

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.04.2019

CORAM:

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

W.P. No.8566 of 2019

- 1.P.V.Gopal
- 2.R.Gowthaman
- 3.S.Nagarathinam
- 4.S.Karunanidhi

.. Petitioners

Vs.

- 1.The State of Tamil Nadu
Rep. by Secretary to Government
Highways Department
St. George Fort, Secretariat
Chennai - 600 009
- 2.The State of Tamil Nadu
Rep. by Secretary to Government
Department of Municipal Administration
St. George Fort, Secretariat
Chennai - 600 009
- 3.The District Collector
Coimbatore
- 4.The Commissioner
Coimbatore Corporation
Coimbatore
- 5.The Member Secretary
Local Planning Authority
Coimbatore
- 6.The Inspector of Police (Traffic Wing)
Peelamedu Police Station
E.22, Peelamedu
Coimbatore - 641 004

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India seeking a WRIT OF MANDAMUS directing the respondents to straighten and widen the "S" bend in the middle of Thanneerpandal Road, Vilankurichi Road, Kodicia Road and Gandhi

Managar Junction situated in Ward No.37 of Coimbatore East Zone, Coimbatore Corporation by implementing the 5th respondents resolution No.4 dated 19.2.2013 and approved in File No.1565/2013/MH5 by 4th respondent, forthwith so as to reduce the accidents and to have free access by considering the representation dated 22.9.2018.

For Petitioner : Mr.R.Prabakar

For Respondents: Mr.E.Manokaran,
Addl. Govt. Pleader for R1 to R3, R5 & R6
Mr.K.Magesh for R4

O R D E R

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

P.V.Gopal, first petitioner and claiming himself to be a public spirited person, with public interest, along with three others, have filed the instant public interest litigation, for a mandamus to the respondents to straighten and widen "S" bend, in the middle of Thanneerpandal Road, Vilankurichi Road, Kodicia Road, and Gandhi Managar junction situated in Ward No.37 of Coimbatore East Zone, Coimbatore Corporation, by implementing resolution No.4, dated 19.2.2013 passed by the 4th respondent, forthwith so as to reduce accidents, and to have free access for the public.

2. Petitioners have further submitted that in their area, "S" bend is a junction point, connecting several arterial roads of Coimbatore city, viz., Thanneerpandal Road, Kodicia Road, Vilankunchi Road, and Gandhimanagar Junction, and the said "S" bend, is situated nearby to Salem-Kochin National Highway, at 150 Kms. "S" bend is the cause for several accidents, and heavy traffic congestions, in the area and that Public have also named the said bend junction, as dangerous curve. In fact, even the 4th respondent-Corporation, while passing the resolution, terming "S" bend junction, as a dangerous area, felt that the traffic congestion can be eliminated, by widening and straightening the arterial road, by resorting to acquisition of the required lands and removal of some of the encroachments in that area, if any. Pursuant to the resolution of the Member Secretary, Local Planning Authority, Coimbatore, 5th respondent herein, dated 19.02.2013, the 4th respondent-Corporation has passed a resolution, dated 22.02.2013.

3. Petitioners have further submitted that when no action was taken on the resolution of the 4th respondent-Corporation, they made representations to implement the resolution, for

reducing the road accidents and to avoid traffic congestion. Dinamalar Kovai Edition also published an article on 21.08.2015, sensitizing the issue. Even after five years, no action has been taken for widening of the road, which is a dangerous bend and that traffic flow has considerably grown manifold in that area, equally in the increase of accidents.

4. For straightening and widening of "S" bend road, the 1st petitioner has sent representations, dated 13.07.2018 and 22.09.2018, through his non governmental organization, viz., Peelamedu Consumer Voice, in which, except the 3rd petitioner, the other petitioners are office bearers. To espouse the cause of public, they have staged peaceful demonstration and sensitized the government for the removal of the 'S' bend. Since no action is taken on the resolutions of both the respondents 4 and 5 and also on the representations of the petitioners, they have filed this writ petition, for the relief, as stated supra.

5. On instructions from the Commissioner, Coimbatore Corporation, Coimbatore, 4th respondent herein, Mr.K.Magesh, learned counsel for the 4th respondent submitted that lands and buildings, situated in Ward No.37 of Coimbatore East Zone, Coimbatore Corporation, belong to private individuals. Admittedly, there is a bend in Thanneerpandal Road, Vilankurichi Road, Kodicia Road and Gandhi Managar junction. Therefore, for straightening the same, private negotiation was made by the 4th respondent-Corporation with the land owners, for purchase and thereafter, to demolish the same. The land owners have sought for higher value and private negotiation did not succeed.

6. Learned counsel for the 4th respondent-Corporation further submitted that in view of the failure of private negotiation, there is no other alternative, except to acquire the lands, by resorting to land acquisition laws and therefore, mandamus sought for, cannot be granted.

Heard the learned counsel for the parties and perused the materials available on record.

7. Though the petitioners have contended that the "S" Bend has caused several accidents, no details are furnished in the supporting affidavit to the writ petition. Though the lands and buildings in that area, are encroached, as per the stand of the Municipality, it is not so. Municipality has not endorsed the contention that they are encroachers.

8. Right to property, under Article 300-A, is a constitutional right. In several decisions, the Hon'ble Supreme Court has held that to hold a property is not only a Constitutional right, but also a human right. [Chandigarh Housing Board v. Major General Devinder Singh {2007 (9) SCC 67}; Lachhman Dass v. Jagat Ram {2007 (10) SCC 448}; Vimlaben Ajitbhai Patel v. Vatslaben Ashokbhai Patel {2008 (4) SCC 649}; and N.Padmamma v. S.Ramakrishna Reddy {2008 (15) SCC 517}].

9. It is trite law that right to property is no more a Fundamental Right. But it is a Constitutional Right under Article 300-A of the Constitution of India. Though the right to property has been deleted from part III of the Constitution of India, the Hon'ble Supreme Court in the following decisions, has declared the same as a constitutional and human and further held that the said right cannot be deprived of, except under the authority of law.

(i) In State of U.P., v. Manohar reported in 2005 (2) SCC 126, at Paragraphs 5, 7 and 8, the Hon'ble Supreme Court, held as follows:

"5. As a matter of fact, the appellants were unable to produce even a scrap of evidence indicating that the land of the respondent had been taken over or acquired in any manner known to law....

.....
7. Ours is a constitutional democracy and the rights available to the citizens are declared by the Constitution. Although Article 19(1)(f) was deleted by the Forty-fourth Amendment to the Constitution, Article 300-A has been placed in the Constitution, which reads as follows:

"300-A. Persons not to be deprived of property save by authority of law.—No person shall be deprived of his property save by authority of law."

8. This is a case where we find utter lack of legal authority for deprivation of the respondent's property by the appellants who are State authorities. In our view, this case was an eminently fit one for exercising the writ jurisdiction of the High Court under Article 226 of the Constitution. In our view, the High Court was somewhat liberal in not imposing exemplary costs on the appellants."

(ii) In *Chairman, Indore Vikas Pardhikaran v. Pure Industrial Coke & Chemicals Ltd.*, reported in 2007 (8) SCC 705, at Paragraphs 53 to 56, the Hon'ble Supreme Court held as follows:

"53. The right to property is now considered to be not only a constitutional right but also a human right.

54. The Declaration of Human and Civic Rights of 26-8-1789 enunciates under Article 17:

"17. Since the right to property is inviolable and sacred, no one may be deprived thereof, unless public necessity, legally ascertained, obviously requires it and just and prior indemnity has been paid".

Further under Article 17 of the Universal Declaration of Human Rights, 1948 dated 10-12-1948, adopted in the United Nations General Assembly Resolution it is stated that: (i) Everyone has the right to own property alone as well as in association with others. (ii) No one shall be arbitrarily deprived of his property.

55. Earlier human rights were existed to the claim of individuals right to health, right to livelihood, right to shelter and employment, etc. but now human rights have started gaining a multifaceted approach. Now property rights are also incorporated within the definition of human rights. Even claim of adverse possession has to be read in consonance with human rights. As President John Adams (1797-1801) put it:

"Property is surely a right of mankind as real as liberty."

Adding,

"The moment the idea is admitted into society that property is not as sacred as the laws of God, and that there is not a force of law and public justice to protect it, anarchy and tyranny commence."

56. Property, while ceasing to be a fundamental right would, however, be given express recognition as a legal right, provisions being made that no person shall be deprived of his property save in accordance with law."

(iii) In *Dev Sharan v. State of U.P.* reported in 2011 (4) SCC 769, relied on by the learned counsel for the petitioner therein, there was a time gap of 11 months and 23 days, almost a year between the publication of Section 4(1) and Section 17 notification and Section 6 Declaration in the local newspaper. The acquisition proceedings were assailed on the ground that

there was no reason to invoke the emergency provision. On the aspect of nature of right of the land owners, under Section 5-A of the Land Acquisition Act, 1806, the Hon'ble Supreme Court, at Paragraphs 17 and 18, held as follows:

"17. In construing the concept of public purpose, the mandate of Article 13 of the Constitution that any pre-constitutional law cannot in any way take away or abridge rights conferred under Part-III must be kept in mind. By judicial interpretation the contents of these Part III rights are constantly expanded. The meaning of public purpose in acquisition of land must be judged on the touchstone of this expanded view of Part-III rights. The open-ended nature of our Constitution needs a harmonious reconciliation between various competing principles and the overhanging shadows of socio-economic reality in this country.

18. Therefore, the concept of public purpose on this broad horizon must also be read into the provisions of emergency power under Section 17 with the consequential dispensation of right of hearing under Section 5A of the said Act. The Courts must examine these questions very carefully when little Indians lose their small property in the name of mindless acquisition at the instance of the State. If public purpose can be satisfied by not rendering common man homeless and by exploring other avenues of acquisition, the Courts, before sanctioning an acquisition, must in exercise of its power of judicial review, focus its attention on the concept of social and economic justice. While examining these questions of public importance, the Courts, especially the Higher Courts, cannot afford to act as mere umpires."

(iv) In Delhi Airtech Services Pvt. Ltd., v. State of U.P., reported in 2011 (9) SCC 354, the right created in favour of citizens vis-a-vis the duties imposed on the State, under the Land Acquisition Act, has been explained. It was a case, emergency provisions were invoked. At Paragraphs 117 and 161, the Hon'ble Supreme Court held that,

"117. Despite the fact that Right to Property in terms of Article 19(1)(f) of the Constitution stood deleted from Chapter III of the Constitution, vide 44th Constitutional Amendment, 1978, Article 300A of the Constitution was added by the same Constitutional Amendment, mandating that 'no person shall be deprived of his property save by authority of law'. This indicates that the Constitution still

mandates that right to property may have ceased to be a fundamental right, but it is still protected by the Constitution and is a Constitutional right. Constitution also provides that deprivation of that right cannot be brought about save by authority of law.

161. The expression 'law' which figures both in Article 21 and Article 300A must be given the same meaning. In both the cases the law would mean a validly enacted law. In order to be valid law it must be just, fair and reasonable having regard to the requirement of Article 14 and 21 as explained in Maneka Gandhi (supra). This is especially so, as 'law' in both the Articles 21 and 300A is meant to prevent deprivation of rights. Insofar as Article 21 is concerned, it is a Fundamental Right whereas in Article 300A it is a constitutional right which has been given a status of a basic human right."

10. Inasmuch as the lands and buildings are owned by private individuals, the prayer sought for, in this writ petition, cannot be granted, as it would be amounting to infringement of the Constitutional Rights of the private individuals under Article 300-A of the Constitution of India.

11. In view of the above decisions, no Mandamus can be issued, depriving the constitutional right of any person.

12. Prayer sought for, has to be rejected and accordingly, rejected. Hence, the writ petition is dismissed. No costs.

Sd/-

Assistant Registrar(CS III)

सत्यमेव जयते

//True Copy//

Sub Assistant Registrar

skm

To

1.The Secretary to Government
State of Tamil Nadu
Highways Department
St. George Fort, Secretariat
Chennai - 600 009.

2.The Secretary to Government
State of Tamil Nadu
Department of Municipal Administration
St. George Fort, Secretariat
Chennai - 600 009

3.The District Collector
Coimbatore

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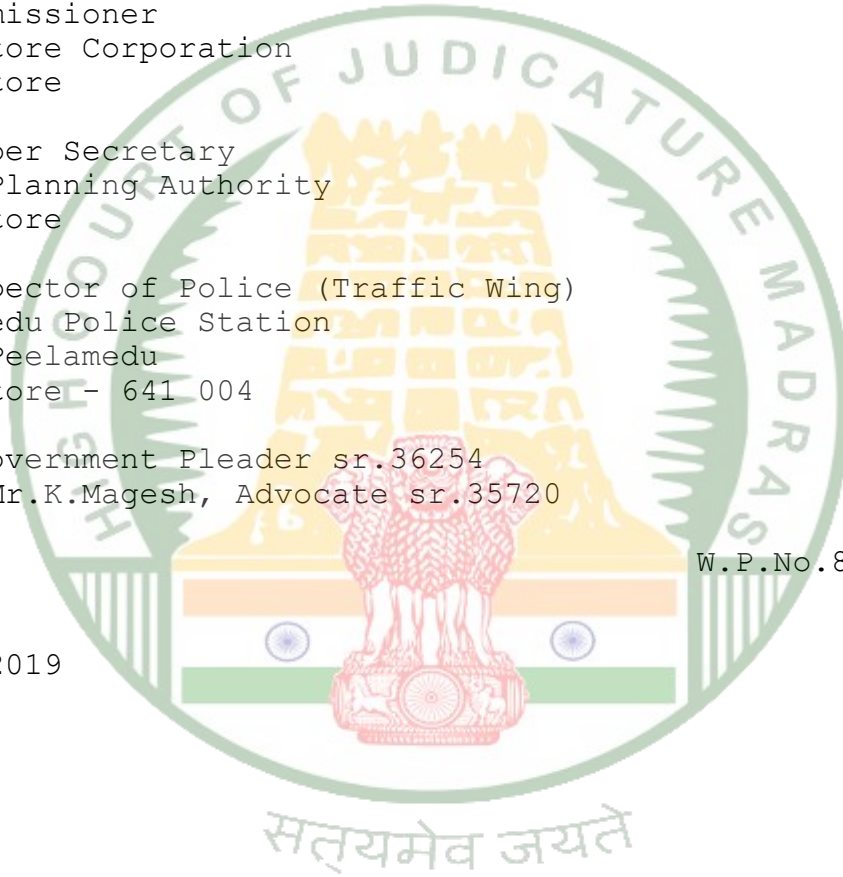
6.The Inspector of Police (Traffic Wing)
Peelamedu Police Station
E.22, Peelamedu
Coimbatore - 641 004

+1cc to Government Pleader sr.36254

+1cc to Mr.K.Magesh, Advocate sr.35720

W.P.No.8566 of 2019

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