

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

WEDNESDAY, THE 6TH DAY OF APRIL 2022 / 16TH CHAITHRA, 1944

WP(C) NO. 5609 OF 2022

PETITIONER:

KUNHIRAMAN K.
AGED 74 YEARS
S/O.KORAN, KAITHAYIL HOUSE, MADAPPALLY COLLEGE, CHORODE,
RAYARANGOTH P.O., KOZHIKODE - 673 102.

BY ADV P.SATHISAN

RESPONDENTS:

- 1 UNION OF INDIA
REP. BY SECRETARY, MINISTRY OF ROAD TRANSPORT & HIGHWAYS,
GOVERNMENT OF INDIA, CENTRAL DELHI P.O., NEW DELHI - 110 001.
- 2 DIRECTOR GENERAL (ROAD DEVELOPMENT) & SPECIAL SECRETARY
ROOM NO.213, MINISTRY OF ROAD TRANSPORT & HIGHWAYS, TRANSPORT
BHAVAN, 1, PARLIAMENT STREET, CENTRAL DELHI P.O.,
NEW DELHI - 110 001.
- 3 PROJECT DIRECTOR
NATIONAL HIGHWAY AUTHORITY OF INDIA (HEAD OFFICE), DWARAKA
SECTOR 10, SOUTH WEST DELHI P.O., NEW DELHI - 110 075.
- 4 CHAIRMAN
NHAI, G-5 & 6, SECTOR -10, DWARAKA, SOUTH WEST DELHI P.O., NEW
DELHI - 110 075.
- 5 THE PROJECT DIRECTOR
NATIONAL HIGHWAYS AUTHORITY OF INDIA, PROJECT IMPLEMENTATION
UNIT- KOZHIKODE, LOTUS HOUSE, 34 1487 A, PROVIDENCE WOMEN'S
COLLEGE ROAD, MALAPARAMBA P.O., KOZHIKODE - 673 009.
- 6 STATE OF KERALA
REP. BY ITS SECRETARY, PUBLIC WORKS DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695 001.
- 7 SPECIAL DEPUTY COLLECTOR
LA (NH), WAYANAD RD., CIVIL STATION, ERANHIPPALAM, KOZHIKODE,
COLLECTORATE P.O., KERALA - 673 020.
- 8 DISTRICT COLLECTOR KOZHIKODE
WAYANAD RD., CIVIL STATION, ERANHIPPALAM, KOZHIKODE
COLLECTORATE P.O., KERALA - 673 020.

BY ADV NAVANEETH.N.NATH

OTHER PRESENT:

SMT.K.AMMINIKUTTY -SR.G.P. AND SRI .MATHEWS K.PHILIP - S.C.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 06.04.2022,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J U D G M E N T

The petitioner alleges that his property has been acquired for the purposes of the National Highway Authority of India (NHAI) in such manner that its access has been completely blocked. He explains that his property is on an elevated terrain and that by effecting the acquisition, the existing access has been completely obliterated, he and his wife - both senior citizens - thus being now subjected to grave prejudice, particularly because they are suffering from various diseases, which require the assistance of ambulance at times.

2. The petitioner says that he, therefore, has preferred an application before the District Collector under Section 3G(5) of the National Highways Act (NH Act) impugning Ext.P3 Award, requesting that either their entire building be acquired under the provisions of Section 94 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('Fair Compensation Act' for short), or that they be afforded an appropriate access, which is requisite at least for an ambulance.

3. The afore submissions of Sri.P.Sathisan - learned counsel for the petitioner, were answered by Sri.Mathews K. Philip - learned Standing Counsel for the NHAI, saying that the Project Director of the NHAI has visited the site in question and has convinced himself that an access to the petitioner's property in an apposite manner is possible.

He submitted that, therefore, if the District Collector is directed to consider the petitioner's application under Section 3G(5) on this issue as a preliminary one, the Project Director of the NHAI will also make available his inputs during such exercise.

4. The learned Senior Government Pleader - Smt.K.Amminkutty, submitted that if this Court is only inclined to direct the District Collector to consider the arbitration application of the petitioner treating the afore issue as a preliminary one, she will not stand in the way of such orders being issued; but prayed that this Court may not make any affirmative declarations as to the entitlement of the petitioner to any relief and leave it to the competent Authority to take a decision on it in terms of law.

5. When I consider the afore submissions, it is without doubt that when any property is acquired, its access cannot be permanently blocked by the competent Authority. If the access is so blocked, then certainly, the entire building itself will have to be acquired under Section 94 of the 'Fair Compensation Act'.

6. However, since Sri.Mathews K. Philip says that the Project Director of the NHAI has verified that an apposite access can be given to the house through the Service Road, I do not think that the impact of Section 94 of the 'Fair Compensation Act' would apply and I record that this is conceded to by Sri.P.Sathisan also, who affirmed that, as

and when such an access is given, his client is willing to give up his contentions on the said provision.

Resultantly, I order this writ petition and direct the District Collector to take up Exts.P4 and P4(a) applications of the petitioner made under Section 3G(5) of the 'NH Act', along with Ext.P8 interim application preferred by him seeking the afore relief and to consider the request made in the latter application as a preliminary one and complete proceedings thereon - after affording him an opportunity of being heard, as also to the competent official of the NHAI - as expeditiously as is possible, but not later than two months from the date of receipt of a copy of this judgment.

I make it clear that the District Collector must ensure that petitioner obtains necessary access to his building, which is enough at least for one ambulance to pass; and if not, he will have to consider the application of the petitioner under Section 94 of the 'Fair Compensation Act' with respect to the building in question.

The afore shall be done by the District Collector and the resultant order communicated to the petitioner before the present access to the building is demolished in terms of the acquisition.

sd/-
DEVAN RAMACHANDRAN
JUDGE

rp

APPENDIX OF WP(C) 5609/2022

PETITIONER EXHIBITS

Exhibit P1	TRUE COPY OF THE PROPERTY TAX NO.KL 11030300680/2022 DATED 18/01/2022.
Exhibit P2	TRUE COPY OF THE OWNERSHIP CERTIFICATE NO.5099501/90/2022 DATED 18/01/2022.
Exhibit P3	TRUE COPY OF THE 3G AWARD LAC NO.5 (CHRD) (RAY) DATED 27/03/2021.
Exhibit P3A	TRUE COPY OF 3G AWARD LAC NO.5 (II) (CHRD) (RAY) DATED 29/03/2021.
Exhibit P4	TRUE COPY OF THE ARBITRATION PROCEEDINGS L.A.N.H.A.I. ARBITRATION NO.540884 OF 2022 IN LAC NO.5 (CHRD) (RAY) BEFORE THE 8TH RESPONDENT.
Exhibit P4A	TRUE COPY OF THE ARBITRATION PROCEEDINGS L.A.N.H.A.I. ARBITRATION NO.541039 OF 2022 IN LAC NO.5 (II) (CHRD) (RAY) BEFORE THE 8TH RESPONDENT.
Exhibit P5	TRUE COPY OF PHOTOGRAPH OF RESIDENTIAL BUILDING OF THE PETITIONER.
Exhibit P6	TRUE COPY OF PHOTOGRAPH OF RESIDENTIAL BUILDING OF THE PETITIONER.
Exhibit P7	TRUE COPY OF THE PHOTOGRAPH OF RESIDENTIAL BUILDING OF THE PETITIONER.
Exhibit P8	TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE 8TH RESPONDENT DATED 12/01/2021.
Exhibit P8A	TRUE COPY OF THE ACKNOWLEDGMENT OF EXT.P8.
Exhibit P9	TRUE COPY OF THE NOTIFICATION OF CENTRAL GOVERNMENT DATED 28/08/2015.