

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

FRIDAY, THE 29TH DAY OF JANUARY 2021 / 9TH MAGHA, 1942

WP(C).No.18002 OF 2020(A)

PETITIONERS:

- 1 MULAKULAM RESIDENTS WELFARE ASSOCIATION,
REPRESENTED BY ITS SECRETARY, BABURAJ M.P,
S/O. PRABHAKARAN NAIR, BABU NIVAS, MULAKULAM SOUTH,
KOTTAYAM DISTRICT.
- 2 P.J. THOMAS,
AGED 56 YEARS,
S/O. JOSEPH, PUTHENVEETIL HOUSE, VELLASSERI,
KADUTHURUTHY, KOTTAYAM DISTRICT.
- 3 SOMAN M.V,
S/O. VELAYUDHAN, KOCHUMALIKAKKAL, MULAKULAM ,
PERUVA, KOTTAYAM DISTRICT.
- 4 M.T. THOMAS,
AGED 68 YEARS,
S/O. M.G. THOMAS, MURAMTHOKKIL, MULAKULAM SOUTH,
PERUVA, KOTTAYAM DISTRICT.

BY ADVS.

SRI.K.MOHANAKANNAN

SRI.ANIL KUMAR M.SIVARAMAN

RESPONDENTS:

- 1 UNION OF INDIA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
MINISTRY OF RAILWAYS, RAIL BHAVAN, RAISANA ROAD,
NEW DELHI.
- 2 STATE OF KERALA,
REPRESENTED BY CHIEF SECRETARY TO GOVERNMENT,
GOVERNMENT, SECRETARIAT, THIRUVANANTHAPURAM-695 001.
- 3 KERALA RAIL DEVELOPMENT CORPORATION LIMITED,
TRANS TOWER, 5TH FLOOR, VAZHUTHACAUD,
THIRUVANANTHAPURAM-695 014, REPRESENTED BY ITS
MANAGING DIRECTOR.

- 4 THE CHAIRMAN,
RAILWAY BOARD, INDIAN RAILWAYS, RAIL BHAWAN,
RAISANA ROAD, NEW DELHI- 110 001.
- 5 CENTRE FOR ENVIRONMENT DEVELOPMENT,
THOZHUVANCODE, VATTIYOORKAVU, THIRUVANANTHAPURAM-
695 013, REPRESENTED BY ITS DIRECTOR.
- 6 KERALA STATE ENVIRONMENT IMPACT ASSESSMENT
AUTHORITY,
PALLIMUKKU, KANNAMOOLA, THIRUVANANTHAPURAM-695024.

BY ADV. SRI.P.VIJAYAKUMAR, ASGI
BY SRI.RANJITH THAMPAN, ADDL.ADVOCATE GENERAL
BY SRI.A.DINESH RAO, SC, RAILWAYS
BY SRI.M.P.SREEKRISHNAN, STANDING COUNSEL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
29.01.2021, ALONG WITH WP(C).22318/2020(L), WP(C).23794/2020(Y),
WP(C).23860/2020(F), THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

FRIDAY, THE 29TH DAY OF JANUARY 2021 / 9TH MAGHA, 1942

WP (C) .No.22318 OF 2020 (L)

PETITIONER/S:

THANKAMMU P.V. ,
AGED 76 YEARS
W/O LATE E.P.MUNDAN, SREE NILAYAM, THIRUNAVAYA,
TIRUR, MALAPPURAM-676 301.

BY ADVS.
SRI.BABU KARUKAPADATH
SMT.M.A.VAHEEDA BABU
SHRI.P.U.VINOD KUMAR
SMT.ARYA RAGHUNATH
SMT.VAISAKHI V.
SRI.T.M.MUHAMMED MUSTHAQ

RESPONDENT/S:

- 1 STATE OF KERALA,
REPRESENTED BY ITS CHIEF SECRETARY, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM-695 001.
- 2 THE SECRETARY TO GOVERNMENT,
DEPARTMENT OF REVENUE, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695 001.
- 3 THE SECRETARY TO GOVERNMENT,
TRANSPORT (D) DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695 001.
- 4 KERALA RAIL DEVELOPMENT CORPORATION LIMITED,
TRANS TOWERS, 5TH FLOOR, VAZHUTHACAUD,
THIRUVANANTHAPURAM-695 014.
- 5 KERALA STATE ENVIRONMENT IMPACT ASSESSMENT
AUTHORITY,
PALLIMUKKU, KANNAMOOLA, THIRUVANANTHAPURAM-695 024.

6 UNION OF INDIA,
REPRESENTED BY SECRETARY TO GOVERNMENT, MINISTRY OF
RAILWAY, RAIL BHAVAN, RAISANA ROAD, NEW DELHI-110
001.

BY SRI.RANJITH THAMPAN, ADDL.ADVOCATE GENERAL
BY ADV. SMT.ASHA CHERIAN
SRI DINESH RAO, SC
SRI M P SREEKRISHNAN, SC
SRI T NAVIN, SC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
29.01.2021, ALONG WITH WP(C).18002/2020(A), WP(C).23794/2020(Y),
WP(C).23860/2020(F), THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

FRIDAY, THE 29TH DAY OF JANUARY 2021 / 9TH MAGHA, 1942

WP (C) .No.23794 OF 2020 (Y)

PETITIONER/S:

- 1 PRAMOD KUMAR P.C,
AGED 44 YEARS,
S/O.K.K.CHANDRASEKHARA KAIMAL, RESIDING AT VISHNU
NABHAS, VELLAMPOIKA, KUNNAMTHANAM P.O.,
PATHANAMTHITTA DISTRICT.
- 2 C.K.VIJAYAN,
AGED 67 YEARS,
SON OF KRISHNA PILLAI, RESIDING AT
KIZHAKKEPARAMBIL, VALLAMALA, KUNNAMTHANAM P.O.,
PATHANAMTHITTA DISTRICT.
- 3 V.M.JOSEPH,
AGED 59 YEARS,
S/O.MARCOS, RESIDING AT VELIYAMKUNNATHU HOUSE,
KUNNAMTHANAM P.O., PATHANAMTHITTA DISTRICT.
- 4 PUSHPAMMA,
AGED 63 YEARS,
W/O.P.S.VIJAYAN, RESIDING AT NAVEENAM, VELLAMALA,
KUNNAMTHANAM P.O., PATHANAMTHITTA DISTRICT.
- 5 K.P.JOSEPH,
AGED 80 YEARS,
S/O.PHILIPOSE, RESIDING AT KARIKANDATHIL HOUSE,
MADAPPALLY, MAMMOODU, CHANGANASSERY, KOTTAYAM
DISTRICT.
- 6 I.K.VARGHESE,
AGED 80 YEARS,
S/O.ITTYAVIRA, RESIDING AT KALAPPURAKKAL HOUSE,
NALUNNAKKAL P.O., THOTTAKKADU, VAKATHANAM, KOTTAYAM
DISTRICT.

BY ADVS.
SRI.T.MADHU
SRI.R.ANILKUMAR (KOTTAYAM)
SMT.C.R.SARADAMANI
SRI.SHAHID AZEEZ
SMT.CHANDRALEKHA SANU

RESPONDENT/S:

- 1 THE UNION OF INDIA,
REPRESENTED BY ITS SECRETARY TO GOVERNMENT,
MINISTRY OF RAILWAYS, NEW DELHI-110001.
- 2 THE STATE OF KERALA,
REPRESENTED BY ITS SECRETARY TO GOVERNMENT, REVENUE
DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695001.
- 3 THE KERALA RAIL DEVELOPMENT CORPORATION LTD.,
5TH FLOOR, TRANS TOWER, VAZHUTHACAUD,
THIRUVANANTHAPURAM-695014, REPRESENTED BY ITS
MANAGING DIRECTOR.
- 4 THE ADDITIONAL GENERAL MANAGER,
THE KERALA RAIL DEVELOPMENT CORPORATION LTD., 5TH
FLOOR, TRANS TOWER, VAZHUTHACAUD,
THIRUVANANTHAPURAM-695014.
- 5 THE KERALA STATE POLLUTION CONTROL BOARD,
PATTOM P.O., THIRUVANANTHAPURAM-695004, REPRESENTED
BY ITS MEMBER SECRETARY.
- 6 THE KERALA STATE ENVIRONMENT IMPACT ASSESSMENT
AUTHORITY,
4TH FLOOR, KSRTC BUS TERMINAL COMPLEX, THAMPANOR,
THIRUVANANTHAPURAM-695001, REPRESENTED BY ITS
MEMBER SECRETARY.
- 7 THE DISTRICT COLLECTOR,
KOTTAYAM, CIVIL STATION, COLLECTORATE P.O.,
KOTTAYAM-686002.
- 8 THE DISTRICT COLLECTOR,
PATHANAMTHITTA-689645.

WP(C).No.18002 OF 2020

& CONNECTED CASES

7

BY ADV. MR.P.R.AJITH KUMAR, CGC
BY SRI.A.DINESH RAO, SC, RAILWAYS
BY ADV. SRI.P.SANJAY
BY ADV. SMT.ASHA CHERIAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29.01.2021, ALONG WITH WP(C).18002/2020(A), WP(C).22318/2020(L), WP(C).23860/2020(F), THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

FRIDAY, THE 29TH DAY OF JANUARY 2021 / 9TH MAGHA, 1942

WP(C).No.23860 OF 2020(F)

PETITIONER/S:

- 1 K.MOOSA KOYA,
AGED 61 YEARS,
S/O K ABU MUSALIAR, NOOR MAHAL PO, VENGALAM,
KOZHIKODE DISTRICT, PIN-673303.
- 2 NASEER B,
AGED 51 YEARS,
S/O BADARUDEEN K,
NEW JELLA HOUSE, VENGALAM P O,
KOZHIKODE-673303.
- 3 P CHATHU,
AGED 72 YEARS,
S/O LATE RAMAN, RAM NIVAS, VENGALAM-673303,
KOZHIKODE DISTRICT.
- 4 BUSHARA N M,
AGED 47 YEARS,
W/O LAGE BASHEER THONDIYIL, MASKANA, VENGALAM-
673303, KOZHIKODE DISTRICT.
- 5 NAJEEB A,
AGED 47 YEARS,
S/O M V AHAMMED, ABHILASH,
P.O., VENGALAM, -673303,
KOZHIKODE DISTRICT.

BY ADVS.

SRI.S.SREEKUMAR (SR.)
SRI.P.MARTIN JOSE
SRI.M.MUHAMMED SHAFI
SRI.P.PRIJITH
SRI.THOMAS P.KURUVILLA
SRI.R.GITESH
SRI.AJAY BEN JOSE

SRI .MANJUNATH MENON
SRI .SACHIN JACOB AMBAT
SHRI .HARIKRISHNAN S .

RESPONDENT/S :

- 1 UNION OF INDIA,
REPRESENTED BY ITS SECRETARY, MINISTRY OF RAILWAYS,
RAILWAY BHAVAN, NEW DELHI-110001.
- 2 THE SECRETARY,
MINISTRY OF FINANCE, DEPARTMENT OF ECONOMIC
AFFAIRS, FUND BANK AND D B DIVISION, ROOM NO.221,
NORTH BLOCK, NEW DELHI-110001.
- 3 STATE OF KERALA,
REPRESENTED BY ITS CHIEF SECRETARY, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM-695001.
- 4 THE CHAIRMAN,
RAILWAY BOARD, INDIAN RAILWAYS, RAIL BHAVAN,
RAISANA ROAD, NEW DELHI-110001.
- 5 KERALA RAIL DEVELOPMENT CORPORATION LTD
TRANS TOWER, 5TH FLOOR, VAZHUTHACAUD,
THIRUVANANTHAPURAM, PIN-695014, REPRESENTED BY ITS
MANAGING DIRECTOR.
- 6 THE CENTRE FOR ENVIRONMENT DEVELOPMENT,
THOZHUALCONDE, VATTIYOORKAVU, THIRUVANANTHAPURAM-
695013, REPRESENTED BY ITS DIRECTOR.
- 7 THE KERALA STATE ENVIRONMENT IMPACT,
ASSESSMENT AUTHORITY, PALLIMUKKU, KANNANMOOLA,
THIRUVANANTHAPURAM-695024, REPRESENTED BY ITS
CHAIRMAN.

BY ADV. SRI .P .SANJAY
BY ADV. SHRI .P .VIJAYAKUMAR, ASG OF INDIA
BY SRI M P SREEKRISHNAN, SC
BY SRI .A .DINESH RAO, SC, RAILWAYS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
29.01.2021, ALONG WITH WP (C) .18002/2020 (A) , WP (C) .22318/2020 (L) ,
WP (C) .23794/2020 (Y) , THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

JUDGMENT

[WP (C) .Nos.18002/2020 , 22318/2020 , 23794/2020 & 23860/2020]

The State of Kerala is one of the most densely populated States in the Country. The human development and related indices show that Kerala is the front runner when compared to all the other States. However, narrow roads in the State have been acting as an impediment to social and economic development. Records from the Crime Records Bureau show that about 4000 people die every year in accidents which take place in the congested roads and about 50000 people sustain injuries. The Southern Railways have also not been able to satiate the needs of the public for a seamless and comfortable travel experience. Due to high land costs and dense population, the move to acquire land for any development activity is met with serious resistance. The State appears to have realised that fast mobility from one part of the State to the other is essential for the overall development of the State and that the congested roads and saturated railway network will not be able to provide fast and efficient mobility to the people.

2. With the above objective, a policy decision was taken to have a Semi-High Speed Railway line named "Silverline" between

Thiruvananthapuram in the South and Kasaragod in the North of the State of Kerala. A joint venture agreement was entered into between the Ministry of Railways, Government of India and the Government of Kerala for infrastructure development of railways. A company by name Kerala Rail Development Corporation Ltd (K-Rail) was formed. Several meetings were held between high level officials of the State and the Chairman of the Railway Board and a feasibility study was agreed to be conducted. The Corporation engaged M/s. Systra, a leading city mobility consultancy firm to prepare a project report. The feasibility report was submitted by the Government and In-Principle Approval (IPA) was granted for taking up pre-investment activities, which would include payment of land acquisition, detailed project report, construction of boundary wall, access roads, site offices, temporary construction etc. however limited to Rs.100 crores. The estimated cost of the project is Rs.63941 crores and the project is expected to be completed within a period of five years from the date of getting approval from the Government of India.

3. These petitions have been filed under Article 226 of the Constitution of India with a prayer to direct the respondents not to proceed with the acquisition proceedings for the proposed "Semi High-Speed Rail" corridor from Thiruvananthapuram to Kasargod without sanction approval from the Government of India, the Railway Board and other Statutory

Authorities. The writ petitioners have also prayed for interdicting the respondents from acquiring the properties falling within the rail corridor and which stands in their name without scrupulously complying with the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act 30 of 2013). In some of the writ petitions, the petitioners have also sought for a declaration that the proposed Semi High-Speed Rail Corridor is technically not feasible and as it adversely affects the environment is liable to be dropped.

4. According to the petitioners, the Government is acting in haste and they are in the process of acquiring land without even obtaining the necessary clearances from the Central Government, the Railway Board and the other statutory bodies. They contend that the Government has taken up a project that incurs huge expenses which the State with its meagre resources will not be able to afford. The project is likely to be dropped midway and if by the time, the Government takes steps to acquire their valuable property, it would result in grave hardship and loss. It is further contended that for the purpose of the project extensive properties have to be acquired and a large number of families and business establishments will have to be displaced. They would also contend that large extent of paddy land and wetland will have to be converted resulting in grave adverse consequences to the environment. According to the petitioners, the

Government has taken up a task which is financially unviable, ecologically destructive, and commercially non-feasible. The NITI Aayog has furnished a report wherein it is stated that the fundamental concept of the Silverline project is flawed and the cost estimated is clearly a huge underestimation. The proposal of the State to avail huge loans from the ADB and other foreign banks have been deprecated. The Southern Railway has also analysed the Detailed Project Report and have marked several deficiencies and mistakes in the present alignment and have asked the respondents to change the same if they want the project to go forward. In other words even the Railways have expressed their disapproval of the project in no uncertain terms. It is on these averments that the writ petitions have been filed for declaring that the proposed Semi High-Speed Rail Corridor is technically not feasible and for a further direction to the respondents to refrain from proceeding further with the acquisition proceedings.

5. A counter has been filed by the State. It is stated that the Government of Kerala and the Ministry of Railways, Government of India, are in the process of constructing a new double line rail corridor as a semi-high speed railway line named as "Silverline" between Thiruvananthapuram and Kasaragod. This would be in addition to the existing two railway lines and is intended for facilitating Semi High-Speed trains. A greenfield corridor parallel to the existing railway alignment is what is planned and this line

would enable trains to travel at a maximum speed of about 200 km/hour. This project was conceptualised to meet the growing demand of rail passengers and to cater to future travel needs. The project is expected to be materialised within a period of five years on getting formal approval from the Railway Board. The estimated cost of the project is ₹ 63941 crores. A reputed consultant was engaged and they have submitted a feasibility report. The report has been approved by the Government. The Ministry of Railways have conveyed its in-principle approval for the project and the State has been permitted to take up pre-investment activities. It is stated that in the meeting chaired by the Chief Minister of the State on 23.01.2020, it was decided that the Government shall proceed with land acquisition strictly in tune with the provisions of Act 30 of 2013. It is further contended that all the provisions of Act 30 of 2013 starting from the social impact assessment shall be scrupulously followed. It is further stated that railway projects do not require prior environmental clearance from the regulatory authority as the railway projects are not included in the list of projects or activities requiring prior environmental clearances as per the notification issued by the Ministry of environment and forests. It is further stated that the NITI Aayog has examined the detailed project report for Silverline project and have sought for certain clarifications. The State has already furnished their reply. It is further stated that only after getting

concurrence from all statutory authorities and also the Government of India shall the State proceed with the project. The Railways have also gone through the detailed project report and furnished their opinion and those aspects will be considered by the State before proceeding with the same. It is further stated that the decision on according administrative sanction for land acquisition for the project is under consideration of the Government of Kerala and only after securing sanction from the Central Government shall the State proceed with the project.

6. The 3rd respondent in W.P.(C).No.18002 of 2020 has filed a counter reiterating the contentions of the State. It is stated that the respondents are expecting the final approval from the Central Government for the project in the first quarter of 2021. Ext.R3(a) is the order dated 17.12.2019 by which in-principle approval has been granted by the railway board for the Silverline project and the State has been permitted to take up pre-investment activities. R3(b) is the appraisal and approval of public funds, schemes and projects detailing the pre-investment activities that can be taken up. R3(d) is the order approving the project report prepared by M/s.Systra which according to the respondent has been forwarded to the Ministry of Railways. R3(g) is the letter issued by the Minister of Railways intimating the Chief Minister of State that the Ministry of Railways supports the proposed project and will render any technical advice/support as and

when required in the course of execution of the project. According to the respondents, the distance of about 530 km from the south to north of Kerala can be traversed in less than 4 hours as against the minimum required time of 12 hours at present. It is further contended that the project has reached up to the stage of approval by the Government of Kerala and a detailed project report has been forwarded to the railway board for their approval. The bottlenecks pointed out by the railways will be rectified and only thereafter that the project shall be taken forward. In so far as the suggestions pointed out by the NITI Aayog is concerned, it is contended that the NITI Aayog is neither a constitutional body or a statutory body and neither the State Government nor the Central Government is bound to head to its advice. The detailed project report is under the active consideration of the Central Government and only after final approval is received that the State intends to go forward with the project.

7. I have considered the submissions advanced by Sri. K. Mohanakannan, Sri. T. Madhu, Sri. Babu Karukapadath and Sri. Martin Jose, the learned counsel appearing for the petitioners in these writ petitions, the learned Assistant Solicitor General of India, Sri.M.P.Sreekrishnan, the learned counsel appearing for the Kerala State Environment Impact Assessment Authority, Sri. Dinesh Rao, the learned standing counsel

appearing for the Kerala Rail Development Corporation Ltd. and the learned Government Pleader. As the questions raised in all these writ petitions are identical, these writ petitions are taken up and disposed of together.

8. On a consideration of the facts and circumstances and the submissions made across the bar, it is luculent that the State has come up with a very ambitious project for constructing a new double line rail corridor as a Semi High Speed Railway Line. The line which has been named as 'Silverline' would connect Thiruvananthapuram on the southern side of the State and Kasaragod on the northern extremity. The Kerala Rail Development Corporation Ltd. has been formed as a joint venture with the Government of Kerala and the Ministry of Railways having equity participation. From the records, it is evident that a joint venture agreement has been executed between the Government of Kerala and the Ministry of Railways. M/s. Systra, an international mobility consultant was entrusted with to conduct a feasibility study. The report submitted by the consultant was presented before the Ministry of Railways and as is evident from Ext.R3(a), in-principle approval has been granted for the project. The Company has been permitted to take up pre-investment activities upto Rs.100 Crores. From the records made available, it appears that the NITI Aayog as well as the Railways have marked out certain objections to the project. However, those are preliminary objections and the State as well as

the Company has been asked to initiate immediate action to correct the anomalies. The southern railway has also pointed out certain discrepancies in the alignment and the respondents have been asked to modify the alignment on the above sections. The respondents have stated that they are waiting for the sanction from the Central Government and they expect that the sanction for the project shall be granted in the first quarter of 2021.

9. The main grievance of some of the petitioners is that the respondents would proceed to acquire land without scrupulously following the provisions of Act 30 of 2013. The respondents have reiterated in their counters that they shall strictly follow the provisions of Act 30 of 2013 before proceeding to acquire the land. Act 30 of 2013 contains elaborate provisions for the determination of compensation, rehabilitation and resettlement. Any process of compulsory acquisition can be taken up only after conducting a Social Impact Assessment (SIA), that too, after a public hearing. The SIA report will have to be published under Section 6 of the Act and later, an expert group will appraise the report. The proposal shall be examined by the appropriate Government thereafter under Section 8 and only thereafter shall the preliminary notification be issued. Upon publication of the preliminary notification, the Administrator for rehabilitation and resettlement appointed under S.43 of Act 30 of 2013 will have to conduct a survey and undertake a census of affected families. The Collector,

thereafter, would review the scheme prepared by the Administrator and forward the same with suggestions, if any, to the Commissioner of Rehabilitation and Resettlement for approval of the scheme. The Commissioner is appointed under S.44 of Act 30 of 2013 by the State Government. The summary of the approved scheme of the rehabilitation and resettlement by the Commissioner will have to be published along with the publication of the declaration of the land under S.19 after hearing the objections as referred under S.15 of Act 30 of 2013. In other words, a detailed procedure is envisaged before proceeding to acquire the land. I am of the opinion that in view of the above, the apprehension raised by the petitioners in the writ petitions is misconceived.

10. The next question is with regard to the feasibility of the project. Once the Government decides to construct a new railway line to cater to the needs of the citizens and follows the procedure prescribed under law commensurate with the nature of the project and collaborates with the experts in the field and the statutory authorities, unless the petitioners are able to show that there is mala fides, fraud or corruption vitiating the entire process, this Court will not be justified in interfering with the process. The interference of Courts is neither warranted to look into the quality of material relied upon by the Government to approach a decision nor to adjudicate upon the sufficiency of such material. These matters are of a

subjective character and if the legislature permits subjective powers on one organ of the State, this Court in exercise of its powers of judicial review is not expected to substitute its own subjective opinion in its place. The sole concern of the Court is to look at the relevancy of the material relied upon to take a decision in order to see that the decision is not devoid of application of mind. It is based on the basic idea that the structure of a subjective decision stands on the foundation of objective reasons. The Court may interfere when a decision is devoid of any reason or affected by mala fides or when the decision is reached in the aftermath of statutory violations. In other words, the formation of the opinion/satisfaction by the Government about the feasibility of the project is a purely subjective process and if the materials show that the opinion was reached in good faith, it is immune from judicial review. The contentions raised by the petitioners in these writ petitions would not enable a prudent person to believe that the objective facts based on which the Government has taken a decision to construct an additional 3rd and 4th line from Thiruvananthapuram to Kasaragod does not exist.

11. The scope of judicial review of governmental policy is now well defined. Courts do not and cannot act as Appellate Authorities examining the correctness, suitability and appropriateness of a policy, nor are courts advisors to the executive on matters of policy which the executive is entitled

to formulate. The scope of judicial review when examining a policy of the Government is to check whether it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution, or opposed to any statutory provision or manifestly arbitrary. Courts cannot interfere with policy either on the ground that it is erroneous or on the ground that a better, fairer or wiser alternative is available. Legality of the policy, and not the wisdom or soundness of the policy, is the subject of judicial review (vide *Asif Hameed v. State of J&K* [1989 Supp (2) SCC 364], *Sitaram Sugar Co. Ltd. v. Union of India* [(1990) 3 SCC 223], *Khoday Distilleries Ltd. v. State of Karnataka* [(1996) 10 SCC 304], *BALCO Employees' Union v. Union of India* [(2002) 2 SCC 333], *State of Orissa v. Gopinath Dash* [(2005) 13 SCC 495] and *Akhil Bharat Goseva Sangh (3) v. State of A.P.* [(2006) 4 SCC 162]).

12. In **Rajeev Suri v. Delhi Authorities**¹, the Apex Court had occasion to elucidate on the role of the Court while exercising judicial review in Policy Matters of the state. It was held that the role of the court is well defined and it must not leave the administration to grapple with multiplicity of alternate opinions by stepping into the shoes of the policy makers.

189. A policy decision goes through multiple stages and factors in diverse indicators including socio-economic and political justice, before its final culmination. As per the nature of the project, the Government executes the project by taking certain steps - legislative, administrative etc. -

¹ [2021 SCC OnLine SC 7]

and it is this which comes under the radar of the Court. The increasing transparency in Government functioning by means of traditional and modern media is reducing the gap between citizens and Government and Government actions are met with a higher level of scrutiny on a real-time basis.

190. In a democracy, the electors repose their faith in the elected Government which is accountable to the legislature and expect it to adopt the best possible course of action in public interest. Thus, an elected Government is the repository of public faith in matters of development. Some section of the public/citizens may have another viewpoint if not complete disagreement with the course of action perceived by the elected Government, but then, the dispensation of judicial review cannot be resorted to by the aggrieved/dissenting section for vindication of their point of view until and unless it is demonstrated that the proposed action is in breach of procedure established by law or in a given case, colourable exercise of powers of the Government. Therefore, it is important for the Courts to remain alive to all the attending circumstances and not interfere merely because another option as in the perception of the aggrieved/dissenting section of public would have been a better option.

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194. In *Tata Iron & Steel* (1996 (9) SCC 709, in paragraph 68, the Court noted that whenever the issues brought before the Court are intertwined with those involving determination of policy and a plethora of technical issues, the Courts are very wary and must exercise restraint and not trespass into policy-making. Similarly, in *Narmada Bachao Andolan v. Union of India* (2010) 6 SCC 664, in paragraph 228, the Court noted that a project may be executed departmentally or by an outside agency as per

the choice of the Government, whilst ensuring that it is done according to some procedure or set manner. Further, the Court should be loath to assume that the authorities will not function properly and that the Court should have no role to play.

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195. To sum up the above discussion, it may be noted that judicial review primarily involves a review of State action - legislative, executive, administrative and policy. The primary examination in a review of a legislative action is the existence of power with the legislature to legislate on a particular subject matter. For this purpose, we often resort to doctrines of pith and substance, harmonious construction, territorial nexus etc. Once the existence of power is not in dispute, it is essentially an enquiry under Article 13 of the Constitution which enjoins the State to not violate any of the provisions of Part-III in a law-making function. The review of executive action would depend upon the precise nature of the action. For, the domain of executive is wide and is generally understood to take within its sweep all residuary functions of the State. Thus, the precise scope of review would depend on the decision and the subject matter. For instance, an action taken under a statute must be in accordance with the statute and would be checked on the anvil of ultra vires the statutory or constitutional parameters. The enquiry must also ensure that the executive action is within the scope of executive powers earmarked for State Governments and Union Government respectively in the constitutional scheme. The scope of review of a pure administrative action is well settled. Since generally individuals are directly involved in such action, the Court concerns itself with the sacred principles of natural justice - audi altrem partem,

speaking orders, absence of bias etc. The enquiry is also informed by the Wednesbury principles of unreasonableness. The review of a policy decision entails a limited enquiry. As noted above, second guessing by the Court or substitution of judicial opinion on what would constitute a better policy is strictly excluded from the purview of this enquiry. Under the constitutional scheme, the government/executive is vested with the resources to undertake necessary research, studies, dialogue and expert consultation and accordingly, a pure policy decision is not interfered with in an ordinary manner. The burden is heavy to demonstrate a manifest illegality or arbitrariness or procedural lapses in the culmination of the policy decision. However, the underlying feature of protection of fundamental rights guaranteed by the Constitution must inform all enquiries of State action by the constitutional Court.

13. In view of the principles laid down above, I am of the considered opinion that this Court in exercise of its jurisdiction under Article 226 of the Constitution of India will not be justified in transgressing into the field of a policy of the Government to have a Semi High Speed Railway Line. The authorities concerned have granted in-principle approval for proceeding with the project and the State has been permitted to take up pre investment activities. There are materials to suggest that the NITI Aayog as well as the Railway has marked certain objections. It is for the Government to examine the advantages and disadvantages of its policy and take appropriate

measures to fine tune the project, correct the alignment and convince the authorities that the project is feasible. As held by the Apex Court, the Government is entitled to commit errors or achieve successes in policy matters as long as constitutional principles are not violated in the process. It is not this Court's concern to enquire into the priorities of an elected Government and judicial review is never meant to venture into the mind of the Government and thereby examine the validity of a decision. The Courts cannot interfere with the policy either on the ground that it is erroneous or on the ground that a better, fairer or wiser alternative is available. The legality of the policy and not the wisdom or soundness of the policy is the subject of judicial review as has been held by the Apex Court in the decisions referred to above. The respondents have assured this Court that they would proceed with the project only after getting concurrence from the Central Government as well as the Railway Board and other statutory authorities. The said submission is recorded.

14. In view of the above discussion, I find no reason to interfere with the policy decision taken by the State to have a Semi High Speed Railway Line and the steps taken by the State to proceed with the project. The petitioners are not entitled to a declaration that the Semi High Speed Rail Corridor is technically and financially not feasible and the same is liable to be dropped. If property owned by the petitioners are intended to be

acquired for the project, the respondents shall follow the provisions of Act 30 of 2013 in its letter and spirit.

These writ petitions are disposed of.

Sd/-

RAJA VIJAYARAGHAVAN V

JUDGE

PS

APPENDIX OF WP (C) 18002/2020

PETITIONER'S/S EXHIBITS:

- EXHIBIT P1 TRUE COPY OF THE COMMUNICATION SENT BY THE MINISTRY OF RAILWAYS TO THE HON'BLE CHIEF MINISTER, KERALA DT. 18.10.2018.
- EXHIBIT P2 TRUE COPY OF THE REPRESENTATION DATED 28.10.2019 SUBMITTED BY THE 4TH PETITIONER ON BEHALF OF OTHERS ALSO BEFORE THE CHAIRMAN, RAILWAY BOARD.
- EXHIBIT P3 TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONERS ALONG WITH 76 OTHERS DATED 29.01.2020
- EXHIBIT P4 TRUE COPY OF THE COMMUNICATION ISSUED BY THE DEPUTY SECRETARY FOR PRINCIPAL SECRETARY TO GOVERNOR DATED 31.3.2020
- EXHIBIT P5 TRUE COPY OF REPRESENTATION DATED 26.04.2020 SUBMITTED BEFORE M.P. SRI. THOMAS CHAZHIKKADAN.
- EXHIBIT P6 TRUE COPY OF THE COMMUNICATION DATED 2.5.2020 OF M.P. SRI.THOMAS CHAZHIKKADAN M.P.
- EXHIBIT P7 TRUE COPY OF THE COMMUNICATION SENT BY THE RAILWAY DEVELOPMENT CORPORATION TO THE 1ST PETITIONER DATED 26.2.2020 WITH COMMUNICATION DATED 17.12.2019
- EXHIBIT P8 TRUE COPY OF THE NEWS ITEM PUBLISHED IN THE MALAYALA MANORAMA DAILY DATED 5.2.2020 WITH ENGLISH TRANSLATION.
- EXHIBIT P9 TRUE COPY OF THE REPRESENTATION DATED 25.06.2020 SUBMITTED BY THE 1ST PETITIONER BEFORE THE 1ST RESPONDENT.
- EXHIBIT P10 TRUE COPY OF THE REPRESENTATION DATED 25.06.2020 SUBMITTED BY THE 1ST PETITIONER BEFORE 4TH RESPONDENT.
- EXHIBIT P11 TRUE COPY NEWS PAPER ITEM PUBLISHED IN MALAYALA MANORAMA DATED 11.6.2020 WITH ENGLISH TRANSLATION.

- EXHIBIT P12 TRUE COPY OF GO (MS) 7/2019 DATED 23.1.2019.
- EXHIBIT P13 TRUE COPY OF RELEVANT PAGES OF THE LIST OF PERSONS WHO HAD GIVEN COMPENSATION FOR FLOOD AFFECTED PERSONS.
- * EXHIBIT P14 TRUE COPY OF THE NEWS PAPER REPORT REPORTED IN MALAYALAM MANORAMA DAILY, KOTTAYAM EDITION DATED 23-9-2020.
- * (ADDITIONAL DOCUMENT ACCEPTED AS PER ORDER DATED 29.01.2021 IN I.A.NO.1 OF 2020) .
- * EXHIBIT P14 TRUE COPY OF THE REPORT DATED 03.11.2020 OF NITI AAYOG OBTAINED UNDER RTI ACT.
- * (ADDITIONAL DOCUMENT ACCEPTED AS PER ORDER DATED 29.01.2021 IN I.A.NO.3 OF 2020) .
- EXHIBIT P15 TRUE COPY OF THE MINUTES OF THE OFFICIAL MEETING HELD ON 22.09.2020 FOR GRANTING SANCTION FOR LAND ACQUISITION.
- EXHIBIT P16 TRUE COPY OF THE LIST OF THE MEMBERS OF THE 1ST PETITIONER ASSOCIATION.
- EXHIBIT P17 TRUE COPY OF THE BASIC TAX RECEIPT DATED 11.04.2018.
- EXHIBIT P18 TRUE COPY OF THE BASIC TAX RECEIPT DATED 30.11.2020
- EXHIBIT P19 TRUE COPY OF THE BASIC TAX RECEIPTS DATED 24.07.2019.
- EXHIBIT P19 (A) TRUE COPY OF THE BASIC TAX RECEIPTS DATED 07.07.2020.
- EXHIBIT P20 TRUE COPY OF THE COMMUNICATION SENT BY THE SOUTHERN RAILWAY TO THE 4TH PETITIONER DATED 08.12.2020 WITH REPORTS DATED 10.06.2020 AND 15.06.2020.

RESPONDENT'S/S EXHIBITS:

- EXHIBIT R3 (a) A TRUE COPY OF THE ORDER DATED

17.12.2019 ISSUED BY THE MINISTRY OF
RAILWAYS.

- EXHIBIT R3 (b) A TRUE COPY OF OFFICE MEMORANDUM NO.
24(35)/PF-II/2012 DATED 05/08/2016
ANNEXED ALONG WITH EXT.R3(a) .
- EXHIBIT R3 (c) A TRUE COPY OF THE LETTER
NO.2018/JVCELL/GENL/SPV/POLICY/2 DATED
23/04/2019 OF GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS (RAILWAY BOARD) .
- EXHIBIT R3 (d) A TRUE COPY OF THE
GO(M.S)NO.18/2020/TRANS DATED 11/06/2020
- EXHIBIT R3 (e) A TRUE COPY OF THE COMMUNICATION
ADDRESSED BY THE STATE GOVERNMENT TO THE
MINISTRY OF RAILWAYS
- EXHIBIT R3 (f) A TRUE COPY OF THE MINUTES OF THE
MEETING HELD BY THE HON'BLE CHIEF
MINISTER GOVERNMENT OF KERALA, IN
CONNECTION WITH THE SEMI HIGH SPEED
PROJECT .
- EXHIBIT R3 (g) A TRUE COPY OF THE COMMUNICATION
ADDRESSED BY THE MINISTRY OF RAILWAYS,
GOVERNMENT OF INDIA, TO THE HON'BLE
CHIEF MINISTER.

//TRUE COPY// P.S. TO JUDGE

ANGAMALY-SABARIMALA RAIL

EXHIBIT P10

A TRUE COPY OF THE SALE DEED NO.831 OF 1977 OF SRO, KODAKKAL EXECUTED BY PADMAVATHY AMMA IN FAVOUR OF THE PETITIONER AND HER HUSBAND, MR.MUNDAN.

RESPONDENT'S/S EXHIBITS:

EXHIBIT R4 (A)

TRUE COPY OF THE ORDER DATED 17.12.2019 ISSUED BY THE MINISTRY OF RAILWAYS.

EXHIBIT R4 (B)

TRUE COPY OF THE OM DATED 05.08.2016 OF MINISTRY OF FINANCE.

EXHIBIT R4 (C)

TRUE COPY OF THE LETTER DATED 23.04.2019 OF THE MINISTRY OF RAILWAYS.

EXHIBIT R4 (D)

TRUE COPY OF THE LETTER DATED 24.02.2020 OF PRINCIPAL SECRETARY TO THE MD KRDCCL ALONG WITH THE MINUTES OF THE MEETING HELD BY THE HON'BLE CHIEF MINISTER OF KERALA DATED 23.01.2020.

EXHIBIT R4 (E)

TRUE COPY OF COMMUNICATION OF MINISTRY OF RAILWAYS, GOVERNMENT OF INDIA TO THE HON'BLE CHIEF MINISTER.

EXHIBIT R4 (F)

TRUE COPY OF THE GO (MS)NO.18/2020/TRANS DATED 11.06.2020

EXHIBIT R4 (G)

TRUE COPY OF COMMUNICATION DATED 17.06.2020 OF THE STATE GOVERNMENT TO THE MINISTRY OF RAILWAYS.

EXHIBIT R4 (H)

TRUE COPY OF LETTER DATED 19.08.2020 OF THE KRDCCL TO THE PRINCIPAL SECRETARY, GOVERNMENT OF KERALA.

EXHIBIT R4 (I)

TRUE COPY OF OM DATED 01.09.2020 OF MINISTRY OF FINANCE AND 1ST PAGE OF MINUTES DATED 18.08.2020.

//TRUE COPY//

P.S.TO JUDGE

APPENDIX OF WP (C) 23794/2020

PETITIONER'S/S EXHIBITS:

- EXHIBIT P1 THE TRUE COPY OF THE REPRESENTATION DATED 19.5.2020 SUBMITTED BY SANATHANA DHARMA VIDYA PEEDAM, KUNNAMTHANAM P.O., THIRUVALLA AND OTHERS BEFORE THE THIRD RESPONDENT WITH ALL ANNEXURE THEREON.
- EXHIBIT P1 (A) THE TRUE COPY OF THE REPRESENTATION DATED 12.5.2020 SUBMITTED BY THE VALLAMALA PULAPPUKKAVU SREE MAHADEVA TEMPLE ADVISORY COMMITTEE BEFORE THE THIRD RESPONDENT.
- EXHIBIT P1 (B) THE TRUE COPY OF THE REPRESENTATION DATED 11.5.2020 SUBMITTED BY THE VALLAMALA SREE KRISHNA VILASAM N.S.S.KARAYOGAM NO.938 BEFORE THE THIRD RESPONDENT.
- EXHIBIT P1 (C) THE TRUE COPY OF THE REPRESENTATION DATED 12.5.2020 SUBMITTED BY THE SAMRUDHI SUDDHA JALA VITHARANA SAMITHI BEFORE THE THIRD RESPONDENT.
- EXHIBIT P1 (D) THE TRUE COPY OF THE REPRESENTATION DATED 13.5.2020 SUBMITTED BY THE MADATHIL KAVU BHAGAVATHY TEMPLE ADVISORY COMMITTEE BEFORE THE THIRD RESPONDENT.
- EXHIBIT P1 (E) THE TRUE COPY OF THE REPRESENTATION DATED 13.5.2020 SUBMITTED BY THE SREE LAKSHMI NARAYANA TEMPLE SAMRAKSHANA SAMITHY BEFORE THE THIRD RESPONDENT.
- EXHIBIT P1 (F) THE TRUE COPY OF THE REPRESENTATION DATED 20.5.2020 SUBMITTED BY ST.MARY'S MALANKARA CATHOLIC CHURCH, MUNDUKUZHI BEFORE THE THIRD RESPONDENT.

RESPONDENT'S/S EXHIBITS:

- EXHIBIT R3 (A) TRUE COPY OF THE ORDER DATED 17.12.2019 ISSUED BY THE MINISTRY OF RAILWAYS.
- EXHIBIT R3 (B) TRUE COPY OF THE OM DATED 05.08.2016 OF

MINISTRY OF FINANCE .

- EXHIBIT R3 (C) TRUE COPY OF THE LETTER DATED 23.04.2019 OF THE MINISTRY OF RAILWAYS .
- EXHIBIT R3 (D) TRUE COPY OF LETTER DATED 24.02.2020 OF PRINCIPAL SECRETARY TO MD KRDCI ALONG WITH MINUTES OF THE MEETING HELD BY THE HON'BLE CHIEF MINISTER OF KERALA DATED 23.01.2020
- EXHIBIT R3 (E) TRUE COPY OF COMMUNICATION OF MINISTRY OF RAILWAYS, GOVERNMENT OF INDIA TO THE HON'BLE CHIEF MINISTER.
- EXHIBIT R3 (F) TRUE COPY OF THE GO (MS)NO.18/2020/ TRANS DATED 11.06.2020 .
- EXHIBIT R3 (G) TRUE COPY OF THE COMMUNICATION DATED 17.06.2020 OF THE STATE GOVERNMENT TO THE MINISTRY OF RAILWAYS .

///TRUE COPY//

P.S. TO JUDGE

APPENDIX OF WP (C) 23860/2020

PETITIONER'S/S EXHIBITS:

- EXHIBIT P1 TRUE COPY OF GO (MS) NO.56/2019/RD DATED 14.02.2019.
- EXHIBIT P2 TRUE COPY OF PROCEEDINGS DATED 23.04.2019 OF THE 1ST RESPONDENT.
- EXHIBIT P3 TRUE COPY OF GUIDELINES PRESCRIBING THE PROCEDURE FOR JVC PROJECTS.
- EXHIBIT P4 TRUE COPY OF IN-PRINCIPLE APPROVAL GIVEN BY THE MINISTRY OF RAILWAYS FOR TAKING UP PRE-INVESTMENT ACTIVITY FOR THE SILVER LINE PROJECT.
- EXHIBIT P5 TRUE COPY OF THE MEETING DATED 23/01/2020.
- EXHIBIT P6 TRUE COPY OF GO (MS) NO.18/2020/TRANS DATED 11.06.2020.
- EXHIBIT P7 TRUE COPY OF LETTER DATED 12.06.2020 ISSUED BY THE 3RD RESPONDENT TO THE 4TH RESPONDENT.
- EXHIBIT P8 TRUE COPY OF REQUEST DATED 19/08/2020 SUBMITTED BY THE 5TH RESPONDENT.
- EXHIBIT P9 TRUE COPY OF RESOLUTION DATED 27/08/2020 OF CHEMANCHERI GRAMA PANCHAYAT.
- EXHIBIT P10 TRUE COPY OF RESOLUTION NO 6(2)2020/21 DATED 14/09/2020 OF PANTHALAYANI BLOCK PANCHAYAT
- EXHIBIT P11 TRUE COPY OF LETTER DATED 01.10.2020 ISSUED BY THE 5TH RESPONDENT TO THE DISTRICT POLICE CHIEF, KOZHIKODE.
- EXHIBIT P12 TRUE COPY OF REPRESENTATION DATED 10.08.2020 SUBMITTED BY THE 1ST PETITIONER BEFORE THE CHIEF MINISTER OF KERALA.
- EXHIBIT P13 TRUE COPY OF REPLY TO EXHIBIT P12 DATED 23.09.2020 ISSUED BY THE 5TH RESPONDENT.
- EXHIBIT P14 TRUE COPY OF RELEVANT PORTION OF 109TH

MINUTES OF SCREENING COMMITTEE HELD ON
18/08/2020.

EXHIBIT P15 TRUE COPY OF LETTER DARTED 03.09.2020
ISSUED BY THE 2ND RESPONDENT TO THE 3RD
RESPONDENT.

RESPONDENT'S/S EXHIBITS:

EXHIBIT R5 (A) TRUE COPY OF THE ORDER DATED 17.12.2019
ISSUED BY MINISTRY OF RAILWAY

EXHIBIT R5 (B) TRUE COPY OF OFFICE MEMORANDUM
NO.24(35)/PF-II/2012 DATED 05.08.2016.

EXHIBIT R5 (C) TRUE COPY OF LETTER NO 2018/JV
CELL/GENL/SPV/POLICY/2 DATED 23/04/2019

EXHIBIT R5 (D) TRUE COPY OF GO(MS) NO.18/2020/TRANS DATED
11/06/2020 PREPARED BY M/S SYSTRA

EXHIBIT R5 (E) TRUE COPY OF THE COMMUNICATION ADDRESSED BY
STATE GOVERNMENT TO MINISTRY OF RAILWAYS

EXHIBIT R5 (F) TRUE COPY OF THE MINUTES OF THE MEETING
HELD BY THE HONB'LE CHIEF MINISTER
GOVERNMENT OF KERALA, IN CONNECTION WITH
THE SEMI HIGH SPEED PROJECT

EXHIBIT R5 (G) TRUE COPY OF THE COMMUNICATION ADDRESSED BY
THE MINISTRY OF RAILWAYS, GOVERNMENT OF
INDIA, TO THE HON'BLE CHIEF MINISTER

//TRUE COPY// P.S.TO JUDGE