

DEVAN RAMACHANDRAN, J.

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**W.P.(C) Nos.30567/2021, 351/2022,
975/ 2022 & 1574/2022**

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Dated this the 20th day of January, 2022

ORDER

There are several issues involved in these cases, which will have to be considered in detail and comprehensively, in due time.

2. Today, I have heard Sri.Ramesh Babu, learned Senior Counsel instructed by Sri.Dinesh Rao, learned Standing Counsel for the Kerala Rail Development Corporation Limited (KRDCL); Sri.S.Manu, learned Assistant Solicitor General of India, appearing on behalf of the Union of India; Sri.O.V.Maniprasad, Sri.Babu Joseph Kuruvathazha, Smt.A.K.Preetha and Sri.Mohammed Shah, learned counsel appearing for the petitioners in these matters; Sri.S.Radhakrishnan and Sri.C.Dinesh, learned counsel appearing for the Railway Board and Sri.T.B.Hood, learned Special Government Pleader appearing for the Government of Kerala and its functionaries.

3. Though the various aspects involved in these cases are of grave importance and amplitude, one among them, namely, as to the manner in which a survey is being presently conducted by the instrumentalities of the Government of Kerala - through their orders dated 18.08.2021 and 30.10.2021 - has an immediate and proximate relevance at this time because of certain submissions that have been

made before this Court by the learned Special Government Pleader.

4. This Court, through the earlier interim orders issued in these cases, have been trying to discern the basis of the survey being conducted and under which provision it is being so done.

5. At the initial stages of the hearing of these matters, this Court was told that the survey is being conducted only under the provisions of the Kerala Survey and Boundaries Act, 1961 (hereinafter referred to as 'the Survey and Boundaries Act' for short). This is still reiterated by Sri.T.B.Hood, when these matters were heard by me today.

6. However, going by the Government Orders dated 18.08.2021 and 30.10.2021, a 'Detailed Project Report' (DPR) and 'Alignment of the Project' in question have already been prepared by an Agency.

7. Interestingly, the submission made by Sri.T.B.Hood, learned Special Government Pleader, is that this was done based on an 'Aerial Survey' and not a physical survey.

8. This Court, at this juncture, deems it necessary to record that, going by the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as 'the Fair Compensation Act' for short),

action for acquisition will have to follow the mandatory statutory Scheme, which, in fact, begins effectively with a notification under Section 4 thereof.

9. Sri.Ramesh Babu, learned Senior Counsel and Sri.T.B.Hood, learned Special Government Pleader affirmed the above and submitted that, as far as some districts in Kerala are concerned, such notifications have now been issued.

10. Indubitably, therefore, the Government is now in the process of preparation of a Social Impact Assessment study (SIA study).

11. However, pertinently, Section 4 of the 'Fair Compensation Act' do not provide for any survey and its scheme stipulates certain steps be followed, leading to Section 12 thereof, which sanctions a preliminary survey of land and enumerates the power of officers to carry on the same.

12. Axiomatically, therefore, when the State says that the survey being now conducted is only under the 'Survey and Boundaries Act', certain aspects, as to the purpose of such an action, *prima facie* arises, when they simultaneously say that SIA study is now being conducted in some of the districts.

13. Coupled with this, the further argument that the DPR was

prepared without a physical survey, but only on the basis of an 'Aerial Survey', certainly makes it incumbent upon the Government of Kerala to explain their actions, within the framework of the statutory formalities.

14. Of course, the learned counsel for the petitioners and in particular Smt.A.K.Preetha, assails the Government Orders impugned in these cases on various grounds, including that the Authority which has issued it, is incompetent.

15. I do not propose to go into those aspects at this time since it is certainly for the competent respondents to answer it through apposite counter pleadings.

16. Of course, I am aware that the State has filed a counter affidavit in one of the matters, however, in which, several information with respect to the various components of the controversy have not been fully touched; and I record that Sri.T.B.Hood, learned Special Government Pleader sought further time to file additional counter pleadings or fresh counter pleadings in it, as also in the other matters.

17. Suffice to say, at this time, this Court would surely require certain adscititious answers to be given by the Government, particularly as to the manner in which the DPR was prepared; the steps - including for survey - conducted before the DPR was settled; whether

a DPR could have been prepared without a proper physical survey; and as to the impact of Sections 4 and 12 of the 'Fair Compensation Act' on the entire process, before finally answering the various contentions regarding the survey being presently being carried on.

18. Since the State now says that DPR has already been prepared and that an 'In principle' approval has been given by the Railway Board to them - which has been produced by them as Exhibit R1(a), along with the counter affidavit in W.P.(C)No.30567/2021 - this Court fails to understand why a survey under the 'Survey and Boundaries Act' is now being conducted in the manner as is presented before this Court.

19. There is a compelling reason why this Court is making the afore observations, which is that, Sri.S.Manu, Assistant Solicitor General of India, submitted that the DPR of the Project has been placed by the KRDCCL before the Railway Board and that they have been advised to provide detailed technical documents, such as '*alignment plan, particulars of railway land and private land, crossing over existing railway network duly depicting affected railway assets through Zonal Railway for detailed examination of the project*', so as to arrive at a conclusion. He, however, affirmatively stated that a final decision with respect to the Project has not yet been taken and that its

further consideration is possible only after the DPR is properly examined and the results thereon 'firmed up', including the financial viability of the project and its appraisal by NITI Aayog and Ministry of Finance.

I therefore, adjourn this matter to be called on 07.02.2022; until which time, steps for survey of the properties of the petitioners in these cases shall stand deferred.

Needless to say, all other earlier interim orders issued in these cases will continue to be in operation.

It is without requirement to reiteratingly say that every step, as is legally permissible under the 'Fair Compensation Act' 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.

**Sd/-
DEVAN RAMACHANDRAN
JUDGE**

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