



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 15<sup>TH</sup> DAY OF APRIL, 2024

PRESENT

THE HON'BLE MR N. V. ANJARIA, CHIEF JUSTICE

AND

THE HON'BLE MR JUSTICE KRISHNA S DIXIT

WRIT PETITION NO. 5201 OF 2024 (GM-RES) PIL



BETWEEN:

1. SRI. IRANNA  
S/O KALAKAPPA NIDAGUNDI  
AGED ABOUT 34 YEARS  
OCCUPATION: AGRICULTURE  
R/O 1447/2, ARAKERI ONI  
VIDYA SAGAR NAGARA  
YELBURGA, KOPPAL DISTRICT  
KOPPAL – 583 236
2. SRI SIDDARAMESH  
S/O DODDAPPA HADAPADA  
AGED ABOUT 25 YEARS  
OCCUPATION: AGRICULTURE  
R/O YELBURGA, KOPPAL DISTRICT  
KOPPAL – 583 236

...PETITIONERS

(BY SRI.PADMANABHA V. MAHALE, SENIOR ADVOCATE  
ALONG WITH SRI BHANU PRAKASH H V, ADVOCATE)

AND:

1. UNION OF INDIA  
THROUGH ITS SECRETARY,  
MINISTRY OF ROAD TRANSPORT AND HIGHWAY  
GOVERNMENT OF INDIA  
TRANSPORT BHAWAN, 1  
PARLIAMENT STREET  
NEW DELHI – 110 001
2. THE STATE OF KARNATAKA  
REP BY ITS UNDER SECRETARY





TO THE GOVERNMENT  
DEPARTMENT OF TRANSPORT  
M S BUILDING, BANGALORE – 560 001

3. THE CHIEF ENGINEER  
OFFICE OF THE CHIEF ENGINEER  
MINISTRY OF ROAD TRANSPORT  
AND HIGHWAYS  
GOVERNMENT OF INDIA  
NO.32, 2<sup>ND</sup> FLOOR  
KSCFL BUILDING  
RACE COURSE ROAD  
BENGALURU – 560 001
4. THE SPECIAL LAND ACQUISITION OFFICER  
AND COMPETENT AUTHORITY  
NATIONAL HIGHWAY AUTHORITY  
MINI VIDHANA SOUDHA  
DHARWAD – 580 001
5. THE DEPUTY COMMISSIONER  
OF KOPPAL DISTRICT  
KOPPAL – 583 231
6. PRINCIPAL SECRETARY  
REVENUE DEPARTMENT  
VIDHANA SOUDHA  
BENGALURU – 560 001
7. KOPPAL DEVELOPMENT AUTHORITY  
KOPPAL, KOPPAL DISTRICT – 583 231
8. ASSISTANT EXECUTIVE ENGINEER  
NHAI, SUB DIVISION  
YELBURGA, KOPPAL DISTRICT – 583 236
9. THE ADDITIONAL DIRECTOR GENERAL NODAL  
MINISTRY OF ROAD TRANSPORT  
AND HIGHWAYS AND SECRETARY GENERAL  
INDIAN ROAD CONGRESS  
KAMAKOTI MARGA, SECTOR 6  
R K PURAM, NEW DELHI – 110 022

...RESPONDENTS

(BY SMT. NILOUFER AKBAR, AGA FOR RESPONDENT NOS.2, 5 & 6  
SRI H.SHANTHI BHUSHAN, DSGI FOR RESPONDENT NOS.1, 3 & 9)



THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OF MANDAMUS OR ANY OTHER APPROPRIATE WRIT OR ORDER OR DIRECTION DIRECTING THE RESPONDENTS TO TAKE IMMEDIATE STEPS TO TAKE ACTION TO STOP THE FURTHER PROCESS OF ROAD CONSTRUCTION ON BYPASS OPTION TO 4 AT ANNEXURE-B AND ETC.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING, THIS DAY, **CHIEF JUSTICE** MADE THE FOLLOWING:

**ORDER**

Heard learned Senior Advocate Mr.Padmanabha V.Mahale with learned advocate Mr.H.V.Bhanu Prakash for the petitioners, learned Additional Government Advocate Ms.Niloufer Akbar for respondent No.2-the State and its authorities-respondent Nos.5 and 6 and learned Deputy Solicitor General of India Mr.H.Shanthi Bhushan for respondent Nos.1, 3 and 9.

2. The present petition filed by two private individuals-petitioners herein, is the invocation of public interest jurisdiction of this Court.

3. What is prayed in the petition is to direct the authorities to take steps to stop the further process of road construction. The petitioners are aggrieved by construction of bypass option No.4. The road is being constructed upon clearance of the Government



of India, Ministry of Road Transport and Highways. It is the bypass road related to National Highway NH-367 which widens the two-lane with paved shoulder from 10.00 km. to 33.00 km. from Bhanapura village to Gaddanakeri section-NH367 of Bagalkot.

3.1 The petitioners are the residents of Yalburga. Their grievance is that in the Notification dated 03.02.2023 issued by the Ministry regarding construction of the said road, four bypass options were planned out. It is the case that option Nos.1 and 3 are out of central point of Yalburga city. However, the National Highway Authority has selected bypass option No.4.

3.2 According to the petitioners because of selection of such option, the road passes through the agricultural tube-wells and travels through the middle of agricultural lands with water wells, etc. It is contended that the bypass alignment is wrongly planned out and is contrary to the guidelines in the subject.

3.3 On the premise of the above basic pleadings, in addition to seeking prayer for stopping of construction of the road, it is further prayed to require the authorities to adopt option No.4 for laying down the Yalburga bypass road. It is claimed that thereby only the



rights of the pedestrians, general public and the users of the road could be preserved.

4. The record of the petitioners reflects that earlier also, in relation to the same subject matter and the grievance, Writ Petition No.17969 of 2023 was filed by the very petitioners which was withdrawn by the petitioners as per the order dated 06.10.2023. As per the liberty reserved by the Court, this petition is again filed.

5. The public interest jurisdiction of this Court is sought to be attracted for the prayer that road construction option is not properly selected and therefore, manner of laying road is wrong requiring stoppage of road construction work.

5.1 Indeed, the exercise of public interest jurisdiction by the Court does not extend to all categories of cases. The public interest litigation originated with an object to secure justice for the poor and weaker sections of the society, not in position to protect their interests and enforce their rights. It is supposed to be a litigation 'in the interest of public'. This jurisdiction could be invoked only in such cases where the relief is connected with the weaker or downtrodden segment of the society, more particularly to operate in



the areas where the facets and forms of human rights or basic rights are found to have been violated and corrective actions are required on.

5.2 In public interest litigation, the concerns underlying are for class of people such as the bonded labourers, under-trial prisoners, prison inmates and such deprived class of the society. Public interest litigation may also be necessary where the judicial intervention is necessary for protection of and for sanctity of democratic institutions and their independence *vis-à-vis* the other two wings of the democratic governance. The public interest litigation may become relevant also in the environmental areas because the adverse effects has direct nexus with the enjoyment of right and the concomitant rights under Article 21 of the Constitution, by the public at large.

5.3 The public interest litigation is, however, not a pill or panacea for all wrongs, it is rightly said. Where the field and functions are that of Executive, the Court will not be justified to readily make inroads in the domain of the Executive by invoking its public interest jurisdiction and interfere in executive functions unless there exists strong reasons to deviate or depart therefrom.



5.4 In **Guruvayoor Devaswom Managing Committee vs C.K.**

**Rajan ([2003] 7 SCC 546)**, the Supreme Court observed,

“Mr. Subba Rao referred to *State of Kerala v. N.M. Thomas* ([1976] 2 SCC 310) for the proposition that court is also a ‘State’ within the meaning of Article 12 but that would not mean that in a given case the court shall assume the role of the executive government of the State. Statutory functions are assigned to the State by the legislature and not by the court. The court while exercising its jurisdiction ordinarily must remind itself about the doctrine of separation of powers which, however, although does not mean that the court shall not step in in any circumstance whatsoever but the court while exercising its power must also remind itself about the rule of self-restraint. The court, as indicated hereinbefore, ordinarily is reluctant to assume the functions of the statutory functionaries. It allows them to perform their duties at the first instance.”

(para 67)

5.5 The public interest litigation has its own purpose to achieve and cannot be used as a tool to substitute or take control of the executive functions. The Court cannot take upon itself the task of statutory or executive authorities in the name of exercising public interest jurisdiction. Even if litigation is brought as non-individualistic, in all cases it may not become entertainable as public interest litigation for that very reason only, unless the issue



touches the wider areas of welfare and upliftment of the weaker sections, violation of fundamental rights, human rights, protection of democratic institutions, environmental aspects and such other categories of such larger public interest. Where it is the function of the Executive, the Court must follow the rule of self-restraint unless overriding circumstances are shown to require exercise of powers in public interest.

5.6 In **Vikram S/o Raghavesh Sirur and 86 others vs. Union of India and others** which was Writ Petition No.4352 of 2022 decided on 21.09.2023 by the Division Bench of this Court, the prayer was issuance of direction to set aside the implementation of the project of elevated corridor which was advanced before the Court invoking the public interest jurisdiction.

5.7 This Court observed in paragraph 4 of the order as under,

“ ... we decline indulgence in the matter inasmuch as the construction project in question essentially relates to the domain of Executive which will have the advantage of technology, feasibility and finance; courts by their very nature are ill-suited in deciding those factors, if called upon. The Apex Court in **INDIRA NEHRU GANDHI vs. RAJNARAIN**, (1975) 2 SCC 159 has identified the doctrine of separation of powers being an essential feature of our Constitution and therefore each



of the State Organs has to show deference to the decisions of the other, unless breach of binding Rule of Conduct is demonstrated. Learned DSG is right in contending that the Judiciary cannot substitute its decisions for those of the Executive in matters like this, by their very nature.”

6. While various grounds are raised in the petition to object laying down of the lane and to assert that the road should be laid in a particular fashion, it has to be observed that planning out the road, its width and length, deciding its layout and the alignment, and the entire design of the road, etc. are the areas to be addressed by the Executive. That are basically the functions of the Executive. The functions of this kind are preceded by planning and is an exercise in expert domain. The field is alien to the jurisdiction of the Court of law. The courts would not generally make an inroad in the pure executive decisions of such nature and kind, unless demonstrated to be palpably arbitrary, evidently irrational or violative of the fundamental rights.

6.1 Even otherwise, the subject matter cannot become the realm of public interest. Laying down the road is itself an act in public interest. The petitioners cannot come before the Court to plead that the alignment of road should be done in a particular way, or



that a particular option of planning should be adopted by the authorities. The Court cannot give such directions. No enforceable right could be said to be existing, much less it is possible to seek any right in public interest realm.

6.2 Not only the project of laying road cannot be arrested as it would be against the public interest, the directions of the kind and nature prayed for by the petitioners are not liable to be granted since they are the functions falling with the realm of the Executive.

7. The present public interest litigation is misconceived and meritless. It is accordingly dismissed.

**Sd/-  
CHIEF JUSTICE**

**Sd/-  
JUDGE**