

THE HONOURABLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.13604 OF 2011

ORDER:

This Writ Petition is filed, under Article 226 of the Constitution of India, to declare the action of the respondents, in trying to close the access of the petitioners-Dabas to the National Highway-7, as illegal and arbitrary.

Heard learned counsel for the petitioners and Sri S.S.Varma, learned Standing Counsel for the respondent-National Highway Authority-I, apart from perusing the material available on record.

First petitioner herein claims to be the absolute owner and possessor of plot No.16 admeasuring 1654.89 sq.yards in Sy.Nos.448/A, 448/AA, 449/A and 449/AA, Lakshmi Green Mydose-2 colony, Pulluru, Manapapaadu Mandal, Mahabubnagar District having purchased the same by way of a registered sale deed bearing document No.6149/2010 dated 26.11.2010. The second petitioner herein claims to be the absolute owner and possessor of plot No.15 admeasuring 1654.89 sq.yards in Sy.Nos.448/A, 448/AA, 449/A and 449/AA, Lakshmi Green Mydose-2 colony, Pulluru, Manapapaadu Mandal, Mahabubnagar District. It is averred in the affidavit, filed in support of the Writ Petition, that, ever since the dates of the respective purchases, the petitioners have been in continuous possession and enjoyment of their respective properties. It

is further averred that the said lands of the petitioners herein, according to them, are situated adjacent to the National Highway No.7 and that the petitioners herein have decided to establish a Daba in their respective lands and, in view of the same, they obtained plan approval from the Gram Panchayat for constructing the same and, accordingly, started construction of the same also. It is alleged that on 27.04.2011 the officials of the respondents came to the plots of the petitioners and started digging in front of the proposed construction and that when the petitioners questioned the staff of the respondents they informed that they were laying fencing, blocking the access of the petitioners herein to the Highway. In the above background, alleging discrimination and questioning the said action on the part of the respondents, the present Writ Petition came to be filed.

This Court, while ordering Rule Nisi, on 30.04.2011, passed an interim order in W.P.M.P.No.16842 of 2011, directing the respondents not to close the access of the petitioners' Dabas to the National Highway-7.

A counter-affidavit, deposed by the Project Director, National Highway Authority of India, PIU, Hyderabad is filed, wherein it is stated that NH-7, which is passing through Pulluru Village of Mahbubnagar District falls under the jurisdiction of the National Highway Authority of India. The said counter also states that the permission of the

Gram Panchayat, said to have been obtained for construction of Daba, is irrelevant as the Gram Panchayat has no role for granting access permission on the National Highway. It is further stated in the counter that the petrol bunks which were established on NH-7 have got access permission into the Highway. It is also stated that, if they do not have any access permission, the National Highway Authority of India would take action for closing down the same.

Reiterating the averments in the said counter-affidavit it is submitted by the learned Standing Counsel that, under Section 28 of the Control of National Highways (Land and Traffic) Act, 2002, no person shall have right of access to a Highway either through any vehicle or on foot by a group of five or more persons except permitted by the Highway Administration either generally or specifically in the manner specified under Section 29. It is also the submission of the learned Standing Counsel that, unless the petitioners herein obtain necessary permission under Section 29 (2) of the Act, they cannot claim access as a matter of right.

Section 29 of the Act reads as under:

“Procedure for permission to access to Highway-(1) The general permission under sub-section (1) of section 28 shall be given by issuing notification in the Official Gazette for such purpose and specific permission under that sub-section shall be given in the manner specified hereinafter under this section.

(2) Any person desirous of obtaining specific permission referred to in sub-section (1) may

make an application in the prescribed form to the Highway Administration specifying therein the means of access to which such permission relates and shall also be accompanied with such fees as may be prescribed and the Highway Administration shall, after considering the application either give the permission with or without the terms and conditions as may be prescribed or reject the application as it may deem fit.

(3) In case, where the permission has been given in respect of the application made under sub-section (2), the person to whom such permission has been given shall obtain the licence from the Highway Administration in the prescribed form enumerating therein the terms and conditions, if any, subject to which such permission has been given, and such permission shall be renewed after such period and in such manner as may be prescribed.

(4) If any person contravenes the provisions of sub-section (1) of section 28 or violates any terms and conditions subject to which permission has been given under sub-section (2) including non-renewal of licence obtained under sub-section (3), his access to Highway under the permission under sub-section (1) or sub-section (3), as the case may be, shall be deemed to be unauthorised access and the Highway Administration or the officer authorised by such Administration shall have the power to remove such access and where necessary, the Highway Administration or such officer may use the necessary force with the assistance of the police to remove such access”.

In view of the above provision of law and having regard to the submissions made by the learned counsel for the petitioner, this Court deems it appropriate to dispose of the Writ Petition , keeping it open for the petitioner herein to make necessary application under Section 29 of the Act within a period of one month from the date of receipt of a copy of this order and if any such application is made within the time stipulated above, the same be considered and appropriate orders be passed, strictly in accordance

with law, within a period of one month thereafter. Till the said exercise attains finality, the interim order granted by this Court on 30.04.2011 shall continue to remain operative.

With the above observation, the Writ Petition is disposed of.

As a sequel thereto, miscellaneous Petitions pending, if any, in this Writ Petition shall stand closed. There shall be no order as to costs.

07th November, 2017
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A.V.SESHA SAI,J

