



GOVERNMENT OF KERALA

Abstract

Revenue Department - Interim orders dated 27/10/2023, 31/10/2023, 07/11/2023 of the Hon'ble High Court in WP(C) No.31739/2023, WP(C) No.33400/2023 and WP(C) No.36729/2023 filed respectively by Smt K M Najma, Smt K M Nazreena and Sri Abdul Salam - Complied with - Orders issued.

REVENUE (B) DEPARTMENT

G.O.(Rt)No.1459/2024/RD Dated,Thiruvananthapuram, 26-06-2024

- Read 1 Representation dated 10/10/2023 submitted by Smt K M Najma (Exbt P16).
- 2 Representation dated 10/10/2023 submitted by Smt K M Nazreena (Exbt P11).
- 3 Representation dated 10/10/2023 submitted by Sri Abdul Salam (Exbt P6).
- 4 Interim order dated 27/10/2023 of the Hon'ble High Court in WP(C) No.31739/2023 filed by Smt K M Najma.
- 5 Interim order dated 31/10/2023 of the Hon'ble High Court in WP(C) No.33400/2023 filed by Smt K M Nazreena.
- 6 Interim order dated 07/11/2023 of the Hon'ble High Court in WP(C) No.36729/2023 filed by Sri Abdul Salam.
- 7 Interim Order dated 27.11.2023 in IA 2/2013 in WP(C) No. 36397/2023 filed by Smt K M Najma, Smt K M Nazreena & Sri Abdul Salam.
- 8 Lr.No.CO/PD-1/NP/AKMTR/01-2019/24-01 dated 08.01.2024

from the Deputy Chief Engineer, Konkan Railway Corporation Ltd.

9 Letter No.B3/424/2022 dated 04.03.2024 and 30.04.2024 of the District Collector, Kozhikode

10 Letter No. B3/424/2022 dated 10.06.2024 from the District Collector, Kozhikode.

ORDER

WP(C) No.31739/2023, WP(C) No.33400/2023 and WP(C) No.36729/2023 has been filed respectively by Smt K M Najma, Smt K M Nazreena and Sri Abdul Salam for a direction to the 1st respondent viz. Secretary, Revenue Department to consider their representations read as 1st, 2nd, and 3rd respectively for taking the entire extent of 3 Acre 88 cents of land owned by the petitioners on lease as per the provisions of Section 104 of the LARR Act, 2013, rather than acquiring it as per the statutory provisions, since the purpose for which requisition is placed by Konkan Railway Corporation Ltd. is of temporary nature i.e., for dumping muck as part of construction of Anakkampoyil - Kalladi - Meppadi Tunnel. The Hon'ble High Court, in the Interim Order read 4th, 5th, 6th above directed the Government to consider the respective representations of the petitioners in accordance with law and after taking note of the provisions contained in Section 104 of the LARR Act, 2013, within a period of one month.

2. In compliance with the judgment, the petitioners were heard by the Under Secretary to Government on 21.11.2023. Shri Abdul Salam, Shri Adam Shynu, representing Smt Nazreena K M & Smt K M Najma attended the hearing. During the hearing, the petitioners raised the following grievances.

- i. Their land is being acquired for a temporary purpose ie. for dumping muck as part of construction of Anakkampoyil - Kalladi - Meppadi Tunnel, and hence their land should be taken on lease as per the provisions of Section 104 of the LARR Act, 2013, rather than acquiring it as per the statutory provisions.
- ii. The documents taken into account for the preparation of BVR are have not been properly assessed for the valuation. The 1st BVR has been prepared by fixing the value around ₹67,000/- per cent. Later the 2nd BVR was prepared by fixing the value around ₹30,000/-. Here the document No. 1255/22 for sale consideration has been rejected stating the registration is done at a fancy price and transaction is done by members of the same family. Further document No.400/22, 1299/2021, 130/21 & 578/2022 has been rejected on the ground that this registration is done by KSEB based on the negotiation done as per the LARR Act, 2013.
- iii. After acquisition an extent of 90 cents in Sy. No. 1418 in respect of Smt. K M Najma and an extent of 60 cents in Sy. No. 1418 in respect of Smt. Nazreena K M is left unused leaving no access to the subject property thereby rendering it useless.
- iv. Shri Abdul Salam pointed out that the valuation done by the Principal Agricultural Officer for the nutmeg tree for an amount of ₹5,000/- is faulty. He informed that initially the valuation done by the Principal Agricultural Officer was for an amount of ₹45,000/- which was later reduced based on the meeting convened by District Collector on 04.10.2023. The valuation for nutmeg trees done by them for GAIL is around ₹1,17,556/-.

3. As per section 36 of the LARR Act, 2013, the appropriate Government may at any time before the award is made by the Collector under section 30

call for any record of any proceedings (whether by way of inquiry or otherwise) for the purpose of satisfying itself as to the legality or propriety of any findings or order passed or as to the regularity of such proceedings and may pass such order or issue such direction in relation thereto as it may think fit:

Provided that the appropriate Government shall not pass or issue any order or direction prejudicial to any person without affording such person a reasonable opportunity of being heard.

Bu the Hon'ble High Court in the interim order read as 7th paper above, held that under section 36, the appropriate Government does not have jurisdiction to review and revise the proceedings of the Collector, on an application made by the petitioners. Therefore the only actions remains is to examine the following request of the petitioners

(i) to take their land on lease as per the provisions of Section 104 of the LARR Act, 2013

(ii) in case of the parcel of land belonging to him that has been notified to be acquired for the tunnel project for waste disposal cannot be leased by Government and Government insists on acquisition, then some additional parcel of outlying land adjacent to the land parcel notified under LA should also be acquired.

4. The Konkan Railway Corporation as per the letter read as 8th paper above, has informed that the identified land was chosen based on technical considerations on account of the terrain which is flat and land is of rectangular shape suitable for stockpiles, as well as the receipt and dispatch of excavated material, which can be easily controlled through the access road. Therefore, only the identified land is suitable for muck disposal and no

further land is required. Moreover, the land is required for muck disposal and hence need to be acquired on a permanent basis as the land, once used for muck disposal, cannot be restored to its original condition.

5. In WP(C) Nos. 3678/2024 & 6861/2024 filed by K.M.Najma & K.M.Nazreena respectively, the petitioners had sought for a direction from the Government to consider their requests for acquisition of remaining property under section 94 (3) of LARR Act 2023.

6. The District Collector, as per the letter read as 9th and 10th informed the utility of the parcel of land occupied by the following persons as follows;

- i. **Sri K.M. Mohamood:-** The requisition authority has culled out a rectangular plot from him leaving the lands at lower level without providing access thereby permanently reducing the value of the balance and it will be rendered useless, justification in acquiring the land of the petitioners having commercial importance which is near to the local town center making the properties virtually unusable for any purpose. In his petition dated 07/12/2023, the land will be unusable after the proposed acquisition due to lack of access, proximity to the river, irregular shape and CRZ restrictions. The District Collector reported that the balance land is a strip of land lying between the river and acquired land and with the acquired land cutting off access to the balance land currently not in the list to be acquired.
- ii. **Smt.K.M.Najuma:-** After the acquisition procedure, as her 2.28 acres have been reduced to 1.31, leaving a strip of 97 cents in an L shape along the sides of the river on the north side and west side with the stream. This has created significant challenges for the mobility and accessibility to her remaining land, rendering it unused and unfit. Presently, around 1.60 acres of the land, from the larger parcel of land

of extent 3.88 acres, is the only land which can be utilised after the completion of the proposed project due to the deposits and storage of muck, dusts and hard rocks from the construction works of the Tunnel project. Acquiring unused land of an extent of 97 cents in L shape sharing a river on the north side and a stream on the east, under Section 94 of the LA Act 2013, along with the 1.31 acres notified under the LA procedures (1.31 acres + 97 cents = 2.28 acres) from the entire 3.88 acres is genuine.

- iii. **Smt.K.M. Nazreen:-** Her land has been marked to an extent of 3.20 acres out of a total of 3.88 acres. A huge river with hard rocks and waterfalls flowing on the north side, which has no access and mobility to the property. A PWD road with approximately 150 M frontage on the south which is the only access to her property is reduced to approximately zero frontage to her existing property due to the present Land Acquisition in her property. This has created significant challenges for the mobility and accessibility of her remaining land, rendering it unused and unfit. The balance land after acquisition will be rendered useless as the land will be formed as a strip of land lying between the River and acquired land and it doesn't have any accessibility.

7. The District Collector informed that a large quantity of muck is expected to be generated from the tunneling operation. While some of the quantity is proposed to be reused back in the project. Large quantity of muck will remain at the designated muck disposal area itself. The height of so filled muck is expected to be around 5 to 8 metres. Therefore the land will not be in a usable state after the completion of the project. The parcels of land possessed by Sri. K.M. Mohamood, Smt.K.M.Najuma, Smt.K.M. Nazreen is acquired for muck disposal and hence the concerns of the

applicant are genuine and based on facts. Their balance land will be rendered useless as balance land after acquisition will remain as a strip of land and access to the land will also be lost. Hence, the District Collector recommended that applications under section 94(3) of the LARR Act 2013 filed by Sri.K.M. Mohamood, Smt.K.M.Najuma and Smt.K.M. Nazreen be accepted and orders be passed favourably. The District Collector also informed that the request of the petitioners ie. Sri. Abdul Salam, Smt.K.M.Najuma, Smt.K.M. Nazreen to take the land on lease could not be entertained.

8. Government has examined the matter in detail on the basis of reports received from the District Collector, the Konkan Railway Corporation Ltd and as per the existing provisions in the LARR Act, 2013. Government has no option but to proceed with the land acquisition since as reported by the Konkan Railway Corporation Ltd the construction waste, debris, and muck from the construction are going to be permanently deposited on this land under acquisition, not merely from the petitioner, but several other private parties. Hence, the land cannot be put to any good use and the Government therefore cannot lease this land from a private party, especially since adjoining land required for this purpose from other parties has already been acquired. Hence, the request of Sri. Abdul Salam, Smt.K.M.Najuma, Smt.K.M. Nazreen to lease the land under section 104 of the LARR Act 2013, rather than acquiring it as per the statutory provisions is rejected.

9. A large quantity of muck is expected to be generated from tunneling operation. While some of the quantity is proposed to be reused back in the project. Large quantity of muck will remain at the designated muck disposal area itself. The height of so filled muck is expected to be around 5 to 8 meters. Therefore the land will not be in a usable state after the completion of the project. Therefore the request of Sri.K.M. Mohamood,

Smt.K.M.Najuma and Smt.K.M. Nazreen is obvious that the concerns of the applicants are genuine and based on the facts mentioned above. Their balance land will be rendered useless as balance land after acquisition will remain as a strip of land and access to the land will also be lost. Therefore the applications as per section 94(3) of the LARR Act, 2013 filed by Sri.K.M. Mohamood, Smt.K.M.Najuma and Smt.K.M. Nazreen is accepted and sanction is accorded to the District Collector to acquire the parcels of land by invoking the provisions contained in LARR Act, 2013.

10. The District Collector will ensure that approval under extant Acts & Rules viz, Conservation of Paddy land and Wetland Act, Coastal Zone Regulation Act and Environment Act, whichever are applicable to the proposal in this case are obtained by the Requisition Authority.

11. The Public Works Department shall bear the cost of the additional land acquisition.

12. The representations submitted by the petitioners read as 1st, 2nd and 3rd above are disposed on the above lines and the directions contained in the interim orders read as 4th, 5th and 6th above of the Hon'ble High Court are complied with accordingly.

(By order of the Governor)

TINKU BISWAL

PRINCIPAL SECRETARY

To

1. Smt.K.M.Najuma, Flat No.18A, Galaxy Ritz Marina Apartment, West hill P O, Kozhikode. 673005.
2. Smt.K.M. Nazreen, Glass Nost, Thondayad P O, Chevarambalam,

Kozhikode-673007.

3. Sri.K.M. Mohamood, Koyappathodi, Fadz, Chevayoor, Kozhikode-670317
4. Sri Abdul Salam, Aranhikundan House, Mundambra Ugrapuram, Areekode, Perumbaramba, Malappuram-39.
5. The Advocate General, Kerala (With C/L)
6. The District Collector, Kozhikode
7. The Deputy General Manager, Konkan Railway Corporation Ltd, Project Division, Thiruvanthapuram.
8. The Accountant General (A&E/Audit), Thiruvananthapuram.
9. Public Works Department.
10. Stock File/Office copy.

Forwarded /By order

Section Officer

Copy to :

PA to Principal Secretary, Revenue Department

PA to Additional Secretary, Revenue Department