



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 04.09.2018

DELIVERED ON : 10.09.2018

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CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P. (MD) No.12380 of 2018
and W.M.P. (MD) Nos.11261 and 11262 of 2018

Muthaiah,
Natham Vattara Vivasaya Sanga Thalaivar,
N.Kovilpatti,
Natham Taluk,
Dindigul District. ... Petitioner
(For himself and on behalf of Reddiyapatti,
Chellappanayakanpatti and surrounding
Villagers and Farmers)

-vs-

- 1.The Secretary,
Ministry of Environment and Forest,
New Delhi.
- 2.The Director General,
National Highways Authority of India,
Dwarka, New Delhi.
- 3.The Chair Person,
Tamil Nadu Pollution Control Board,
78, Anna Salai,
Guindy,
Chennai - 600 032.
- 4.The Project Director,
National Highway Authority of India,
Madurai - 625 020.
- 5.The District Collector,
Dindigul District, Dindigul.
- 6.The Environmental Engineer,
Pollution Control Board,
Dindigul District.



7.The Executive Engineer/WRO,
Public Works Department,
Dindigul District.

8.The Competent Authority,
Special District Revenue Officer (LA),
National Highway,
Dindigul District.

9.Tamil Nadu State Environment Impact Assessment Authority,
Represented by its Chairman,
3rd Floor, Panagal Maligai,
No.1, Jeenis Road, Saidapet,
Chennai - 600 015.

... Respondents

R9 is impleaded vide Court Order

Dated 27.06.2018 in W.M.P.(MD) No.11784/2018

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned 3A notifications issued by the 8th respondent in Na.Ka.No.1/2018CU, dated 19.02.2018 published in Daily Thanthi dated 22.02.2018 and the consequential notification in Na.Ka.No.9/2018/NTM dated 29.05.2018 published in Daily Thanthi 30.05.2018 and quash the same in so far as the notifications relates to the acquisition of 5 tanks comprised in Survey Nos.491/2, 491/3, 458, 392/2 of Reddiyapatti Village and Survey Nos.11 and 6 of Chellappanayakkanpatti Village and small tanks other than the three tanks and canals comprised in Survey Nos.468/1, 409, 408/2A, 408/4, 411, 387, 299 and 466 of Reddiyapatti Village and canal in Survey No.47/3 of Chellappanayakkanpatti Village and consequently to direct the respondents to widen the road in the existing Madurai Natham Road.

For Petitioner : Mr.T.Arul

For Respondents 1 & 2 : MR.V.Kathirvelu,
Assistant Solicitor General
assisted by

Mr.P.Subbiah
Central Government Standing Counsel

For Respondents 3 & : Mr.A.K.Baskarapandian
5 to 8 Special Government Pleader

For 4th Respondent : Mr.C.Arul Vadivel @ Sekar

O R D E R

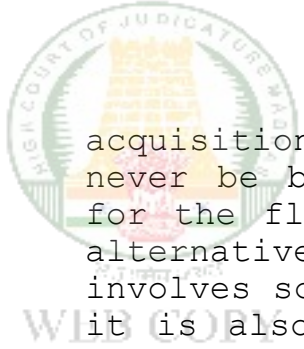
M.M.SUNDRESH, J.

This public interest litigation is initiated by the petitioner, who is an association of farmers. The sole grievance of the petitioner in this writ petition is with respect to the tanks while undertaking the proposed expansion of the road by respondent No.4.

2.A decision was made to widen/four laning of Madurai - Natham NH - 785, which is a State Highway by making it as a National one. Accordingly, a notification under Section 3-A(1) of National Highways Act was published. As per the proposed expansion, the respondent No.1 has decided to have a by-pass alignment. This was done to avoid the demolition of existing buildings, reduction of the huge cost that would occur and to maintain the required standards set by Indian Road Congress. It is also the case of the respondent No.4 that the proposed alignment would involve lesser usage of land and with the damage to the tanks minimal.

3.The learned counsel appearing for the petitioner has submitted that the existing road can be widened and a bridge can be constructed over it. Alternatively, instead of realignment of curve, an over bridge can be constructed. The respondent No.4 has not obtained environmental clearance as per Environment (Protection) Act and Rules. The notification under Sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986 cannot be made applicable to an old and existing State Highway being converted to a National Highway. Thus, a clearance is mandated which has not been done. By the proposed construction, the aquifer of the area would get affected. The water is being used not only for drinking purpose but also for irrigation. In the notification, the character of the tanks as water bodies was not mentioned deliberately. When there is a conflict between the environment and development the former will have to be given primacy. To buttress his submission, the learned counsel for the petitioner relied on the decision of the National Green Tribunal, Southern Zone, Chennai in **Application No.104 of 2013 (SZ) (THC) between Conservation of Nature Trust represented by its Chairman Dr.R.S. Lal Mohan & another and The District Collector, Kanyakumari District & others** and the decision of the Division Bench of this Court in **Selvakumar v. U.O.I. [(2011) 2 MLJ 341]**.

4.Considering the fact that technical issues are involved we had asked the learned counsel appearing for the respondent No.4 to make the presence of respondent No.4 before us. Accordingly, joint submissions have been made by both of them. It is submitted that sufficient care has been taken to do the work with the minimal damage. If the contentions of the petitioner is accepted with reference to the expansion of the road as it exists today, more extent of land would be required. Now, the area acquired for the proposed realignment is only 8319 Sq.m. as against 9399 Sq.m. It also would involve touching upon more area, more extent in the tanks. What has been acquired is very small extent. Even this



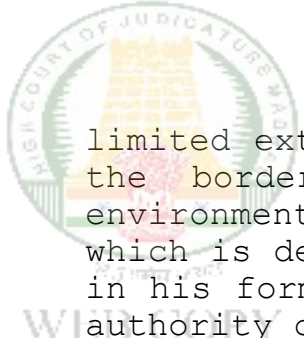
acquisition is on the periphery and the border. The tanks would never be bifurcated through the expansion. There is no difficulty for the flow of water as the construction is on the upstream. The alternative suggestion made by the petitioner is not possible as it involves solid ramps, which would result in acquiring more lands and it is also not technically feasible. In the technical matters it would be only proper to allow the respondent No.4 to go on with his work, which has been initiated after due scrutiny.

5. We have heard the arguments of learned counsel on either side at length and perused the records.

6. Records pertaining to proposed road, realignment curve and the extent of damage to the tanks were filed and demonstrated before us. On the legal issue raised by the counsel appearing for the petitioner with respect to the mandate of getting the environmental clearance, we find that in as much as the existing State Highway Road is to be converted into National Highway, no such requirement is needed. The Schedule to the Notification No.1067 dated 14.09.2006 in column No.7(f) deals with New National/State Highways greater than 30 K.M. involving additional right of way greater than 20m involving land acquisition. This has been amended as expansion of National Highways greater than 100 K.M. involving right of way or land acquisition greater than 40m on existing alignment and 60m of realignment in by-passes. This amendment has come into being on 22.08.2013.

7. On a perusal of the above Notifications, we are of the view that annexure to column 7(f) of Notification No.1067 dated 14.09.2006, would be applicable when an expansion is made by State or National Highways as the case may be. It would also involve an expansion made over the State Highways by converting it into a National Highway. The contention of the petitioner would defile logic as it would only mean such an expansion can be made without environmental clearance by the State Highway Authority as against National Highway Authority. To make the position clear, if the case of the petitioner is accepted then such an expansion without environment clearance can only be made by the State Highway authority and not National Highway Authority over a land which is declared at present as State Highways. What is important is status of the road and not the authority. Thus, the above said submission of the petitioner stands rejected.

8. Coming to the environmental impact, the plan produced by the fourth respondent would clearly show that the suggestion made by the petitioner would involve more acquisition of land apart from a larger expansion of the tanks. The respondent No.4 has taken into consideration various factors. These factors would involve protection of tanks with minimal damage, the interest of the general public who would loose their buildings, cost involved and the feasibility of the project. We do not find any error in this decision nor the process adopted. By the proposed curve only a



limited extent of tanks is being used that too on the periphery and the border. After all, one has to balance development with environment. We find that there is no illegality in the project, which is demonstrated before us. Thus sufficient care has been taken in his formulation. It is not in dispute that respondent No.4 is an authority constituted for carrying out the work of laying roads.

9. When a decision is said to have been taken after analyzing various factors, this Court cannot substitute it with an alternative view. In this connection it is appropriate to refer to the decision of the Hon'ble Apex Court in **Akhil Bharat Goseva Sangh (3) v. State of A.P. [(2006) 4 SCC 162]**:

"59. The appellant sought to challenge the veracity and correctness of the figures given in the report of the Central Government as well as in the quinquennial census. In our view, this submission is devoid of merit. It is now well-settled by various decisions of this Court that the findings of expert bodies in technical and scientific matters would not ordinarily be interfered with by the courts in the exercise of their power under Art. 226 of the Constitution or by this Court under Article 136 or 32 of the Constitution. For this proposition, reliance can be placed on the decision of this Court in the case **Systopic Laboratories (P) Ltd. vs. Dr. Prem Gupta [1994 Supp (1) SCC 160]**. Paras 19 and 20 of this decision clearly give the answer on the question whether the findings of expert body in technical and scientific matters can be interfered with by the Court either under Article 226 or by this Court under Art. 32 or 136 of the Constitution."

On the expertise of the respondent No.4, the Hon'ble Supreme Court in **Union of India v. Kushala Shetty [(2011) 12 SCC 69]** held as follows:

"28. Here, it will be apposite to mention that NHAI is a professionally managed statutory body having expertise in the field of development and maintenance of national highways. The projects involving construction of new highways and widening and development of the existing highways, which are vital for development of infrastructure in the country, are entrusted to experts in the field of highways. It comprises of persons having vast knowledge and expertise in the field of highway development and maintenance. NHAI prepares and implements projects relating to development and maintenance of national highways after thorough study by experts in different fields. Detailed project reports are prepared keeping in view the relative factors including intensity of heavy vehicular traffic and larger public interest. The courts are not at all equipped to decide upon the viability and feasibility of the particular project and whether the particular alignment would subserve the larger public interest. In such matters, the scope of judicial review is very limited. The court can nullify the acquisition of land and, in rarest of rare cases, the particular project, if it



is found to be ex-facie contrary to the mandate of law or tainted due to mala fides. In the case in hand, neither any violation of mandate of the 1956 Act has been established nor the charge of malice in fact has been proved. Therefore, the order under challenge cannot be sustained."

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10.Thus, in the light of the above, and in the absence of any material to satisfy on the adverse environmental impact in carrying out the work we are not inclined to interfere. While dealing with such matters, Court has to strike a balance. Such a balance is to be seen from the point of view of development and environment. Though the later will have to be given more credence, in the absence of inability to synchronize both. We do not find any such difficulty in the project adopted by the respondent No.4 as the impact is very minimal.

11.Though the learned counsel for the parties made reliance on various decisions, we are not inclined to consider the same as law is quite settled. As regards the judgement of the Division Bench of this Court in **Selvakumar v. U.O.I. [(2011) 2 MLJ 341]** relied on by the petitioner is concerned, the same has to be seen contextually. The learned counsel for the fourth respondent would submit that the project did not go through as it was not possible to comply with the said decision. After all, each decision has to be seen in its own factual context.

12.Thus, we do not find any reason to allow this petition. Accordingly, this Writ Petition is dismissed. Consequently, connected Miscellaneous petitions are also dismissed. No costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS-II)

To

- 1.The Secretary to Govt. of India,
Ministry of Environment and Forest,
New Delhi.
- 2.The Director General,
National Highways Authority of India,
Dwarka, New Delhi.
- 3.The Chair Person,
Tamil Nadu Pollution Control Board,
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Guindy, Chennai - 600 032.



4.The Project Director,
National Highway Authority of India,
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5.The District Collector,
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9.The Chairman,
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3rd Floor, Panagal Maligai,
No.1, Jeenis Road, Saidapet,
Chennai - 600 015.

+1 CC To MR.C.ARUL VADIVEL @ SEKAR, Advocate SR. NO. 83208
+2 CC To MR.P.SUBBIAH, Advocate SR. NO.83151

Order in
W.P. (MD) No.12380 of 2018
and W.M.P. (MD) Nos.11261 and 11262 of 2018

SJ
TR/PM/SAR-II(19.09.2018) 7P 13C