

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 28TH DAY OF JULY 2015/6TH SRAVANA, 1937

W.P.(C).No.4200 of 2015 (Y)

PETITIONER(S):

M/S.WALAYAR RESORTS PVT. LTD.,
WALAYAR,
HAVING ITS ADMINISTRATIVE OFFICE AT SOORYA TOWER,
KUNNATHOORMEDU, PALAKKAD,
REPRESENTED BY ITS MANAGING DIRECTOR,
N.MANI, AGED 50 YEARS, S/O.VELUSAMY GOUDER.

BY ADVS.SRI.BABU KARUKAPADATH
SMT.M.A.VAHEEDA BABU
SRI.K.A.NOUSHAD
SRI.P.U.VINOD KUMAR
SRI.KANDAMPULLY RAHUL
SRI.MITHUN BABY JOHN
SRI.J.RAMKUMAR.

RESPONDENT(S):

1. THE CHIEF GENERAL MANAGER,
REGIONAL OFFICE, NATIONAL HIGHWAY AUTHORITY OF INDIA,
CHENNAI, TAMIL NADU.
2. THE PROJECT DIRECTOR,
NATIONAL HIGHWAY AUTHORITY OF INIDA (NHAI),
8/1187, ARUMUGHAM COLONY, CHANDRANAGAR, PALAKKAD.

R1 & 2 BY ADV. SRI.THOMAS ANTONY.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
28-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

APPENDIX

PETITIONER(S)' EXHIBITS:-

- EXT.P1. A TRUE COPY OF THE 4-STAR CLASSIFICATION CERTIFICATE DATED 28/5/2012 ISSUED TO THE PETITIONER.
- EXT.P2. A TRUE COPY OF THE LIE OF THE NH-47 DOWNLOADED FROM GOOGLE MAP ALONG WITH THE RELEVANT DETAILS FURNISHED BY THE PETITIONER.
- EXT.P3. A TRUE COPY OF THE RELEVANT PAGES OF THE POLICY GRANTING PERMISSION FOR ACCESS TO PRIVATE PROPERTY.
- EXT.P4. A TRUE COPY OF THE REPRESENTATION DATED 9/1/2015 SUBMITTED BY THE PETITIONER TO THE 1ST RESPONDENT.
- EXT.P5. TRUE COPIES OF THE PHOTOGRAPHS SHOWING THE POSITION OF M/S.SOORYA SWAGATH AND THE LIE OF THE ROAD.

RESPONDENT(S)' EXHIBITS:-

- EXT.R2(a) TRUE PHOTOCOPY OF THE LINE DIAGRAM SHOWING THE DEVELOPED 4-LANE NH 47 WITH MEDIAN OPENINGS AND SERVICE ROAD OPENINGS FROM Km.183.100 TO km.185.075.

Vku/-

[true copy]

K. Vinod Chandran, J.

W.P.(C).No.4200 of 2015-Y

Dated this the 28th day of July, 2015

JUDGMENT

The petitioner is the owner of a 4-Star hotel, situated near to the border of the State of Kerala, with the State of Tamil Nadu. The petitioner is aggrieved by the development of National Highway 47, carried on by the National Highway Authority of India [NHAI] insofar as restricting direct access to the petitioner's hotel by the side medians built on the National Highway. The petitioner contends that the NHAI has provided gaps/access to the service roads by breaking the medians at various places of the National Highway according to their whims and fancies and flouting the norms laid down for the same. The petitioner contends that the nearest opening provided to the service road, which has access to the hotel of the petitioner, towards Thrissur, is 1 Km. away from the hotel and towards Coimbatore, again it is at a distance of 1 Km. The petitioner projects the circuitous route a customer will have to take to have access to the hotel, which according to the petitioner, would hamper the business of the

hotel. The petitioner also, as per Exhibit P3 norms, seeks for an opening to be provided at the median and undertakes payment of fees as provided.

2. The NHAI has filed a counter statement, that the development work carried on of the National Highway is in pursuance of the 4-laning work commenced on 18.05.2013 under the Central Government project termed “the National Highways Development Project”, Phase-II of which is now implemented. The work of widening of the 4-lane traffic was taken up as per IRC:SP:84-2009 norms, based on good industry practises. According to clause 2.14 of these norms, median opening shall not be made within 2 Kms. and it specifies that all the median openings shall be provided with additional 3.5 meter wide shelter lane by the side of median in both directions for the vehicles taking “U” turn to veer away from the regular traffic lanes. In the instant case a 4-lane highway with 7 meter wide service road is provided on the left side of the main 4-lane from Km.183.250 to 185.000 and at Km.184.130 a median opening is provided for access to the service road on the left hand side for the entry of the vehicles for inspection by the Commercial Tax Check Post. As

per the IRC specification, 5 openings are said to be provided for the use of the Commercial Tax Check Post, R.T.O. Check Post, Malabar Cement Factory and other National Highway users, including the customers of the petitioner. The aforesaid five median openings are said to be within the prohibited distance of 2 Kms., but, however, the same was granted as a special case considering the factum of existence of Check Posts as also a public sector undertaking, wherein constant transportation of goods are necessitated for reason of it being carrying on cement manufacture. A detailed diagram has also been provided as Exhibit R2(a).

3. Considering the controversies raised, this Court had issued a Commission and the Advocate Commissioner has filed his report dated 04.06.2015.

4. Essentially it is to be noticed that the petitioner's contention is not of no access having been provided; but the access not being conducive enough for the customers to have easy access to the hotel. When a developmental activity is implemented, it cannot be said that every citizen or every commercial undertaking should be given preference in advancing

their prospects or their individual business interest. That would result in the public interest being subjugated to the individual interest.

5. Herein it is to be noticed that the 4-laning of the road is undertaken by the Central Government for easing the traffic with overall development and public interest as its objective. It is to be emphasised that despite the contention raised by the petitioner of a hotel project having been established, making considerable investment, the petitioner has thought it fit to start the hotel project at the place near to the border where the statutory check posts of various departments of the Government are located. Probably, looking at the commercial advantage, the petitioner invested money at the specific location near to the border. However, the petitioner should have been aware of the fact that the existence of the Commercial Check Post, which necessarily was long before the petitioner's hotel project was contemplated, would create a traffic-bottle-neck at the area and also result in a confluence of heavy vehicles at the particular spot necessitating even detention for verification of the goods and the documents accompanying the transport. Hence,

on the basis of the investments made, the petitioner cannot seek for an additional benefit of an opening at the National Highway.

6. Further, it is to be noticed that the NHAI, in its counter statement, has specifically stated that at every opening of the median, they are expected to provide carriageway for the vehicles to veer away from the regular lanes and take it to the service roads. Private interest and commercial considerations definitely has to concede to development intended with larger public interest as its objective. The plan produced by the NHAI as Exhibit R2(a) clearly indicates the openings in the 4-lane highway, providing access to the service roads.

7. The Commission report also does not comment any interference as sought for by the petitioner. In fact, the petitioner's contention that its customers would have to take a long circuitous route is belied by answers at 2.5.1(a) and (b), which are extracted hereunder:

“2.5.1 (a) A vehicle coming from Coimbatore side should take a left turn at 184.130 KM to the Service road and after moving in straight direction for approximately 450 meters can reach the Hotel.

- (b) A vehicle coming from Mannuthy side had to travel 450 metres past the Hotel and reach KM 184.130 and then take a right turn to the service road and after moving in straight direction for approximately 450 meters can reach the Hotel”.

A vehicle coming from the Coimbatore side would have to just enter into the service road on the left hand side and travel 450 metres along the service road to reach the hotel. A vehicle coming from Palakkad side would have to travel again nearly ½ a kilometer and then take a “U” turn to enter into the service road and immediately have access to the hotel. The traffic congestion in the area has been noticed by the Commissioner. But, that cannot lead to any preference being given to the petitioner, since the petitioner was well aware of the possibility of such congestion especially for reason of the location of the Check Posts near to the border.

8. The claim made on the basis of Exhibit P3 is also not sustainable. The norms at Exhibit P3 speak of Other Properties, being private or Government, including commercial and industrial units as also hotels. It is clearly specified in Exhibit

P3 that there shall be no direct access to the National Highway for Other Properties and access shall be only through the service roads. Access permission and payment of fees as specified are only to the service road access and there can be no direct access claim to the National Highway as such. This Court does not find any infirmity in such norms having been implemented, since it is only in the larger public interest and, as has been earlier noticed, private interest should always concede to that. This Court does not find any reason to grant the reliefs as sought for. The writ petition is devoid of any merit and the same is accordingly dismissed, leaving the parties to suffer their respective costs.

Sd/-
K.Vinod Chandran
Judge.

Vku/-

[true copy]