

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:20/9/2018

CORAM

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Petition No.24859 of 2018

M.Jamaludeen

... Petitioner

Vs

1. The District Collector
District Collectorate
Villupuram District.
2. The Divisional Engineer
(Highways Department)
NABARD and Village Roads
41 Eratai Pillaiyar Street
Pudupalayam
Cuddalore 607 001.
3. The Assistant Divisional Engineer
(Highways Department)
NABARD and Village Roads
Opposite to ESI Hospital
Trichy Main Road
Villupuram 605 602.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus to consider the representation of the petitioner, dated 27/7/2018 and pass appropriate orders, directing the respondents not to construct the staircase on the service lane of Villupuram-Katpadi railway line, along with the railway over bridge in Villupuram on Tiruchy-Chennai Highways.

For petitioner ... Mr.Father Xavier Arul Raj
for M/s. Father Xavier Associates

O R D E R

(Order of the Court was made by Subramonium Prasad,J)

Instant writ petition has been filed, by a resident of Kaivalliya Street, Villupuram, to direct the respondents, not to construct a staircase, on the service lane of Villupuram-Katpadi railway line, along side the railway over bridge, in Villupuram, on Tiruchy-Chennai Highways.

2. Relevant paragraphs in the writ petition reads as under:-

"3. I humbly submit that some 70 years back, a railway line came to be laid in this area to connect Villupuram with Katpadi, Vellore. The railway line, running north to south divided the area into eastern and western side of the railway track. A railway crossing was established with a railway gate to control the traffic across the railway line. The people in the locality including the petitioner had no problem to take the deity around their streets and carry the dead bodies to the burial ground, by crossing the railway track, through functional railway gates.

4. I humbly submit that in 2014, to ease the traffic in this particular railway crossing, the respondents decided to construct an over bridge over the track. At that time, the people of the locality approached the authorities orally requesting them not to hinder their movement across the railway track in permitted hours, so that they can take the deities in procession and move the dead bodies to the burial ground on the western side. It was accepted and till now, the people of the area are moving back and forth, across the railway track, from the eastern to western area and vice versa.

5. I humbly submit that while the facts being so, the construction of a staircase in the railway line has just been started, under NABARD scheme, to reach the over bridge by short cut. If such staircase is constructed, there will be no space to take out deities in car procession of the temples, which are situated just few meters from the spot of construction. It will be a great hardship for the people to carry the mortal remains to the

burial/cremation ground on the western side of the railway track. The bier and procession for the last rituals cannot be taken over the stairways leading to the over bridge.

6. I humbly submit that expressing the concern of the people in the locality, some representatives including the petitioner approached the respondents and requested not to construct the staircase, which will affect the religious festivals, burials of the dead bodies and the daily movement of the people. On behalf of the people of the area, the petitioner has sent representations dated 27/7/2018 to the respondents in this regard. But without considering the representation of the petitioner, the respondents are proceeding with the construction work."

3. Petitioner has also filed the photographs along with the writ petition, to substantiate his case.

4. Heard Mr. Father Xavier Arul Raj, learned counsel for the petitioner and also perused the materials available on record.

5. Perusal of the writ petition would show that the resident of the Kaivalya Street, Villupuram, are challenging the construction of staircase, by the railways on the ground that it will affect their religious festival and burials of dead bodies and daily movement of people. Undoubtedly, the stair case is being constructed for the benefit of the people. It is quite obvious that before starting of the construction, views of the local bodies, highways, would have been taken and site would have been chosen only after due application of mind. Fact that the present location of stair case would cause a bit inconvenience to the local people, cannot be a ground to stall the entire project. When there is a public purpose for which action has been taken by the State, then it is not for the Court to sit on judgment of the executive as an appellate forum.

6. It is well settled that Courts cannot run Governments. The Hon'ble Supreme Court, had time and again, reminded that the Judges must not try to perform legislative or executive function.

7. In Narmada Bachao Andolan Vs. Union of India and Others, reported in {2000 (10) SCC - 664}, the Hon'ble Supreme Court observed as follows:-

"232. While protecting the rights of the people from being violated in any manner utmost care has to be taken that the Court does not

transgress its jurisdiction. There is, in our constitutional framework a fairly clear demarcation of powers. The Court has come down heavily whenever the executive has sought to impinge upon the Court's jurisdiction.

233. At the same time, in exercise of its enormous power, the Court should not be called upon to or undertake governmental duties or functions. The Courts cannot run the Government nor can the administration indulge in abuse or non-use of power and get away with it. The essence of judicial review is a constitutional fundamental. The role of the higher judiciary under values of the Constitution and the rights of Indians. The Courts must therefore, act within their judicially permissible limitations to uphold the rule of law and harness their power in public interest. It is precisely for this reason that it has been consistently held by this Court that in matters of policy the Court will not interfere. When there is a valid law requiring the Government to act in a particular manner the Court ought not to, without striking down the law, give any direction which is not in accordance with law. In other words, the Court itself is not above the law.

234. In respect of public projects and policies which are initiated by the Government the Courts should not become an approval authority. Normally such decisions are taken by the Government after due care and consideration. In a democracy welfare of the people at large, and not merely of a small section of the society, has to be the concern of a responsible Government. If a considered policy decision has been taken, which is not in conflict with any law or is not mala fide, it will not be in public interest to require the Court to go into and investigate those areas which are the function of the executive. For any project which is approved after due deliberation, the Court should not refrain from being asked to review the decision just because a petitioner in filing a PIL alleges that such a decision should not have been taken because an opposite view against the undertaking of the project, which view may have been considered by the Government is possible. When two or more options or views are possible and after

considering them the Government takes a policy decision it is then not the function of the Court to go into the matter afresh and, in a way, sit in appeal over such a policy decision."

8. The above mentioned observations have been quoted with approval by the Hon'ble Supreme Court in BALCO EMPLOYEES' UNION (REGD) Vs. UNION OF INDIA AND OTHERS {2002 (2) SCC - 333}.

9. In DIVISIONAL MANAGER, ARAVALI GOLF CLUB AND ANOTHER {2008 (1) SCC - 683}, in paragraphs Nos.17, 19, 20 and 22, the Hon'ble Supreme Court held thus:-

"17. Before parting with this case, we would like to make some observations about the limits of the powers of the judiciary. We are compelled to make these observations because we are repeatedly coming across cases where judges are unjustifiably trying to perform executive or legislative functions. In our opinion this is clearly unconstitutional. In the name of judicial activism judges cannot cross their limits and try to take over functions which belong to another organ of the State.

19. Under our Constitution, the legislature, the executive and the judiciary all have their own broad spheres of operation. Ordinarily, it is not proper for any of these three organs of the State to encroach upon the domain of another, otherwise the delicate balance in the Constitution will be upset, and there will be a reaction.

20. Judges must know their limits and must not try to run the Government. They must have modesty and humility, and not behave like emperors. There is broad separation of powers under the Constitution and each organ of the State - the legislature, the executive and the judiciary - must have respect for the other and must not encroach into each other's domains.

22. In Tata Cellular Vs. Union of India (vide AIR para 113 : SCC para 94), this Court observed that the modern trend points to judicial restraint in administrative action. The same view has been taken in a large number of other decisions also, but it is unfortunate that many Courts are not following these decisions and are trying to perform legislative or executive functions. In our opinion adjudication must be done within the system of historically validated restraints and conscious

minimisation of the Judges' preferences. The Court must not embarrass the administrative authorities and must realise that administrative authorities have expertise in the field of administration while the Court does not. In the words of Neely VJ (SCC p.681, para 82).

"82..... I have very few illusions about my own limitations as a Judge ... I am not an accountant, electrical engineer, financier, banker, expect Judges intelligently to review a 5000 page record addressing the intricacies of a public utility operation."

It is not the function of a Judge to act as a superboard, or with the zeal of a pedantic schoolmaster substituting its judgment for that of the administrator."

10. In COMMON CAUSE (A REGD. SOCIETY) VS. UNION OF INDIA AND OTHERS, {2008 (5) SCC - 511}, wherein at paragraph No.40, the Hon'ble Supreme Court, held thus:-

"The justification given for judicial activism is that the executive and legislature have failed in performing their functions. Even if this allegation is true, does it justify the judiciary in taking over the functions of the legislature or executive? In our opinion it does not: firstly, because that would be in violation of the high constitutional principle of separation of powers between the three organs of the State, and secondly, because the judiciary has neither the expertise nor the resources for this. If the legislature or executive are not functioning properly it is for the people to correct the defects by exercising their franchise properly in the next elections and voting for candidates who will fulfil their expectations, or by other lawful means e.g., peaceful demonstrations and agitations, but the remedy is surely not by the judiciary in taking over the functions of the other organs."

11. In view of the decisions, which this Court has taken note of, instant writ petition cannot be entertained and

accordingly, the same is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mvs.

To

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+1cc to the Government Pleader, S.R.No.65648

W.P.No.24859 of 2018

NRL (CO)
CS/29/10/2018

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