

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.18770 of 2018
and
W.M.P.No.22124 of 2018

S.Gnanasekaran ...Petitioner

Vs.

- 1.The Secretary,
Ministry of Road Transport and Highways,
Government of India,
Parivahan Bhavan,
1, Parliament Street,
New Delhi.
- 2.The Chairman,
National Highways Authority of India,
G 5&6, Sector-10, Dwarka,
New Delhi - 110 075.
- 3.The Chief General Manager (Technical) and
Regional Officer,
National Highways Authority of India,
'Sri Tower', 3rd Floor, DP-34 (SP),
Industrial Estate, Guindy,
Chennai - 600 032. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, issuing a Writ of Mandamus, directing the respondents to consider the representation of the petitioner dated 04.07.2018 on merits and in accordance with law for giving up the present proposed project Bengaluru - Chennai Expressway, within the time frame.

For Petitioner : Mr.V.Sanjeevi

For R3 : Mr.G.Karthikeyan
Additional Solicitor General

For R1 & R2 : No Appearance

O R D E R

(Order of the Court was made by S.MANIKUMAR, J.)

A resident of Periyar Nagar, Irumbuliur, West Tambaram, Chennai, claiming himself to be interested in the welfare of people and developmental projects of Government, has filed the instant writ petition, for a Mandamus, directing the respondents to consider his representation dated 04.07.2018 on merits, for giving up the proposed projects of Bengaluru - Chennai Expressway.

2. In the supporting affidavit, petitioner has contended that, in the month of November - December 2016, Central Government proposed the project "Bengaluru - Chennai Expressway" with a view to reduce a huge and substantial distance, against the present distance. According to him, the present connectivity between Bengaluru and Chennai, is by way of two routes. The first route NH-4, from Bengaluru to Chennai via Kolar, Chittoor, Ranipet and Kancheepuram, is at a total length of 335 kms. The second route is (from Bengaluru to Chennai) NH-7, from Bengaluru to Krishnagiri, NH-46 is from Krishnagiri to Ranipet and NH-4 from Ranipet to Chennai and the total distance is 349 kms.

3. Petitioner has contended that the authorities of NHAI have proceeded on the erroneous basis that the distance from Chennai to Bengaluru or Bengaluru to Chennai is 372 km, but it is only 349 kms. The distance between Bengaluru - Krishnagiri in the second route is 90 kms, the distance between Krishnagiri - Ranipet is 146 kms and the distance between Bengaluru and Chennai is 113 kms, totalling 349 kms.

4. Petitioner has contended that the distance between Bengaluru and Chennai, in the proposed project "Bengaluru - Chennai Expressway" as envisaged by NHAI, is only 329 kms, as against the present route distance of 349 kms, and the reduction proposed is only 20 kms. The proposed project covers a distance of 329 kms, which is from Bengaluru to Hoskote - 27 kms, Hoskote town NH-4 to Sriperumbudur NH-4 (total length - 262 kms); and Sriperumbudur to Chennai - 40 kms.

5. Details of two present routes and proposed project "Bengaluru - Chennai Expressway", are extracted hereunder:-

- "(i) 1st Route of connectivity from Bengaluru
- Chennai
NH-4 via., Kolar, Chittoor, Ranipet and Kancheepuram with a total length of 335 km.
- (ii) 2nd Route of connectivity from Bengaluru
- Chennai
NH-7, Bengaluru to Krishnagiri, NH-46 from Krishnagiri to Ranipet and NH-4, Ranipet to Chennai with a total length of 349 km, but wrongly assumed that it is 372 kms.

The total length between Bengaluru to Chennai

is 349 kms only, since Bengaluru to Krishnagiri is 90 kms; Krishnagiri to Ranipet is 146 kms and Ranipet to Chennai is 113 kms, totalling 349 kms only.

(iii) The proposed project Bengaluru - Chennai Expressway covering 329 kms.

From Bengaluru to Hoskote - 27 kms; Hoskote town NH-4 to Sriperumbudur NH-4 is 262 kms; and Sriperumbudur to Chennai is 40 kms."

6. Petitioner has further contended that from the Audit report of the Principal Accountant General, Chennai, sent to the Central Government and NHAI, he came to know about the project "Bengaluru - Chennai Expressway" is not viable, as it reduces only 20 kms and not 40 kms.

7. Petitioner has further contended that for reduction of 20 kms, huge money need not be spent and about 455.85 acres of lands, are to be utilised for the project in Kancheepuram. Petitioner has further contended that the Audit report has elaborately discussed about the present connectivity between Bengaluru and Chennai.

8. Petitioner has further contended that the proposed project also falls adjacent to the lands at Vadamangalam Village etc., belonging to the Archaeological Department. According to him, no permission is obtained from the Archaeological Department.

9. Taking note of the averments contained in Paragraph No.7 of the supporting affidavit in the writ petition, in particular, as to how the writ petitioner came to know of the audit report, on 14.08.2018, we passed the following order:-

"At paragraph No.7 of the supporting affidavit, petitioner has contended that he came to know of the audit report from the Principal Accountant General, Chennai-18, sent to Central Government and NHAI, wherein, it is stated that project "Bengaluru-Chennai Expressway" is not viable, as it reduces only 20 Km and not 40 Km.

5. During the course of hearing of this writ petition, when a question was posed to Mr.Sanjeevi, learned counsel for the petitioner, as to how the audit report came to the hands of the petitioner, reply was that an official had given to the petitioner. He further added that the above said report was not given under RTI.

3. Placing on record the above, petitioner is directed to file an affidavit settling out the details, as to how he got an official report, without any authority.

(4) Mr.G.Karthikeyan, learned Assistant

Solicitor General, Submitted that before the representation of the petitioner dated 04.10.2013, was taken up for consideration, writ petition has been filed on 17.07.2018

(5) Learned Assistant Solicitor General, is directed to get instructions on they prayer for and also get instructions, as to how the audit report of the details, is stated to have been furnished to the petitioner.

6. Post on 21.08.2018."

10. Subsequently, on 21.08.2018, petitioner has filed an affidavit to the effect that, when the officers were fixing stones, in the land bearing S.No.314/1A1 etc., belonging to him, in Vadamangalam Village, Sriperumbudur Taluk, Kancheepuram District, for the proposed project "Bengaluru-Chennai Expressway", he interacted with the officers and they gave him some contents of the Audit report. For brevity, paragraph No.2 of the affidavit of the petitioner, dated 21.08.2018, is extracted hereunder:-

"2. I submit that while the officers were fixing stones in the land bearig S.No.314/1A1 etc., belonging to me in Vadamangalam Village, Sriperumbudur Taluk, Kancheepuram District for the proposed project "Bengaluru-Chennai Expressway", I interacted with them. During the course of interaction, they gave me some contents of the audit report for the said project, which are said to be submitted by the office of the Principal Accountant General, Chennai-18. This is how I came to know about the audit report. In order to get the full and complete official and authenticated copy of the said report, I made applications to the Additional Chief Secretary, Highways and Minor Ports Department, Project Director, National Highways Authority of India, PIU-Chennai, the Project Director, National Highways Authority of India, PIU-Bengaluru (Expressway), Bengaluru and the Public Information Officer - Office of the Principal Account General (E&RSA), Chennai-600 018 from 14.03.2018 onwards under the Right to Information Act, 2005. The applications/Representations filed by me under the Right to Information Act, 2005 and the reply submitted thereto by the authorities are filed in the typed set of papers. In compliance of the direction of this Hon'ble Court dated 14/08/2018, I am filing this affidavit as to how I came to know about the audit report referred in the affidavit filed in support of the above writ petition."

11. Petitioner has also filed an additional typed set of papers, wherein, he sought for a copy of Audit report.

12. Project Director of "Chennai-Bangalore Highways", has filed a counter affidavit denying handing over of a copy of the Audit report. For brevity, paragraph No.3 of the counter affidavit dated 27.08.2018, of the Project Director, Chennai-Bangalore Highways, is extracted hereunder:-

"3. I submit that, the petitioner has also filed some documents which he claims to be the unofficial copy of the auditor report. However, the documents in Page Nos.16 to 20 are the brief of the project uploaded while submitted online Forest Clearance proposal for diversion of 5.42 hectares of Mahimandalam R.F. area in Vellore District of Tamil Nadu for the proposed Bangalore-Chennai Express Highway project, which are available in the Ministry of Environment, Forest and Climate Change website <http://parivesh.nic.in>. However, it is pertinent to state here that, these are not the documents connecting to the Audit Report as claimed by him."

13. In the representation dated 14.03.2018, petitioner has stated that he owns land measuring an extent of 1.46.5 hectares in Survey No.314/1A1 and etc, in Vadamangalam Village, Sriperumbudur Taluk, Kancheepuram District. He further submitted that the officials have implanted stones stating that "Bangalore-Chennai Expressway" project, is proposed to be executed in the said place, belonging to him.

14. Hence, in the representation dated 14.03.2018, addressed to the Additional Chief Secretary to the Government, Highways and Minor Ports Department, Secretariat, Chennai, he has stated that one among the officers, dealing with the project, gave him, a copy of the Auditor's report of the government, with regard to abovesaid project. Stating so, he has requested the abovesaid Officer to furnish a copy of the Auditor's report, wherein according to the petitioner it has been mentioned that if the said project is abandoned, compensation amount given in respect of acquisition of land, would be beneficial to the Government and that the time delay would be avoided.

15. In the representation dated 14.03.2018, petitioner has requested the Additional Chief Secretary to Government, Highways and Minor Ports Department, Secretariat, Chennai, to furnish him, with a copy of the Auditor report, with regard to the aforesaid Expressway project, under the Right to Information Act, 2005.

16. Responding to the representation dated 14.03.2018 of the petitioner, Additional Chief Secretary to Government, Highways and Minor Ports Department, Secretariat, Chennai, has sent a reply, dated 22.03.2018, to the petitioner, stating that representation dated 14.03.2018, has been forwarded to the Public Information Officer-cum-Project Director, National Highways Authority of India, Chennai, for necessary action.

17. Thereafter, petitioner has once again sent a representation dated 06.04.2018, to the Additional Chief Secretary to Government, Highways and Minor Ports Department, Secretariat, Chennai, seeking for a copy of Auditor's report. Thereafter, petitioner has sent representations dated 12.04.2018, 28.04.2018 respectively, for the same purpose.

18. On 04.05.2018, the Public Information Officer-cum-Under Secretary to the Government, Highways and Minor Ports (H.V.1) Department, Secretariat, Chennai, sent a reply to the petitioner stating that the request for furnishing copy of the Auditor report, is not available with the State Government and the petition dated 07.04.2018, has been forwarded to the Public Information Officer-cum-Project Director, Project Implementation Unit, National Highways Authority of India, Chennai.

19. Ultimately, Vide letter dated 04.05.2018, Public Information Officer-cum-Under Secretary to the Government, Highways and Minor Ports (H.V.1) Department, Secretariat, Chennai, has rejected the request of the petitioner, under Section 2(f) of the Right to Information Act, 2005.

20. Thereafter, petitioner has sent another representation, dated 10.05.2018, to the Principal Accountant General, (E & RSA) Tamil Nadu, Chennai, to furnish a copy of the Auditor's report, which is followed by another representation, dated 23.05.2018, for the same purpose.

21. Though in all the representation's dated 14.03.2018, 06.04.2018, 12.04.2018, 28.04.2018, 10.05.2018 and 23.05.2018, the petitioner has stated that he owns land measuring an extent of 1.46.5 hectares in Survey No.314/1A1 and etc, in Vadamangalam Village, Sriperumbudur Taluk, Kancheepuram District, that eking his livelihood only through this land and that the land surveyors laid the stones in the Bangalore-Chennai Expressway project, but conveniently, in the supporting affidavit to the writ petition, he has omitted to disclose the fact that his lands are also sought to be acquired. He has filed instant writ petition, claiming it to be a Public Interest Writ Petition, but private interest of the petitioner is very much reflected in the representations made to the Public Information Officer, to obtain a copy of the Auditor's report. Contention of petitioner is that, reduction of distance would only be 20 kms and not 40 kms and therefore, the respondents should give up the proposed project of Bangalore-Chennai Expressway, cannot be countenanced.

22. It is for the respondents 1 and 2, to decide as to the distance and estimate of the route. National Highways Act, 1956, empowers the Central Government, to acquire land

and procedure is set out for the said purpose.

23. In exercise of powers conferred under sub section (1) of section 3A of the National Highways Act, 1956 (48 of 1956), Ministry of Road Transport and Highways, have also issued notification dated 13.12.2016, notifying that the land is required for the purpose of (Widening/four-laning, etc.,) maintenance, management and operation of Bangalore-Chennai Expressway Section, in the stretch of land from Km.218/280 to Km.245/200 and Km.245/700 to Km.258/808 in the District of Kanchipuram, State of Tamilnadu.

24. As per the said notification, any person interested in the said land may, within twenty-one days from the date of publication of the notification dated 13.12.2016, can object to use of such land for the aforesaid purpose under sub section (1) of Section 3C of the Act. Every such objection shall be made to the competent authority, namely, the Special District Revenue Officer (Land Acquisition), Kanchipuram and Thiruvallur Districts at Kanchipuram, Tamil Nadu, in writing and shall set out the grounds thereof and the competent authority shall give the objector an opportunity of being heard, either in person or by a legal practitioner, and may, after hearing all such objections and after making such further enquiry, if any, as the competent authority thinks necessary, by order, either allow or disallow the objections. Any order made by the competent authority under sub section (2) of Section 3C of the said Act, shall be final.

25. Petitioner, who is aggrieved by the acquisition, ought to have made objections to the competent authority. Claiming himself to be a public interest litigant and espousing the cause of public, he has filed instant writ petition. Though instant writ petition is filed as a Public Interest Writ Petition, as observed supra, it is more of the private interest, for the reasons stated supra.

26. Notification dated 13.12.2016, has been issued, under sub section (1) of section 3A of the National Highways Act, 1956 (48 of 1956), Ministry of Road Transport and Highways, and nearly after two years, a public interest writ petition has been filed.

27. For the reasons stated supra, writ petition deserves to be dismissed and accordingly dismissed. No Costs. Consequently, the connected writ miscellaneous petition is closed.

Sd/-

Deputy Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

1.The Secretary,
Ministry of Road Transport and Highways,
Government of India,
Parivahan Bhavan,
1, Parliament Street,
New Delhi.

2.The Chairman,
National Highways Authority of India,
G 5&6, Sector-10, Dwarka,
New Delhi - 110 075.

3.The Chief General Manager (Technical) and
Regional Officer,
National Highways Authority of India,
'Sri Tower', 3rd Floor, DP-34 (SP),
Industrial Estate, Guindy,
Chennai - 600 032.

+1cc to Mr.G.Karthikeyan , Advocate SR.No.58924

+1cc to Mr.V.Sanjeevi , Advocate SR.No. 59084

W.P.No.18770 of 2018
and
W.M.P.No.22124 of 2018

VBA(CO)
ASK(24/09/2018)

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