

Andhra Pradesh High Court - Amravati

Nagavani Filing Station vs The Government Of Ap on 12 May, 2023

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W.P.No.6026 of 2023  
VS,J

HONOURABLE SMT. JUSTICE V. SUJATHA

WRIT PETITION No.6026 of 2023

ORDER:

The present writ petition came to be filed under Article 226 of the Constitution of India seeking the following relief:

"...to issue an order or direction especially one in the nature of WRIT OF MANDAMUS declaring the action of the Respondent No.6 in issuing impugned letter vide Lr.No.NH67/2 Lane Major Bridge/NH DIV/LA/Petrol Bunk/A1/2022-1 dated 22.02.2023, by highhandedly directing the Respondent Authorities for the removal of the petitioners Filling Station/Petrol Bunk in total located in Survey No.595 in an extent of 6950 sq.feet situated at the right side bank of Sarvepally Canal, in Nellore Town, SPSR Nellore District, without there being any kind of obstruction or interruption caused by the petitioners Filling Station/Petrol Bunk to the Right of Way of NH 67 as illegal, arbitrary, discriminatory, against Principles of Natural Justice as well as violative of Articles 14, 21 and 300A of the Constitution of India and consequently set aside the impugned letter vide Lr.No.NH67/2 Lane Major Bridge/NH DIV/LA/Petrol Bunk/A1/2022-1, dated 22.02.2023 issued by the 6th Respondent and to pass..."

2. The petitioner, along with one Sri. D. Sugunakar Reddy are running a Petrol Bunk under the name and style of M/s. Nagavani Filling Station. The said filling station was established in survey No.95 in an extent of 6950 sq. feet, situated at the right side bank of Sarvepally Canal in Nellore Town, SPSR W.P.No.6026 of 2023 VS,J Nellore District. The schedule property was leased out by the Government in the year 1964 in favour of the 8th respondent i.e., M/s. Indian Oil Corporation Limited and the same was extended from time to time.

3. While the matter stood thus, the Ministry of Road Transport and Highways sanctioned works pertaining to constructions of two-lane major bridge across Penna River at Km.739.234 of NH-67 including approaches parallel to existing two-lane bridge in SPS Nellore District in the State of Andhra Pradesh through EPC Contract under Annual Plan 2021-22. Subsequently, the 6th respondent issued impugned letter dated 2.02.2023 directing the petitioner to clear the site as the petrol bunk is falling in the approaches of subject work, entrusted to the Executive Engineer (R&B) and requested to clear it in order to execute the above subject work i.e., construction of two-lane

major bridge across Penna River. Challenging which, the present writ petition is filed.

4. When the writ petition came up for admission on 10.03.2023, this Court was pleased to pass the following interim order:

"At request of learned Government Pleader for getting instructions as to how much extent is required by the respondents for laying the road.

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Thereafter, the said interim order has been extended from time to time.

5. The learned Government Pleader for Roads and Buildings has filed a detailed counter stating that the petitioner's petrol bunk named as M/s. Nagavani Filling Station (IOCL Dealers) is located in SY.No.95 of Nellore Bit-I village, and falls partly in NH-67 Road land and partly in Canal poramboke land. Out of total extent of 586.276 sq.mts of this Petrol Bunk, 285.814 sq.mts is covered under NH-67 Right Of Way (ROW) and the remaining extent of 300.462 sq. mts is on Canal poramboke land. It is further stated that the petitioner is running the petrol bunk without obtaining access permission from the National Highways Department, which is mandatory as per "The Control of National Highways (Land and Traffic Act). 2002". Also on enquiry with Water resources Department, the Executive Engineer, Nellore Central Division has addressed a letter to the petitioner vide Letter.No.AB/A3/1108m dated 25.10.2021 to pay the arrears of lease amount Rs.59,29,362/- for a period of 21 years from 2000 to 2021 and vacate the said premises, as canal modernization work is under progress.

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6. It is further stated that the statement of the petitioner i.e., the Lease being extended from time to time by the government is not correct. Vide Letter No.SE/IC/NLR/DB/ATO- 1/Penna Vridge/307M, dated 18.04.2023, the Superintending Engineer, Irrigation Circle, Nellore has informed that no Lease is in force by the Water resources department with IOCL or with any individual Firm or person for the petrol bunk located in Canal Poramboke land in Survey No.95 of Nellore Bit-1 village and also informed that their department has No Objection for the High Way bridge project. It has also been stated that 48% of the petitioner's petrol bunk is falling in NH-67 road land, which is obstructing the ongoing Highway project and it is required to be removed to the encroachment portion of NH land for widening and this stretch was identified as accident prone Zone by the "District Road Safety Committee" in which removal of this Petrol bunk is also included.

7. It is further submitted that the Ministry of Road Transport & Highways, New Delhi has sanctioned the work "Construction of Two Lane Major Bridge across Penna River at Km.739.234 of NH-67 including approaches parallel to existing 2 lane bridge in SPS Nellore District in the State of Andhra Pradesh through EPC contract under Annual Plan 2021-22" and appointed Revenue Divisional Officer, Nellore as Competent W.P.No.6026 of 2023 VS,J Authority of Land Acquisition

(CALA) for the subject work vide Notification under section 3(a) of NH Act, and was published in Gazette of India No.3725 dated 06.05.2022 in S.O.No.4059(E), dated 01.10.2021. Thereafter, the Land Acquisition procedure was strictly followed as per National Highways Act 1956 and accordingly notification under Section 3A of NG Act, was published on 15.02.2022 in the "Andhra Prabha" Telugu daily and "The Hindu" English daily dated 09.03.2022, calling for any objections from the interested persons before the competent authority i.e., Revenue Divisional Officer, Nellore within 21 days from the date of publications in news Papers as per 3C of NH Act. In spite of the same, the petitioner has failed to submit any objections thereafter.

8. Thereafter, a notification under Section 3D of NH Act, dated 08.09.2022 was also published in the Official Gazette, the land specified in the said schedule shall vest absolutely in the Central Government, free from all encumbrances. Subsequently, CALA has published notification under 3G(3) of NH Act 1956 in two local news papers i.e., Andhra Prabha Telugu Daily and the Deccan Chronicle English Daily on 01.10.2022, calling the persons whose lands were proposed for acquisition, to attend for award enquiry on 10.10.2022, before CALA and Revenue Divisional officer, Nellore in Award No.NH-67/07/2022-2023, W.P.No.6026 of 2023 VS,J dated 06.01.2023, duly following the Land Acquisition procedure as per NH Act.

9. It is further stated that the above project includes Construction of two new Bridges, one is Major Bridge (proposed parallel to the Existing major bridge which is 70 years old, narrow Bridge of 800 meters length over Penna river) and the other is a Minor Bridge (Proposed parallel to the Old narrow bridge over irrigation main canal) and also includes formation of new approach roads for improving the Highway geometrics at both ends of these structures, which is very important for highway traffic entering and leaving the Nellore city and also from road safety point of view.

10. Along with the counter, the letter dated 14.04.2023 has also been filed wherein the Superintending Engineer, Irrigation Circle, Nellore has given No Objection for the extent of 300.462 sq.mts which is on the Canal poramboke land. But, however, only because of the land occupied by the petitioner in 285.814 sq.mts, which is covered under NH-67, the respondents are unable to proceed further with the said project, which is seriously objected by the counsel for the petitioner.

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11. In view of the same, this Court feels it appropriate to order for a survey as follows:

- i. The respondents, with the assistance of the Mandal Surveyor, shall conduct a survey to demarcate the road margins in survey No.95 in an extent of 6950 sq. feet, situated at the right side bank of Sarvepally Canal in Nellore Town, SPSR Nellore District. This survey shall be conducted in the presence of the petitioner or their representatives and also in the presence of the respondent No.8 along with the Superintending Engineer, Irrigation Circle, Nellore has given No Objection for the extent of 300.462 sq. mts which is on the Canal poramboke land.

ii. For the purpose of enabling these persons to be present at the time of the survey, notices shall be given to the petitioner, the 8th respondent and as well as the Superintending Engineer, Irrigation Circle, Nellore.

iii. After the survey is conducted, if it is found, that the petitioner has encroached the road margin, it would be open to the respondents to W.P.No.6026 of 2023 VS,J take appropriate action in accordance with law. This survey shall be completed within a period of six (6) weeks from today.

iv. Till such survey is completed, the respondents shall not interfere with the

petitioner's possession over the subject land, without following due process of law.

12. Accordingly, with the above directions, this Writ Petition is disposed of. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, shall stand closed.

\_\_\_\_\_ V. SUJATHA, J Date: 12.05.2023.

GSS Note:Issue CC by today.

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Date: 12.05.2023 GSS