

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

WRIT PETITION No.5391 of 2017

ORDER:

Heard learned counsel for the petitioners, learned standing counsel for Respondents 1 and 2 and the learned Government Pleader for Respondents 3 and 4.

2. The petitioners claim that they are the agriculturists, having land admeasuring Ac.2.70 cents in Sy.No.202 situated in Musunuru Village, Kavali Mandala, SPSR Nellore District. They stated that the said land is abutting to the National Highway (NH) No.5 connecting Chennai and Kolkata. It was also stated that the said NH was laid after acquiring their agricultural land along with land belonging to other farmers. They stated that while laying the NH, the 2nd respondent has provided underpasses for pedestrian and vehicular passage at regular intervals near Musunuru village at chainage KM Nos.1313.881, 1322.000 and at 1323.950. When the 2nd respondent sought to lay an underpass in front of their agricultural land in January 2015, the petitioners objected for the same on 30.01.2015 stating that there is already an existing under pass located at a distance of 500 meters at KM 1323.500 from the proposed underpass and that laying of a new underpass is not necessary and will cause much inconvenience to the farmers. They also represented that there is alternative for the proposed underpass without causing inconvenience to the farmers. When the 2nd respondent was taking steps for laying an underpass on NH.5 at Musunuru village, between chainage KM Nos.1323.500 and 1323.000, they filed WP No.3901 of 2015 and this court, by order dated 08.07.2015 granted stay of all further proceedings in the matter. While the respondents 1 and 2 once again initiated steps to lay an underpass at a distance of less than 2 meters from the

proposed underpass and began the work at about 4.30 p.m. on 13.02.2017, the petitioners objected for the same, but the 2nd respondent was going ahead with it, the present writ petition was filed by the petitioners.

3. This court by order dated 15.02.2017 ordered *status quo* to be maintained.

4. Thereafter, the 2nd respondent filed counter-affidavit stating that the Government of India took up work of six laning of Chilakaluripet to Nellore section of NH.5 from KM 1182.802 to KM 1366.547 (length 183.620) in the State of Andhra Pradesh under NHDP Phase V to be executed as BOT (Toll) Project on DBFOT pattern. The land acquisition was done as per NH Act, 1956. The land of the petitioners was acquired for an extent of 79 sq. m. in Sy.No.202/ 2A2 and compensation of an amount of Rs.1,53,254/- was received by the petitioners on 20.04.2012. The underpass was provided keeping in view of the accidents occurring very frequently at chainage KM 1323.440. There is a road crossing the highway, which coming from the village Musunur and going to other side of the fields. Musunur village exists on the western side of Highway and on the eastern side of the Highway, grazing fields for the cattle, water tank and agriculture fields exist. The cattle from the village are crossing the high way and going to the grazing field. Number of accidents has occurred and it is evident from the police records. To avoid road accidents, an underpass is provided, so that the cattle and pedestrians do not come on the highway and the cattle and pedestrians can move through the under pass from one side of the highway to other side of the high way. The Supreme Court Committee on Road Safety, has issued instructions to National Highways Authority of India (NHAI) vide letter dated 09.09.2016 directing the NHAI to provide the action plan taken by

31.12.2016. In view of the same, NHAI has proposed the underpass in the proposed location. Number of underpasses were constructed on the highway so that the people and the cattle can easily go from one side to another side of the highway without collision/ accidents. Wherever the underpasses are provided, the rate of road accidents have come down drastically and the road users are safer on the road. The present construction of pedestrian underpass is not meant for vehicular underpass as the height and width of the underpass is only 2.5 meters and 4 meters, respectively. As per the agreement, there are about 25 vehicular underpasses and 22 pedestrian underpasses to be constructed. The proposed underpass is for the benefit of the public but not for the benefit of concessionaire or to the NHAI. The existing underpass is at KM 1323.950, which is about 510 meters away from the proposed location from the underpass. As per the norms of the Manual of Specifications and Standards for Six Laning of National Highways through PPP published by the Ministry of Road Transport and Highways Clause No.2.2.5 under the Head Facilities of Pedestrians and Cyclists - 'the crossing facilities shall be provided through underpasses such that unless otherwise specified in Schedule-B pedestrians do not have to walk for more than 0.5 KM to reach the crossing point'. Since, a writ petition was filed by the petitioners in WP No.3901 of 2015 on the ground that it is causing inconvenience to them, the underpass which was proposed in front of the petitioners' fields, was dropped and now the underpass is being proposed in front of the cross road and just opposite to the straight road coming from the village and going to the other side of the village but not in front of the petitioners' fields.

5. In spite of the said statement made by the 2nd respondent, the petitioners resisted the case by filing a reply affidavit, stating that the

police reports do not disclose the accidents stated to have occurred under the said spot. A new ground was raised stating that the underpass is being laid without following the mandatory nature of Section 38 of the Control of National Highways (Land and Traffic) Act, 2002. It is also stated that since another underpass existed at 510 meters away from the proposed location, the construction of a new under pass is not at all necessary.

6. As stated above, in view of the statement made by the 2nd respondent in the counter-affidavit that the proposed underpass before the land of the petitioners was dropped in view of the filing of WP No.3901 of 2015, but the learned counsel for the petitioners by relying on Section 38 of the Control of National Highways (Land and Traffic) Act, 2002, submitted that the 2nd respondent is not competent to lay underpass. He further submitted that the approval of Highway Administration was not taken and the Regional Officer (Hyderabad) is the competent authority for taking a decision. In view of the same, the matter was adjourned and the learned standing counsel for NHAI produced before this court a letter dated 18.02.2016 addressed by the Regional Officer, to the Project Director, PIU, NHAI, Nellore, stating that since NH-5 (new No.16) was entrusted to NHAI by the Central Government for construction and maintenance etc., approval of Highway Administration for construction of underpass at KM 1323.440 on Kavali Bypass, under Section 38 of the Control of National Highways (Land and Traffic) Act, 2002 on Chilakaluripet – Nellore Section of NH-5 is not required.

7. It is for the concerned Authority to provide for underpasses at the appropriate places and if there is any inconvenience to the petitioners, it is always open to them to approach this court.

8. In view of the stand taken by the respondents 1 and 2 in their counter-affidavit that they abandoned their earlier proposal to lay a underpass before the land of the petitioners and now they are laying underpass in front of the cross-road, which is opposite to the straight road coming from the village and going to the other side of the village, there would not be any grievance to the petitioners. This stand was not taken in the earlier writ petition and in view of the categorical assertion made by the respondents 1 and 2 in the present writ petition along with the sketch of the proposed underpass, this court sees no ground to grant the relief sought by the petitioners.

9. The writ petition is, accordingly, dismissed. No order as to costs. Pending miscellaneous petitions, if any, shall stand dismissed in consequence.

Date: 18.04.2017
BSS

A. RAMALINGESWARA RAO, J



8

HON' BLE SRI JUSTICE A. RAMALINGESWARA RAOWRIT PETITION No.5391 of 2017Date: 18.04.2017

BSS