

BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONAL BENCH, CHENNAI

O.A. No. 243 of 2021[SZ]

P. Prakash,
S/o Ponnurangam,
No.16, MuthaiyaGounder Street,
Kalilheerthalkuppam,
Madagadipet (Post)
Puducherry – 605 107.

.....Applicant

Vs.

1. The Chairman,
National Highways Authority of India,
C 5 & 6, Sector – 10, Dwarka,
New Delhi – 110 075.
2. The Chief Engineer,
Central Office, PWD,
34, Lal Bahadur Sastri St,
Puducherry – 605 001.
3. The Member Secretary,
Pondicherry Ground Water Authority
No.15, 3rd Cross St,
Mariamman Nagar,
Karamanikuppam,
Puducherry – 605 004.

P. Prakash

4. The Director, Department of Science, Technology and Environment,
III Floor, PHB Building Anna Nagar,
Puducherry – 605 005.

.....Respondents

REJOINDER ON BEHALF OF THE APPLICANT
TO THE REPLY AFFIDAVIT
FILED BY THE RESPONDENT No. 1/THE CHAIRMAN, NHAI

I, P.Prakash, son of Mr. Ponnurangam , Hindu , residing at No. 16, Muthaiya Gounder Street, Kalitheerthakuppam, Madagadipet Post, Puducherry – 605 107, now come down to Chennai do hereby solemnly affirm and sincererly state as follows:

1. I submit that I am the applicant in the main application herein and lam well acquainted with the facts of the case and I submit as follows:
2. I submit that the above main application has been filed seeking directions from the Hon'ble Tribunal to the respondent authorities to slightly modify the plan[re-alignment] of expansion of Villupuram to Nagapattinam National Highway NH-332 through the villages Madagadipet, Thirubuvanai and Thiruvandarkoil [approx 3 to 4 kms], thereby preventing damage to the ponds,lake, water canal[French canal] and 1000 numbers of palm trees and other environmental damages.
3. I submit that on the last hearing 07.03.2022, the 1st respondent NHAI have filed their reply affidavit [no supporting documents

P. Prakash

filed], the present rejoinder is filed in reply to that. Save what all are matter of record and what is specifically admitted herein after, all other allegations/averments contained in the said reply affidavit is denied and disputed.

BRIEF SUBMISSIONS/OBJECTIONS -

4. It is submitted that originally the NH-45A has a stretch of 40 km (Villupuram to Puducherry). The lands for NH-45A were acquired in the year 1992. The NH-45A was approved for a double road of four lane having ROW (Right of Way) 25 to 30 meters. But for the past 30 years it hasn't been completed and remained with a single road of two-way with a width of 10.70 meters. In this road of 40 km, the stage carriage (Mofussil) buses cover the distance from 50 to 75 minutes. This NH-45A (Villupuram-Puducherry) links the NH-45(Chennai-Trichy), NH-45C[Vikravandi-Tanjore(via) Kumbakonam]] and East Coast Road [ECR/ Chennai to Nagapattinam]. This highway itself connects all the major cities/towns as mentioned in the reply affidavit filed by the 1st respondent.
5. It is submitted that the present expansion project NH-332 (Villupuram- Nagapattinam) which starts from south of Villupuram and gets linked in the NH-45A at 14km from Villupuram (eastern side) and gets diverted at 26 km towards Southern side of NH-45A. Further, the Puducherry Government has not issued any notice for the acquisition of lands for NH-332, that is NH-45A having a ROW of 30 meters and for NH-332 ROW is 45 meters (addition of 15 meters is yet to be acquired). It is falsely stated in

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the reply that the lands have been already acquired in 1992. Whatever lands acquired in the year 1992 would have been only for ROW of maximum 30 meters, but how they can proceed now with the proposed ROW of 45 meters without any new acquisition.

6. It is further submitted that some regions in-between the Puducherry state belongs to Tamil Nadu state which are being irrigated/recharged by the flow of water diverted from Tamil Nadu River namely 'Then Pennaiyar' to Elix chathiram Check dam in Villupuram district of Tamil Nadu. From this Check dam, the water passes through the canals in Tamil Nadu state and flows in Puducherry state villages namely – Maducarai, Kariamanickam, Nallur, Madagadipet, Kaleetheerthal kuppam, Thirubuvanai and Thiruvandar Koil (nearly 7 villages), where these village Tanks and Ponds are filled and get irrigated/recharged during the rainfall.
7. It is further submitted that from ThiruvandarKoil tank, the surplus water flows through the canal situated to North of NH-45A road (which has been re-aligned and a pucca concrete canal has been constructed during the year 2005-06) and fills the recharging Ponds (3) of this village and enters Tamil Nadu region, towards southern side. In this area again the canal is to be re-aligned for NH-332. From the main feeder shutters of the Tank, the flow of water helps in irrigating the lands in Thiruvandarkoil village and enters TamilNadu region, towards Eastern side. This water body system maintained during British and French government period was called as French Canal (Pondicherrian Vaikkal).

P. Ramesh

8. It is further submitted that the Thirubuvanai tank bund, possessing 636 palm trees and having an age of more than 60 to 100 years, situated in the North side of the NH 45A is proposed to be destroyed during the alignment of NH-332. This can be re-aligned as they have only proposed to acquire 7.5 meters on both sides of the NH-45A [as per their reply], by re-aligning to the Southern side of the NH road, as 60% of land is vacant/ Government lands.
9. It is submitted that the 1st respondent NHA have obtained permission for the work only in between the months of Dec 2021 and Jan 2022. But several Objections were raised to the authorities by the farmers' Association, Villagers and also this present case is registered before this National Green Tribunal (SZ) before the permission was granted by the Puducherry U.T authorities. Moreover a special Grama Sabha meeting was held on 10-JUN-2020 by the Commissioner of Mannadipet Commune Panchayat in the presence of the MLA, where the villagers/farmers objected the proceedings to be taken/ done for NH-332 and requested to conduct a meeting with all concerned authorities. But no public meetings/hearings was ever conducted.
10. It is humbly submitted that the authorities have not followed any procedures and have not conducted any –
- a. Public hearings/meetings with area people, farmers and other people affected by this project.
 - b. Social impact assessment of the areas concerned.

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- c. Environment impact assessment of the project – damage to the water bodies, canals, flora and fauna.

The reply filed by the 1st respondent has not addressed any of the above important aspects and also have not filed any documents before this Tribunal. The reply also do not state what mitigation measures have been taken so far by the authorities and instead they say mitigation measures will be done after the construction of highway.

PARA WISE REPLY/OBJECTIONS

11. With regard to paragraph No. 1 of the reply affidavit, it is submitted that the present issue/area in this case falls under the package No. 1 ie Villupuram to Puducherry[there are 4 packages in this project].
12. With regard to paragraph No. 2 of the reply affidavit, it is submitted that the 1st respondent has not even obtained permission to cut the 636 palm trees till now, now after filing this case before this Tribunal only, they are approaching the concerned authorities. Apart from the palm trees more than 1000 trees of other varieties are proposed to be felled in this package alone, of which many trees have been already felled.
13. With regard to paragraph No. 3a of the reply affidavit, it is submitted that they themselves admit that the highway will be 10 m inside the pond. This pond is very vital to the irrigation and ground water recharge of the village and the farmers will be

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affected very much if the pond is meddled with and damaged. The authorities have not followed any procedures and have not conducted any public hearings/meetings regarding this issue and no study conducted to consider if the pond could be saved by slight re-alignment. The other side of the road mainly consists of vacant and government lands, which have not been considered by the authorities. The authorities are rushing with the project without conducting any proper environmental and social impact study. It is further stated that additional lands surrounding the pond have to be acquired to maintain the spread area of the pond with the support of Puducherry Government, but in any project, the acquisition process is the preliminary process, which is not being followed in this project is against the rules.

14. With regard to paragraph No. 3b of the reply affidavit, it is submitted that here also they admit that the highway will affect the Thiruvandarkoil pond. It is submitted that from ThiruvandarKoil pond, the surplus water flows through the canal situated to North of NH-45A road and fills the three recharging Ponds of this village. This pond is very vital to the irrigation and ground water recharge of the village and the farmers will be affected very much if the pond is meddled with and damaged. The authorities have not followed any procedures and have not conducted any public hearings/meetings regarding this issue and no study conducted to consider if the pond could be saved by slight re-alignment. The other side of the road mainly consists of vacant and government lands, which have not been considered by the authorities. Adjacent to the Thiruvandarkoil pond, there is an ancient Temple namely Panchanatheeswarar Temple, also

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known as Vadukeeswarar Temple which is declared a monument of National Importance under the Ancient Monuments and Archaeological Sites and Remains Act 1958 by the Archaeological Survey of India. The age of the Temple is around 1000 – 2000 years. The temple is situated at less than 100 m from the pond. The authorities say that they will acquire the land surrounding the pond and restore the volume of pond affected, which will definitely require permission from the ASI. Whether any construction activities can be carried out within 100m from the ancient temple is another question which the 1st respondent has to answer.

15. With regard to paragraph No. 4 of the reply affidavit, It is very pertinent to note that the said French canal is running parallel and adjacent to the existing highway in this disputed stretch of 3 to 4 kms from Madagadipet to Thiruvandarkoil village. The canal comes directly in the ROW of the present project NH 332 and will be completely affected. It is submitted that the French canal feeds the Nallur Tank, Madagadipet Tank and then crosses the Present NH and Passes by the Northern side of the NH 45A. This French canal is the Feeder canal of Madagadipet Pond (Spring Pond) Measuring of one acre and also Feeder canal for the Thirubuvanai Tank. The surplus water from Thirubuvanai tank is the feeder for the Tank in Thiruvandarkoil village. The surplus water from this tank passes through the surplus canal over the northern side of the NH 45A and feeds the pond in front of the Temple and the excess water passes through the culvert and feeds the Tank in Azhiyur Village (TN) again the surplus water from this tank feeds the tank in Mandagapattu

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Village [TN] thus it is a continues process filling the tanks. Hence this canal is very vital to this area and any meddling with the canal will have huge adverse impact to the farmers and the groundwater. The reply does not state how they propose to proceed with the project without disturbing the canal with supporting expert documents. This projecting is affecting the water bodies, which in turn will affect the ground water table and since this stretch is only less than 20 kms from the sea, salt water will rise and will adversely affect the irrigation and farmers.

16. With regard to paragraph No. 5 of the reply affidavit, it is submitted that the ROW is definitely affecting the Thirubuvanai Lake bund and the lake also and all the palm trees in the bund are also affected by the NH 332.
17. With regard to paragraph No. 6a of the reply affidavit, it is submitted that since the construction period is 2 years, the authorities have not explained how the water bodies/canals will be maintained during rainfall season for this 2 years till the completion of the project. The project is interfering with ponds and the canals.
18. With regard to paragraph No. 6b and 6c of the reply affidavit, it is submitted that apart from the 636 palm trees more than 1000 trees of other varieties are proposed to be felled in this package alone, of which many trees have been already felled in this area. The reply simply states that the feasibility of relocation of the palm trees is being explored, but does not give any details/steps taken to explore the possibility. The Tank bunds of

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Puducherry UT are full of Palm trees because they can save and recharge ground water and withstand the tank bunds during all natural calamities.

19. With regard to paragraph No. 6d of the reply affidavit, it is submitted that they themselves admit that they are proceeding with this project NH-332 [ROW is 45 meters] with lands acquired in the year 1992 for the project NH 45A [ROW is 30 meters]. The Puducherry Government has not issued any notice for the acquisition of lands for NH-332, that is NH-45A having a ROW of 30 meters and for NH-332 ROW is 45 meters (addition of 15 meters is yet to be acquired). It is falsely stated in the reply that the lands have been already acquired in 1992. Whatever lands acquired in the year 1992 would have been only for ROW of maximum 30 meters, but how they can proceed now with the proposed ROW of 45 meters without any new acquisition. With regard to slight re-alignment of the project, the reply states that it would cause additional financial burden on the state exchequer but comparing the damage to the 636 palm trees, 1000 other trees, damage to the water bodies in each village and the damage to the French canal, damage to the farmers and damage to other flora and fauna, this cost is nothing but meagre. The slight re-alignment can prevent all this damage. The project is in the beginning stage as the appointed date of the contractor is only 25.11.2021 and hence the 1st respondent has to make an honest attempt to re-align in this stretch of 3 to 4 kms.

20. The reply filed by the 1st respondent is vague regarding the main issues raised by the applicant in the application and does

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not offer any proper explanation/description with supporting documents. Hence I hereby reserve the right to file additional rejoinder with the leave of this Hon'ble Tribunal, once the 1st respondent gives detailed explanation and files necessary documents before the Tribunal.

21. It is humbly submitted that this applicant prays the Hon'ble Tribunal may be pleased to appoint an independent committee of expert members to verify whether all due processes and laws are being followed in this project and can be directed to file a report. They can also study this disputed stretch of 3 to 4 kms and give an opinion if the slight re-alignment is possible to prevent the damages to the water bodies, canals, flora and fauna.

22. To summarize, the following environment aspects/persons are affected in this stretch of 3 to 4 kms from Madagadipet to Thiruvandarkoil village due to the wrong alignment of this project

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- a. Farmers of the 3 villages
- b. Madagadipet village Pond
- c. Thirubuvanai village lake and bund
- d. Thiruvandar Koil village ponds
- e. French canal running parallel to the highway in this stretch
- f. 636 Palm trees [60 to 100 years old]
- g. 60 families dependant on the palm trees
- h. Ground water and irrigation will be affected
- i. Nearly 1000 other species of trees are proposed to be felled

P. Ramesh

Hence it is humbly prayed that this Honourable court may be pleased to reject the reply affidavit filed by the 1st respondent and allow the main Application and pass such further or other orders and thus render justice.

Solemnly affirmed at Chennai and
signed his name in my presence
on this the 26th day of March 2022

P. Daksh X
Before Me

A. Jay
Advocate, Chennai
MHA