

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13.08.2019

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.17797 of 2017
and
W.M.P.Nos.19305 of 2017
and 3843 of 2019

U.Chandru Petitioner

Vs

1. The Government of India
Dept of Railway
Rep by its Chairman of the Railway Board
Rail Bhavan, 1, Raisina Road,
New Delhi.
2. The General Manager
Southern Railway Office
Central Railway Station,
Chennai-3
3. The Government of Tamil Nadu,
Rep by its Secretary,
Highway Department,
Fort St. George, Chennai.
4. The Chief Engineer,
National Highways,
PWD Complex, Kamaraj Salai,
Chepauk, Chennai.
5. The Chief Engineer,
Construction and Maintainance,
PWD Complex, Kamaraj Salai,
Chepauk, Chennai.
6. The Divisional Engineer,
Highway Department,
Thanjavoor Road, Thiruvarur.
7. The District Collector,
Thiruvarur District.

8. The Revenue Divisional Officer,
Mannargudi, Thiruvavarur District.

9. The Thasildar,
Needamangalam,
Thiruvavarur.

10. The Divisional Railway Manager,
Southern Railway, Thiruchirapalli.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, direct the respondent to take appropriate and necessary steps to construct a Railway Over Bridge (ROB) across the Railway gate situated NH 67 Needamangalam, adjacent to the Needamangalam railway station, Thiruvavarur District and to avoid the accidents of human being.

For Petitioner : Mr.P.Vijendran

For R1, R2 and R10 : Mr.P.T.Ramkumar

For R3 to R9 : Mr.Akhil Akbar Ali
Government Advocate.

O R D E R

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

Petitioner has sought for a writ of mandamus, directing the respondents, to take appropriate and necessary steps, to construct a Railway Over Bridge (ROB), across the railway gate, situated at NH 67 Needamangalam, adjacent to Needamangalam Railway Station, Thiruvavarur District and to avoid the accidents of human being.

2. In support of the prayer sought for, petitioner has contended that he is the Needamangalam Town Secretary of the Communist Party of Indian (CPI) and Union Secretary of AITUC. After a long struggle, the government had established a railway station in Needamangalam. The said railway gate is situated at NH67 road. Everyday, at least 18 trains are passing through this station between 05.15 hrs to 21.45 hrs. All the trains are stopped at least 15 to 30 minutes in this railway station, except goods, wagon, trail trains etc., whenever these trains are passing through this station, the railway gate is being closed at least 15-30 minutes and due to this, general public suffering a lot. They have no other alternative option, other than waiting in this railway gate, about 8 hours per day. Hence,

it is needless to explain the sufferings of the general public.

3. Petitioner is taking various steps to redress the grievances of general public. All his attempts ended in vain. Therefore, petitioner decided to conduct an agitation on 17.04.2012 between 8 a.m. and 5 p.m., in front of the Town Panchayath office, at Needamangalam, demanding immediate redressal for the long standing grievances of the general public in and around Neendmangalam, and whoever travels across the said railway gate. To maintain the law and order, the 7th respondent conducted a peace meeting with the agitators and public. The concerned authorities assured that the metal road from Needamangalam Periyar statue to Ottakadai Palanganathur would be widened immediately by the 6th respondent to reduce the difficulty of the people and to have an alternative route. Following the assurance given by the authorities, the agitation scheduled was temporarily suspended on 17.04.2012.

4. No action was taken by the authorities after the withdrawal of the agitation. The authorities are also aware that the school children are not in a position to go to school in time. Even general public greatly suffer on closure of this railway gate. But the authorities have failed to keep their promise as usual. The inaction of the authorities forced one of the members of that agitation group Mr.selvaraj (Ex. M.P) to approach This Court in W.P.No.19650 of 2012, for issuance of a writ of mandamus "directing the authorities (respondents therein) to take immediate steps to widen the metal road from Needamangalam Periyar statue to Ottakadai Palengalathur, Thiruvarur District enabling the people now passing through Needamangalam railway gate to have easy access to hospitals, educational institutions, public offices etc".

5. In the abovesaid writ petition the 6th respondent therein filed a counter affidavit, and based on the counter affidavit, this Court on 25.09.2012 passed an order, directing the respondents "to complete the widening of the road as expeditiously as possible and preferably within a period of six month from today. It goes without saying that only light traffic shall be allowed in the said road is and heavy vehicles shall be banned from using the road until the road widened and strengthened".

6. Petitioner has further contended that they have conducted rail picketing on 3.12.2013 and after rail picketing a peace meeting was conducted by the respondent with the agitating

group and various railway authorities had attended the meeting and in that meeting various problems faced by the general public by this railway gate and grievances were accepted by the authorities. Thereafter, petitioner has made a representation on 22.07.14 to the railway authorities and other state authorities, but there is no response from any one of them. As usual the railway authorities had failed to do so.

7. He further submitted that they decided to lay siege to Needamangalam railway station from 01.08.14 to 14.08.14. The 8th respondent conducted a peace meeting on 08.08.14 at his office. In that meeting the railway authorities informed that they will take action to construct an over bridge across the railway gate. Therefore, siege was lifted. But no action was taken by the respondent. On 25.09.2014, petitioner made another representation to the respondents, requesting to take necessary action to construct the over bridge. But, respondents did not consider the abovesaid representation. Section 19 of the Railway Act, 1989 confers duty on the respondents to construct an over bridge for the interest of general public. Therefore, petitioner has filed W.P.No.30903 of 2014, for a mandamus, to construct Over Bridge at Needamangalam Railway Station. This Court passed an order on 26.11.2014. But the order was not complied with and therefore petitioner has filed Contempt Petition No.971/2015. This Court felt that there was no willful disobedience of the order, but observed that the Government has to inform the petitioner about the timeline within which the project would commence and completed. But nothing was informed. Petitioner's endeavor is not expecting the information from the Government whereas to commence the project and to complete the same within reasonable period and to avoid the human loss, due to the accidents.

8. Number of accidents occurred between the orders passed in W.P.No.30903 of 2014 and filling the Contempt Petition No.971/2015. After passing the order in Contempt Petition No.971/2015, dated 27.04.2016, totally 78 accidents occurred and 21 persons died. For the abovesaid reasons, petitioner has filed the instant writ petition, for the prayer, as stated supra.

9. Denying the abovesaid averments, Deputy Chief Engineer, Gauge Conversion/I, Southern Railway, Tiruchirappalli, has filed the counter affidavit and the same is extracted hereunder:-

(i) Deputy Chief Engineer, Gauge Conversion/I, Southern Railway, Tiruchirappalli, has submitted that,

the work of Tiruchchirappalli Division, Tiruvarur - Thanjavur Section (Branch Line); Proposed Road Over Bridge in lieu of Level Crossing No.20 at Km 30/000-100 in Nidamangalam Yard, [Highways Department - Project Wing - Thanjavur Circle - Construction of ROB in lieu of LC No.20 at Km 52/4 of Nagai - Gudalore - Mysore Road (NH 67) in between Railway Km 29/800-30/000 at Needamangalam Yard in Needamangalam Railway Station of Thanjavur - Nagore - Karaikal Section] has been included in Railway Works Programme 2015-2016. The alignment/GAD for construction of the Road Over Bridge has to be proposed by the State Highways Department and sent for approval of Railway Department before finalising the alignment.

(ii) He further submitted that, GAD for construction of Road Over Bridge was initially approved on 12.03.2016. The Railways Department executes the work only within the Railway Portion of the Bridge and the remaining area work has to be executed by State Highways Department. After the approval of GAD we issued a Letter of Acceptance dated 21/22.11.2016 to COPCO Engineering Pvt. Ltd., for construction of Railway Portion of Road Over Bridge at a total value of Rs. 11,12,86,056/-.

(iii) He further submitted that, a letter dated 12.05.2017, has been sent to Railway Department by the Chief Engineer, Highways (Projects) intimating the approved alignment involves a "T" junction at above Grade Level which would lead to Traffic Conflicts. Hence a revised alignment without a "T" Junction at above Grade Level is being studied and after approval by the Alignment Committee, it would be forwarded to Southern Railway for further action. It was further advised in the said letter as Railway Portion of the ROB in lieu of LC No.20 and LC No.1 may be taken up for execution by Southern Railway after obtaining approved revised alignment proposal from the Highways Department in view of the cancellation of GAD approved earlier.

(iv) He further submitted that, considering the letter dated 12.05.2017 issued by the Highways Department, the contract awarded for execution of Railway Portion of work are remains cancelled and the he work may be taken up for execution by the Southern Railway after obtaining approved revised alignment proposal from the Highways Department. By letter dated

19.12.2017 the Chief Engineer, Highways (Projects) sent a revised alignment plan and GAD for construction of ROB in lieu of LC No.20 and requested Railways to send our approval. By a communication dated 28.2.2018 the Chief Engineer Highways (Projects) suggested some corrections to be made and requested Railways Department to carry out the corrections and sent fresh approved GAD for further processing.

(v) He further submitted that, after approving the corrections suggested by Highways Department, by letters dated 02.05.2018 and 14.05.2018 the revised General Arrangement Drawing (GAD) approved by Railways for construction of Road Over Bridge was communicated to the Chief Engineer, Highways (Projects) by the Chief Bridge Engineer, Southern Railways.

(vi) Petitioner has submitted that, the minutes recorded in co-ordination meeting held on 11.12.2018 between Highway and Railway Department officials would indicate Land Plan Schedule for the above projects has been sent to the District Collector, Thiruvavur on 26.12.2017 and a notification under Section 15(2) of Land Acquisition Act was published on 08.08.2018 and Over Bridge has to be executed after following all the procedures like finalizing the alignment, analyzing, the technical feasibilities and allocation of sufficient funds for execution of the work. Hence considerable time has been taken by concerned departments for finalizing this Project and to commence the work.

(vii) He has further submitted that, the Petitioner earlier filed a Writ Petition in W.P.No.3090-3/14 which was disposed of by this Court on 26.11.2014 directing the concerned authorities to take necessary actions. The Contempt Petition No.971/2016 filed by the Petitioner was dismissed by this Honble Court on 27.04.2016. Without waiting for the authorities to take a decision for commencement of the work after following all due procedures, the Petitioner has filed the present Writ Petition which is barred by the settled Principle of Res Judicata and is liable to be dismissed on this ground.

10. Divisional Engineer, Highways Department, Construction and Maintenance, Tiruvavur, has filed a status report, which reads thus:-

(i) It is submitted that the work of Construction of Railway Over Bridge in lieu of LC 20 at Km. 52/4,

Nagai - Gudalore - Mysore road in between Railway at Km. 27/700 - 900 at Needamangalam Yard in Needamangalam Railway Station of Thanjavur - Nagore - Karaikkal Section was covered under the Jurisdiction of the Divisional Engineer (H), Projects, Thanjavur and the present status of the work was obtained from the Divisional Engineer, Highways, Projects and hereby submitted to the Court.

(ii) It is submitted that the Status report for the above work with diary of events as follows.

- ◆ The work was administratively sanctioned vide G.O. 2D No.24 dated. 29.10.2013 for Land Acquisition, Shifting of service utilities and Investigation charges for Rs. 10.6788 Crores and was included in Railway Works Programme 2015- 2016.
- ◆ The Alignment for ROB was prepared and got approved by Alignment Committee on 03.01.2014.
- ◆ The Chief Bridge Engineer, Southern Railways inspected the site on 11.04.2015 and instructed to add LC 1 as both the LC 20 and LC 1 lies within 1 km distance.
- ◆ The Revised Alignment including LC 1 was prepared and got approved by Alignment Committee on 10.06.2015.
- ◆ The Approved Railway GAD was received on 12.04.2016.
- ◆ Land Plan Schedule was submitted to District Collector, Tiruvarur on 18.07.2016.
- ◆ The Chief Engineer (H), Projects, Chennai instructed to study a revised Alignment as the "T" junction in the merging portion of Mannargudy and Thanjavur arms of the ROB proposed in the Alignment may lead to traffic conflicts, vide Letter No. 363A/W3/2014-2/Dated. 12.05.2017.
- ◆ Three Alternative junction improvement proposals were submitted to Chief Engineer (H), Projects, Chennai for approval vide Letter. No. 109/2014/ AE 1/Dated. 19.07.2015.
- ◆ The Subsoil Exploration was completed on 23.08.2017. The revised Alignment involving the Mannargudy arm with "Y" junction was approved on 26.10.2017.
- ◆ Revised Land Plan Schedule submitted to District Collector, Tiruvarur on 26.12.2017.
- ◆ Railways accepted the proposal of reduction in girder depth (from 2.70 m in LC 20 to 2.10m

and 2.20m in LC 1 to 1.50m) on 11.04.2018 and the approved Railway GAD was received on 17.05.2018.

- ◆ District Revenue Officer, Tiruvarur inspected Sithamalli Melpathi and Parapanamedu Village on 10.05.2018. 15 (2) Notification for Parapanamedu
- ◆ Village sent to Government on 01.08.2018.
- ◆ The District Collector, Tiruvarur inspected the Old Needamangalam and Sithamalli Melpathi Village on 07.08.2018 for wet lands. 15 (2) proposal for Old Needamangalam and Sithamalli Melpathi Village has to be sent to the Government, by the District Revenue Officer, Tiruvarur for approval.
- ◆ Present Stage of Work : Combined GAD submitted to the Chief Engineer (H) Projects, Chennai on 04.10.2018. Now the preparation of Combined Bore Chart and Borelog particulars is under progress by the Investigation wing of the Highways Department. In the acquisition of land, 15 (2) Notification to be published for Old Needamangalam Village and 15(1) Notification to be published for Pappanadu and Sithamalli Melapathi Village.

(iii) It is submitted that the petitioner is under wrong impression that Construction of Railway Over Bridge in lieu of LC 20 at Km. 52/4, Nagai - Gudalore - Mysore road in between Railway at Km. 27/700 - 900 at Needamangalam Yard in Needamangalam Railway Station of Thanjavur - Nagore - Karaikkal Station is related to Divisional Engineer (H), Construction and Maintenance, Tiruvarur. But it is lying with the jurisdiction of Thanjavur Highways Projects Division.

It is humbly submitted that the construction of ROB is dealt by Divisional Engineer (H), Projects, Thanjavur the relevant particulars and current stage of work only with the project wing of the Highways Department. It is therefore prayed that the this Court may be pleased to include the Divisional Engineer, Highways, Projects, Thanjavur as one of the Respondent.

11. In the light of the averments made by the Deputy Chief Engineer, Gauge Conversion/I, Southern Railway, Tiruchirappalli and the Divisional Engineer, Highways Department, Construction and Maintenance, Tiruvarur, we only direct the authorities concerned to expedite the process of construction of the Railway Over Bridge.

12. In view of the above, no mandamus is required to be issued. Writ petition is disposed of. No Costs. Consequently, the connected writ miscellaneous petition is closed.

-s/d-

Assistant Registrar (CS-I)

True Copy

Sub-Assistant Registrar

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To

1. Chairman of the Railway Board
Government of India
Department of Railway
Rail Bhavan, 1, Raisina Road,
New Delhi.

2. The General Manager
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Central Railway Station,
Chennai-3

3. The Secretary,
Government of Tamil Nadu,
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4. The Chief Engineer,
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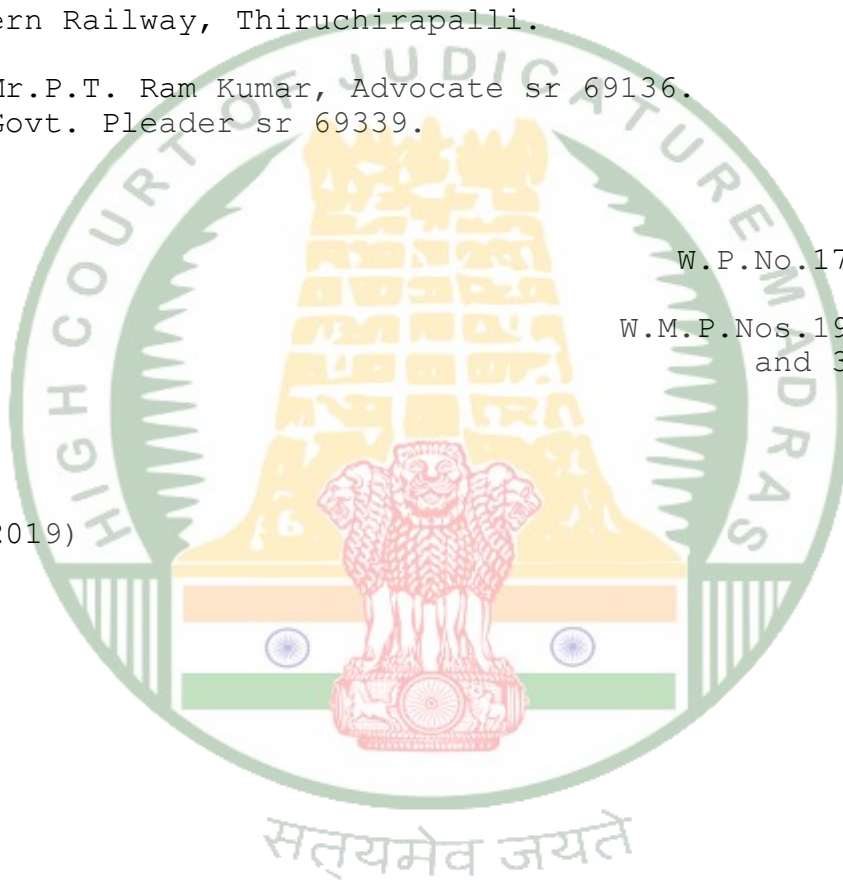
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+1 CC to Mr.P.T. Ram Kumar, Advocate sr 69136.
+1 CC to Govt. Pleader sr 69339.

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and 3843 of 2019

PM(CO)
SP(26/09/2019)



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