to be in accordance with law. In that view of the matter, the common order now passed by the learned Single Judge dated 7.2.2022 impugned in the writ appeals cannot be sustained.

14. Therefore, after having taken into consideration the rival submissions made across the Bar, we are of the view that writ appeals are to be allowed in terms of the common judgment in W.A. No.169 of 2022 and connected cases dated 14.2.2022.

15. Accordingly, we allow the writ appeals and set aside the common order of the learned Single Judge dated 7.2.2022. It is also made clear that the findings, observations and the conclusions arrived at by this Court in W.A. No.169 of 2022 and the connected cases would strictly apply to the instant writ appeals also.

Writ appeals are allowed accordingly.

Sd/-
S. Manikumar,
Chief Justice

Sd/-
Shaji P. Chaly,
Judge

SOU.