Yumkham Rother
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IN THE HIGH COURT OF MANIPUR
AT IMPHAL

WP(C) No. 481 of 2020

1. ***Yumnam Biramadhop Singh***, aged about 72 years, S/o (L) Y. Natum Singh, a resident of Keirak Leirak Achouba, P.O. Kakching & P.S. Kakching, Kakching District, Manipur, 795103;
2. Thounajam Nongyai Meitei**,** aged about 60 years, S/o (L) Th. Amuchou Singh, a resident of Keirak Leirak Achouba, P.O. Kakching & P.S. Kakching, Kakching District, Manipur, 795103;
3. Elangbam Irobot Singh**,** aged about 62 years, S/o E. Tombi Singh, a resident of Keirak Leirak Achouba, P.O. Kakching & P.S. Kakching, Kakching District, Manipur, 795103.

… Petitioners

-Versus-

1. **The Director General**, National Rural Road Development Agency (NRRDA), Ministry of Rural Development, Government of India, 5th Floor, NBCC Tower, Vikaji Cama Place, New Delhi – 110066.
2. The State of Manipur represented by **the Commissioner/ Principal Secretary/ Secretary/ Additional Chief Secretary (RD & PR),** Government of Manipur, Secretariat Complex, Babupara, Imphal West District, Manipur – 795001;
3. **The Chief Engineer**, Rural Engineering Department (RED)/Manipur State Rural Roads Development Agency (MSRRDA), Government of Manipur, Smart Office Complex, AT Line, North AOC Imphal, Manipur – 795005;
4. **Executive Engineer**, Rural Engineering Department (RED)/Manipur State Rural Roads Development Agency (MSRRDA), Government of Manipur, Smart Office Complex, AT Line, North AOC Imphal, Manipur – 795005.

… Respondents

B E F O R E
HON'BLE MR. JUSTICE KH. NOBIN SINGH

ORDER

18-12-2020

[1] Heard Shri B. Prem Sharma, learned Advocate appearing for the petitioners; Shri Niranjan Sanasam, learned GA for the State respondents and Shri S. Vijayanand Sharma, learned CGC for the Union of India.

[2] The validity and correctness of the order dated 18-07-2020 issued by the Chief Engineer, RED/ MSRRDA, Government of Manipur is under challenge in this writ petition

[3.1] According to the petitioners, they are the residents of Wabagai Leirak Achouba, PO & PS Kakching, Manipur. The construction of a bridge at Wabagai Leirak Achouba near the wooden bridge was proposed by the former SE, Rural Engineering Department to be constructed under PMGSY. After the said SE being promoted, new officials of the RED suggested another location for construction of the said bridge at a place between the Banyan trees and the Community Hall/ Mandap/ Club/ Electric Transformer. The grievance of the petitioners is that if the bridge is constructed at the new location, it will affect the school playground, where the children are playing, which is also being used as parking for various ceremonies including marriage ceremonies. On top of that, it will affect the homestead lands of some of the residents. In support of their allegations, the petitioners have relied upon the photographs of the old

and new locations. In order to show the old proposed site and the new proposed site, copies of the site plans have been filed as Annexure-A/6 and A/7 which are relied upon by them. Being aggrieved by the change of location of the bridge, the petitioners submitted a representation dated 14-02-2020 to the Chief Engineer, RED, Government of Manipur who failed to consider it. But in the month of June, 2020, the contractor started bringing materials/ machines to constrict the bridge at the new proposed site.

[3.2] Being aggrieved by the inaction on the part of the Chief Engineer, RED, the petitioners filed a writ petition being WP(C) No.289 of 2020 which was disposed of by this Court on 19-06-2020 directing that the Chief Engineer, RED, Government of Manipur shall consider the representation dated 14-02-2020 submitted by the petitioners as quickly as possible within a period of two weeks therefrom.

[3.3] In compliance with this Court's order dated 19-06-2020, the Chief Engineer, RED, Government of Manipur disposed of the said representation vide its order dated 18-07-2020 which is impugned herein by the petitioners on the inter-alia grounds that in a meeting held in the month of September, 2020 at the Social Worker's Club, the Executive Engineer, RED who was present, stated that as per his knowledge from the books, the best place would be the one which was initially proposed by the State Government, the recording of which could be produced before this Court; that the Executive Engineer and the Superintending

Engineer, RED decided to shift the construction of bridge at the new site at the pressure of the local clubs; that the new site is not feasible for construction of the bridge, as it will affect the residents of the area as mentioned hereinabove and that the order dated 18-07-2020 was issued by the Chief Engineer, RED without any application of mind misleading the residents of the area including the petitioners.

[4] In the affidavit filed by the Chief Engineer, RED, it has been stated that before the expiry of two weeks granted by this Court for disposal of the representation, the petitioners filed a writ petition being WP(C) No.330 of 2020 and during its pendency, the representation was disposed of. While disposing of the said writ petition, this Court vide its order dated 21-08-2020 observed that the Court cannot dictate that the bridge should be constructed in a particular location/ site and that the same is a matter of experts. This fact has been deliberately concealed by the petitioners in the present case and therefore, the instant petition deserves dismissal as not maintainable. Relying upon the decisions rendered by the Hon'ble Supreme Court in **Anand Sharadchandra Oka Vs. University of Mumbai, (2008) 5 SCC 217, Ayaaubkhan Noorkhan Pathan Vs. State of Maharastra, (2013) 4 SCC 465**, it has been stated in the affidavit that the petitioners have no locus standi to challenge the construction of the bridge as well as the impugned order. There is no question of shifting the site of construction of the bridge and after the proposal for the construction of the bridge being initiated sometime in the year, 2015, the officials conducted survey and soil testing. The proposal

for the construction of the bridge was considered by the State Level Committee in its meeting held on 08-12-2017 and its recommendation was approved and sanction accorded by the Central Government vide its letter dated 11-01-2018. Tender was floated vide NIT dated 27-10-2018 and the work order dated 26-07-2019 was issued to Shri L. Romesh Singh for construction thereof.

[5] On 09-09-2020 when the instant writ petition was listed for consideration, this Court issued notice to the respondents and the Chief Engineer, RED was directed to produce the relevant file for perusal by the Court. On 14-10-2020 when the matter was listed, it was submitted by the learned Government Advocate that the counter affidavit on behalf of the respondent Nos.3 & 4 had been filed, although the same was not on record. On 03-11-2020, the matter was heard and considered on the issue relating to maintainability of the writ petition and the order thereof was reserved by this Court.

[6] At the outset, it is made clear that it is the State Government or for that matter, the RED, Government of Manipur which has to decide where the bridge will be constructed, under PMGSY, depending the advice of the experts. In other words, it is the domain of the State Government and the Court cannot interfere with it. Moreover, this Court is not competent to examine the feasibility thereof. That is why this Court while disposing of the writ petition being WP(C) No.330 of 2020, made its observation in this regard. In the present case, this Court is concerned

only with the limited issue as to whether the RED, Government of Manipur has shifted the site of the construction arbitrarily, without any application of mind and without any formal decision being taken thereof, which is likely to affect the interest of the residents including that of the petitioners, the school playground etc. In other words, the issue is whether the act of the RED, Government of Manipur is malafide and unreasonable as contended by the petitioners.

[7] Since the issue relating to the maintainability of the writ petition was raised by the respondents, this Court considered it before going into the merit of the case. After having heard the learned counsels appearing for the parties, this Court vide its order dated 19.11.2020 held that the instant writ petition could not be said to be not maintainable for the reasons mentioned therein. The allegation of the petitioners was that the proposed site had been shifted to a new site arbitrarily and without application of mind which is likely to affect the interest of the residents, for which they had relied upon the site plans filed herewith as Annexure-A/6 & A/7. In the counter affidavit filed by the Chief Engineer, RED, the averments made in the petition about the said site plans were not denied. Moreover, it is nowhere stated therein that the site plans might have been manufactured by the petitioners to tarnish the image of the RED, Government of Manipur with malafide intention and that they were not the ones prepared by their engineers. It may be noted that if the averments made in the writ petition are not specifically denied by the respondents, there are decisions of the Hon'ble Supreme Court which have held that

the same shall be deemed to have been admitted by them. In compliance with this Court's order dated 09-09-2020, some files were produced before this Court by the State Government and on perusal thereof, it was seen that there were no site plan at all. Assuming that the site plans produced by the petitioners were not the ones prepared by the engineers of the RED, Government of Manipur, there had to be a site plan which would indicate the exact site where the bridge would be constructed by the RED, Government of Manipur. Such a site plan indicating the exact place of construction except mentioning it generally in the drawings as Wabagai Leirak Achouba, was not there in the file and it was not clear as to whether such a site plan was merely found missing from the file or it had never been prepared by the engineers of the RED, Government of Manipur. In any case, a site plan is said to be indispensable for the construction of a bridge and therefore, it was the duty of the RED, Government of Manipur to produce a copy of the site plan prepared by its engineer, for perusal by this Court, so that the limited issue involved herein could be decided at an early date.

[8] On 03-12-2020, this Court directed the Chief Engineer, RED, Government of Manipur to produce a copy of the site plan, prepared by its engineers and matched with the drawings, for the construction of the said bridge by the next date or alternatively, he might file an additional affidavit by the next date as to the correctness or otherwise of the site plans filed by the petitioners as Annexure-A/6 and A/7 in the writ petition so that the petitioners could be asked to prove them. On 11-12-2020

when the matter came up for consideration, it was submitted by the learned Government Advocate that the site plan had been filed on the previous day but since the same was not on record, the matter was adjourned to 18-12-2020 on which it was found that it was not a site plan as such but a copy of the area shown in the google map.

[9] The fact that no site plan could be filed by the respondent State appears to have shown the fact that it was not there in the file which was placed before this Court for perusal and returned to the Government thereafter. This was the reason as to why this Court felt that the allegation that the site of the construction of the bridge had been shifted, appears to have some merit. A similar case came up before this Court two years ago wherein a decision was taken by the State Government for construction of a school probably under SSA at a particular place at Chairen and the amount was received from the central Government but the school was constructed at another place. This Court did not interfere with it, as the construction of the school was already over by then. In the present case, the construction of the bridge is not yet complete. In the absence of a site plan and taking advantage of it, there is a probability that the site might have been shifted. The change of site could not have been possible, if there was a site plan for the reason that the drawings of the bridge might have been prepared according to the area located at the site /spot. In any case, this Court has expressed no opinion on the allegation of the petitioners because the present case involves disputed question of facts.

[10] When the matter is taken up for consideration, this Court has expressed its difficulty to decide the issue involved herein in the absence of the materials as regards the correct facts of the case. Accordingly, it has been submitted by Shr B. Prem Sharma, learned Advocate appearing for the petitioners that this petition can be disposed of by issuing an innocuous order and therefore, the instant writ petition stands disposed of with the direction that the petitioners shall submit a detailed representation to the Chief Secretary, Manipur within a period of ten days from the receipt of a copy of this order and in the event of such a representation being received, the Chief Secretary, Manipur shall consider it within a month from the date of receipt of the said representation and dispose of the same by issuing a speaking order in respect thereof.

Copies of this order shall be sent to the learned counsels appearing for the parties and the Chief Secretary, Manipur through their WhatsApp/e-mail.

JUDGE

FR / NFR

Victoria