
(2006) 04 CHH CK 0029
In the Chhattisgarh High Court
Case No : Writ Petition No. 1878 of 2006

Nagar Vikash Parishad

APPELLANT

Vs

State of C.G. and Others

RESPONDENT

Date of Decision : 26-04-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Madhya Pradesh Land Revenue Code, 1959 — Section 24, 258, 258(1), 258(2)

Citation : (2006) 2 CGLJ 41

Hon'ble Judges : S.R. Nayak, C.J.; Dilip Raosaheb Deshmukh, J

Bench : Full Bench

Advocate : Vishnu Koshta, for the Appellant; Prashant Mishra, A.A.G. and Utkarsh Venna, Dy. Government Advocate for State, for the Respondent

Final Decision : Dismissed

Judgement

S.R. Nayak, C.J.—The action of the Respondents proposing to construct an over-bridge at the Railway crossing in Baloda Road in Akaltara town has been assailed in this Writ Petition claiming it to be a Public Interest Litigation, by Nagar Vikash Parishad. Akaltara represented by its President on several grounds such as. (i) that the over-bridge cannot be constructed without permission of the Pollution Control Board; (ii) that the construction of over-bridge result in cutting of about 100 trees; (iii) that the proposed site for construction of over-bridge could not serve the purpose for which it is constructed and it could be conveniently constructed at a different point and (iv) that even the Railway Board in his meeting held on 03-05-2005 has agreed to consider the proposal to change the site for construction of over-bridge if it receives a request from the State Government in that regard.

2. Having heard learned Counsel for the parties, we do not find any substantive ground to step in under Article-226 of the Constitution of India and to entertain this Public Interest Litigation. Although above grounds are taken in support of this Writ Petition at page-6 of the Writ Petition, learned Counsel for the Petitioner

did not press first contention obviously, because, such obligation could not be traced with reference to any public law. In support of the second contention, our attention was drawn to Rule 1(b) of the Rules framed by the State Government in exercise of the powers conferred by Sub-section (1) and Clause (xi) of Sub-section (2) of Section 258 read with Section 24 of Chhattisgarh Land Revenue Code, 1959 and it was contended that since that rule applies, in the facts and circumstances of this case, the Respondents cannot cut the 100 trees existing therein within the prohibited distance and in that view of the matter, construction of over-bridge without permission of the Government would be illegal. The contention is misconceived. Rule 1(b) has no application to the facts and circumstances of this case. Rule 1(b) provides that no tree shall be cut, girdled or otherwise damaged among other situations covered therein if such tree is situated within 15 meters of the centre of a road or a cart-track and within 6 meters of footpath. That only means that if there exists a road or cart-track or footpath, as the case may be, the tree situated within the perscribed distance from the centre of road or cart-track or foot-path, as the case may be, shall not be cut or removed. That provision has no application where the Respondents are to construct over-bridge.

3. The feasibility and suitability of constructing an over-bridge at a particular point is the matter to be decided by the Respondent authorities who are supposed to be experts in the field taking into account all relevant factors and circumstances to subserve the public interest. They cannot be dictated by a legal local body like the Petitioner who could not be regarded as an expert in the field to its liking. Be that as it may, it is neither pleaded nor shown that the Respondent-authorities have decided to construct over-bridge at the Railway crossing on Baloda Road with any ulterior motive and/or for any extraneous consideration. Unless the proposed action is shown to be mala fide, it is not the legitimate domain of the Court to step in under Article 226 of the Constitution of India to correct the decision taken by the Respondents.

4. There is no need to deal with the last contention. If the Railway Board is willing to consider the request of the Petitioner to change the point at which over-bridge has to be constructed if it receives a proposal in that regard from the State Government, the Petitioner can persuade the State Government to do so accordingly. Nobody can question that liberty of the Petitioner.

5. Cumulatively, we do not find any ground what soever to entertain this Writ Petition and it is accordingly dismissed.