



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.09.2021

CORAM

THE HONOURABLE MR.JUSTICE SETHILKUMAR RAMAMOORTHY

W.P(MD)No.11260 of 2021

D.R.Paulraj

... Petitioner

Vs.

The Executive Engineer,
Public Works Department,
Water Resources Department,
Kothaiyaru Division,
Nagercoil, Kanyakumari District.

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondent to permit the petitioner to construct a small bridge across Therku Malai Odai in Survey No.809 and 810 of Aralvaimozhi Village, Kanyakumari District so as to approach the petitioner's property in Survey No.813/1A and 312/3, Aralvaimozhi Village, Kanyakumari District by considering the representation of the petitioner dated 22.03.2021 within a time frame that may be fixed by this Hon'ble Court.

For Petitioner : Mr.S.C.Herold Singh
For Respondent : Mr.P.Subbaraj,
Counsel for State.

ORDER

The petitioner seeks permission for construction of a small bridge across the Therku Malai Odai in Survey Nos.809 and 810 of Aralvaimozhi Village, Kanyakumari District.

2. The petitioner is a limited company engaged in manufacturing activities. In order to generate electricity and thereby reduce dependence on the distribution licensee, the petitioner has installed a windmill in the year 2011. In order to carry out maintenance and repair work in relation to the said windmill, the petitioner is required to cross the above mentioned waterbody in Survey Nos.809 and 810. For such purpose, the petitioner has requested for permission to construct a small bridge across the said waterbody. The present Writ Petition is filed in that connection.

3. Mr.P.Subbaraj, learned counsel for the State, appears on behalf of the sole respondent. He points out that an order dated 22.07.2021 was issued to the petitioner. By such order, the request of the petitioner was rejected on the ground that the width of the relevant waterbody is thirty metres, whereas the petitioner seeks



permission to construct a bridge with the width of 4.8 metres.

4. Learned counsel for the petitioner states that the order dated 22.07.2021 indicates that there could be a restriction on the free flow of water if a bridge is constructed with the width of only 4.8 metres. Therefore, by reply dated 24.07.2021, the petitioner informed the respondent that no impediment would be caused to the flow of water and that if any such impediment is caused, the petitioner would undertake remedial measures at its cost. Therefore, he submits that the respondent may be directed to reconsider the matter in view of the petitioner's subsequent representation dated 24.07.2021.

5. The decision as to whether the petitioner should be permitted to construct a bridge across the relevant waterbody and, if so, the width of such bridge is a matter to be decided by the executive authority concerned. In judicial review, it is not appropriate to issue directions in such matters since it involves knowledge of the ground realities and relevant technical expertise. Nonetheless, the petitioner has submitted a further representation dated 24.07.2021 wherein it is stated that the flow of water would not be impeded and that the petitioner would remedy any issues caused in such regard at its own cost. The said representation of the petitioner may be considered and disposed of on merits.

6. Accordingly, without entering any findings on the merits of the petitioner's representation, the respondent is directed to consider the subsequent representation dated 24.07.2021 and dispose of the same by a reasoned order after providing a reasonable opportunity to the petitioner. Such reasoned order shall be issued within a period of 30 days from the date of receipt of a copy of this order.

7. W.P.(MD).No.11260 of 2021 is disposed of on these terms without any order as to costs.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

tsg/LM

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the service centre/In-charge concerned.

<https://hcservicescentre.gov.in/hcservices>



To

The Executive Engineer,
Public Works Department,
Water Resources Department,
Kothaiyaru Division,
Nagercoil,
Kanyakumari District.

+1 CC to M/s.SPL. GP (SR-29092[F] dated 15/09/2021)

+1 CC to M/s.S.C.HEROLD SINGH, Advocate (SR-29240[F] dated
16/09/2021)

W.P (MD) No.11260 of 2021
14.09.2021

NSN(CO)
KB(22.09.2021) 3P 4C