



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 30.04.2019

Pronounced on : 08.05.2019

CORAM:

THE HONOURABLE MR.JUSTICE **G.R.SWAMINATHAN**

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W.P. (MD) No.3311 of 2019

and

W.M.P. (MD) No.2599 of 2019

- 1.R.Jenitha Selva Rani
- 2.N.Nadine
- 3.N.Kevin Samuel
- 4.N.Rithik Samuel

... Petitioners

Vs

- 1.The Divisional Engineer,
National Highways,
Old Employment Exchange Building,
Opposite to Lakshman Mahal Kalyana Mandapam,
Nagercoil, Kanyakumari District.
- 2.The Assistant Divisional Engineer,
National Highways, Kuzhithurai Sub-Division,
Kuzhithurai, Kanyakumari District.
- 3.The Junior Engineer,
National Highways,
Kuzhithurai, Kanyakumari District.
- 4.SPL Infrastructure Private Limited,
No.15, Kasturirangam Road,
Alwarpet, Chennai - 600 018.
- 5.SPL Infrastructure Private Limited,
2nd Floor, Skoda Showroom,
Opp. To Bensam Hospital,
Nagercoil - 629 001.
- 6.The Divisional Engineer (Highways),
Construction and Maintenance,
Tamil Nadu State Highways Department,
P.W.D.Compound, Vappamoodu Junction,
Nagercoil, Kanyakumari District - 629 001.
- 7.The Assistant Divisional Engineer (Highways),
Construction and Maintenance,
Tamil Nadu State Highways Department,
Kuzhithurai at Marthandam,
Kanyakumari District.



8.The Union of India,
Represented by its Secretary,
Department of Road Transport and Highways,
New Delhi.

9.The National Highways Authority of India,
G5 and 6, Sector 10, Dawrka,
New Delhi - 110 075,
Represented by its Chairman.

10.The Regional Manager,
Regional Office,
National Highways Authority of India,
Sri Tower, 3rd Floor,
DP34, Industrial Estate,
Guindy, Chennai - 600 032.

11.The Project Director,
National Highways Authority of India,
Nagercoil, Kanyakumari District. ... Respondents

(R6 to R11 are impleaded vide Court order
dated 08.03.2019 in W.M.P.(MD)Nos.3779 and
4443 of 2019 in W.P.(MD)No.3311 of 2019)

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondents to permit the petitioners to make their space in the southern portion, that is, the space of about thirty-three feet in length and about eleven-and-a-half feet in width between their Ebenezer Building and National Highway 47, in their property of 12.745 cents (5.16 ares) of land in Re.Survey Nos.D3/63, D3/62-1 and D3/65-1 (Old Survey No.2313A) of Kuzhithurai Town Village (Former Nalloor Village), Vilavancode Taluk, Kanyakumari District, and the adjoining footpath of about five feet in width to slope towards National Highway 47, so as to make the same in the same level as that of the motorable road therein so as to be fit for taking in vehicles into their said property, and taking the same out of the property, by removing necessary portion of the obstructing retaining wall by the side of National Highway 47, at their expense, with a time to be fixed by this Court.

For Petitioners : Mr.K.N.Thampi

For Respondents : Mr.Su.Srinivasam for R1 to R3

: Mr.M.Rajarajan
Government Advocate for R6 & R7

**ORDER**

The writ petitioners own the petition mentioned lands. They have constructed a commercial complex known as Ebenezar building. They are running a textile shop in portion of the building and other establishments are being run in the said complex. It is abutting NH-47 stretch of Kerala/Tamil Nadu border to Kanyakumari from Km 599+000 to Km 655+000. In view of the construction of fly-over in the abutting highways, the access rights of the writ petitioners have been affected. Therefore, they want to restrain the respondents from making any construction in front of their property particularly the adjoining footpath.

2. Initially there was a doubt as to whether, the construction was being put up by the National Highways Authority of India or the State Highways. It subsequently transpired that the Central Government vide Notification in SO No.1399 (E), dated 27.09.2005 have entrusted the Section in question to the National Highways Authority of India and that the Divisional Engineer, National Highways, Tirunelveli Division, Government of Tamil Nadu has taken over the same in the year 2014. As on date, the stretch in question is only under the maintenance of the State Government. This Court therefore directed the sixth respondent to respond to the concerns raised by the writ petitioners.

3. The sixth respondent had made their stand clear that it is not possible to comply with the writ petitioners' request. This Court called upon the writ petitioners to get an expert report as to what can be done in the matter. The learned counsel appearing for the writ petitioners produced a report dated 27.04.2019 submitted by one Bharat Constructions. The said Engineering concern has indicated that it is possible to grant access to the service road from the writ petitioners' premises in the following manner:-

"The said access can be had in the following manner.

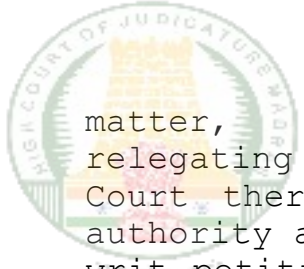
The level of the service road, and the corresponding portion of the retaining wall on its southern side can be removed. One ramp each on the western and eastern side of the said area can be built to connect the said area to the footpath on either side, and retain the footpath.

Protection walls or railing can be made on the western and eastern side of the said area, excluding the footpath portion.

The above can be done in three days period."

A diagram has been appended indicating as to how it is possible.

4. I am of the view that these are technical matters and that it is not possible for this Court to substitute its opinion. Since the sixth respondent appears to have taken a categorical stand in the



matter, I am of the view that no purpose will be served by relegating the writ petitioners to move the sixth respondent. This Court therefore permits the writ petitioners to move the higher authority at the level of Superintending Engineer. It is open to the writ petitioners to place their comprehensive representation before the said higher authority. The said authority will hear the writ petitioners in person and permit them to demonstrate as to how the proposal given by them is feasible of compliance. It is for the said authority to take a decision in the matter. The said authority will dispose of the representation to be submitted by the writ petitioners within a period of three weeks thereafter. It is made clear that this Court has not gone into the merits of the matter. The rights of the writ petitioners are left open.

5.The writ petition is disposed of on these terms. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar (AE) /
Vacation Officer

/ True Copy /

Sub Assistant Registrar(CS)

ias
To:

- 1.The Divisional Engineer (Highways),
Construction and Maintenance,
Tamil Nadu State Highways Department,
P.W.D.Compound,
Vappamoodu Junction,
Nagercoil,
Kanyakumari District - 629 001.
- 2.The Assistant Divisional Engineer (Highways),
Construction and Maintenance,
Tamil Nadu State Highways Department,
Kuzhithurai at Marthandam,
Kanyakumari District.
- 3.The Junior Engineer,
National Highways,
Kuzhithurai, Kanyakumari District.
- 4.The Divisional Engineer (Highways),
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Tamil Nadu State Highways Department,
P.W.D.Compound, Vappamoodu Junction,
Nagercoil, Kanyakumari District - 629 001.



5.The Assistant Divisional Engineer (Highways),
Construction and Maintenance,
Tamil Nadu State Highways Department,
Kuzhithurai at Marthandam,
Kanyakumari District.

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+1 CC to M/s.K.N.THAMPI, Advocate (SR-65319[F] dated 08/05/2019)

+1 CC to M/s.SPL GP (SR-65744[F] dated 10/05/2019)

Order in
W.P. (MD) No.3311 of 2019
08.05.2019

ES/17.05.2019/5P/8C