

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 7/2/2019

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Petition No.3614 of 2019

Anna Nagar Residence

Welfare Association (Reg.No.66/2015)

rep. by its President

No.2/1239 A Nehru Street

Anna Nagar

87 Vepampattu Village

Thiruvallur Taluk & District

Pin 602 024.

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Petitioner

vs

1. The Secretary

The Government of Tamil Nadu

Department of Highways & Minor Ports

Fort St. George

Chennai.

2. The District Collector

Thiruvallur District

Thiruvallur.

3. The District Revenue officer

Thiruvallur District

Thiruvallur.

4. The Divisional Engineer

Department of Highways

Project Division - II

Chennai 600 018.

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Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus to direct the respondents to construct Railway Over Bridge (ROB) over the railway level crossing gate LC No.13 at 88 Vepampattu Village only after completing the incomplete Railway Over Bridge (ROB) Over the railway level crossing LC No.14 at 89 Perumalpattu Village and left open to general public.

For petitioner ... Mr.J.Deliban

For respondents ... Mr.Akhil Akbar Ali
Government Advocate

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O R D E R

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

Instant Public Interest Litigation has been filed for the following relief:-

"To direct the respondents to construct Railway Over Bridge (ROB) over the railway level crossing gate LC No.13 at 88 Vepampattu Village only after completing the incomplete Railway Over Bridge (ROB) Over the railway level crossing LC No.14 at 89 Perumalpattu Village and left open to general public."

2. Petitioner is a welfare association, represented by its President. Petitioner states that Government of Tamil Nadu, issued Notification, for acquiring land, for construction of a Railway Over Bridge upon Railway Level Crossing Gate, i.e., LC No.14 at 89 Perumalpattu Railway Station. Petitioner submits that though substantial work has been completed, for some reason, even after the lapse of seven years, it was decided to construct another Railway Over Bridge over the Railway Level Crossing Gate, at LC No.13. He states that due to the construction work for constructing Railway over bridge at LC No.14, there is lot of traffic congestion. According to the petitioner to abandon the project of constructing the Railway over bridge at LC No.14 at this stage is not in public interest. The petitioners have prayed for a mandamus, to first complete the incomplete Railway Over Bridge (ROB) Over the railway level crossing LC No.14, at 89 Perumalpattu Village and open it to general public before starting construction at LC.No.13.

3. Heard Mr.J.Deliban, learned counsel for the petitioner and Mr.Akhil Akbar Ali, learned Government Advocate for the respondents.

4. It is purely the discretion of the Government to decide how the projects are to be completed. Petitioner has no locus to decide how the Government has to proceed in the matter of construction of Railway bridge. It is well settled that Courts cannot run Governments. The Hon'ble Supreme Court, has time and

again, reminded that the Judges must not try to perform legislative or executive function.

5. 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."

6. 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}.

7. 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."

8. 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 allegations 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."

9. 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.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Secretary
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Chennai 600 018.

+1cc to Government Pleader sr.11321
+1cc to Mr.J.Deliban, Advocate sr.no.11761

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nr 19/03/2019