

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD
W.P.No.4414 of 2019
and W.M.P.No.4968 of 2019

C.Jayaraj

.. Petitioner

Vs.

1. The Government of Tamil Nadu,
Represented by its Principal Secretary,
Highways Department, Fort St.George
Chepauk, Chennai - 600 009.
2. The Director Collector,
Kancheepuram District,
Office at Collectors Office,
Kancheepuram - 631 501.
3. The Chief Engineer (Metro),
Highways Department,
HRS Complex, Guindy, Chennai - 600 032.
4. The Divisional Engineer (Highways),
Chennai Metropolitan Development Scheme,
Schemes Division 1, Chennai - 600 032.
5. The Commissioner,
Pallavapuram Municipality,
Pallavapuram, Chennai - 600 004.
6. The General Manager,
Southern Railway,
Park Town, Chennai - 600 003.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India seeking a Writ of Mandamus directing the respondents to complete the pedestrian subway constructed at L.C.No.27 Chrompet-Radha Nagar Main Road in terms of G.O.Ms.No.245 Highways (S.X.U-2), dated 05.12.2003 granting Administrative sanction for construction of a pedestrian subway by laying and completing the approach road and pathway on the side of Radha Nagar Main Road on the East and GST road on the West without in

any way modifying the usage of the said subway from Pedestrian subway to limited use vehicular subway.

For Petitioner	: Mr.Raja Kalifulla SC for Mr.M.Jayendrakumar
For Respondents 1 to 4	: Mr.Akhil Akbar Ali Government Advocate
For Respondent 5	: Mr.P.Srinivas
For Respondent 6	: Mr.P.T.Ramkumar Standing Counsel

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O R D E R

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

Claiming himself to be a resident of Pallavaram and a public spirited person, the petitioner has filed the instant public interest litigation seeking a Writ of Mandamus to direct the respondents to complete the pedestrian subway constructed at L.C.No.27 Chrompet-Radha Nagar Main Road in terms of G.O.Ms.No.245 Highways (S.X.U-2), dated 05.12.2003, granting Administrative sanction for construction of a pedestrian subway by laying and completing the approach road and pathway on the side of Radha Nagar Main Road on the East and GST road on the West without in any way modifying the usage of the said subway from Pedestrian subway to limited use vehicular subway.

2. Petitioner has submitted that Pallavaram Municipality comprises of 42 wards with a population of around 2.5 lakhs and there are five Railway level crossings located within the Pallavaram Municipal Limits. In view of frequent accidents and loss of life, Government of Tamil Nadu, in consultation with the Southern Railways, decided to construct over bridges, Pedestrian and vehicular subway across the Railway lines, in a phased manner to eliminate Human casualties.

3. Petitioner has further submitted that in L.C.No.24 viz Eawari Nagar-Overbridge and Light Vehicular Sub way, L.C.No.28 viz M.I.T Gate - Over bridge, L.C.No.25 Dargha Road- Light Vehicular Sub way was constructed and at L.C.No.26 viz Vaishnava College road there is a proposal of vehicular subway.

4. Petitioner has further submitted that Pallavaram Municipality in its regular meeting held on 29.02.2000, passed a resolution to construct Foot Over bridge and Pedestrian subway at L.C. No.25 viz Dargha road at present vehicular sub way was in existence and a foot over bridge at L.C. No.27 viz Radha Nagar main road. The Chennai-Trichy National Highway runs, North-South, parallel to the Railway lines. Radha Nagar Main road runs East-West and joins the service road on the western extremity and GST road. There was a manual level crossing which

connects the Radha Nagar Main road and GST road. In view of heavy flow of Traffic there is frequent traffic congestion and disruption in the movement of vehicles. In such condition, it was the pedestrians who were put to severe hardship.

5. Petitioner has further submitted that the Government of Tamil Nadu, after considering the said proposal and after obtaining a report from the Chief Engineer (Schemes), dated 21.08.2002 and 24.09.2002 and 20.11.2003, sent after discussion with the Southern Railways, issued G.O.Ms.No.245, Highways (S.X.U-2) dated 05.12.2003, granting Administrative sanction for construction of limited use subway in the place of L.C.No.25 (Durga salai) at Kms 23/9-10 between Pallavaram and Chrompet station at a cost of Rs.573 lakhs and a pedestrian subway in the place of L.C.No.27 Chrompet-Radha Nagar Main road at Kms. 25/5-4 at a cost of 300 lakhs. Both the projects are to be taken up by the Government of Tamil Nadu and Southern Railway by sharing the cost equally and advised the Chief Engineer (Metro), Highways Department, Guindy / third respondent herein, to obtain financial assistance from HUDCO, for implementing the schemes.

6. It is further submitted that pursuant to the said Government order, Limited Use Subway, in the place of L.C.No. 25 (Durga salai) at Kms 23/9-10 between Pallavaram and Chrompet station was constructed and opened to Public in the year 2006. In so far as the construction of Pedestrian subway in the place of L.C.No.27 Chrompet-Radha Nagar Main road at Kms.25/5-4 is concerned, Southern Railways have completed their portion of the Subway by putting up pre-fabricated Box, below the four lane Railway track for a length of 27 mts and width of 5 mts and height of 2.5 mts. According to the petitioner, the District Collector, Kancheepuram District, the Chief Engineer (Metro) Highways Department, Guindy, The Divisional Engineer (Highways), Chennai Metropolitan Development Scheme, Guindy and Commissioner, Pallavaram Municipality / respondents 2 to 5 herein, did not take any steps nor any interest in completing this project by laying approach road on either side and the project remained uncompleted.

7. It is further submitted that Pallavaram Municipality at its regular meeting held on 29.06.2007, passed a resolution to convert the pedestrian subway in the place of L.C.No.27 Chrompet-Radha Nagar Main road at Kms. 25/5-4 into Limited use Vehicular subway, taking into consideration the Development of the Municipality and the growth of Traffic in the Locality and there was objections by the residents of Radha Nagar as the Main road is hardly 20 feet in width and movement of Vehicles will cause heavy traffic congestion and inconvenience to the residents. Accordingly, based on this resolution, the Chief Engineer (Metro) Highways Department, Guindy / third respondent

herein held a meeting with the sixth respondent, and a fresh Scheme was prepared by the Southern Railways on 17.11.2008. This proposal was sent to the Government of Tamil Nadu / first Respondent herein on 24.09.2008 for construction of Limited use subway, as resolved by Pallavaram Municipality in its meeting on 29.06.2007. In terms of this revised Scheme, Runway in Subway would be with a width of 5.5.mts, approach road with a width of 5.5 mts on both sides of Radha Nagar main road, Drainage and Pedestrian path with a width of 1.5mts, pedestrian in subway to rear Tambaram side with a width of 2mts and approach road at NH-45 on Chrompet side with a width of 5.5 Mts. This has been recommended by Pallavaram Municipality by their Resolution No.287. The width of the run way was reduced to 4 Mts as per the public request, instead of 5.5 Mts.

8. It is further submitted that Government of TamilNadu did not grant approval for conversion of Pedestrian subway in to limited use Vehicular Sub way at L.C.No.27.

9. It is further submitted that Pallavaram Municipality conducted a meeting held on 24.11.2011, after considering the fact that L.C.No.24 and 25 vehicular subway constructed and L.C.No.28 road Over Bridge constructed is already being used by the Public and at 200 ft Pallavaram-Thuraipakkam link road a New over bridge has been constructed. Hence the vehicles approaching from GST road towards Chrompet, Hastinapuram and Nemlichery are using the above said bridges. In such circumstances, it is sufficient to construct L.C.No.27 as Pedestrian Subway and for two wheelers.

10. It is further submitted that the third respondent proceeded to acquire lands along Radha Nagar main road and this led to several litigations as the affected land owners challenged the Acquisition proceedings before this Court and the entire project was kept in cold storage and the Concrete Box was kept closed to avoid illegal activities. The residents of Radha Nagar were put to tremendous hardship and ultimately the acquisition proceedings were upheld.

11. Petitioner has further submitted that during the interregnum period, the Highways Department have also put up an Escalator, Over bridge foot path runs from East to West on the Chrompet side on the service lane and there is no space to lay any approach road that could be formed in GST Road. The Chief Bridge Engineer, Southern Railway by his letter dated 23.04.2017, informed the third respondent that in view of this development the Southern Railways cannot part with their lands to the Highways department for forming approach road, as they require the same for laying additional track and passenger facilities at Chrompet station and expansion of the Railway

station. Accordingly, they advised the third respondent to confine the Subway as already envisaged and construction be used as comprehensive Pedestrian subway, as adjoining Subway at L.C. No.26, is already in use as a vehicular subway and requested the authorities to take an early decision, as the subway was put up several years back and not been completed due to various local issues.

12. It is further submitted that Pedestrians form the largest single road user group. Pedestrians are the most vulnerable group in respect of facilities comprised discriminately of the young and elderly. It is thus essential to provide facilities that are well designed and appropriate to enhance pedestrian safety. Planning and designing good pedestrian infrastructure will benefit the whole community. Non vehicular mobility for pedestrians will be safe and enjoyable facility. There are definite guidelines outlining the policies, planning, and standard for good pedestrian infrastructure and facilities. The Highways department is responsible for managing the State road networks and freeways as well as safe and efficient road access for all road users. However, the department has compromised on the safety of pedestrians due to the political pressure, by vested interest.

13. It is further submitted that the guidelines for Pedestrian facilities was approved by the Highways Specifications Standard Committee and approved by the IRC council in November 2011. Accessible design is the foundation and primary concern for all pedestrian design, hence all pedestrian facilities need to be planned, designed, operated and maintained so that it is usable by everyone including those with disabilities or using mobility aids. As considerable number of pedestrians traffic is the victim of road accidents. It is desirable to segregate pedestrian and vehicular subways distinctly without any conflict of interest. The general principle is that pedestrian facility should be planned as an integrated manner so as to ensure a continuous pedestrian flow. Convenience of pedestrians should be paramount consideration to ensure full utilization of the facility.

14. Petitioner has further submitted that the authorities originally conceived with an idea of constructing exclusive pedestrian subway in the place of L.C.No.27 Chrompet-Radha Nagar Main road at Kms.25/5-4. The design was approved and administrative sanction was accorded in the year 2003 by the Government for construction of pedestrian subway and funds were also allotted. Southern Railways have completed their portion of the Subway in the year 2008 by putting up pre-fabricated Box, below the four lane Railway track. But for reasons best known to the respondents 2 to 5, they did not take any steps nor any interest in completing this project by laying approach road on

either side and the project remained uncompleted.

15. Petitioner has further submitted that with successive changes in the Municipality, the scheme was changed according to the whims and fancies of the ruling party and political pressure was brought on the Highways department to change the usage originally from pedestrian subway to limited use vehicular subway and thereafter as pedestrian and two-wheeler subway. But none of these proposals was approved by the Government by modifying the earlier Government order issued in G.O.Ms.No.245, dated 05.12.2003. Further according to the petitioner, it is well settled that a Government order is issued in the name of the Governor of Tamil Nadu and the same cannot be changed by administrative orders. If any modification or change is proposed it can be done only by another Government order. But till date, the Government order issued for construction of pedestrian subway at L.C.No.27 has not been modified by any Government order. The authorities are bound by the Government order and have to complete the project as originally envisaged and the subway should be completed by laying approach pathway and open to public use without any delay.

16. Petitioner has further submitted that the residents have given several representations to the respondents to complete the Pedestrian subway but the respondents 2 to 5 are not taking any steps. As the representations remained unanswered, the petitioner has filed the instant writ petition seeking for the relief as stated supra.

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

18. Railways have constructed and completed the railway portion of Limited Use Subway (LUS) with 5.50 m carriageway for four wheeler & two wheeler vehicular traffic and 2.00 m for pedestrian footpath with a height of 3.50 m, on March, 2012 itself. Divisional Engineer (H), CMDP Division -I, Guindy, Chennai / fourth respondent herein, has filed counter affidavit dated 28.02.2019, contending inter alia that approach ramp on either side has to be formed by the Highways Department. In paragraph Nos.12 to 14 it is stated hereunder:

"12. As the Railways has constructed their portion of Limited Use Subway in March 2012 itself with 5.50m carriageway for vehicular traffic and 2.00m for Pedestrian footpath, for which approaches ramp on either sides only has to be formed by Highways Department. If the same may be constructed it will serve the dual purpose for vehicular traffic as well as pedestrian traffic for which limited use subway (LUS) portion was

constructed by Railways. Hence, Highways Department by its letter dated 12.04.2018 requested the Chief General Engineer (Railways) to permit to shift the existing Escalator of the foot over bridge GST road side in the Railway land. Based on which Southern Railway by its letter dated 14.05.2018 has granted permission to shift and relocate the existing escalator in the railway land. Hence it has been decided by Highways Department to construct approaches to the already constructed Limited Use Subway by Railways as per the revised G.O. Ms. No.73, Highways and Minor Ports (HQ2) Department dated 19.04.2012. The statement of petitioner that the adjoining subway at LC.No.26, is already in use as a vehicular subway is not true. The proposal is at the initial stage and it is not yet finalized by both Railways and Highways Department.

13. It is submitted that, as the LC-27 crossing is finalized to be constructed as Limited Use Subway providing facilities for both light four wheeler and two wheeler vehicular traffic upto height of emergency vehicles (Ambulance, etc.,) and pedestrian traffic to cross the tracks safely, the petitioner statement of the department compromises on the safety of pedestrians not hue. All measures have been taken to construct a safe pathway for both light vehicular and pedestrians at this location.

14. It is submitted that, as stated by the petitioner the convenience of pedestrians is considered and hence 2.00m width of footpath is provided in the Limited Use Subway already constructed by Railways for which approach ramp are going to be formed by Highways. The design of this Limited Use Subway was carefully made by considering the safety and convenience of the pedestrian movements at this location. Vehicular traffic and pedestrian traffic is well channelized at this limited use subway by ensuring Pedestrian safety."

19. The Divisional Engineer (Highways), Chennai Metropolitan Development Scheme, Schemes Division - I, Chennai - 600032, has further submitted that G.O.Ms.No.73, Highways and Minor Ports (HQ2) Department, dated 19.04.2012, was issued to construct

pedestrian subway L.C.No.27, has not been modified and the Southern Railway has completed their portion of the limited subway in 2012 itself. Highways department has to provide the approach road. Land owners whose lands were acquired, filed writ petitions before this Court challenging the Notification and obtained interim orders. Writ appeals filed by them were dismissed on 16.11.2018. In view of the litigation, physical possession of the lands could not be taken.

20. Ms.E.Thenmozhi, Assistant Engineer, Highways Department, Government of Tamil Nadu, present in Court, stated that W.A.No.2823 of 2018, filed by the land owners was also dismissed by a Hon'ble Division Bench of this Court on 20.12.2018 and physical possession would be taken today.

21. Land owners have sought for extension of time, Ms.E.Thenmozhi, Assistant Engineer, further submitted that no sooner physical possession of the subject land is taken, tender notification will be issued for the purpose of providing approach roads and after finalisation of such tender, work will commence. According to her, laying of approach roads, in accordance with the specifications would take considerable time, as the approach roads are located near a National Highway and that there would be traffic congestion also. She also explained the other difficulties, in formation of the approach road, from either side of the limited use subway. However, she submitted that the project, if undertaken after taking over of physical possession, could be completed in 18 months. Submission is placed on record.

22. We have gone through the entire materials on record and though there is a delay, in construction of the limited use subway and use thereof, Southern Railway, as well as the Highways Department, have arrived at a decision that the limited use subway, would be used for movement of vehicles and pedestrians.

23. Mr.P.T.Ramkumar, learned Standing Counsel for the Southern Railways / sixth respondent herein, submitted that the height of the limited use subway is 12 feet; width is 27 meters and length is 36 meters. As already recorded, there is sufficient carriage way for vehicular traffic and 2 meters for pedestrian footpath.

24. Therefore, the apprehension of the writ petitioner that safety of the pedestrian is not taken note of while constructing the limited use subway is not substantiated. Delay in the execution of the approach road has been explained and the same is accepted. Contention of the petitioner that the project has

been delayed, only to facilitate a local politicians is unsubstantiated.

25. What remains to be considered is the formation of approach road. There shall be a direction to the Secretary to the Government, Highways Department, Government of Tamil Nadu, Chief Engineer (Metro), Highways Department, HRS Complex, Guindy and Divisional Engineer (Highways), Chennai Metropolitan Development Scheme, Schemes Division-I, Chennai - 32 / respondents 1, 3 and 4 respectively, to form the approach road / approach ramps, within 18 months from today and while doing so, ensure that vehicular traffic and pedestrian traffic is well channelised. Commissioner, Pallavaram Municipality / fifth respondent herein, is directed to extend the fullest cooperation for the purpose of formation of the approach roads.

26. With the above directions, writ petition is disposed of. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Secretary to Government,
Highways Department, Fort St.George
Chepauk, Chennai - 600 009.
2. The Director Collector,
Kancheepuram District,
Office at Collectors Office,
Kancheepuram - 631 501.
3. The Chief Engineer (Metro),
Highways Department,
HRS Complex, Guindy, Chennai - 600 032.
4. The Divisional Engineer (Highways),
Chennai Metropolitan Development Scheme,
Schemes Division 1, Chennai - 600 032.

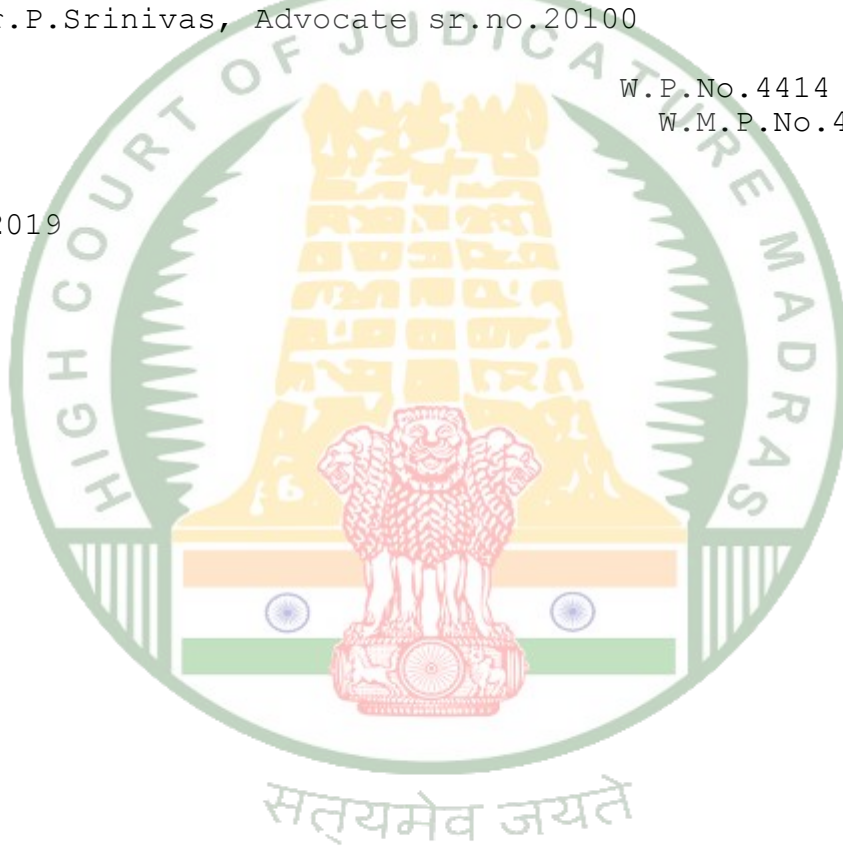
5. The Commissioner,
Pallavaram Municipality,
Pallavaram, Chennai - 600 004.

6. The General Manager,
Southern Railway,
Park Town, Chennai - 600 003.

+lcc to Mr.M.Jayendrakumar, Advocate sr.19257
+lcc to Mr.P.T.Ram kumar, Advocate sr.no.19533
+lcc to Government Pleader sr.no.h19968
+lcc to Mr.P.Srinivas, Advocate sr.no.20100

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