



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

W.P(MD)No.5063 of 2018

Vairamuthu

... Petitioner

Vs.

1.The Deputy Chief Engineer,
Broad Gauge Conversion
(Thiruvarur-Pattukottai-Karaikudi-GC-II),
Southern Railways,
Trichy.

2.The District Collector,
Pudukottai District.

... Respondents

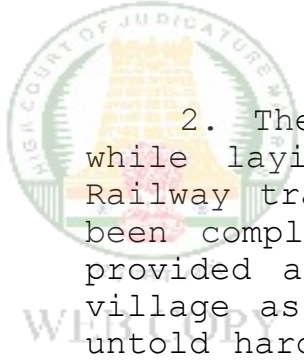
PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the first respondent to provide/construct subway or level crossing way in Tiruvarur-Pattukottai-Karaikudi Broad Gauge Railway line by accessing the public to reach between Pudukottai, Melakudieruppu, Sanganathi, Samban Odai, Veerandan, Surakudi Villages and MDR 653 (Aranthangi - Peravurai Road) based on the recommendation of the second respondent vide his proceedings No.Na.Ka.No.C3/15274/2016, dated 12.01.2018 within the stipulated time fixed by this Court.

For Petitioner	: Mr.R.M.Arun Swaminathan for M/s.Chettinad Legal Solutions
For Respondents	: Mr.S.Manohar Standing Counsel for R.1 Mr.A.Muthukaruppan, Additional Government Pleader for R.2

ORDER

[Order of the Court was made by M.SATHYANARAYANAN,J.]

The petitioner claims to be one of the residents of Pudukottai, Aranthangi Taluk, Pudukottai District and according to them, nearby their village/hamlet, Aranthangi to Peravurani Road (MDR 653) is located and Tiruvarur - Pattukottai - Karaikudi Railway line is also crossing through their village. Subsequently, a decision has been taken to convert Meter Gauge to Broad Gauge and before such conversion, there was an unmanned Level Crossing which was in existence for very many decades and while converting the Meter Gauge into Broad Gauge, it has been closed.



2. The learned Counsel for the petitioner would submit that while laying the Broad Gauge line, elevation was done and the Railway track was laid on the same and access to either side has been completely blocked and no other alternative pathway/road is provided and as a consequence, the residents of the petitioner's village as well as neighbouring villages/hamlets are being put to untold hardship and grave difficulty for having denied the right of access which was in existence for very many years.

3. In this regard, very many representations were also submitted and protests were also held and taking note of the same, the District Collector, Pudukkottai District, vide proceedings dated 12.01.2018 in Na.Ka.C3/15274/2016, has taken into consideration the stand of the Deputy Chief Engineer, Southern Railways, Trichy Zone and also the recommendation made by the jurisdictional Revenue Divisional Officer and also the order dated 17.08.2017 made in W.P (MD)No.13265 of 2017 and directed the Deputy Chief Engineer of the Southern Railways, Trichy, to form a Railway Under Bridge and despite such a positive direction, no steps have been taken to put up the same and constrained the petitioner to file the present writ petition.

4. Mr.S.Manohar, learned Standing Counsel who accepts notice on behalf of the first respondent, has drawn the attention of this Court to Section 19 of the Railways Act, 1989 and would submit that it is not for the District Collector to pass a positive order on the Railway Administration to form either a Railway Over Bridge or a Railway Under Bridge, for the reason that it is to be taken on the highest level after conducting the field inspection and related studies and also invited the attention of this Court to the order dated 02.02.2018 made in W.P(MD)No.22470 of 2017 [S.Subbaiah v. The General Manager, 1st Floor, NGO Main Building, Southern Railway, Park Avenue, Chennai - 600 005 and others], wherein reliance has also been placed on the judgment of the Honourable Supreme Court in Union of India v. J.D.Suryavanshi reported in AIR 2011 SC 3605 and in the above said order, this Court found that the policy decision of the Railway Administration cannot be interfered with and therefore, prays for the dismissal of this writ petition.

5. This Court has considered the rival submissions and also perused the materials placed before it.

6. One U.Chellaiah has filed W.P(MD)No.13265 of 2017 for the very same relief and it was disposed of by this Court, vide order, dated 17.08.2017 by directing the second respondent to look into the matter and pass appropriate orders and accordingly, the second respondent has passed the proceedings dated 12.01.2018 (cited supra).

7. The petitioner therein alleging wilful disobedience and non-compliance of the said order, filed Contempt Petition (MD)No.162 of 2018 and it was disposed of on the ground that the order passed by the second respondent has been complied with.



8. It is relevant to extract hereunder Section 19 of the Railways Act, 1989:

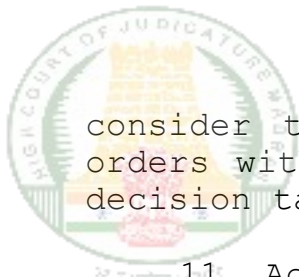
"19. Over-bridges and under-bridges.- (1) Where a railway administration has constructed lines of rails across a public road at the same level, the State Government or the local authority maintaining the road, may, at any time, in the interest of public safety, require the railway administration to take the road either under or over the railway by means of a bridge or arch with convenient ascents and descents and other convenient approaches, instead of crossing the road on the level, or to execute such other works as may, in the circumstances of the case, appear to the State Government or the local authority maintaining the road to be best adapted for removing or diminishing the danger arising from the level crossing.

(2) The railway administration may require the State Government or the local authority, as the case may be, as a condition of executing any work under sub-section (1), to undertake to pay the whole of the cost of the work and the expense of maintaining the work, to the railway administration or such proportion of the cost and expenses as the Central Government considers just and reasonable.

(3) In the case of any difference of opinion between the railway administration and the State Government or the local authority, as the case may be, over any of the matters mentioned in sub-section (1), it shall be referred to the Central Government, whose decision thereon shall be final."

9. The Honourable Supreme Court in *Union of India v. J.D.Suryavanshi* reported in AIR 2011 SC 3605, in paragraph 8, with regard to the provision of Air-conditioned Coaches, etc., has held that "... The Courts do not have data inputs, specialized knowledge or the technical skills required for running the Railways. The High Court cannot interfere in regard to only one sector without having any material or information about the requirements of other sectors available infrastructure, existing demands and constraints, safety requirements etc.".

10. In the light of the same, this Court is not in a position to issue any positive direction to the first respondent to construct either Railway Over Bridge or Railway Under Bridge as prayed for by the petitioner. However, this Court taking into consideration the difficulties and hardships pleaded by the petitioner, permits the petitioner to submit a representation to the General Manager, Southern Railways, Chennai - 600 003, as to the formation of Railway Over Bridge or Railway Under Bridge for having access, within a period of two weeks from the date of receipt of a copy of this order and upon receipt of the same, the first respondent is directed to



consider the same on merits and in accordance with law and pass orders within a period of ten weeks thereafter and communicate the decision taken to the petitioner.

11. Accordingly, this writ petition is disposed of as above. No costs.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

1.The Deputy Chief Engineer,
Broad Gauge Conversion
(Thiruvarur-Pattukottai-Karaikudi-GC-II),
Southern Railways,
Trichy.

2.The District Collector,
Pudukottai District.

3.The General Manager,
Southern Railways,
Chennai - 600 003.

+1cc to M/S.R.M.Arun Swaminathan, Advocate SR.No. 54585

+1cc to M/S.S.Manohar, Advocate SR.No. 54676

+1cc to Special Government Pleader, SR.No. 54590

W.P(MD)No.5063 of 2018

09.03.2018

rsb

JM/SKN RSK/SAR 3/13.03.2018/4P/7C