

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

TUESDAY, THE 27TH JUNE 2006 / 6TH ASHADHA, 1928

WP(C).No. 7552 of 2006(Y)

PETITIONERS:

1. ROBEN ABRAHAM, S/O. ABRAHAM,
KUKRUSUMMOOTIL HOUSE, KIZHAKUMBHAGAM KARA,
ETTUMANOOR VILLAGE (KANAKARI P.O), KOTTAYAM DIST.
2. SAJU, S/O. CHACKO,
MUNDATHANATHATHU HOUSE, KIZHAKUMBHAGAM KARA,
ETTUMANOOR VILLAGE (KANAKARI P.O), KOTTAYAM DIST.
3. MATHEW, S/O. MATHAI,
EDAYANTHARATHAYATHADATHIL HOUSE, KIZHAKUMBHAGAM-
KARA, ETTUMANOOR VILLAGE (KANAKARI P.O),
KOTTAYAM DISTRICT.
4. K.P. JOSE,
THUNDATHIL HOUSE, KIZHAKUMBHAGAM KARA,
ETTUMANOOR VILLAGE (KANAKARI P.O), KOTTAYAM DIST.

BY ADV. SRI.ABRAHAM MATHEW (VETTOOR)
SRI.P.I.GEORGEKUTTY

RESPONDENTS:

1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
PUBLIC WORKS DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM.
2. KERALA STATE TRANSPORT PROJECT (KSTP),
DIRECTOR, THIRUVANANTHAPURAM.
3. THE CHIEF ENGINEER (KSTP),
KERALA STATE, KILLIPALAM, THIRUVANANTHAPURAM.
4. THE EXECUTIVE ENGINEER (KSTP),
MUVATTUPUZHA, ERNAKULAM DISTRICT.
5. THE EXECUTIVE ENGINEER,
PWD (B & R), KOTTAYAM DISTRICT.

6. THE ASSISTANT ENGINEER,
P.W.D., ETTUMANOOR, KOTTAYAM DISTRICT.

BY GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 27/06/2006, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS:

EXHIBIT P1: COPY OF PLAN SHOWING PRESENT LINE OF ACQUISITION in the POINT WHERE THE PETITIONERS PROPERTY.

EXHIBIT P2: ORIGINAL PHOTOGRAPHS SHOWING THE PRESENT POSITION OF THE ROAD IN THE AREA WHERE THE PETITIONERS HOUSES ARE SITUATED.

EXHIBIT P2(a): COPY OF PHOTOGRAPH SHOWING THE RESIDENTIAL HOUSE OF THE 1ST PETITIONER.

EXHIBIT P2(b): COPY OF PHOTOGRAPH SHOWING THE RESIDENTIAL HOUSE OF THE 2ND PETITIONER.

EXHIBIT P2(c): COPY OF PHOTOGRAPH SHOWING THE RESIDENTIAL HOUSE OF THE 3RD PETITIONER.

EXHIBIT P3: COPY OF REPRESENTATION MADE BY THE PETITIONER TO THE 3RD RESPONDENT WITH COPY TO THE OTHER RESPONDENTS DATED 23.11.2005.

EXHIBIT P4: COPY OF REPRESENTATION TO THE GOVERNMENT SECRETARY TO THE LOCAL ADMINISTRATION DEPARTMENT DATED 14.12.2005.

EXHIBIT P5: COPY OF REPRESENTATION MADE BY THE PETITIONERS TO THE GOVERNMENT SECRETARY TO THE LOCAL ADMINISTRATION DEPARTMENT DATED 8.2.2006.

EXHIBIT P5(a): COPY OF REPRESENTATION MADE BY THE PETITIONERS TO THE 2ND RESPONDENT DATED 8.2.2006.

EXHIBIT P5(b): COPY OF REPRESENTATION MADE BY THE PETITIONERS TO THE 3RD RESPONDENT DATED 8.2.2006.

EXHIBIT P5(c): COPY OF REPRESENTATION MADE BY THE PETITIONERS TO THE 3RD RESPONDENT DT. 8.2.2006.

EXHIBIT P6: PHOTOGRAPHS SHOWING THE PROPERTIES OF THE PETITIONERS COVERED BY THE ACQUISITION.

EXHIBIT P6(a): PHOTOGRAPHS SHOWING THE EASTERN SIDE AND WESTERN SIDE OF THE ROAD AND SURVEY STONES FOR ACQUISITION LAID ON THE WESTERN SIDE.

EXHIBIT P6(b): PHOTOGRAPHS SHOWING THE EASTERN SIDE AND WESTERN SIDE OF THE ROAD AND SURVEY STONES FOR ACQUISITION LAID ON THE WESTERN SIDE.

EXHIBIT P6(c): PHOTOGRAPHS SHOWING THE WESTERN SIDE OF THE ROAD AND SURVEY STONES.

EXHIBIT P6(d): PHOTOGRAPHS SHOWING THE PROJECTED VIEW OF THE WESTERN SIDE OF THE ROAD AND SURVEY STONE LAID.

/TRUE COPY/

PA TO JUDGE

K.HEMA, J.

W.P.(C).NO.7552 of 2006

Dated this the 27th day of June, 2006

JUDGMENT

First petitioner is the owner of an extent of 5 Ares 25 square meters of land in Ettumanoor Village. Second petitioner owns an extent of 6 cents of land in the same village. Petitioners 3 and 4 also are owners of certain extent of land in Ettumanoor Village. Those are situated on the eastern side of the M.C.Road, about 300 meters towards south of the Pattithanam junction near Ettumanoor. The petitioners constructed residential buildings facing the M.C.Road. Those houses are comparatively new.

2. A survey was conducted in the properties of the petitioners, in order to acquire land for widening the M.C.Road. The Survey team has also laid survey stones in the properties of the petitioners. The petitioners are very much aggrieved by the manner in which the present survey has been conducted and the line of acquisition has been determined. According to petitioners, average width of the road is 15 meters, whereas in petitioners' area alone, the line of acquisition has been drawn providing a width of 21 meters, carving out a curve towards the properties of the petitioners. Only in this area, the road is bulging into the petitioners' properties. This is allegedly causing much inconvenience to the petitioners even for the residence.

3. According to petitioners, properties of some influential persons are avoided and not included in the acquisition so as to suit their convenience. A plan is produced as Exhibit P1 to explain the malafides. It is contended that petitioners would not be able to construct even a compound wall, once acquisition is made as per the proposed alignment. Petitioners filed representations before the authorities concerned, but

those have not been considered so far. Exhibits P3 to P5 are certain representations filed by them.

4. Petitioners, therefore, seek quashing of Exhibit P1 plan, showing the present alignment, which is prejudicial to the petitioners' interest. They also seek for a direction commanding the respondents to retain the present central line of the existing road and to equally distribute the area for widening of the road from both sides of the road. They also pray for a direction to be issued to the respondents to consider Exhibits P3 to P5 representations.

5. Fourth respondent filed a counter affidavit and it is averred that the proposed alignment is the most suitable and ideal, which was determined after a detailed study. Those are designed based on technical parameters. Any change to the alignment, as per the requirement of the petitioners, will not be feasible, it is submitted. Bus bays and parking places along with various other features that supplement the road safety, easy accessibility to public, and arrangements for avoiding traffic bottlenecks are also provided along the road, which are imperative, according to fourth respondent.

6. Learned Government Pleader also pointed out that even a notification has not been issued in this case under Section 4(1) of the Land Acquisition Act and technically, the proceedings are not initiated. The acquisition proceedings are at a very early stage and petitioners will be entitled to raise their contentions and they can also raise objections at the appropriate stage, on getting notice under Section 9 of the Land Acquisition Act, it is submitted.

7. It is also pointed out that everything will be settled in an enquiry conducted under Section 5A of the Land Acquisition Act. It was strongly submitted that the present prayer is only to intervene in the land acquisition proceedings at a too premature stage. The petitioners also

have no right to challenge the proposed alignment, especially since no malafides have been attributed in making the proposed alignment, it is argued. It was also pointed out that Exhibit P1 plan itself will explain that the authorities were actually saving the properties of the petitioners by making a convex projection of the road into the proposed property, lying immediately on the opposite side of the road on the western side. According to learned Government Pleader, the acquisition of the petitioners' properties as per the present alignment has become inevitable.

8. Learned Government Pleader also placed reliance upon a decision reported in ***M/s.Anand Buttons Ltd. Etc. v. State of Haryana & Ors.*** (2005(1) Supreme 861) and argued that this Court cannot sit in appeal over the alignment. It was argued that the authority will be in the best position to judge, as to which of the land can be exempted from the acquisition, without jeopardizing the development scheme. It is not possible for the court to sit in appeal over the exercise of such satisfaction by the authority vested with the task of implementing the development plan. The relevant portion from the said judgment can be extracted as hereunder:

“The authority, who has to carry out the planned development of the industrial estate, is in the best position to judge as to which land can be exempted from the acquisition without jeopardizing the development scheme. It is not possible for the court to sit in appeal over the exercise of such satisfaction by the authority vested with the task of implementing the development plan.”

9. On hearing both sides, I find that there is some projection of the

road at some places which the petitioners would contend, is to cause inconvenience to the petitioners, whereas the Government Pleader submitted that it is to suit their convenience and avoid inconvenience to most of the owners of the property who are involved. Any way, as pointed out by learned Government Pleader, this is too premature a stage where the court can intervene. Several aspects have to be considered by the authorities themselves. The land acquisition proceedings are at a very early stage.

10. It cannot be said that the present proposal will be finalised as such, without any changes. The confirmation will be effected only after hearing all the concerned parties and affected land owners, after a detailed enquiry under Section 5A of the Act. The petitioners have their efficacious remedy even before the authorities. In these circumstances, it may not be proper for this Court to enter any finding with respect to the present alignment, malafides, the alleged influence by the owner of the property situated on the western side of the property etc. At the same time, it is clear that the petitioners have some genuine grievance. All their grievances and apprehensions can be placed before the authorities at the appropriate stage and it may be possible to redress also. This Court expects that Exhibits P3 to P5 representations will be looked into by the authorities concerned, without any delay taking into consideration the anxiety of the petitioners. I do not find any ground to interfere in the matter at this premature stage.

11. Learned Government Pleader also submitted that there is no proposal to acquire the property invoking urgency clause under Section 17 of the Land Acquisition Act and the apprehension of the petitioners that the acquisition proceedings will be carried on without notice to them etc. are baseless. He also submitted that the over anxiety of learned counsel for the petitioners that the petitioners will be dispossessed from the

property immediately is also baseless and it is made clear that the dispossession will follow only after issuance of a notification under Section 4(1) of the Act and the enquiry to be followed after due notice to the petitioners in accordance with the provisions of the Act. In the light of the above submission, I do not find that any direction need be given to the respondents not to dispossess the petitioners

With these observations, this petition is disposed of.

K.HEMA, JUDGE

vgs.