

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

MONDAY, THE 14TH DAY OF FEBRUARY, 2022 / 25TH MAGHA, 1943

WA NO. 169 OF 2022

[AGAINST THE ORDER DATED 20.01.2022 IN WP(C) NO. 351/2022]

APPELLANT/2ND RESPONDENT IN THE WRIT PETITION:

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

BY ADVOCATE GENERAL, MR. K. GOPALAKRISHNA KURUP  
BY SPECIAL GOVERNMENT PLEADER TO A.G. SHRI T.B.HOOD,  
SHRI V.MANU, SENIOR G.P.(GP-46)

RESPONDENTS/PETITIONERS AND RESPONDENTS 1, 3, 4 IN THE WRIT PETITION:

- 1 BINU SEBASTIAN, AGED 45 YEARS  
S/O. P.T DEVASIA, PUNCHAYIL HOUSE, ETTUMANOOR P.O,  
KOTTAYAM, PIN - 686016.
- 2 SUNIL K.M., 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. V.T. EAPEN, VALIYAPUNCHALPUTHANVEETIL HOUSE,  
ANIKKAL KAVALA, PERUMBAIKAD P.O, ETTUMANOOR VIA.,  
KOTTAYAM, PIN - 686016.
- 4 MADHU J. THEKKANATTU, AGED 47 YEARS  
S/O. MATHAI JOSEPH, THEKKANATTU HOUSE,  
KIZHAKKUMBHAGAM KARA, ETTUMANOOR P.O,  
KOTTAYAM DISTRICT, PIN - 686631.
- 5 UNION OF INDIA,  
REPRESENTED BY ITS SECRETARY,  
MINISTRY OF RAILWAYS, RAIL BHAVAN, 256-A,  
RAISINA ROAD, RAJPATH AREA, CENTRAL SECRETARIAT,  
NEW DELHI, PIN - 110001.

- 6 KERALA RAIL DEVELOPMENT CORPORATION LIMITED,  
REPRESENTED BY ITS MANAGING DIRECTOR,  
TRANS TOWER, 5TH FLOOR, VAZHUTHACAUD,  
THIRUVANANTHAPURAM, PIN - 695014.
- 7 THE RAILWAY BOARD,  
REPRESENTED BY ITS CHAIRPERSON,  
INDIAN RAILWAY, 256-A, RAIL BHAVAN,  
RAISINA BOARD, NEW DELHI, PIN - 110001.

R1 TO R4 BY ADVS. SRI. BABU JOSEPH KURUVATHAZHA  
R5 BY ADV. SRI. MANU S., ASG OF INDIA  
R6 BY SENIOR ADVOCATE SRI. S. RAMESH BABU,  
SRI. A DINESH RAO (SC)  
R7 BY ADV. SRI. C. DINESH

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 14.02.2022,  
ALONG WITH WA. NO.176/2022, 179/2022 AND 186/2022, 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

MONDAY, THE 14TH DAY OF FEBRUARY, 2022 / 25TH MAGHA, 1943

WA NO. 176 OF 2022

[AGAINST THE ORDER DATED 20/01/2022 IN WP(C) NO.1574/2022]

APPELLANTS/RESPONDENTS 4 AND 9 IN THE WRIT PETITION:

- 1 STATE OF KERALA,  
REPRESENTED BY THE SECRETARY TO GOVERNMENT,  
DEPARTMENT OF TRANSPORT, SECRETARIAT,  
THIRUVANANTHAPURAM, PIN - 695001.
- 2 SPECIAL TAHSILDAR(L.A.), N.H. NO. 2 , ALUVA, PIN - 683101.

BY ADVOCATE GENERAL, MR. K. GOPALAKRISHNA KURUP  
BY SPECIAL GOVERNMENT PLEADER TO A.G. SHRI T.B.HOOD,  
SHRI V.MANU, SENIOR G.P.(GP-46)

RESPONDENTS/PETITIONER AND RESPONDENTS 1, 2, 3, 5, 6, 7 & 8  
IN THE WRIT PETITION:

- 1 SUNIL J. ARACKALAN, AGED 47 YEARS,  
S/O. JOSEPH, ARACKALAN HOUSE, ELAVUR KARA,  
PAARAKKADAVU VILLAGE, ALUVA TALUK,  
ERNAKULAM DISTRICT, PIN - 683101.
- 2 UNION OF INDIA,  
REPRESENTED BY ITS SECRETARY,  
MINISTRY OF RAILWAYS, RAIL BHAVAN, 256-A, RAISINA  
ROAD, RAJPATH AREA, CENTRAL SECRETARIAT,  
NEWDELHI, PIN - 110001.
- 3 THE RAILWAY BOARD,  
RAIL BHAVAN, 256-A RAISINA ROAD, RAJPATH AREA,  
CENTRAL SECRETARIAT, NEW DELHI, PIN - 110001.  
REPRESENTED BY ITS CHAIRMAN.

- 4 SOUTHERN RAILWAY, HEADQUARTERS OFFICE,  
PARK TOWN, CHENNAI, PIN - 600003.  
REPRESENTED BY ITS ZONAL MANAGER.
- 5 KERALA RAIL DEVELOPMENT CORPORATION LIMITED (K-RAIL),  
5TH FLOOR, TRANS TOWER, VAZHUTHACAD, THYCAD P.  
THIRUVANATHAPURAM, KERALA., PIN - 695014.  
REPRESENTED BY ITS MANAGING DIRECTOR.
- 6 MANAGING DIRECTOR,  
KERALA RAIL DEVELOPMENT CORPORATION LIMITED (K-RAIL),  
5TH FLOOR, TRANS TOWER, VAZHUTHACAD, THYCAD P.  
THIRUVANATHAPURAM, KERALA., PIN - 695014.
- 7 THE UNION TERRITORY OF PUDUCHERRY,  
REPRESENTED BY ITS SECRETARY,  
REVENUE DEPARTMENT, CHIEF SECRETARIAT,  
PUDUCHERRY, PIN - 605001.
- 8 THE REGIONAL ADMINISTRATIVE OFFICER,  
OFFICE OF THE REGIONAL ADMINISTRATOR,  
GOVERNMENT HOUSE, MAHE, PIN - 673310.

R1 BY ADV. SMT. A.K.PREETHA

R2 BY ADV. S. MANU, ASGI,

R3 BY ADV. SRI. C. DINESH

R5 & R6 BY SENIOR ADVOCATE SRI. S.RAMESH BABU

BY STANDING COUNSEL SRI. A. DINESH RAO, SC

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 14.02.2022,  
ALONG WITH WA. NOS.169, 179 & 186 OF 2022, 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

MONDAY, THE 14TH DAY OF FEBRUARY, 2022 / 25TH MAGHA, 1943

WA NO. 179 OF 2022

[AGAINST THE ORDER DATED 20/01/2022 IN W.P.(C) NO. 30567/2021]

APPELLANTS/RESPONDENTS 1, 3, AND 4 IN THE WRIT PETITION:

- 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 HEADQUARTERS,  
THIRUVANANTHAPURAM, PIN - 695010.

BY ADVOCATE GENERAL, MR. K. GOPALAKRISHNA KURUP  
BY SPECIAL GOVERNMENT PLEADER TO A.G. SHRI T.B.HOOD,  
SHRI V.MANU, SENIOR G.P. (GP-46)

RESPONDENTS/PETITIONERS AND RESPONDENTS 2, 5, 6 IN THE WRIT PETITION:

- 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, MAPPILACHERRY VILLA,  
MAMOOD P.O., CHANGANACHERRY, PIN - 686536.
- 3 P. A. JOHNIKKUTTY,  
S/O. ITTIAVIRA, KUNNASSERI PUTHENPURAYIL,  
THOTTECADU, VAKATHANAM P.O., KOTTAYAM.

- 4 KERALA RAIL DEPARTMENT CORPORATION LTD.,  
TRANS TOWER, 5TH FLOOR, VAZHUTHACADU,  
THIRUVANANTHAPURAM-695 054,  
REPRESENTED BY THE MANAGING DIRECTOR.
- 5 THE RAILWAY BOARD,  
INDIAN RAILWAYS, RAIL BHAVAN, RAISINA ROAD,  
NEW DELHI-110001,  
REPRESENTED BY ITS CHAIRMAN,
- 6 UNION OF INDIA,  
REPRESENTED BY ITS SECRETARY TO GOVERNMENT OF INDIA,  
MINISTRY OF RAILWAYS, RAIL BHAVAN, NEW DELHI- 110001

R1 TO R3 BY ADV. SRI. O.V. MANIPRASAD  
R4 BY SENIOR ADVOCATE SRI. S. RAMESH BABU,  
BY ADV. SRI. A DINESH RAO, STANDING COUNSEL FOR RAILWAYS  
R5 BY ADV. SRI. C. DINESH,  
R6 BY ADV. MANU S., ASG OF INDIA

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 14.02.2022,  
ALONG WITH WA.NOS.169/2022 176/2022 & 186/2022, 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

MONDAY, THE 14TH DAY OF FEBRUARY, 2022 / 25TH MAGHA, 1943

WA NO. 186 OF 2022

[AGAINST THE ORDER DATED 20/01/2022 IN W.P.(C) NO.975 OF 2022]

APPELLANTS/RESPONDENTS 2, 5, 6 & 7 IN THE WRIT PETITION:

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

BY ADVOCATE GENERAL MR. K. GOPALAKRISHNA KURUP  
ADV. SRI.T.B.HOOD, SPL.G.P. TO A.G.  
ADV. SRI.V.MANU, SENIOR G.P.(GP-46)

RESPONDENTS/PETITIONERS AND RESPONDENTS 1, 3 & 4 IN THE WRIT PETITION:

- 1 V.V. VARMA, AGED 69 YEARS,  
S/O. ARUMUGAN, VAZHAPPULLY HOUSE, AYNOOR,  
PAZHANJI P O, THRISSUR - 680542.
- 2 MUJEEB RAHMAN A., AGED 39 YEARS,  
S/O. KOYAKKUTTY, ATTIYEDATH, CHERUVANNUR,  
FEROKE P O, KOZHIKKODE- 673631.
- 3 M.T. THOMAS, AGED 70 YEARS,  
S/O. M. G . THOMAS, MURAMTHOOKIL, MULAKULAM SOUTH,  
PERUVA P O, KOTTAYAM- 686610.

- 4 V. M. JOSEPH, AGED 71 YEARS,  
S/O. MATHAI THOMAS VAREECKAL, KUNNAPPILLY,  
PERUVA.P.O, KOTTAYAM, PIN - 686610.
- 5 MATHEW KURIAN, AGED 65 YEARS,  
S/O. KURIAN MATHEW, PUTHOOR THEEKARA, KUNAPPILLY,  
PERUVA P. O., KOTTAYAM- 686610.
- 6 UNION OF INDIA, REPRESENTED BY SECRETARY,  
MINISTRY OF RAILWAYS, RAIL BHAVAN, 256-A, RAISINA ROAD,  
RAJPATH AREA, CENTRAL SECRETARIAT, NEW DELHI - 110001.
- 7 KERALA RAIL DEVELOPMENT CORPORATION LIMITED,  
TRANS TOWER, 5TH FLOOR, VAZHUTHACAUD,  
THIRUVANANTHAPURAM, PIN - 695001,  
REPRESENTED BY ITS MANAGING DIRECTOR.
- 8 RAILWAY BOARD, RAIL BHAVAN, 256-A, RAISINA ROAD,  
RAJPATH AREA, CENTRAL SECRETARIAT, NEW DELHI-110001,  
REPRESENTED BY ITS CHAIRPERSON.

R1 TO R5 BY ADV. SRI. P.A.MOHAMMED SHAH  
R6 BY ADV. SRI. S. MANU, ASG OF INDIA  
R7 & R8 BY SENIOR ADVOCATE SRI. S. RAMESH BABU  
BY ADV. SRI. A. DINESH RAO, SC, RAILWAYS

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 14.02.2022,  
ALONG WITH WA.169/2022, 176/2022 & 179/2022, THE COURT ON THE SAME DAY  
DELIVERED THE FOLLOWING:



## **JUDGMENT**

### **S. Manikumar, CJ**

Instant writ appeals are filed against the interim order dated 20.01.2022 passed in W.P.(C) Nos. 30567/2021, 351/2022, 975/2022, and W.P.(C) No. 1574/2022, by which the writ court directed that steps for survey of the properties belonging to the writ petitioners/party respondents herein shall stand deferred until the matters are considered again on 7.2.2022.

2. It was also ordered that all other earlier interim orders issued in the writ petitions will continue to be in operation and further that every step, as is legally permissible under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, (hereinafter called LARR Act 2013) can certainly be continued by the competent Authorities, scrupulously complying with the statutory prescriptions, and that the afore directions will not stop them from doing so.

3. By the impugned interim order, the learned single Judge has kept in abeyance the proceedings initiated by the appellants to survey

the properties of the writ petitioners, invoking the powers conferred under the Kerala Survey and Boundaries Act, 1961, in order to undertake the Social Impact Assessment Study, as required under Section 4 of the LARR Act, 2013.

4. Appellant in W.A No. 169/2022 is the 2<sup>nd</sup> respondent in W.P.(C) No. 351/2022; appellants in W.A. No. 176/2022 are respondents 4 and 9 in W.P.(C) No. 1574/2022; appellants in W.A. No. 179/202 are respondents 1, 3 and 4 in W.P.(C) No. 30567/2021; and appellants in W.A. No. 186/2022 are respondents 2, 5, 6, and 7 in W.P.(C) No. 975/2022.

5. Respondents/writ petitioners have filed the writ petitions to quash G.O.(Ms.) No.163/2021/RD dated 18.08.2021 and G.O.(Rt.) No.3643/ 2021/RD dated 30.10.2021, issued by the Chief Secretary to the Government, State of Kerala, Thiruvananthapuram, and restrain the respondents and their instrumentalities, from entering into the properties of the writ petitioners/respondents, for the purpose of demarcating the boundaries for acquiring the properties of the writ petitioners, for Kerala Rail Development Corporation Limited,

Thiruvananthapuram, (hereinafter called 'KRDCL'), represented by its Managing Director, until the Union of India and Railway Board or their instrumentalities issue appropriate notification, as contemplated under the provisions of the Railways Act, 1989, for the ends of justice.

6. The issues raised in the writ petitions are in relation to installation of survey marks by the appellants under Kerala Survey and Boundaries Act, 1961 (hereinafter referred to as the 'Act, 1961'), engraving "K-Rail" in the properties belonging to the writ petitioners and others, in order to conduct Social Impact Assessment (SIA) study for the proposed Semi High Speed Railway Line Project (Silver Line Project) between Thiruvananthapuram and Kasaragod districts, within the State of Kerala.

7. The contention raised by the writ petitioners, who are the owners of various parcels of properties in Kottayam, Ernakulam, Thrissur and Kozhikode districts is that, concrete poles with the marking "K-Rail" and the survey contemplated as per Notification No.B2/2021 dated 12.10.2021 issued by the Special Tahsildar (LA) (Silver Line), Kottayam, 2<sup>nd</sup> appellant in W.A. No.179/2022 under the

provisions of Act, 1961 and the rules framed thereunder (Exhibit-P7 in W.P.(C) No.30567/2021) and similar notifications issued for other districts in the writ petitions are illegal, in view of the fact that it interferes with the provisions of LARR Act, 2013. Hence, they have sought for removal of concrete poles erected with the marking “K-Rail”.

8. Writ petitioners have further contended that appellants are attempting to take possession of the properties under the guise of land acquisition, without following the mandatory requirements contemplated under the LARR Act, 2013.

9. In fact, in W.P.(C) No.30567/2021, which is the subject matter of W.A. No.179/2022, the learned single Judge has passed an interim order dated 23.12.2021, directing that the survey shall be conducted in strict compliance of the requirements under Rule 3 of the Kerala Survey and Boundaries Rules, 1964 and to install survey marks of the size, and in the manner provided therein.

10. Separate counter affidavits were filed by the State Government, as well as KRDC, represented by its Managing

Director, (4<sup>th</sup> respondent in W.A. No.179/2022), a company incorporated under the Companies Act, 2013, with the Central Government holding 51% share and State Government holding 49% share.

11. In the counter affidavit filed by the appellant State Government, the allegation that appellants are attempting to take possession of the properties belonging to the writ petitioners, is specifically denied. It is further contended therein that they the survey is conducted for the purpose of SIA study, as provided under Section 4 of the LARR Act, 2013. It is also contended that the survey mark engraved as “K-Rail” is not opposed to Rule 3 of the Kerala Survey and Boundaries Rules, 1961, in as much as, the said rule only provides that survey marks shall ordinarily be of stones of durable quality.

12. It is further pointed out that going by the definition of “survey marks” in Section 2(vii) of the Kerala Survey and Boundaries Act, 1961, any other marks or objects can also be used. However, it is contended that, without going into the real purport of the survey conducted by the appellants and the purpose for which the survey

marks were laid, the learned single Judge has absolutely prohibited the appellants to conduct survey of the lands and laying stones, which has caused serious and adverse effects and impacts to the steps taken by the State Government, in order to fructify and achieve its target to introduce the Semi High Speed Rail Corridor connecting eleven districts of State of Kerala. Hence, it is contended that unless and until the impugned interim order is interfered with, it would seriously hamper the project envisaged by the State Government.

13. *Per contra*, the contention advanced by the writ petitioners is that LARR Act, 2013 is a self contained statute, having its own facets and characteristics, and therefore, unless and until the procedure contemplated under the said Act are carried out, appellants are not entitled to enter into their properties, conduct survey, and lay the concrete poles, by exercising the powers conferred under the Kerala Survey and Boundaries Act, 1961 and the rules framed thereunder.

14. It is further contended that the survey could be conducted only in terms of the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement

Act, 2013, and that too, at the stage when acquisition is decided to be proceeded under Section 12 of the said Act, and not by invoking the provisions of Survey and Boundaries Act, 1961. Writ petitioners have also contended that State Government is not the appropriate authority to acquire land for the Silver Line Project.

15. In reply to the abovesaid contention of the writ petitioners, referring to Section 20A of the Railways Act, 1989, appellants submitted that Central Government can issue land acquisition notification only for Special Railway Projects, and the provisions of the Railways Act apply only when the Semi High Speed Rail Corridor covers one or more States.

16. Before proceeding to adjudicate the issues raised by the rival parties, it would be helpful to understand in brief, the steps taken by the State Government to execute the Semi High Speed Railway Corridor project, and for that purpose, the facts and documents available in W.A. No.179/2022 are replied upon.

17. During December, 2014, Ministry of Railways, Government of India, requested the State Government to partner with Indian

Railways, in its endeavour to develop railway network in the country and to convey the consent of the State Government to form a Special Purpose Vehicle for raising funds for the development of the network in the State; on 23.12.2015, Government, as per G.O.(Ms.) No. 80/2015/Trans, accorded sanction to partner with the railways to form a Special Purpose Vehicle with 50% equity participation, each by Government of Kerala and Indian Railways for raising funds and to implement railway project specifically selected by the State Government; on 13.01.2016, Southern Railway informed the State, the desire of the Ministry of Railways, to form a Joint Venture Company; thereupon, State Government examined the proposal and accorded sanction as per G.O.(Ms.) No.2/2016/Trans dated 13.01.2016 to partner with Indian Railways, to form a JVC, with equity participation by Indian Railways and Government of Kerala, for implementation of the railway development project. Accordingly, on 25.01.2016, a Memorandum of Understanding (MoU) was signed.

18. On 5.8.2016, State Government, as per G.O.(Ms.) No.52/2016/Trans, accorded sanction for entering into the Joint Venture



Agreement between Government of Kerala and Ministry of Railways, Government of India, for the infrastructure development of railways in Kerala, with 51:49 equity partnership and on 1.9.2016, the Joint Venture Agreement was signed between Government of Kerala and Ministry of Railways; on 02.12.2016, by G.O.(Ms.) No.75/2016/Trans, Government have accorded sanction for the formation of KRDCCL; and on 3.1.2017, KRDCCL was incorporated, with the objective, among other things, to build, construct, operate, develop, finance, and maintain viable railway projects. On 26.08.2019, Semi High Speed Rail Line Project (Silver Line Project) to construct the 3<sup>rd</sup> and 4<sup>th</sup> railway lines, in addition to the existing two railway lines between Thiruvananthapuram and Kasaragod districts, covering a distance of 540 kms., to facilitate train running at an average speed of 200 kms. per hour, was conceived by the State Government for implementation through KRDCCL. Accordingly, M/s. SYSTRA was appointed as the General Consultant for preparation of the feasibility report and as per G.O.(Ms.) No.43/2019/Trans dated 26.08.2019, State Government has approved the feasibility report prepared by M/s.

SYSTRA for the Silver Line Project.

19. On 17.12.2019, as per Letter No.2019/JV Cell/KRDCL/SHSRC dated 12.12.2019, addressed to the Chief Secretary, Government of Kerala, Thiruvananthapuram, Ministry of Railways, Government of India, informed that the proposal of KRDCL has been examined and the competent authority has accorded “In-Principal Approval” for taking up pre-investment activities for the above mentioned project.

20. It is also pointed out that, in Exhibit-R1(a) letter dated 17.12.2019, reference is made to the Office Memorandum No.24(35)/PF-II/2012 issued by the Ministry of Finance, Government of India, Department of Expenditure [Exhibit-R1(b)] dated 5.8.2016, and as per clause 10 of Exhibit-R1(b), pre-investment activities include preparation of Feasibility Reports, Detailed Project Reports, Pilot Experiments/Studies for Schemes, Survey/Investigation required for large projects, payment for land acquisition in accordance with the orders of a competent authority under law, construction of boundary wall across the roads, minor bridges/culverts, water-power lines, site

offices, temporary accommodation etc.

21. It is also submitted that on 11.06.2020, M/s. SYSTRA has submitted a Detailed Project Report (DPR) and alignment for the proposed Silver Line project. As per the DPR, the estimated cost of the project is Rs.63,941/- Crores and is expected to be materialized, within a period of five years, on getting final approval from Government of India, and in turn, as per G.O.(MS.) No.18/2020/Trans dated 11.06.2020, State Government has approved the DPR and alignment of the proposed Semi Speed Rail Corridor - Silver Line.

22. While matters stood thus, on 29.01.2021, on the allegation that acquisition proceedings for the proposed Silver Line project were initiated, without sanction from the Central Government, W.P.(C) No.18002/2020 was filed by an organization called Mulakulam Residents' Welfare Association, a place within the limits of Ernakulam district. Said writ petition along with connected cases were disposed of by a learned single Judge as per judgment dated 29.01.2021 [Exhibit-P5 in W.P.(C) No.30561/2021], with a direction that if the properties owned by petitioners therein are intended to be acquired for

the project, the provisions of LARR Act, 2013, shall be followed.

23. It seems, on 11.06.2021, Government as per G.O.(Ms.) No.13/2021/Trans have accorded sanction to proceed with the preparatory works for land acquisition, for the proposed Silver Line project; as a part of the preparatory works, it was directed that SIA study would be conducted, as contemplated under Section 4(1) of the LARR Act, 2013; and for that, an expert committee would have to be constituted, to evaluate the SIA report. It was made clear therein that the Government order to proceed with the land acquisition as per Section 8(2) of the LARR Act, 2013 would only be issued after getting final approval of the project from the Railway Board.

24. Thereupon, Government have issued G.O.(Ms.) No.163/2021/RD dated 18.08.2021, according sanction for creation of a Special Deputy Collector Office and 11 Special Tahsildar Land Acquisition Offices for Semi High Speed Railway Line (Silver Line) project. In the said order, Government have also accorded sanction for acquisition of 955.13 hectares of land by invoking the provisions of LARR Act, 2013, in various villages of Thiruvananthapuram, Kollam,

Alappuzha, Thrissur, Kozhikode, Kannur, and Kasaragod districts, subject to the condition that SIA study, as contemplated under section 4(1) of LARR Act, 2013 would be conducted and an expert committee would be constituted to evaluate SIA report. It is also specified in Exhibit-P6 Government order dated 18.08.2021, that the decision of the State Government to proceed with the land acquisition as per LARR Act, 2013 would be issued only after getting final approval of the project from the Railway Board.

25. Appellants have also stated that in partial modification of Exhibit-P6 order dated 18.08.2021, Government have issued G.O.(Rt.) No.3642/2021/Rd dated 30.10.2021, according sanction for acquisition of 1221 hectares of land. Thereafter, notification under Section 6 of the Kerala Survey and Boundaries Act, 1961 (Exhibit-P7 in W.P.(C) No.30567/2021) was issued during September/October, 2021, in various districts, to facilitate survey for the purpose of Social Impact Assessment study under Section 4 of the LARR Act, 2013.

26. During October/November, 2021, W.P.(C) Nos.23554/2021 and 24973/2021 were filed before the writ court, challenging the

abovesaid Government orders dated 18.08.2021 and 30.10.2021. Appellants have contended that by the said Government orders, Government have accorded sanction to acquire land for Silver Line project and also to create Special Tahsildar Land Acquisition Offices. In the said writ petitions, the challenge is basically on the ground that as per Section 20A of the Railways Act, 1989, only the Central Government have the powers to issue land acquisition notification for the project in question, as it is a special railway project.

27. State Government and Kerala Rail Development Corporation Limited have filed separate counter affidavits in the writ petitions. It is stated that the writ petitions were heard and posted to a later date.

28. On 22.12.2021, W.P.(C) No.30567/2021 leading to W.A. No.179/2022 was filed, contending that erection or laying of concrete poles with the marking "K-Rail" and taking possession of the property are illegal and liable to be interfered with. On 23.12.2021, writ court passed an interim order in W.P.(C) No.30567/2021 directing that survey shall be conducted in strict compliance of the requirements under Section 3 of the Kerala Survey and Boundaries Rules, 1964, and

to install survey marks of the size and in the manner as provided therein. Sometime in December, 2021 and January, 2022, Government have issued notifications under Section 4 of the LARR Act, 2013 for SIA study in various districts.

29. On 5.1.2022, W.P.(C) No.351/2022 leading to W.A. No.169/2022 was filed by the writ petitioners challenging the Government orders dated 18.08.2021 and 30.10.2021 respectively, raising similar grounds and reliefs sought for in W.P.(C) No.24973/2021, which was heard.

30. On 6.1.2022, when W.P.(C) No.351/2022 has come up for admission, writ court passed an order directing the learned Senior Government Pleader to explain, as to how the details of block numbers, survey numbers and villages were mentioned in the impugned Government orders, even though the survey under Kerala Survey and Boundaries Act, 1961 was stated to be underway.

31. On 7.1.2022, as a Public Interest Litigation, writ petitioners therein filed W.P.(C) No.741/2022 challenging the Government orders dated 18.08.2021 and 30.10.2021 respectively. Apart from that, they

have sought for other consequential reliefs. On 5.2.2022, said writ petition was withdrawn by the petitioners. While so, challenging the Gazette Notifications issued under Section 6 of the Kerala Survey and Boundaries Act, 1961 dated 07.10.2021, 12.10.2021, and 13.10.2021, for conducting survey in Thrissur, Kozhikode and Kottayam districts, W.P.(C) No.975/2022 leading to W.A. No.186/2022 was filed. According to the writ petitioners, survey could be conducted only in terms of LARR Act, 2013, and not under the Survey and Boundaries Act, 1961. Thereafter, on 14.01.2022, W.P.(C) No.1574/2022 leading to W.A. No.176/2022 was filed by the writ petitioners therein challenging the Government orders dated 18.08.2021 and 30.10.2021, and seeking to quash the notifications issued under Section 6 of the Act, 1961, in regard to Thrissur district.

32. The State Government has filed a counter affidavit in the lead Writ Petition No.30567/2021, explaining the facts and circumstances involved in the subject issues. Said counter affidavit is adopted in W.P.(C) No.351/2022. It was thereafter, the impugned interim order was passed by the learned single Judge on 28.01.2022,



prohibiting the State Government from proceeding with the notifications issued under the Kerala Survey and Boundaries Act, 1961 and the rules framed thereunder. The legality and correctness of the same is under challenge in these *intra* court appeals.

33. The paramount contention advanced by the appellants is that State Government is vested with ample powers to issue notifications under Section 6 of the Kerala Survey and Boundaries Act, 1961, which are under challenge in the writ petitions, for conducting survey of the properties, in order to carry out the mandatory requirements contained under Section 4 of the LARR Act, 2013.

34. It is further contended that the attempt made by writ petitioners/party respondents to project the case, as if the State Government is proceeding with the acquisition of the lands, is totally misleading, since the attempt of the State Government is only to carry out Social Impact Assessment study to protect the interest of the land owners, enabling them to take steps to object the SIA study by having a proper and clear picture of the extent of acquisition made in their properties. It is also submitted that concrete poles with marking “K-

Rail” are planted only with the objective of identifying the lands for evaluating social impact of acquisition and the State Government has no intention to acquire the lands by planting the stones.

35. That apart, it is contended that the entire action undertaken by the State Government is in accordance with the powers conferred under the Act, 1961, in order to have a meaningful attempt to make the SIA study, which can, in no way, interfere with the rights enjoyed by the property owners. It is also contended that even without issuing notifications, since SIA study is a mandatory requirement, State Government and its authorised officers have to enter into the properties, make a report, and in order to comply with the requirements of LARR Act, 2013, they have no other option than to make a report and follow the procedures, in contemplation of sub-sections (4), (5), (6) and (7). While contending so, Mr. Gopalakrishna Kurup, learned Advocate General, submitted that the attempt of the writ petitioners is to scuttle the project as such, and that the State Government and its officials will not do anything to acquire the lands, without following the procedure contemplated under the Act, 2013.

36. Learned Advocate General further submitted that while passing the impugned interim order, learned single Judge ought to have accepted the contention of the State Government that the present survey is for the purpose of demarcating the boundary of the project alignment for SIA study.

37. Referring to Section 4(4) of the LARR Act, 2013, which provides that SIA study under Section 4(1) shall include the extent of land, public and private houses, settlement and other common properties, likely to be affected by the proposed acquisition, learned Advocate General also submitted that the lands in question must be surveyed and demarcated and that the survey could only be done under the Kerala Survey and Boundaries Act, 1961, and not under the LARR Act, 2013.

38. Learned Advocate General further contended that the learned single Judge ought to have found that identification of the land, buildings, and other structures that would be affected by the proposed project is essential for the purpose of conducting SIA study and that it would be possible only by physical survey, for which purpose only, the

provisions of the Kerala Survey and Boundaries Act, 1961 have been resorted to.

39. On the other hand, learned counsel appearing for the writ petitioners/party respondents submitted that the State Government and its authorised officers are not vested with the powers to enter into the properties, conduct survey and lay concrete poles for the purpose of conducting SIA study and such things can only be done after undergoing the procedures contemplated under Sections 11 and 12 of the LARR, 2013, coming under Chapter IV dealing with notification and acquisition. That apart, learned counsel for the writ petitioners raised contentions supporting the impugned interim order.

40. Learned Senior Counsel appearing for KRDCCL has also taken us through the various provisions of Kerala Survey and Boundaries Act, 1961, the rules framed thereunder, and the provisions of LARR Act, 2013, to canvas the point that arguments putforth by the writ petitioners in the respective writ petitions would come into play only when the State Government decides to acquire the lands after completing the mandatory requirements envisaged under Sections 4 to

7 of the LARR Act, 2013.

41. On the other hand, learned counsel for the writ petitioners contended that learned single Judge has arrived at the conclusions in the impugned interim order, on the basis of a Detailed Project Report (DPR) prepared by the State Government and “In-Principle Approval” given by the Railway Board as per Exhibit-R1(a) letter dated 17.12.2019 produced along with the counter affidavit in W.P.(C) No.30567/2021. In the matter of preparation of DPR, Government is taking an estimate with regard to the cost of the project and the approximate extent of the lands required and other intrinsic aspects therein, in order to understand the basic requirements, to proceed with the acquisition, for which, survey of the land and installation stones are not required.

42. Mr. S. Manu, learned Assistant Solicitor General, submitted that in effect, Ministry of Railways have only accorded “In-Principle Approval” to the State Government as per Exhibit-R1(a) letter dated 17.12.2019, for taking up pre-investment activities for the proposed construction of 3<sup>rd</sup>/4<sup>th</sup> line between Thiruvananthapuram and

Kasaragod districts covering 540 kms., Semi High Speed Rail Corridor alone, and not yet approved the project finally. He further contended that on the basis of the “In-Principle Approval”, DPR and other aspects can be undertaken. However, the State Government can proceed with the acquisition of lands, only after obtaining appropriate orders from the Ministry of Railways.

43. Heard Mr. K. Gopalakrishna Kurup, learned Advocate General for the State and its officials, assisted by learned Special Government Pleader Mr. T. B. Hood, Mr. P. A. Mohammed Shah, Mr. O. V. Maniprasad, Mr. Babu Joseph Kuruvathazha, and Smt. A. K. Preetha, learned counsel appearing for the writ petitioners, Mr. S. Ramesh Babu, learned Senior Counsel assisted by Mr. A. Dinesh Rao, Standing Counsel for KRDCCL, Mr. S. Manu, learned Assistant Solicitor General of India, Mr. C. Dinesh, learned counsel for the Railway Board, New Delhi, and perused the material on record.

44. In order to understand the arguments advanced by the rival parties, we deem it fit to consider the relevant statutory provisions, viz., the Kerala Survey and Boundaries Act, 1961, the rules framed

thereunder, and LARR Act, 2013.

45. Kerala Survey and Boundaries Act, 1961, is an Act to consolidate, amend, and unify the law relating to survey of lands and settlement of boundary disputes in the State of Kerala. Section 2(vi) of the Act defines the word “survey” to include all operations incidental to the determination, measurement, and record of a boundary or boundaries, or any part of a boundary and includes a resurvey. The words “survey mark” is defined under Section 2(vii) to mean any mark or object, erected, made, employed or specified by a Survey Officer to indicate or determine or assist in determining the position or level of any point or points.

46. Section 4 under Chapter II of the Act, 1961 deals with survey of lands. As per Section 4, Government is vested with powers to direct the survey of any land or any boundary of any land. It states that Government or, subject to the control of the Government, any officer or authority authorised by the Government in this behalf, may by notification in the Gazette, order the survey of any land or of any boundary of any land or of the boundary forming the common limit of

any Government land and any registered land.

47. Section 6 of the Act, 1961 speaks about notification to be published by Survey Officers. Sub-section (1) of Section 6 stipulates that when any survey is ordered under Section 4 or Section 5, the Survey Officer shall publish a notification in the Gazette, in the prescribed manner, inviting all persons having any interest in the land or in the boundaries of which the survey has been ordered, to attend either in person or by agent at a specified place and time, and from time to time thereafter when called upon, for a purpose of pointing out boundaries and supplying information in connection therewith.

48. Proviso to Section 4(1) is significant in the context, which states that where the survey is ordered for the purpose of, or in connection with, the acquisition of any land under the law relating to compulsory acquisition of land for public purposes for the time being in force, notification under this sub-section may be published in the Gazette or in two daily newspapers which, in the opinion of Survey Officer, have wide circulation in the locality in which the land in respect of which the survey has been ordered is situated. In fact, the



said proviso was added to Section 6 by Act 18 of 1986 on and with effect from 19.11.1983.

49. Conjoint reading of Sections 4 and 6(1) of the Kerala Survey and Boundaries Act, 1961, along with the proviso, makes it amply clear that State Government is vested with powers to conduct survey of any lands or boundary of any land which can also be for the purpose of, or in connection with the acquisition of any land under the law relating to compulsory acquisition of land for public purposes for the time being in force.

50. On an analysis of the proviso to Section 6(1), it is clear that, by virtue of the said proviso, State Government is vested with the powers to conduct survey of the properties for the purpose of, or in connection with acquisition of the land alone. Thus to say, the proviso carved out from the main provision of Section 6 would not enable the State Government to acquire the lands because, it clearly denotes that the empowerment is done for the purpose of, or in connection with the acquisition of any land. Therefore, we have no doubt in our mind to say that State Government is vested with powers to survey the lands

for the purpose of acquisition, or in connection with acquisition of land for public purpose, and not for acquisition of land as such.

51. Section 18 of the Kerala Survey and Boundaries Act, 1961 deals with power to enter upon, examine and clear obstruction on lands. Sub-section (1) thereto makes it clear that for the purpose of any survey, enquiry or other proceedings under the Act, 1961, the Survey Officer or the Collector or any of the subordinates of such officers shall have power to enter upon, examine and measure any land under survey and to clear, by cutting down or removing any trees, jungle, fences, standing crops or other material obstructions, the boundaries or other lines, the clearance of which may be necessary for the purposes of the survey. Going through Section 18(1) also, it is clear that the Survey Officer or the Collector or the authorised officer is vested with powers only to enter into the property and do the necessary, so as to conduct the survey effectively.

52. Kerala Survey and Boundaries Rules, 1964 are framed by virtue of Section 22 of the Act, 1961. Some of the provisions are relevant, in order to consider and adjudicate the issues raised by the

rival parties. Rule 2(b) of the Rules, 1964 defines 'field mark' to mean the mark placed at the bends and junctions on the boundaries of survey fields and sub-divisions, and includes marks placed on village boundary, khandam boundary and other off-set stones. Rule 3 deals with specifications of survey marks, which provides that survey marks shall ordinarily be stones of durable quality, namely, granite stones of the following descriptions and dimensions:

- (1) Field stones.- Granite stones of durable quality roughly squared of approximate dimensions 60cm. x 15 cm. x 15 cm. width with a coconut tree mark 1 cm. deep cut on one side.
- (2) Theodolite stones:- Granite stones of durable quality roughly squared of approximate dimensions measuring 60cm. x 15cm. x 15 cm. width with a plummet hole, 1 cm. deep cut on the top and a coconut tree mark 1 cm. deep cut on one side.

53. The contention advanced by Mr. K. Goplakrishna Kurup, learned Advocate General, is that Rule 3 of the Kerala Survey and Boundaries Rules, 1964 stipulate that stones specified therein are not a mandatory requirement because, the rule itself says that the specified survey stones shall be planted ordinarily, and, therefore, there is no mandatory requirement that the stones specified in Rule 3 are to be

planted for the purpose of conducting Social Impact Assessment study. He also contended that the stones specified in Rule 3 may be planted by the State Government at a later point of time, if and when, after the Social Impact Assessment study, the Government decides to acquire the land required for the purpose of Semi High Speed Rail Corridor.

54. Relying on Rule 7 of the Kerala Survey and Boundaries Rules, 1964, which deals with survey marks in special tracts, in particular, sub-section (3) thereto, learned Advocate General submitted that in exceptional cases, where survey marks of the prescribed quality and dimensions cannot be obtained at reasonable cost, the Director of Survey and Land Records shall, for reasons to be recorded in writing, prescribe suitable survey marks. Therefore, according to the learned Advocate General, it is not a hard and fast rule that planting of field and theodolite stones are the mandatory requirements, in order to conduct survey, especially for SIA study.

55. Now, coming to the provisions of LARR Act, 2013, which is an Act made by the Union Government to ensure, in consultation with the institutions of Local Self-Government and Gram Sabhas

established under the constitution, a humane, participative, informed and transparent process for land acquisition for industrialisation, development of essential infrastructural facilities and urbanisation with the least disturbance to the owners of the land and other affected families and provide just and fair compensation to the affected families whose land has been acquired; or proposed to be acquired or are affected by such acquisition and make adequate provisions for such affected persons for their rehabilitation and resettlement; and for ensuring that the cumulative outcome of compulsory acquisition should be that affected persons become partners in development leading to an improvement in their post acquisition social and economic status and for matters connected therewith or incidental thereto. We have stated the purport and intend from the preamble of the Act since, we feel that the provisions of LARR Act, 2013 would have to be considered bearing in mind the purpose of legislation.

56. The definition contained under Section 3(e) of LARR Act 2013, viz., appropriate Government, would be relevant to consider the arguments advanced by the learned counsel for the writ petitioners

and it reads as under.-

“3. Definitions.- In this Act, unless the context otherwise requires.-

(e) “appropriate Government” means.-

- (i) in relation to acquisition of land situated within the territory of, a State, the State Government;
- (ii) in relation to acquisition of land situated within a Union territory (except Puducherry), the Central Government;
- (iii) in relation to acquisition of land situated within the Union territory of Puducherry, the Government of Union territory of Puducherry;
- (iv) in relation to acquisition of land for public purpose in more than one State, the Central Government, in consultation with the concerned State Governments or Union territories; and
- (v) in relation to the acquisition of land for the purpose of the Union as may be specified by notification, the Central Government:

Provided that in respect of a public purpose in a District for an area not exceeding such as may be notified by the appropriate Government, the Collector of such District shall be deemed to be the appropriate Government;

57. Reading of the above provisions make it clear that in so far as the lands to be acquired for the State Government, the appropriate Government is the State. However, if acquisition of any land is required for public purpose, in more than one State, the appropriate Government is the Central Government and it shall carry out the

acquisition, in consultation with the concerned State Governments or Union Territories. This we say specifically for the reason that, writ petitioners have a case that the proposed Silver Line Project is passing through Mahe, which is within the limits of Union Territory of Puducherry, and therefore, the appropriate Government is the Central Government. We did not think much deliberation is required on that aspect, because the learned Advocate General has specifically pointed out that the property of the Union Territory of Puducherry is not at all required and further that, in Exhibit-R1(a) letter of the Ministry of Railways, Government of India dated 17.02.2019, no such objection was raised by the Government of India.

58. That apart, LARR Act, 2013 provides a clear distinction by and between the provisions of Social Impact Assessment study contained under Chapter II and the consequential actions thereto, and also the notification and acquisition guided by the provisions of Chapter IV of the LARR Act, 2013.

59. It would be worthwhile to make a reference to Section 4 of the LARR Act, 2013, in order to understand the real reason for the

preparation of the Social Impact Assessment study. Section 4 speaks about preparation of Social Impact Assessment Study and sub-section (1) thereto clearly states that whenever the appropriate Government intends to acquire land for a public purpose, it shall consult the concerned Panchayat, Municipality or Municipal Corporation, as the case may be, at village level or ward level, in the affected area and carry out a Social Impact Assessment study in consultation with them, in such manner and from such date as may be specified by such Government by notification.

60. Sub-section (2) of Section 4 states that the notification issued by the appropriate Government for commencement of consultation and of the Social Impact Assessment study under sub-section (1) shall be made available in the local language to the Panchayat, Municipality or Municipal Corporation, as the case may be, and in the offices of the District Collector, the Sub-Divisional Magistrate and the Tehsil, and shall be published in the affected areas, in such manner as may be prescribed and uploaded on the website of the appropriate Government.



61. Going by the above provision, it is clear that the notification issued under Section 4 of the LARR Act, 2013 is guided by a clear procedure. Sub-section (4) of Section 4 states that the Social Impact Assessment study referred to in sub-section (1) shall, amongst other matters, include all the following, namely:

- (a) assessment as to whether the proposed acquisition serves public purpose;
- (b) estimation of affected families and the number of families among them likely to be displaced;
- (c) extent of lands, public and private, houses, settlements and other common properties likely to be affected by the proposed acquisition;
- (d) whether the extent of land proposed for acquisition is the absolute bare- minimum extent needed for the project;
- (e) whether land acquisition at an alternate place has been considered and found not feasible;
- (f) study of social impacts of the project, and the nature and cost of addressing them and the impact of these costs on the overall costs of the project *vis-a-vis* the benefits of the project:”

62. First of all, sub-section (4) of Section 4 is an inclusive provision by which, all requisites shall be followed, in order to conduct the study. From the above, it could be deduced that the appropriate Government has to undertake Social Impact Assessment study, in order to make awareness to the public, the public purpose,

estimation of affected families, and the number of families likely to be displaced, the extent of lands, public and private, houses, settlements and other common properties likely to be affected by the proposed acquisition, etc.

63. The proviso to Section 4 makes it clear that Environmental Impact Assessment study, if any, shall be carried out simultaneously and shall not be contingent upon the completion of the Social Impact Assessment study. In our considered opinion, the provisions of Section 4 of the LARR Act, 2013 is incorporated to ensure that a study is conducted to protect the interest of the public at large and the property owners. Only after conducting such a study, the State Government would be able to identify the properties required for acquisition and thereby, inform the public about the extent of land and other aspects dealt with therein.

64. To put it otherwise, in order to have a proper Social Impact Assessment study, there should be clear facts and figures with the Government, in order to put it across the public and property owners, the public purpose and other aspects in regard to the proposed

acquisition of the lands. This we say because, Section 5 of the LARR Act, 2013 makes it clear that whenever a Social Impact Assessment study is required to be prepared under Section 4 of the Act, the appropriate Government shall ensure that a public hearing has to be held at the affected area, after giving adequate publicity about the date, time and venue for the public hearing, to ascertain the views of the affected families to be recorded and included in the Social Impact Assessment Report.

65. Section 5 gives a clear picture that the persons who are affected by the land acquisition or likely to be affected by the land acquisition are entitled to ascertain correctly as to whether their land is proposed to be acquired; the extent of land to be acquired, and the manner in which the acquisition is carried out by the appropriate Government.

66. Section 6 of Act 2013 makes it abundantly clear that Social Impact Assessment study report has to be published along with the Social Impact Management plan, referred to in sub-section (6) of Section 4 of LARR Act, 2013 and made available in the local

language to the Panchayat, Municipality or Municipal Corporation, as the case may be, and the offices of the District Collector, the Sub-Divisional Magistrate and the Tehsil, and shall be published in the affected areas, in such manner as may be prescribed, and uploaded in the website of the appropriate Government. Apart from the same, other procedures are also prescribed therein.

67. Sub-section (6) of Section 4 of the LARR Act, 2013 makes it mandatory that the appropriate Government shall require the authority conducting the SIA study to prepare a Social Impact Management Plan, listing the ameliorative measures required to be undertaken for addressing the impact for a specific component referred to in sub-section (5), and such measures shall not be less than what is provided under a scheme or programme, in operation in that area, of the Central Government or, as the case may be, the State Government, in operation in the affected area.

68. Sub-section (5) of Section 4 further makes it clear that while conducting SIA study under sub-section (1) of Section 4, the appropriate Government shall take into consideration the impact that

the project is likely to have on various components such as livelihood of affected families, public and community properties, assets and infrastructure particularly roads, public transport, drainage, sanitation, sources of drinking water, sources of water for cattle, community ponds, grazing land, plantations, public utilities such as post offices, fair price shops, food storage go-downs, electricity supply, health care facilities, schools and educational or training facilities, anganwadies, children parks, places of worship, land for traditional tribal institutions and burial and cremation grounds.

69. Therefore, in our considered view, Section 4 of the LARR Act, 2013 has its own facets and requirements, in order to ensure knowledge of every intrinsic aspects to the public and owners of the lands, by giving a precise and specific picture with respect to the extent of acquisition required and the public and private amenities that are likely to be affected by the same.

70. We have discussed the above matters elaborately for the basic and primary reason that Social Impact Assessment study cannot be seen as an empty formality; the public is entitled to know, as of

right, the adverse impact and consequences they are likely to suffer, on account of the proposed acquisition. That apart, the SIA study report along with Social Impact Management Plan have to be appraised by an Expert Group, in contemplation of Section 7 of the LARR Act, 2013, which is an independent multi-disciplinary Expert Group constituted with various officials and experts, as are prescribed under the said provision.

71. Ultimately, only after undergoing the mandatory requirements contained under Chapter II of LARR Act, which deals with the determination of Social Impact and Public Purpose, the appropriate Government can proceed with the acquisition of lands. This we say so because, sub-section (4) of Section 7 makes it clear that if the Expert Group constituted under sub-section (1), is of the opinion that, (a) the project does not serve any public purpose; or (b) the social costs and adverse social impacts of the project outweigh the potential benefits, it shall make specific recommendations within two months from the date of its constitution to the effect that the project shall be abandoned forthwith and no further steps for acquiring the

land will be initiated in respect of the same. Therefore, it can be seen that even if the SIA study is undertaken and ultimately, the Expert Group rejects the proposal, Government would have to take a decision to abandon the project for land acquisition.

72. Moreover, Section 8 of the LARR Act, 2013, makes it clear that the appropriate Government also should have to be satisfied that there is a legitimate and *bona fide* public purpose for the proposed acquisition, which necessitates acquisition of the land identified; the potential benefits and the public purpose which shall outweigh the social costs and adverse social impact, as determined by the Social Impact Assessment and has been carried out. Apart from the same, other requirements are also contained under Section 8, in order to enable the Government to go ahead with the acquisition of lands after conducting SIA study.

73. The Social Impact Assessment study may be exempted only under one circumstance mentioned in Section 9 of the LARR Act, 2013, where land is proposed to be acquired invoking the urgency provisions under Section 40 of LARR Act, 2013.

74. The deliberations made above would make it clear that the Social Impact Assessment study is independent of the provisions contained under Chapter IV for notification and acquisition. If only the appropriate Government decides to proceed with the acquisition, a notification for acquisition of the land is required to be published under Section 11, in the Official Gazette and in two daily newspapers having circulation in the locality of such area of which, one shall be in the regional language, etc.

75. Section 12 of the LARR Act, 2013 makes it clear that for the purpose of enabling the appropriate Government to determine the extent of land to be acquired, it shall be lawful for any officer, either generally or specifically authorised by such Government in this behalf, and for his servants and workmen, to enter upon and survey, and take levels of any land in such locality, for the purpose specified therein; to do all other acts necessary to ascertain whether, the land is adapted for such purpose, etc. Therefore, we have no doubt in our mind to say that if only it enables the Government to proceed with the acquisition of lands after the SIA study is over, the acquisition of lands can be done



by the Government, which is an act to be carried out continuously, in order to ascertain the extent of the land to be acquired, boundaries to be fixed, and all other attendant consequential purposes.

76. Here is a case where, the State Government is at the initial stage of understanding the social impact that is likely to occur if the Government proceeds with the acquisition of lands, and therefore, it cannot be said that the provisions of Sections 11 and 12 of the LARR Act, 2013, contained under Chapter IV, dealing with notification and acquisition, publication of preliminary notification, etc., would come into operation at this stage of the proceedings. In order to employ the said provisions, the stage of the acquisition should reach, and therefore, in our considered view, the requirements contained under Sections 11 and 12 of the LARR Act, 2013, cannot be relied upon for the conduct of SIA study. To put it otherwise, the apprehensions made by the writ petitioners are premature in nature and do not have a bearing at all to the facts in dispute.

77. Mr. S. Manu, learned ASGI, submitted that out of the total extent of the property required for acquisition, about 185 hectares of

land belonging to the railways are likely to be utilised, since the proposed Semi High Speed Rail Corridor is running parallel to the present existing double line railway, maintained by the Ministry of Railways, Government of India, which is about 200 kms, from the total extent of 1221 hectares of properties.

78. Learned ASGI also submitted that those aspects are yet to attain finality since the proposal submitted by the State Government for utilisation of railway property as per letter dated 28.09.2021 is under consideration of the Ministry of Railways, and thereafter, various procedures are to be undertaken through different departments of Union Government. Therefore, the State Government is not entitled to fix the survey stones through the properties of the railways. Said submission of the learned ASGI is placed on record.

79. In this context, learned counsel appearing for the writ petitioners Mr. Mohammed Shah, has invited our attention to Rule 42 of the Kerala Survey and Boundaries Rule, 1964, to contend that the basis for demarcation is for sub-division. We are unable to agree with the said contention, for the reason that Rule 42 of the Rules, 1964

would come into play and require the authority to demarcate the subdivisions only when the land is finally acquired under the Land Acquisition Act, 1894. In our view, said rule exemplifies a situation where there is already a concluded land acquisition proceedings. Viewed in that manner, the said rule would not come into operation and apply at this stage of the proceedings.

80. That apart, Smt. A.K. Preetha, learned counsel for one of the writ petitioners, relied on paragraph (10) of Exhibit-R1(b) Office Memorandum issued by Ministry of Finance, Government of India, New Delhi, dated 5.8..2016, produced in W.P.(C) No. 30567/2021, to contend that since the project cost is exceeding Rs.100/- Crores, approval is required from the concerned Ministry of Government of India and the Cabinet. However, we are unable to agree with the same, since paragraph (10) of the said Office Memorandum deals with, among others, pre-investment activities, such as preparation of feasibility reports, detailed project reports, survey etc., and not the entire project cost. Writ petitioners do not have a case that for pre-investment activities, approval of the concerned is not obtained.

81. Even though Mr. Mohammed Shah, learned counsel, submitted that when there is a specific provision in the LARR Act, 2013, in the matter of conducting the survey for acquisition of land, as provided under Section 12 of the LARR Act, 2013, we are of the view that, it can be invoked by the appropriate Government for the purpose of acquisition only. Therefore, there is no conflict at all, with the Central and State laws, in the matter of survey to be undertaken at two different stages, viz., (a) survey in connection with acquisition, as contemplated under Section 6 of the Kerala Survey and Boundaries Act, 1961 and LARR Act, 2013; and (b) acquisition at a later stage.

82. Learned counsel for the respondents/writ petitioners in W.A. Nos.169/2022, 179/2022 and 176/2022, also invited our attention to the provisions of Railways Act, 1989, in particular, Section 2(37A), which defines “special railway project” to mean a project notified as such by the Central Government from time-to-time, for providing national infrastructure for public purpose in a specified time-frame, covering one or more States or the Union territories. Further, Chapter VIA of the Railways Act, 1989 deals with land acquisition for a

special railway project. Section 20A of Chapter VI speaks about power to acquire land, etc., and it reads as under:

**“20A. Power to acquire land, etc.-** (1) Where the Central Government is satisfied that for a public purpose any land is required for execution of a special railway project, it may, by notification, declare its intention to acquire such land.

(2) Every notification under sub-section (1), shall give a brief description of the land and of the special railway project for which the land is intended to be acquired.

(3) The State Government or the Union territory, as the case may be, shall for the purposes of this section, provide the details of the land records to the competent authority, whenever required.

(4) The competent authority shall cause the substance of the notification to be published in two local newspapers, one of which shall be in a vernacular language.”

83. Reading of the above makes it clear that the provisions of Railways Act, 1989, would come into play and apply only if the project is a 'special railway project', covering one or more States. According to us, to attract the said provision, the Semi High Speed Rail Corridor should cover at least one State, apart from the State which envisages the project. Definitely, if such a situation arises as per the LARR Act, 2013 and Railways Act, 1989, the appropriate Government would be the Central Government.

84. We have already stated that there is no requirement for going through the said provisions of Railways Act, 1989 because, learned Advocate General, as well as the learned Senior Counsel for KRDC, submitted that the Semi High Speed Rail Corridor runs through the districts, within the State of Kerala, and not through the Union Territory of Puducherry. Moreover, we have already stated that the stage of acquisition of land comes only later, since the Social Impact Assessment study alone is carried out.

85. Learned Advocate General has also submitted that the State Government would not proceed with the acquisition of lands for the proposed Silver Line Project, unless and until all other mandatory requirements, in accordance with law, are complied with, in consultation with the Union Government.

86. Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Kerala) Rules, 2015, provides a clear procedure to conduct the Social Impact Assessment study. Chapter IV of the Rules, 2015 deals with Social Impact Assessment. Under Chapter IV, Rule 9 speaks about Social Impact

Assessment Units to be formed by the Government for the purpose of conducting SIA study, in accordance with the provisions of the Act and to take appropriate action in that regard.

87. Rule 10 of the Rules, 2015 speaks about notifying a Social Impact Assessment Unit for conducting Social Impact Assessment study; Rule 11 of the Rules, 2015 speaks about project specific terms of reference and deposit of the cost of conducting Social Impact Assessment study; and Rule 12 speaks about the process of conducting Social Impact Assessment study.

88. Sub-rule (1) of Rule 12 clearly states that the Social Impact Assessment team shall collect and analyze a range of quantitative and qualitative data, undertake detailed site visits, use participatory methods such as focused group discussion, participatory rural appraisal techniques and informant interviews in preparing the Social Impact Assessment report.

89. Sub-rule (2) of Rule 12 clearly states that all relevant project reports and feasibility studies shall be made available to the Social Impact Assessment process, as required. Any request for information

from the Social Impact Assessment Unit shall be met at the earliest and not later than ten days of its receipt. The District Collector shall be responsible for providing the information requisitioned by the Social Impact Assessment team. Apart from that, various other procedures are also prescribed for the preparation of the Social Impact Assessment study report, public hearing, the Social Impact Management Plan, publication of the report of the Expert Group and publication of the decision of the Government etc.

90. Taking into account the various pros and cons, and the facts and figures, we are of the unequivocal and considered opinion that the State Government is vested with adequate powers to conduct the survey, and mark the properties appropriately, for conducting the Social Impact Assessment study, and therefore, the impugned interim order passed by the learned single Judge, interdicting the survey and marking of the properties in question, after issuing appropriate notifications by the State Government under the provisions of Kerala Survey and Boundaries Act, 1961, and the rules framed thereunder, has to be interfered with. Accordingly, we set aside the common



interim order passed by the learned single Judge in W.P.(C) Nos.30567/2021, 351/2022, 975/2022 & 1574/2022 dated 20.01.2022 in regard to the same.

91. We make it clear that the observations and findings rendered by us are for the purpose of arriving at a logical conclusion, in the matter of the interim order passed by the writ court, and the same will not stand in the way of the rival parties taking up all contentions in the writ petitions.

In the result, Writ Appeals are allowed.

**S. MANIKUMAR  
CHIEF JUSTICE**

**SHAJI P. CHALY  
JUDGE**

Krj

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P.A. TO C.J.