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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 23.02.2023

Pronounced on : 03.03.2023

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

W.P.Nos. 12886 & 22417 of 2018

And

W.P.No. 11021 of 2020

And

Cont.P.No. 689 of 2020

And

W.M.P.No. 32081 of 2018

And

W.M.P.Nos. 13407/2018, 19999/2019, 15133 & 26272/2018

W.P.No. 12886 of 2018

P.Poongothai

... Petitioner

..Vs..

1. The District Collector
Collectorate Building,
Coimbatore – 641 018.
2. The Chief Engineer
Highways Department
Tamilnadu State Highways
NABARD and Rural Roads,
Block-II1, 3rd Floor,
Sidco Electronics Complex
Guindy, Chennai – 600 032.



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3. The Superintending Engineer
Highways Department
Tamilnadu State Highways
Salem Circle,
NABARD and Rural Roads,
Nananmai Kattida Valagam,
Salem 636 001.
4. The Divisional Engineer
Highways Department
Tamilnadu State Highways
NABARD and Rural Road,
1661, Trichy Road,
Coimbatore 641 018.
5. The Chief Bridge Engineer
O/o. Chief Bridge Engineer
Southern Railway
Chennai – 600 003.
6. The Divisional Engineer
(DEN/West/SA)
Salem Divisional Railway Office
Suramangalam, Salem -636 005.
7. The Commissioner
Coimbatore City Municipal Corporation
Coimbatore.
8. The Member Secretary
Local Planning Authority
Coimbatore.



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9. The Deputy Chief Engineer
Constructions
Southern Railway, Podanur,
Coimbatore – 641 023.

... Respondents

PRAYER: Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus forbearing the respondents 2 to 4 from interfering with the petitioner's peaceful possession and enjoyment of petitioner's property comprised in S.F.No. 469/2(part), Avyanshi Road, Coimbatore known as G.R.G. Matriculation School, except by due process of law.

W.P.No. 22417 of 2018

G.K.Vijayakumar (deceased)

1. Rajeswari
2. V.Rajagopal
3. Arthi Anand
4. Tharini

... Petitioners

(Substituted by order dated 03.03.2023 in
W.M.P.No. 28705 of 2021)

..Vs..

1. The District Collector
Collectorate Building,
Coimbatore – 641 018.
2. The Chief Engineer
Highways Department
Tamilnadu State Highways
NABARD and Rural Roads,
Block-III, 3rd Floor,
Sidco Electronics Complex
Guindy, Chennai – 600 032.



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3. The Superintending Engineer
Highways Department
Tamilnadu State Highways
Salem Circle,
NABARD and Rural Roads,
Nananmai Kattida Valagam,
Salem 636 001.
4. The Divisional Engineer
Highways Department
Tamilnadu State Highways
NABARD and Rural Road,
1661, Trichy Road,
Coimbatore 641 018.
5. The Chief Bridge Engineer
O/o. Chief Bridge Engineer
Southern Railway
Chennai – 600 003.
6. The Divisional Engineer
(DEN/West/SA)
Salem Divisional Railway Office
Suramangalam, Salem -636 005.
7. The Deputy Chief Engineer
Construction
Southern Railway, Podanur,
Coimbatore – 641 023.

... Respondents

PRAYER: Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus forbearing the respondents 2 to 7, their men, agents, servants or any other person acting through them from deviating from the approved Coimbatore Master Plan, Singanallur Detailed



Development Plan No.27, Vilankurichi Detailed Development Plan No.9, and District Road safety council orders dated 18.02.2010, 01.05.2010, 30.09.2010, for alignment of Road Over Bridge L C No. 6, as per existing scheme road “AA” (New Name “BB”) on eastern side of Vilankurichi / Thaneer Pandhal road and inconsistent with the provisions of Tamil Nadu Town and Country Planning Act, 1971 and Motor Vehicles Act, 1988.

W.P.No. 11021 of 2020

Mr.P.Mani

... Petitioner

..Vs..

1. The Chief Engineer
Highways Department
Tamilnadu State Highways
NABARD and Rural Roads,
1st Floor Integrated Chief Engineer's Office
76, Sardar Patel Road,
Guindy,
Guindy, Chennai – 600 025.
2. The Superintending Engineer
Highways Department
Tamilnadu State Highways
Salem Circle,
NABARD and Rural Roads,
Nananmai Kattida Valagam,
Salem 636 001.



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3. The Divisional Engineer
Highways Department
Tamilnadu State Highways
NABARD and Rural Road,
1661, Trichy Road,
Coimbatore 641 018.
 4. The Assistant Engineer
% The Divisional Engineer
Highways Department
Tamilnadu State Highways
NABARD and Rural Roads,
1661, Trichy Road,
Coimbatore.
 5. The Assistant Divisional Engineer
% The Divisional Engineer
Highways Department
Tamilnadu State Highways
NABARD and Rural Roads,
1661, Trichy Road,
Coimbatore.
- ... Respondents

PRAYER: Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus forbearing the respondents, their men, agents, servants or any other person from proceeding with the Tender process initiated by the second respondent in Tender Notice Announcement No.11/2020-2021 dated 14.07.2020 published in Dinakaran Newspaper on 15.07.2020, for construction of Road Over Bridge (ROB) at Level crossing- No.6 (LC-6) between Singanallur and Peelamedu railway stations at Vilankurichi/ Thaneer Pandhal Road, Coimbatore, pending formation of 3.75 meter service road and to restrain the respondents, their men, agents,



servants or any other persons from interfering with the petitioner's peaceful access and enjoyment of petitioner's factory premises namely, M/s. Sree Meenakshi and Company situated at No.1, Vilankurichi Road, Peelamedu, Coimbatore.

Cont.P.No. 689 of 2020:

G.K.Vijayakumar

1. Rajeswari
2. V.Rajagopal
3. Arthi Anand
4. Tharini

... Petitioners/petitioners

[Petitioners 1 to 4 to bring on record the legal heirs of the deceased petitioner G.K.Vijayakumar as per the order of the Hon'ble Court in Sub.Appln.No. 1 of 2022 in Cont.P.No. 689 of 2020, dated 17.02.2022.

Vs.

1. M.K.Selvan
2. P.Valarmathi
3. T.Nabeesa Beevi

... Respondents/Respondents2-4



PRAYER: Petition under Section 11 of the Contempt of Court's Act 1971, praying to punish the respondents for the willful and flagrant violation of the order dated 20.11.2018 made in W.M.P.No. 26272 of 2018 in W.P.No. 22417 of 2018 passed by this Hon'ble Court.

For Petitioner in
W.P.Nos. 12886 &
22417/2018

:: Mr. V.Raghavachari
Senior Counsel
for Mr.B.Nambiselvan

For petitioner in
W.P.No. 11021/2020 &
Cont. P.No. 689 of 2020 :: Mr.A.P.Sathya Murthy

For Respondents in
Cont.P.No. 689/2020 &
W.P.No. 11021/2020 &
For RR 1 to 4 in W.P.Nos.

12886 & 22471/2018 :: Mr. Haja Nazirudeen
(AAG-I)
Assistant by Mr.M.Venkateswaran
(Special Government Pleader)
& Mr.P.Hari Babu
Government Advocate

For RR 5, 7 & 9 in
W.P.No.12886/2018

For RR 5 to 7 in

W.P.No. 22417/2018

:: Mr. M.T.Arunan
Special Counsel for Railways
assisted by M.A.Aruneshe & S.Harini Sri

For 7th Respondent in
W.P.No. 12886 of 2018

:: Mr.K.Magesh



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COMMON ORDER

All the Writ Petitions have been filed questioning the Coimbatore Master Plan, Singanallur Detailed Development Plan No.27, Vilankurichi Detailed Development Plant No.9 and District Road Safety Council orders dated 18.02.2010, 01.05.2010 and 30.09.2010 for alignment of Road Over Bridge LC No. 6 as existing scheme road “AA” (New Name “BB”) on eastern side of Vilankurichi/Thaneer Pandhal Road.

2. The Vilankurichi Detailed Development Plan No.9 was notified under Section 23 of Town and Country Planning Act 1971. It was a notification which conferred power to the Director to call upon the local planning authority to prepare a Detailed Development Plan under Section 23 of the Tamil Nadu Town and Country Planning Act 1971. The Detailed Development Planning was approved by the Director of Town and Country Planning under Sub-Section 2 of Section 25 of the Town and Country Planning Act 1971 on 19.12.2011 and numbered on Map No.9 TDPL letter dated 19.12.2011. The Vilankurichi Detailed Development Plan line was under process awaiting approval under Section 29 of the Town and Country



Planning Act 1971.

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3. In W.P.No. 12886 of 2018 the petitioner P.Poongothai had sought a Mandamus forbearing the second to fourth respondents / the Chief Engineer, Highways Department, Tamilnadu State Highways, NABARD and Rural Roads, Chennai, the Superintending Engineer, Highways Department, Tamilnadu State Highways, Salem Circle and the Divisional Engineer, Highways Department, Tamilnadu State Highways, NABARD and Rural Road, Coimbatore, from interfering with the possession and enjoyment of the petitioner of her property in S.F.No.469/2(part), Avyanshi Road, Coimbatore, a school called G.R.G. Matriculation School, except by due process of law.

4. In W.P.No. 22417 of 2018, the petitioner G.K.Vijayakumar, had sought Mandamus forbearing the second to seventh respondents which also included the aforementioned respondents from deviating from the approved Coimbatore Master Plan, Singanallur Detailed Development Plan No.9 and District Road Safety Council orders dated 18.02.2010, 01.05.2010 and 30.09.2010 for alignment of Road Over Bridge on the eastern side of Vilankurichi / Thaneer Pandhal Road.



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In W.P.No. 11021 of 2020, the petitioner P.Mani, had sought a Mandamus restraining again the same respondents from proceeding with tender process initiated by the second respondent, Superintending Engineer, Highways Department, Tamilnadu State Highways, Salem circle in tender notice No. 11/2020-2021 dated 14.07.2020 published in Dinakaran Newspaper on 15.07.2020 for construction of Road Over Bridge at level crossing No.6 between Singanallur and Peelamedu railway stations at Vilankurichi /Thaneer Pandhal Road, Coimbatore, pending formation of 3.75 meter service road. The petitioner also sought a restraint from interfering with peaceful access and enjoyment of factory premises M/s. Sree Meenakshi and Company situated at No.1, Vilankurichi Road, Peelamedu, Coimbatore.

6. It is thus seen that all the Writ Petitions relate to the same issue, namely, construction of Road Over Bridge over level crossing No.6 between Singanallur and Peelamedu railway station at Vilankurichi / Thaneer Pandhal Road, Coimbatore.



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7. The petitioners have their own grievances but primarily they seek to restrain the construction of such Road Over bridge on the apprehension that such construction would either directly or indirectly affect their peaceful enjoyment of the premises over which they are in occupation and more particularly G.R.G. Matriculation School and M/s. Sree Meenakshi and Company. They also seek a restraint of further progress of the tender which had been issued and announced in the Dinakaran Newspaper for construction of such Road Over Bridge.

8. When the Writ Petition in W.P.No.12886 of 2018 came up for consideration for the first time, a learned Single Judge of this Court had ordered as follows on 20.11.2018:-

*“ Notice to the respondents through
Court as well as privately returnable by
18.12.2018.*

Post on 18.12.2018.



There shall be an order of status

quo till then.”

9. Complaining violation of this particular order, the writ petitioner in W.P.No. 22417 of 2018 , G.K.Vijayakumar had filed Cont.P.No. 689 of 2020.

10. The arguments in all the three Writ Petitions and in the Contempt Petition overlapped and the facts also overlapped. The issue was with respect to the construction of the Railway Over Bridge. It is therefore prudent that a common order is passed in all the three Writ Petitions and in the Contempt Petition.

11. In W.P.No. 12886 of 2018, the petitioner had stated that the Tamilnadu State Highways NABARD and Rural Road had proposed to construct a Road Over Bridge at level crossing No.6 between Peelamedu and Singanallur Railway Station at Vilankurichi / Thaneer Pandhal Road. The petitioner claimed that her school G.R.G. Matriculation Higher Secondary School, would be affected if the Bridge is built including the Local Planning Authority Scheme Road “AA” (New Road “BB”). It had been stated that



there were several meetings on this issue conducted in the office of the first respondent/ District Collector, Coimbatore and there were discussions relating to the proceedings of the District Road Safety Council and formation of New Roads. There was also discussion over the formation of Road Over Bridge. It had been stated that a Bridge to the width of 8.5 meter is sufficient. It had been stated that a scheme Road will be formed at a width of 60 feet instead of 80 feet and the Railway Bridge must be constructed at the width of 8.5 meter instead of 12 meters. It had been stated that the petitioner had earlier filed W.P.No. 3033 of 2018 seeking a Mandamus to direct implementation of the directions dated 01.10.2010 and 30.09.2010. That Writ Petition was disposed of on 15.02.2018 holding that the apprehension of the petitioner was premature.

12. It was complained that the respondents were trying to take possession of the school premises. It was under those circumstances that the writ was filed in the nature of Mandamus seeking a restrain from interfering with the peaceful possession and enjoyment of the school premises, G.R.G. Matriculation Higher Secondary School.



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13. In W.P.No. 22417 of 2018, the writ petitioner G.K.Vijayakumar had sought a similar relief to protect possession of his property. It had been alleged that the alignment of Vilankurichi Road had been altered in violation of the provisions of the Tamilnadu Town and Country Planning Act, 1971. This was also modified and approved by Coimbatore Master Plan approved on 12.10.1994 by the Tamilnadu Government Gazettee notification in G.O.No.661. It was also stated that the respondents have a legal duty to disciplined land use according to local planning authority Zoning regulations as per G.O.Ms.No. 1730 dated 24.07.1974. It had also been stated that Vilankurichi Detailed Development Plan No.-9 had been notified on 09.05.1979 in Tamil Nadu Gazette. It was under those circumstances that the Writ Petition had been filed in the nature of Mandamus seeking a restraint against the respondents from deviating from the approved Coimbatore Master Plan.

14. The petitioner in W.P.No. 11021 of 2020 had stated that a representation had been given to cancel the tender notice which had been



issued in the Dinakaran Newspaper on 15.07.2020 for construction of Road Over Bridge at level crossing No.6 between Peelamedu and Singanallur railways station at Vilankurichi / Thaneer Pandhal Road, Coimbatore, for the formation of service Road of 3.75 mts. He had stated that M/s. Sree Meenakshi and Company requires raw materials transported on 40 foot trailer trucks. It had been stated that if the construction is proceeded, much loss and hardship would be caused. He had therefore sought a Mandamus to restrain the respondents from proceeding further with the tender notification.

15. Cont.P.No. 689 of 2020 had been filed consequent to the issuance of the very same tender notification and claiming it to be issued in Contempt of the status quo order granted by the learned Single Judge in W.P.No. 12886 of 2018.

16. The Writ Petitions have been meandering around various Courts. The Officials were present on various occasions and learned Single Judges had entered into a discussion on the alignment to be projected for the construction of the Road Over Bridge. This construction has to be done by the Railways and also by the State Highways Department. So far as the



Railways are concerned, they have constructed the Road Over Bridge within their premises. They had identified the place for constructing Road Over Bridge where the level cross was in existence. The Bridge was required to prevent accidents and to provide free public movement.

17. It is the contention of the Railways that the alignment was finalised and determined only after deep study had been done. It was also stated that the Railway Board had taken a policy decision to construct Road Over Bridges wherever there are level crossings.

18. The Divisional Engineer of NABARD and Rural Roads at Coimbatore had filed a counter affidavit and it had been stated that the Detailed Development Plan was approved by the Director of Town and Country Planning under the provisions of the Town and Country Planning Act 1971 on 19.12.2011. It had also been stated that the Vilankurichi Map No.9 is in process for approval. It had been therefore stated that the relief sought in W.P.No. 22417 of 2018 is premature and cannot be granted. It had been stated that the construction of the Road Over Bridge could not progress and the Land Acquisition proceedings had also not been initiated.



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19. With respect to the averments in W.P.No. 12886 of 2018, it had been stated that the acquisition proceedings had not even commenced and that even if commenced, it would be done only in accordance with due process of law.

20. With respect to the tender notification complained in W.P.No. 11021 of 2020 and in Cont.P.No. 689 of 2020, it had been stated that the tender notice had been dropped.

21. The facts stated above very clearly point out that three private individuals, by filing the writ petitions have effectively prevented construction of the Road Over Bridge over the level crossing No.6 between Peelamedu and Singanallur stations at the Vilankurichi / Thaneer Pandhal Road in Coimbatore. The construction had stopped.

22. The Railways however have constructed a Over Bridge within their property. The State Highways will now have to construct the further extension of the said Road Over Bridge. The petitioners have given various suggestions for the nature of land to be acquired and the alignment of the



Roads.

WEB COPY 23. The Court cannot consider itself to be an expert in these issues.

The Superintendent Engineer and other officials of the Tamilnadu State Highways Department, Chennai are competent to examine the nature of the bridge to be constructed, the alignment of the Road, the width of the road and all other surrounding issues.

24. It is seen that the petitioners have put spokes even to the approval of the plan. They have their private interests in running a school and having a factory, but that private interest has to be balanced with public interest. As responsible citizens, they should make way and permit the Bridge to be constructed over the level crossing. I am sure that the petitioners would not accept fault on their part and would blame the Highways Department and the Railways if, God forbid, there was to be an accident at the level crossing involving a student of the school or a workmen of the factory. The Road Over Bridge is required. It is a matter of policy of the Government and of the Railways. It is in public interest. It could prevent accidents. It would enable free movement of the public.

25. It is the clear that the petitioners have effectively stalled the



projects. The land will have to be acquired. The respondents have held out and they would follow due process in the acquisition of such lands. It had been very specifically stated that if ever land is to be acquired, then they would again proceed in accordance with the provision of the Tamilnadu Highways Act and under the relevant provisions of the Tamil Nadu Town and Country Planning Act and more importantly under the provisions of the Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

26. In 2022 SCC OnLine SC 1143 [Dr. Abraham Patani of Mumbai and Another Vs. State of Maharashtra and Others], the Hon'ble Supreme Court was concerned with a similar dispute which had spread several decades. The facts were as follows:-

“4. The possibility of having a road through the Appellants' land was floated initially in a Development Plan (“DP”) of 1976. After this, the road was realigned in 1984 in order to secure smooth passage through Appellants' land. Appellants raised



objections in this regard in 1992 and the planned road was deleted from the DP via notification dated 12.11.1992 issued by Respondent No. 1.

5. During this period, various complaints were allegedly received from residents in surrounding areas regarding the need for a road in order to connect the Mahakali Caves with the Central Industrial District. Respondent No. 1 issued a directive under Section 37(1) of the Maharashtra Regional Town Planning Act, 1966 (“MRTP Act”) on 07.06.1993, acknowledging the need for a connecting road but stating that it was “not feasible” to pursue construction of an 18.30 metre road through the Appellants' land.

Thus, Respondent No. 2 was instructed to analyse the legal and technical aspects of the project before submitting a proposal for setting up the road with minor modifications in the DP under Section 37 of the MRTP Act.



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6. Meanwhile, Appellants completed construction of a bungalow on their land in 1994. However, subsequent sanctions sought by the Appellants for further buildings were rejected by the Municipal Corporation on the ground that a proposal for creation of a link road through the property was under consideration.

7. Respondent No. 2 eventually passed Resolution No. 651 on 10.09.1996 that renewed the proposal to have the link road constructed through Appellants' land. Two further resolutions were then passed : a) Resolution No. 39 dated 18.08.1998 by the Improvement Committee affirming the proposal for the link road; b) Resolution No. 536 on 08.12.1998 by Respondent No. 2 under Sec. 126 of the MRTP Act and Secs. 90 (1) & (3) of the Mumbai Municipal Corporation Act ("MMC Act") for the acquisition of land in order to build the new road line."



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27. Thus decisions to construct a link road and acquisition of land were questioned by filing Writ Petition before the Bombay High Court. The matter travelled upto the Hon'ble Supreme Court twice over.

28. The Hon'ble Supreme Court on the facts presented above had occasion to examine the concept of ***public interest Vs. private interest***.

29. The Hon'ble Supreme Court held as follows:-

“C.3. Public Interest V. Private Interest

91. It is important for us to take stock of the nature of the present dispute. The Appellants are private citizens who have valid title and ownership over the land in question. Without doubt, their personal and private rights are of great importance. In a democratic society governed by the rule of law, the rights of an individual carry immense importance and are the foundational blocks on which our legal, social, and political milieu



thrives. Under no circumstances should the rights of individual citizens be trodden upon arbitrarily and any curtailment of them must be scrutinized with utmost care.

92. At the same time, we must not lose sight of the fact that in several situations, the needs of the many must outweigh that of the few. We say so not with any fervour nor as a mantra, but as a solemn acknowledgment of the realities of modern life. The question of what constitutes “public interest” has been contemplated upon multiple times and the history of this Court is full of musings by different benches on the exact contours of this phrase in the context of various situations and statutes.

93. In (2018) 13 SCC 491 [Manimegalai v. Special Tehsildar], it was surmised that:

“14. Similarly, public purpose is not capable of precise definition. Each case has to be considered in the light of the purpose



for which acquisition is sought for. It is to serve the general interest of the community as opposed to the particular interest of the individual. Public purpose broadly speaking would include the purpose in which the general interest of the society as opposed to the particular interest of the individual is directly and vitally concerned. Generally, the executive would be the best judge to determine whether or not the impugned purpose is a public purpose. Yet it is not beyond the purview of judicial scrutiny. The interest of a Section of the society may be public purpose when it is benefitted by the acquisition. The acquisition in question must indicate that it was towards the welfare of the people and not to benefit a private individual or group of individuals joined collectively. Therefore, acquisition for anything which is not for a public purpose cannot be done compulsorily.”

94. In (2003) 7 SCC 309 [B.P. Sharma v. Union of India], the nebulous nature of phrases such as “public interest” or “in the interest of the general public” was commented



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upon, with the Court stating:

“15. ...The phrase “in the interest of the general public” has come to be considered in several decisions and it has been held that it would comprise within its ambit interests like public health and morals, economic stability, stability of the country, equitable distribution of essential commodities at fair prices for maintenance of purity in public life, prevention of fraud and similar considerations...”

95. This point was emphasized in (2012) 13 SCC 61 [Bihar Public Service Commission v. Saiyed Hussain Abbas Rizwi] as well, which held that no strict definition for “public interest” existed:

(

“22. The expression “public interest” has to be understood in its true connotation so as to give complete meaning to the relevant provisions of the Act. The expression “public interest” must be viewed in its strict sense with all its exceptions so as to justify



denial of a statutory exemption in terms of the Act. In its common parlance, the expression “public interest”, like “public purpose”, is not capable of any precise definition. It does not have a rigid meaning, is elastic and takes its colour from the statute in which it occurs, the concept varying with time and state of society and its needs. It also means the general welfare of the public that warrants recognition and protection; something in which the public as a whole has a stake.”

96. It is unnecessary to belabour the point. The proposition is simply that the notion of public interest will necessarily reflect the specificities of the situation at hand. In the present case, the public interest which has been emphasized upon by Respondents is the urgent need for the creation of a connecting road through the Appellants' property. The need stems from the traffic congestion caused on the route from the Mahakali Caves to the Central MIDC. The



lack of a direct linkage requires detours to be taken that significantly increase commuting time and cause inconvenience to the general public.

97. When the public interest is so clearly articulated and is an urgent and pressing exigency, private interests must give way to the extent required. This Court has acknowledged this before, such as in (2012) 5 SCC 1 [Ramilila Maidan Incident v. Home Secretary, Union of India] :

“119. The right to freedom in a democracy has to be exercised in terms of Article 19(1)(a) subject to public order. Public order and public tranquillity is a function of the State which duty is discharged by the State in the larger public interest. The private right is to be waived against public interest. The action of the State and the Police was in conformity with law. As a large number of persons were to assemble on the morning of 5 June, 2011 and considering the



other attendant circumstances seen in light of the inputs received from the intelligence agencies, the permission was revoked and the persons attending the camp at Ramlila Maidan were dispersed.”

(Emphasis Applied)

98. In (2011) 9 SCC 1 K.T. Plantation Pvt. Ltd. v. State of Karnataka, the origins of “Eminent Domain” were traced and the ethos behind acquisition of land by the government for public good was discussed. The Court elaborated on this in the following terms:

“134. Hugo Grotius is credited with the invention of the term “eminent domain” (jus or dominium eminens) which implies that public rights always overlap with private rights to property, and in the case of public utility, public rights take precedence. Grotius sets two conditions on the exercise of the power of eminent domain : the first requisite is public advantage and then compensation from the public funds be made, if possible, to the one who has lost his right. Application of



the above principle varies from countries to countries. Germany, America and Australian Constitutions bar uncompensated takings. Canada's constitution, however, does not contain the equivalent of the taking clause, and eminent domain is solely a matter of statute law, the same is the situation in United Kingdom which does not have a written constitution as also now in India after the 44 Constitutional Amendment.”

(Emphasis Applied)

99. With these considerations in mind, we deem the present case to be an appropriate instance where public interest must have paramountcy over private interest. We emphasize once again before parting that the rights of the individual must only be watered down when the necessary circumstances demanding such a drastic measure exist.”

30. The reasonings above are directly applicable to the facts of this case.



31. In 2021 SCC Online SC 1114 [*State of Tamil Nadu and Another Vs. National South Indian River Interlinking Agriculturist Association*], the Hon'ble Supreme Court had examined interference of the Court with public policy.

32. The Hon'ble Supreme Court had held as follows:-

“9. The State of Tamil Nadu has raised a preliminary contention that the Court cannot review the scheme since it is a fiscal policy decision of the State. Before we proceed with the arguments on Article 14, it is imperative that we discuss the law down by this Court relating to the ambit and extent of judicial review of policy. An examination of this issue must begin with the primary question of the meaning of the phrase ‘policy’. A policy is the reasoning and object that guides the decision of the authority, which in our case is the State of Tamil Nadu. Statutes, notifications, ordinances, or Government orders are means for the implementation of the policy of



the State. Therefore, it is not possible to completely appreciate the law without reference to the policy behind the law. The judicially evolved two-pronged test to determine the validity of the law vis-à-vis Article 14 of the Indian Constitution, refers to the objective of the law because the 'policy' behind the law is never completely insulated from judicial attention.

*10. However, it is settled law that the Court cannot interfere with the soundness and wisdom of a policy. A policy is subject to judicial review on the limited grounds of compliance with the fundamental rights and other provisions of the Constitution. It is also settled that the Courts would show a higher degree of deference to matters concerning economic policy, compared to other matters of civil and political rights. In (1981) 4 SCC 675 **RK Garg v. Union of India** , this Court decided on the constitutional validity of the Special Bearer Bonds (Immunities and Exemptions) Act 1981. The challenge to the*



statute was on the principal ground that it was violative of Article 14 of the Indian Constitution. Rejecting the challenge, the Constitution Bench observed that laws relating to economic activities must be viewed with greater latitude and deference when compared to laws relating to civil rights such as freedom of speech:

“8. Another rule of equal importance is that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion etc. It has been said by no less a person than Holmes, J., that the legislature should be allowed some play in the joints, because it has to deal with complex problems which do not admit of solution through any doctrinaire or strait-jacket formula and this is particularly true in case of legislation dealing with economic matters, where, having regard to the nature of the problems required to be dealt with, greater play in the joints has to be allowed to the legislature. The court should feel more inclined to give judicial deference to legislative judgment



*in the field of economic regulation than in other areas where fundamental human rights are involved. Nowhere has this admonition been more felicitously expressed than in **Morey v. Doud** [354 US 457 (1957) : 1 L.Ed.2d 1485 (1957)] where Frankfurter, J., said in his inimitable style: “In the utilities, tax and economic regulation cases, there are good reasons for judicial self-restraint if not judicial deference to legislative judgment. The legislature after all has the affirmative responsibility. The courts have only the power to destroy, not to reconstruct. When these are added to the complexity of economic regulation, the uncertainty, the liability to error, the bewildering conflict of the experts, and the number of times the judges have been overruled by events - self-limitation can be seen to be the path to judicial wisdom and institutional prestige and stability.”*

*11. The respondent has placed reliance on (2002) 2 SCC 333 [**BALCO Employees Union v. Union of India**]. A Constitution Bench considered a challenge to the decision of the*



Union of India to disinvest and transfer 51% shares of Bharat Aluminum Company Limited. Rejecting the challenge, it was observed that that the wisdom of economic policies is not subject to judicial review:

“92. In a democracy it is the prerogative of each elected Government to follow its own policy. Often a change in Government may result in the shift in focus or change in economic policies. Any vested interests. Unless any illegality is committed in the execution of the policy or the same is contrary to law or mala fide, a decision bringing about change cannot per se interfered with by the Court.

93. Wisdom and advisability of economic policies are ordinarily not amenable to judicial review unless it can be demonstrated that the policy is contrary to any statutory provision or the Constitution. In other words, it is not for the courts to consider relative merits of different economic policies and consider whether a wiser or better one can be evolved. For testing the



correctness of a policy, the appropriate forum is Parliament and not the courts. Here the policy was tested and the motion defeated in the Lok Sabha on 1-3-2001.”

12. Economic policies broadly comprise of policies on taxation, expenditure, and allocation. The State and its agencies often endeavor to make economically feasible decisions. The implementation of every policy of the State involves expenditure. Merely because the policy involves the expenditure of funds, it cannot be termed as an economic policy. The core feature of the policy and the targeted area needs to be determined to identify the nature of the policy. The impugned loan waiver scheme is, in essence, a social policy in pursuance of the Directive Principles of State Policy, introduced with an object to eliminate inequality in status, income, and facilities. ”

33. It is thus seen that the Hon'ble Supreme Court has voiced is concern about the interference by the Court in matters of public policy and when a policy decision had been taken by the Government.



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34. In the instant case, the petitioners have come to Court even before the State Highways have taken a decision regarding acquisition of land. However, it is seen that the Railways have constructed the Over Bridge and therefore a duty is cast on the respondents to move forward with the approved plan.

35. In so far as the Contempt Petition is concerned, I do not find the Contempt Petition maintainable. The Contempt Petition has been filed for violation of an order which granted status quo. The order granting status quo was to protect possession. The Contempt Petition has been filed consequent to the issuance of a tender notice.

36. It would be stretching imagination too far to hold that the tender notice was issued only to interfere with possession. The said tender notice was issued inviting bids for construction.

37. All the Writ Petitions and the Contempt Petition have been filed with private interest in mind. The petitioners deserve no order from this



Court. They had effectively prevented construction of a Railway Over Bridge over the said level crossing. They have no respect for public interest. The Writ Petitions have been filed only to prevent public interest from being served. I do not find any merits in the Writ Petitions and in the Contempt Petition.

38. In the result:

(i) W.P.No. 12886 of 2018 is dismissed with costs of Rs.1/- lakh to be paid to the Tamilnadu State Legal Services Authority, Chennai;

(ii) W.P.No. 22417 of 2018 is dismissed with costs of Rs.1/- lakh to be paid to the Tamilnadu State Legal Services Authority, Chennai;

(iii) W.P.No. 11021 of 2020 is dismissed with costs of Rs.1/- lakh to be paid to the Tamilnadu State Legal Services Authority, Chennai;

(iv) Cont.P.No. 689 of 2020 is dismissed; and



WEB COPY (v) All connected Miscellaneous Petitions are dismissed

39. The costs to be deposited with the Tamilnadu State Legal Services Authority, Chennai, within a period of 10 days from the date of receipt of a copy of this order, failing which, the Collector, Coimbatore District, is directed to initiate revenue recovery proceedings for recovery of the costs.

03.03.2023

vsg

($\frac{1}{2}$)

Index: Yes/No

Internet: Yes/No

Speaking / Non Speaking Order

To

1. The District Collector
Collectorate Building,
Coimbatore – 641 018.
2. The Chief Engineer
Highways Department
Tamilnadu State Highways
NABARD and Rural Roads,
Block-II1, 3rd Floor,
Sidco Electronics Complex



Guindy, Chennai – 600 032.

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3. The Superintending Engineer
Highways Department
Tamilnadu State Highways
Salem Circle,
NABARD and Rural Roads,
Nananmai Kattida Valagam,
Salem 636 001.
4. The Divisional Engineer
Highways Department
Tamilnadu State Highways
NABARD and Rural Road,
1661, Trichy Road,
Coimbatore 641 018.
5. The Chief Bridge Engineer
O/o. Chief Bridge Engineer
Southern Railway
Chennai – 600 003.

C.V.KARTHIKEYAN, J.,

vsg

6. The Divisional Engineer
(DEN/West/SA)
Salem Divisional Railway Office
Suramangalam, Salem -636 005.
7. The Commissioner
Coimbatore City Municipal Corporation
Coimbatore.



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8. The Member Secretary
Local Planning Authority
Coimbatore.
9. The Deputy Chief Engineer
Constructions
Southern Railway, Podanur,
Coimbatore – 641 023.

Pre-Delivery Order made in

W.P.Nos. 12886 & 22417 of 2018

And

W.P.No. 11021 of 2020

And

Cont.P.No. 689 of 2020

And

W.M.P.No. 32081 of 2018

And

**W.M.P.Nos. 13407/2018, 19999/2019,
15133 & 26272/2018**

03.03.2023

(1/2)