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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
PUBLIC INTEREST LITIGATION NO. 167 OF 2016

Shri Govind Kondiba Tanpure

... Petitioner

vs.

The Project Director, National
 Highway Authority of India and Ors.

... Respondents

.....

Ms. Smita R. Gaidhani for the Petitioner.

Mr. Chandan Athani i/b. M/s. Hinge and Deshmukh Associates for Respondent
 no. 1.

Mr. Manish M. Pabale, AGP for Respondent no. 2 and 3.

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CORAM : A.S. OKA & A.K. MENON, JJ.

DATE : 28th NOVEMBER, 2017

P. C.

1. Heard the learned Counsel appearing for the petitioner. The issue raised in this PIL concerns construction of Vehicular Under Pass below Pune Satara section of National Highway no.4. The petitioner, a resident of village Dhangwadi has invited attention of the Court to the decision taken by the respondent nos. 1 to 3 and in particular the National Highways Authority of India to construct Vehicular Under Pass at km 802.350 below Pune-Satara section of NH4. The work was to be executed on the basis of BOT.

2. The basic contention in this petition is that the said Vehicular Under Pass (the disputed under pass) is being made at the instance of the respondent nos. 4 and 5 who are influential political leaders. It is stated that the said decision has been taken on the basis of a letter dated 15th May, 2008

addressed by the respondent no. 4, who at the relevant time was a member of the Legislative Assembly, to the Project Director of the National Highways Authority of India.

3. The first prayer in this PIL is for cancellation of the disputed under pass. The second prayer is for issuing a Writ of Mandamus directing the respondent nos. 1 to 3 to construct another Vehicular Under Pass at Dhangwadi, S.T. stand phata. The third prayer is for constituting a committee for conducting an enquiry into the construction of disputed under pass.

4. The learned Counsel appearing for the petitioner pointed out that the disputed under pass is not at all convenient for most of the villagers and therefore, all along, the petitioner and other villagers had suggested a spot near Dhangwadi S.T. stand phata to construct a Vehicular Under Pass. Inviting our attention to a letter dated 15th May, 2008 issued by the respondent no. 4 to the respondent no.1, she submitted that the letter dated 30th June, 2008 addressed by respondent no. 1 to respondent no. 4 clearly shows that the construction of the disputed under pass has been undertaken at the instance of the respondent nos. 4 and 5. The contention is that the decision has been taken by the respondent no. 1 considering the personal need of the respondent nos. 4 and 5.

5. The learned Counsel appearing for the petitioner has tendered across the bar a map showing the location of the properties held by the respondent nos. 4 and 5. She submitted that if the location is perused, it is obvious that

the disputed under pass is being constructed for the benefit of the respondent nos. 4 and 5 who are influential local political leaders. She submitted that if a Vehicular Under Pass would have been constructed at a place demarcated on the map near the “S.T. stand phata”, it would have satisfied the need of the villagers. She submitted that the work of disputed under pass is not yet completed.

6. We have given careful consideration to the submissions. At Exhibit-B (colly), there are photographs annexed by the petitioner. The photographs at page nos. 41 and 42 show that the work of construction of the disputed under pass is already completed. In fact one of the photographs shows that the user of the said under pass has also commenced. Even assuring that the decision to construct disputed under pass was taken at the instance of respondent nos. 4 and 5, as regards the construction of the disputed under pass, no relief can be granted. The first reason is that apart from the respondent nos. 4 and 5, there will be several others who will be entitled to use the disputed under pass. The second reason is that the removal of the disputed under pass will amount to waste of public money. Obviously there is no prejudice to the citizens on whose behalf the petitioner has filed this petition, if the disputed under pass continues to exist.

7. In this PIL, we are concerned with the issue as to which place a vehicular under pass should be constructed after taking into consideration need of the local residents and several other factors. A Writ Court cannot

decide the issue as to at which spot a vehicular under pass should be constructed and therefore the matter should be left to be decided by the experts in the field.

8. If according to the case of the petitioner and other villagers, there is need to construct additional vehicular under pass, notwithstanding the existence of the disputed under pass, the petitioner and other villagers can always make a representation to the respondent nos. 1 to 3 in that behalf. It is for the authorities to decide whether the case of the petitioner for construction of a vehicular under pass at any other spot needs to be considered. Considering the fact that only an expert in the field can decide the issue of location of a vehicular under pass especially in relation to a National Highway, a Writ as prayed for in this PIL cannot be issued.

9. Accordingly, we pass the following order :

- (a) Prayer (a) and prayer (c) are rejected;
- (b) As regards prayer (b), we grant liberty to the petitioner to make a representation to the appropriate authorities. If such representation is made, the same shall be decided expeditiously within a period of three months from the date on which the representation is made;
- (c) There will be no order as to costs.

(A.K. MENON, J.)

(A.S. OKA, J.)