

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 20.07.2022

PRONOUNCED ON : 11.10.2022

CORAM :

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

W.P.(MD)No.15152 of 2022
and
W.M.P.(MD)Nos.10844 & 10853 of 2022

1.M.Vijayakumar
2.R.Balagurusamy
3.S.Dinakaran
4.S.Murali
5.K.Renuga

... Petitioners

-Vs-

1.The District Collector,
Theni District.

2.The Divisional Engineer,
State Highways, Building and Maintenance,
Periyakulam Division,
Theni District.

3.The Assistant Divisional Engineer,
State Highways,
Building and Maintenance,
Periyakulam Division,
Theni District.

4.The Public Works Department,
Rep. by its Executive Engineer,
Theni.

.. Respondents

[R4 is *Suo-motu* impleaded vide Court
order dated 19.07.2022 by GRSJ]

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the impugned proceedings on the file of the 3rd respondent dated 20.06.2022 and quash the same as illegal, arbitrary and without jurisdiction and consequently forbear the respondents from building a High Level Bridge across the Odai cum Pathway in Uppodai @ Kothirattodai alongside the Kailasanathar Kovil Road in T.S.No.1310/3B, Thenkarai Division-1 Village, Periyakulam Taluk, Theni District, in a manner obstructing/restricting the access of the petitioners through the odai cum pathway, to their agricultural lands in Survey Numbers 1319/1, 1326, 1327/1, 1372/2, 1328/2, 1316/3A, 1318/2A, 1318/2B, 1310/2A1, 1310/2B1, 1310/2B3, 1310/1A, 1310/1C, 1310/4, 1315, 1316/3, 1318/2, 1319, 1316/1A, 1317 in Thenkarai Division 1 Village, Periyakulam Taluk, Theni District.

For Petitioners : M/s.H.Lakshmi Shankar
For Respondents : Mr.N.Ramesh Arumugam,
Government Advocate

ORDER

Heard both sides and also the Assistant Divisional Engineer, State Highways, Building and Maintenance, Periyakulam Division in person.

2. The writ petitioners are agriculturists. They are aggrieved by the proposed construction of causeway / high level bridge across Uppodai @ Kothirattodai in the Kailasanathar Kovil Road by the impugned communication

dated 20.06.2022 by the third respondent. Challenging the same, the present Writ Petition has been filed.

3.The learned counsel appearing for the petitioners reiterated all the avernments set out in the affidavit filed in support of the writ petition.

4.Per contra, the learned Government Advocate appearing for the respondents as well as the third respondent in person submitted that the Government of Tamil Nadu has taken a policy decision to construct such causeway over all the foot bridges through out Tamil Nadu and that the proposed petition mentioned construction is towards implementation of the aforesaid policy.

5.After carefully considering the rival contentions and going through the materials on record, I am more than satisfied that the writ petition has to be allowed. The respondents have proceeded in the matter as if "one size fits all". The respondents have rejected the request made by the villagers, primarily on the ground that a policy decision has been taken for the entire state and that exception cannot be made in the case of Lakshmipuram Village alone. Such an approach cannot be appreciated. Article 40 of Constitution of India states that the State shall take steps to organize village panchayats and

endow them with such powers and authority as may be necessary to enable them to function as units of self-government.

6.The apprehension of the villagers is that if the proposed construction comes up, their traditional pathway right will be totally affected. Kailasanathar Kovil Road, runs South to North. Uppodai runs West to East. In the intersection point, the proposed construction will come up. The villagers have been using the Uppodai as a pathway for their movement and also for movement of agricultural produce. Of course, during rainy season when there is flow of water, such usage is not possible. During the rest of the year, Uppodai also doubles as a pathway. Even tractors can ply across. This movement will be affected if the construction comes up. That will definitely have a bearing on the rights of the villagers. It is for this reason they have opposed the construction. Without even involving the stakeholders, the proposed project has been conceived. This top-down model may not always work. The villagers and farmers know better as to what is good for them. The department ought not to assume they are endowed with better wisdom. The decision of the department cannot always be imposed on the villagers. It is not as if the stand of the villagers is opposed to public health or morality or order. In such cases, the Court will defer to executive wisdom. Without involving the villagers, the third respondent has rejected the petitioners'

request only because it is a policy initiative of the Government and that therefore, she may not have much of a discretion.

7.I permit the petitioners to submit a representation to the Government. The Government will call for report from the District Collector as well as the Highways Department and take the final call. It is of course open to the Government to exempt Lakshmipuram village from the proposed State level scheme. The petitioners are given three weeks time from the date of receipt of a copy of this order to submit such a representation. Till the Government takes a final decision, the proposed construction will be put on hold.

8.In that view of the matter, the impugned order dated 20.06.2022 passed by the third respondent in the Writ Petition is set aside and the Writ Petition is disposed of accordingly. No costs. Consequently, the connected miscellaneous petitions are closed.

11.10.2022

Speaking/Non-speaking order
Index: Yes/No
Internet : Yes/No
sp/gd

To

- 1.The District Collector,
Theni District.
- 2.The Divisional Engineer,
State Highways, Building and Maintenance,
Periyakulam Division,
Theni District.
- 3.The Assistant Divisional Engineer,
State Highways,
Building and Maintenance,
Periyakulam Division,
Theni District.
- 4.The Executive Engineer,
Public Works Department,
Theni.
- 5.The Public Prosecutor,
High Court, Madras.

W.P.(Md) No.15152 of 2022

G.R. SWAMINATHAN, J.

sp/gd

Pre-Delivery Order in
W.P. (MD) No. 15152 of 2022

11.10.2022