

HIGH COURT OF KERALA

Date of Decision: April 19, 2024

BENCH : THE HONOURABLE MR. JUSTICE VIJU ABRAHAM

WP© NO. 18627 OF 2022

PETITIONERS:

EXPIRED, KRISHNAN N.T.

PRADEEP N.T

PETITIONER

VS

THE DISTRICT COLLECTOR, KOZHIKODE

THE TAHSILDAR, KOZHIKODE TALUK

THE VILLAGE OFFICER, RAMANATTUKARA

THE TALUK SURVEYOR, KOZHIKODE

**THE PROJECT DIRECTOR, NATIONAL HIGHWAY
AUTHORITY OF INDIA, KOZHIKODE**

**THE NATIONAL HIGHWAY AUTHORITY OF INDIA, NEW
DELHI**

RESPONDENTS:

Legislation:

The Land Acquisition Act, 1894

The National Highways Act, 1956

Subject: Dispute over encroachment and land acquisition by

National Highway Authority for highway expansion – the petitioner claims wrongful encroachment beyond the demarcated and acquired area; respondents counterclaim illegal removal of survey stones and encroachment by the petitioner.

Headnotes:

Land Ownership and Boundary Issue – Land Encroachment and Resurvey Process – Writ Petition for Review of Resurvey Based on Original Records – Petitioner alleges wrongful encroachment by respondents on his property; claims correct boundaries established by 1987 survey – Respondents contend petitioner removed survey stones and encroached on highway land – Court finds that resurvey confirmed original encroachment boundaries; copies of original records sufficed for resurvey – Held, no merit in petitioner’s claim that resurvey was conducted without original acquisition records; writ petition dismissed with liberty to challenge resurvey in appropriate forum. [Paras 1-5]

Assertion of Land Ownership – Petitioner asserts ownership of 6.49 Ares post-1987 highway land acquisition – Claims construction of boundary wall behind officially laid survey stones to protect property – Respondents accuse petitioner of altering landscape and encroaching on highway land – Court relies on resurvey affirming no changes in land boundaries as claimed by petitioner. [Para 1-2]

Judicial Review of Administrative Action – Challenge to validity of resurvey proceedings – Court concludes resurvey was conducted properly with available records – Dismisses petitioner's claims for lack of conclusive evidence showing improper resurvey; emphasizes administrative procedures were followed as per court's previous directions. [Paras 3-5]

Decision – Dismissal of Writ Petition – High Court dismisses writ petition challenging resurvey, upholds that resurvey was conducted according to court's directions using available records – Petitioner granted one month to appeal decision, maintaining interim order. [Para 5]

Referred Cases: None.

Representing Advocates:

For Petitioners: Abdul Jawad K., A.Grancy Jose

For Respondents: K.A. Salil Narayanan

JUDGMENT

The petitioner is the absolute owner in possession

of 6.49 Ares (16.03 cents) of land by Ext.P1 title deed. The petitioner was originally holding 30 cents of land, that he obtained by way of release deed executed by his sister. The National Highway Authority had acquired 0.0565 hectares of land for the purpose of widening the national highway in the year 1987 and clear demarcation of the acquired land was made by laying survey stones. The petitioner has been holding the remaining land of 16.03 cents after acquisition. The petitioner has constructed a boundary wall just behind the survey stones laid by the authorities to protect his remaining land. A house was existing in the remaining land of the petitioner, apart from that a shop room building, a well and a toilet are also existing in the land in the possession of the petitioner. While so the petitioner and other neighbours were served with Ext.P5 notice as part of conducting an inspection in the land. Petitioner submits that no inspection was required at all since the property has already been demarcated and boundary survey stones were laid way back in 1987. On 30.05.2022, respondents 2 and 4 along with officers of the National Highway planted a stick inside the land of the petitioner approximately 1.10 metres away from the boundary

survey stone already laid in 1987. The petitioner contends that the action of the respondents is a clear case of encroachment upon private property and if they want any part of the land of the petitioner they ought to have resorted to land acquisition proceedings. Petitioner relying on Ext.P7 series of documents contended that no portion of the earlier acquired land during 1987 is in the possession of the petitioner. Petitioner relying on Ext.P8 series of photographs submits that the compound wall has been constructed beyond the original survey stone laid in 1987.

2. A detailed counter affidavit has been filed by the 5th respondent wherein it is contended that though the land was acquired in the year 1988, it was not used for development/widening of the highway and the petitioner has removed the survey stones and encroached the high way and constructed a compound wall illegally. When encroachment was noticed, the NH authorities requested the 2nd respondent to conduct a survey and the same was conducted with notice to the land owners and Ext.R5 (a) survey sketch was prepared to show the encroached area in red ink.

3. A detailed reply was submitted by the

petitioner wherein it is submitted that no survey was conducted with notice to the petitioner as averred in the counter affidavit. A survey if conducted would be only after publishing a notice. Petitioner would submit that though in Ext.P4 possession certificate, the extent of land in possession of the petitioner is 0.0601 hectares, the said mistake in the extent of land was corrected and a fresh possession certificate is issued as Ext.P11 showing the extent of land as 0.0649 hectares for which the petitioner has been paying tax. Petitioner also submits that the residential building has been constructed after obtaining necessary consent as per Ext.P12. The petitioner would contend that though he has made the necessary application before the Special Tahsildar LA Kozhikode regarding the location sketch and plan relating to the property already acquired from the petitioner, a reply was given as per Ext.P17 that such records are not available in his office. Petitioner would further submit on the basis of Ext.P21 reply that the survey conducted pursuant to the direction issued by this Court on 19.01.2023, the original records of land acquisition was never made available to the surveyor.

4. This Court as per order dated 19.01.2023 directed the respondents to complete the resurvey proceedings based on the original records. On the contention of the petitioner that survey has not been conducted based on the original records of land acquisition, an affidavit has been filed by the 2nd respondent wherein it is stated that as per the direction issued by this Court on 19.01.2023, a survey was conducted and found that there is no change or difference in the encroached area which was marked earlier as per survey report and sketch dated 18.06.2022. Even though NH authorities have not handed over the original records of the acquisition of the land to the Taluk Surveyor, as copies of approved FMB (original acquisition records) were available in the Taluk office, there was no need to hand over the original records by the National Highway Authority to the Taluk surveyor for conducting the survey. Ext.R2(b) encroachment sketch was also produced whereby the encroachments were noted. It is also stated in the affidavit that land records like FMB, a register of all lands including Government Puramboke land are maintained and possessed by the Revenue and Survey Department

and it was submitted that the survey was conducted based on the original records regarding acquisition and the contention of the petitioner cannot be accepted.

5. By an interim order dated 19.01.2023, this Court directed to complete the resurvey proceedings based on original records. The contention of the petitioner is that the same has not been done based on the original records of acquisition and the apportionment sketch made thereon. But in the affidavit filed by the Government dated 20.12.2023 in paragraph 8, it was stated as follows:

“8. Based on the above said aspects, since the copies of the approved FMB (Original acquisition records) are available in the Taluk Office concerned there is no need to hand over the original records by the Project Director, NHAI, PIU, Kozhikode (5th respondent) to Taluk Surveyor for conducting survey of the disputed land. Hence the petitioners 3rd query in Exhibit P20 is answered accordingly.”

As per the direction issued by this Court on 19.01.2023, the encroachment earlier noted was again verified and found to be correct. The contention of the petitioner that the resurvey has been done without the original records cannot be accepted since it is the specific case of the 2nd

respondent that copies of approved FMD (original acquisition records) were available with the Taluk Office. The authorities have twice measured the property, even on the basis of an order passed by this Court. Further, based on the affidavit filed to the effect that copies of approved FMD (original acquisition records) were available with the Taluk Office, I am not inclined to grant the relief sought for in this writ petition. If the petitioner is aggrieved by the resurvey conducted pursuant to the direction issued by this court on 19.01.2023, it is for him to challenge the same in appropriate proceedings. If a challenge is made by the petitioner, the appellate authority concerned shall dispose of the same without any delay. Leaving open such right of the petitioner, the writ petition is disposed of. To facilitate the petitioner to approach the appellate authority, the interim order granted by this Court on 08.06.2022 will remain in force for a further period of one month from today.

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