

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved : on 08.06.2018

Order Delivered : on 21.06.2018

Coram:-

The Honourable Mr. Justice T.Raja

Writ Petition No.31940 of 2017

Bakthavatsalu Naidu

... Petitioner

vs.

1.The Project Director,
National Highways Authority of India,
Villupuram.

2.M/s.Pondicherry Tindivanam Tollway Limited,
NH-66-Km. 6+572, Morattandi Toll Plaza,
Morattandi Village, Auroville Post,
Vanur Taluk,
Villupuram District.

... Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus to call for the records of the first respondent in relation to the order made in NHAI/PD/VPM/LA/Court case/NH 66/2017/1475, dated 25th November, 2017 and quash the same and consequently direct the respondents to desist from commissioning/constructing of a Public Lavatory in front of the petitioner's property comprised in New Survey No.179/3, presently sub-divided as S.No.179/11 Tiruchitrambalam Village, Vanur Taluk, Villupuram District.

For Petitioner : Mr.M.R.Thangavel

For R1 : Mr.R.Singaravelan, SC
for Ms.S.R.Sumathi

For R2 : Mr.D.Ravindranathan

ORDER

By way of filing this writ petition, the petitioner seeks to quash the proceedings dated 25.11.2017 of the first respondent rejecting his request to shift the construction of public lavatory in front of his property.

2. Mr.M.R.Thangavel, learned counsel for the petitioner submitted that the petitioner is the owner of a land to an extent of 885 sq.ft. comprised in New Survey No.179/3, subdivided as S.No.179/11, Tiruchitrambalam Village, Vannur Taluk, Villupuram District. The said property is situated abetting the National Highways No.66 (Pondicherry to Tindivanam) on the intersection of Tiruchitrambalam-Auroville road. The petitioner is also running a Tiffin stall in the vacant land of his property facing NH-66. However, all of a sudden, on 29.09.2017, the second respondent, by levelling the land in front of his property, had sunk a bore-well in front of his property and on enquiry, he was informed that the second respondent is proposing to construct the Public Lavatory covering the entire frontage of his property to an extent of 30 feet. Apart from this hindrance to his ingress and egress to his property, the second respondent is also planning to construct septic tank, therefore, it is pleaded, construction of septic tank in the said place would ultimately lead to contamination of his borewell situated within his land. Therefore, it is contended, the said proposal of the second respondent is highly arbitrary, illegal and in violation of his fundamental rights guaranteed under Article 21 of the Constitution of India.

3. Aggrieved by the said approach of the respondents, the petitioner has filed a Writ Petition No.27017 of 2017 seeking a direction to the respondents to desist from commissioning/constructing of a Public Lavatory in front of his property comprised in New Survey No.179/3, Tiruchitrambalam Village, Vanur Taluk, Villupuram District. This Court, in its order dated 13.10.2017, disposed of the said writ petition, without expressing any view on the merits of the claim made by the petitioner, directing the first respondent to consider the said representation and pass orders and in accordance with law. Pursuant to the order of this Court, the first respondent, vide his impugned proceedings dated 25.11.2017, rejected the request of the petitioner to relocate the proposed Public Lavatory to any other location near the toll plaza.

4. Assailing the impugned proceedings, it is further stated that as the petitioner is running a Tiffin stall on the backyard of his house, the proposed Public Lavatory which is closer to the petitioner's house will deprive his livelihood. Besides, it is stated, if the Public Lavatory is constructed near the toll plaza instead of constructing the same 400 metres away from the toll plaza, the same would benefit the public at large, but, without making use of such huge ample space available near the toll plaza, the first respondent is planning to construct the same in front of the petitioner's house, which is 400 metres away from the Toll Plaza, therefore, the said

approach of the first respondent is wholly unsustainable in law, he pleaded.

5. Mr.R.Singaravelan, learned Senior counsel appearing for the first respondent submitted that the petitioner is not running any Tiffin shop in the property in question, however, he has started construction of a permanent RCC structure in that property, which is in violation of IRC Norms and guidelines, for, the Government of India, in its Circular dated 24.07.2013, clearly stipulated that no structure should be constructed within 3 metres from ROW. It is further submitted that the layout of the current location of Toilet Block clearly shows that after the construction of Toilet Blocks, still the petitioner has 36.08 feet of frontage and therefore, he can directly access the National Highway, hence, it is contended, the objection of the petitioner for construction of Public Lavatory, which is approved under Swatch Bharat Mission for the benefit of road users to improve the hygienic condition of our Nation, is liable to be dismissed. Besides, the Government of India, in its letter dated 24.07.2013, also clearly stipulated the guidelines of access to private properties and as per IRC-73-1980, no structure should be constructed within the building line, which is 10 metres from Highway ROW. It is also further stated that if the claim of the petitioner to shift the Toilet Blocks to any other place is accepted, then everyone may start to claim the same and it would become impossible to implement the Government proposal and ultimately, the public would be put into lot of inconvenience.

6. Refuting the contention of the petitioner that if the respondent is allowed to construct the septic tank in the property in question, then the ground water of the petitioner would get contaminated, it is stated that in no case contamination of ground water is technically possible, as the same would be constructed with water tight cement construction.

7. Justifying the proposed location for construction of Public Lavatory, learned Senior counsel for the petitioner submitted that shifting of Public Lavatory is not possible due to the following reasons;

(i) within 100 metres from the toll plaza, there is an existence of static weigh bridge and control room;

(ii) in between 100 metres and 200 metres, a Box culvert is in existence for crossing of drainage water and therefore, if the same is disturbed for construction of Public Lavatory, then the drainage of water will be affected and the same would cause flooding during monsoon.

(iii) in between 200 metres and 300 metres from the toll plaza, intersection SH 136 is existed at Thiruchitrambalam. In view of the aforesaid reasons, it is contended, the claim of

the petitioner that his access to NH would be denied and his livelihood also would be affected is not tenable.

8. Heard the learned counsel appearing on either side and perused the materials available on record.

9. Swach Bharat Mission has been launched by the Government of India as a fitting tribute to the 150th Birth Anniversary of Mahatma Gandhi. The NHAI, on their part of contribution towards the said Mission, decided to keep the Highways free from littering around/along the road and also to keep the highway clean and tidy by installing the suitable size waste bins/dustbins along the highways. Under the Swach Bharat Mission of Government of India, the public toilet construction along with Highway Nest (Mini Cafeteria) is to be done at both sides (LHS & RHS) of each Toll Plaza on Highway Road coming under the jurisdiction of NHAI.

10. In the counter affidavit, the respondents have stated that shifting of the proposed toilet blocks is impossible for the reason that within 100 metres from Toll Plaza, static weigh bridge and control room are existing; secondly, in between 100 metres and 200 metres from the Toll Plaza, a Box Culvert has been laid for smooth crossing of drainage of water and therefore, if the said culvert is disturbed, then the drainage of water will be affected and this would ultimately pave the way for flooding during monsoon season; thirdly, it is stated that in between 200 metres and 300 metres from the Toll Plaza, intersection is existed at Thrichitrambalam. Therefore, in view of these well sounded reasons, in my considered view, shifting of Toilet Blocks near to the Toll Plaza are not possible, hence, I do not find any reason to interfere with the decision taken by the first respondent to install the Public Lavatory at 400 metres away from the Toll Plaza, where the petitioner's property is situated.

11. One of the objections of the petitioner is that since the proposed construction of septic tank is to be located 30 feet away from the petitioner's property, the same would cause contamination of his ground water. The said contention, in my considered view, is wholly unacceptable, for, the septic tank will be constructed with water tight construction, besides, the bore-well sunk by the petitioner is 30 metres away from the proposed septic tank, therefore, the bore-well also will not be affected.

12. Hence, this Court, accepting the case of the respondents that shifting of Toilet Blocks to other area due to land constrain will affect the vehicle movement and also the

road users, is not inclined to entertain the writ petition. Accordingly, the writ petition is dismissed. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Deputy Registrar (CS)

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Sub Assistant Registrar

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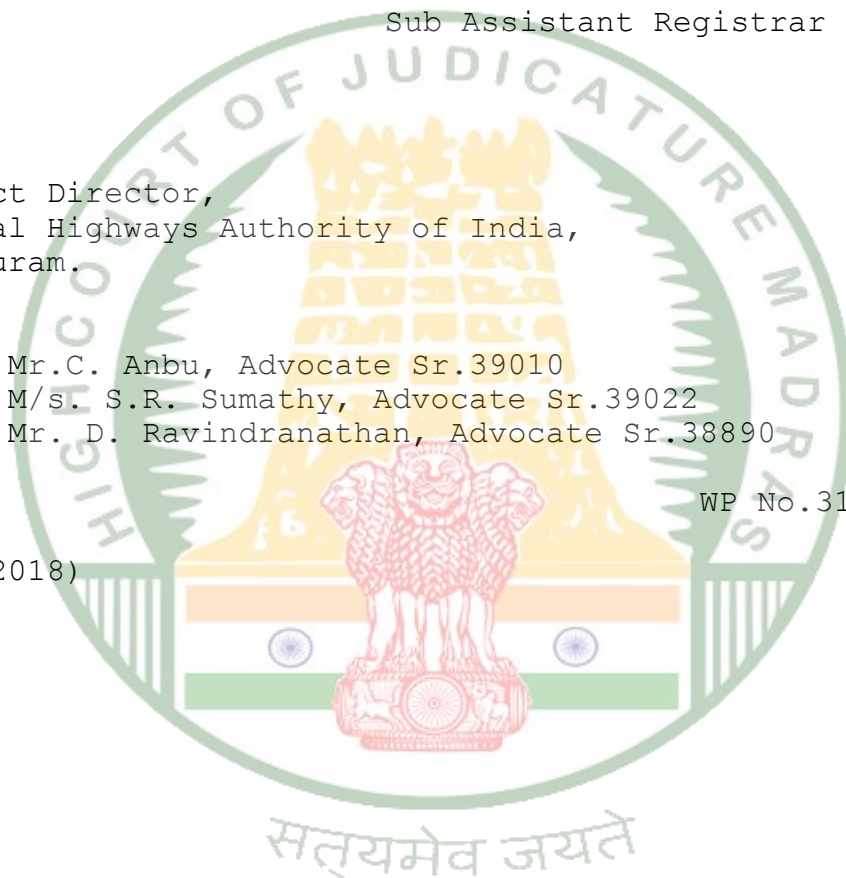
To

The Project Director,
National Highways Authority of India,
Villupuram.

+ 1 cc to Mr.C. Anbu, Advocate Sr.39010
+ 1 cc to M/s. S.R. Sumathy, Advocate Sr.39022
+ 1 cc to Mr. D. Ravindranathan, Advocate Sr.38890

WP No.31940 of 2017

(CS-DR)
EU(02/07/2018)



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