

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WP Nos.9405 of 2018 and 22653 of 2018

ORDER:

The grievance of the petitioners in these writ petitions is identical and hence they are heard together and being disposed of by this common order.

2. The petitioners are aggrieved by the action of the respondent-Project Director, National Highways Authority of India in making constructions which has the impact of restricting ingress and egress to the petitioners' lands in question and, therefore, seeks to declare the same as being illegal, arbitrary, unconstitutional and for issuance of appropriate consequential directions to the respondents to stop further constructions in the frontage portion of their lands, to meet the ends of justice.

3. The petitioner in WP No.9405 of 2018 is owner and possessor of the land in Sy. No.15, situated at Gamjal Village, Soan Mandal, Nirmal District, to an extent of Ac.2-14 guntas, having purchased the same through registered sale deed bearing document no.4169 of 2011, dated 25-08-2011. The respondent-authorities acquired an extent of Ac.0-27 guntas

for the purpose of widening of National Highway road. The petitioner opposes the action of the respondent authorities in raising structures in the frontage portion of the land facing National Highway, as it restricts ingress and egress to her land abutting to the National Highway. It is stated that if constructions are allowed to come up on the frontage of the petitioner's land, it will deprive her from taking advantage of complete access to the National Highway, violates the right of free movement of ingress and egress to her land and offends the equality clause and equal opportunities enshrined in Article 14 and life and liberty guaranteed under Article 21 of the Constitution. Similar set of facts emerge in WP No.22653 of 2018 and, therefore, it would suffice to advert to the facts of the case in WP No.9405 of 2018.

4. Counter affidavit is filed by the 3rd respondent-Project Director of National Highways Authority of India. In the counter affidavit, it is stated that the Ministry of Road and Transport & Highways, New Delhi, to further nurture the cause of sanitation/Swachh Bharat Mission, has taken a decision to provide facilities by construction of Highway Nest

(Mini) on up/down sides of the Toll Plazas at a distance of 200-250 metre ahead of the fee axis so as to facilitate the road users. The facilities that would be provided in this Highway Nest (Mini) include kiosks for sale of packaged food items, *viz.*, chips/biscuits/cookies/water bottles/soft drinks, tea and coffee vending machines, water ATM for drinking water, toilets for ladies and gents and physically challenged persons and space for parking vehicles. That such construction of Highway Nest (Mini) is taken up by the Concessionaire on the lands of the National Highway Authority of India (NHAI) near the Toll Plazas and construction is being undertaken in the land acquired and owned by NHAI. It is denied that after construction of the Highway Nest (Mini), the petitioner would have no ingress and egress to the land. The petitioner can seek permission from the competent authority under Section 29 of the Control of National Highways (Land and Traffic) Act, 2002, (for short, “the Act”). That petitioner cannot have free access to the National Highway in view of the restriction imposed under Section 28 of the Act unless obtains permission from the competent authority under Section 29 of the Act.

5. Heard the learned counsel for the petitioners and the learned standing counsel for the respondents 2 to 4.

6. The issue that the arise for consideration is whether the 3rd respondent-Project Director, National Highways Authority of India is entitled to make constructions, Highway Nest (Mini), through the Concessionaire on the lands of the National Highway Authority of India (NHAI) near the Toll Plazas, which are public utility in nature, more particularly for the facility of the road users on the highways covering the frontage area of petitioner's land which has an impact of restricting free ingress and egress to the petitioner's land, if so whether the authorities while doing so acted within the constraints of law.

7. The main contention of the learned counsel for the petitioners is that by virtue of making construction in the land abutting the petitioners' land, full frontage of land exposed to the National Highway is blocked and such construction blocking the frontage area is violation of the property rights of the petitioners under Article 300A of the Constitution as it also depreciates the value of the land.

8. It is to be seen that construction of Highway Nest (Mini) is being taken up pursuant to a scheme evolved by the Ministry of Road Transport & Highways, New Delhi, with an avowed object of maintaining sanitation and as part thereof proposed for construction of Highway Nest (Mini), which has certain utilities for the convenience of the road users. The purpose of constructing such Highway Nests on up/down sides of the roads of the Toll Plazas at a distance of 200-250 metre ahead of the fee axis cannot be undermined as it serves larger public purpose. It is no longer *res-integra* that where, a conflict arise between public and private interest, private interest must yield to the public interest. Petitioners are not oblivious of the fact that under Section 28 of the Act, no person shall have a 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 of the Act. Unless the petitioners obtain necessary permission under Section 29 (2) of the Act, they cannot claim access as a matter of right. In fact situation, it cannot be said

that the respondents chosen to construct Highway Nest only to deprive the petitioners from utilizing the full potentiality of their land. Providing road users with facilities by construction of Highway Nest near to Toll Plaza fee axis better serves the purpose for which they are meant than relocating them elsewhere, as every vehicle will slow down at fee axis Toll Plazas and providing such facilities near Toll Plazas sub-serves the safety and security concerns of the road users using those facilities. At the same time, the claim of the petitioners to use the land to maximum potentiality cannot also be brushed aside by virtue of construction of Highway Nest abutting the land of the petitioners if it totally blocks the ingress and egress. In **SATRABOYINA SOMESWARA RAO vs. SANGASETTI TIRUPATHAMMA**¹, a Division Bench of this Court while dealing with the right of easement and obstruction caused in public highway and the principles in granting the relief of mandatory injunction expressed that the owner of a land abutting a public street or a public way has every right to use the pathway for ingress and egress all along the line of contact between his land and the public pathway. Petitioners'

¹ 1988 (2) APLJ 469

counsel seeks to harp on the principle laid down in the said decision to contend that the petitioners have right to use every inch of the land all along the line of contact of their land and the National Highway. But it is to be seen that the decision in **SATRABOYINA SOMESWARA RAO's** case (cited supra) arose out of a matter under civil law remedy and the provisions of the Act did not fall for consideration and it allegedly a case of encroachment of land by the plaintiffs therein and the defendant is Eluru Municipality. Though there was difference of opinion on the point of allowing the plaintiffs to use the pathway to its full extent, on being the matter referred for the opinion of the learned third Judge, it was observed that encroachments have to be removed within a time frame, however, subject to the District Collector, making an allotment of an alternative site for locating the school elsewhere. The ratio laid down in the above case is not applicable to the facts of the present case. In the present case, the land is acquired under the Act and for the purposes intended therein. There was no occasion for the learned Bench in that case (1 supra)

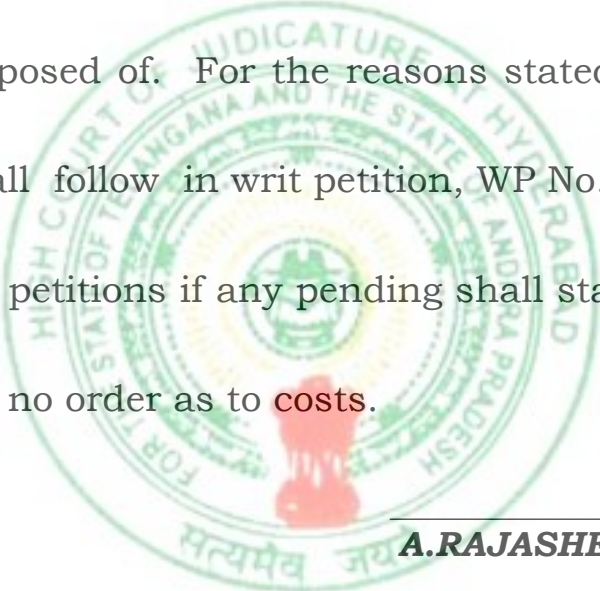
to consider the provisions of the Act, which is enacted in the year 2002.

9. It is to be seen that the respondent-Project Director had acquired the land in question under the provisions of the Act and it is free to put the land so acquired for the purposes intended under the Act. However, Section 29 to the Act itself provides for grant of permission to have access to a National Highway. In such view of the matter, if total constructions come-up blocking the frontage land of the petitioners, it will not serve any purpose even if the petitioners invokes the statutory provision and makes an application for permission to have access to the National Highway.

10. In the circumstances, it is open for the petitioners to make an application under Section 29 of the Act, within a period of four weeks from today, to the competent authority seeking permission to have access from their lands to the National Highway and on such applications being filed by the petitioners, it is for the competent authority to examine the same and pass appropriate orders thereon within a reasonable timeframe, not later than four weeks thereafter, having regard

to the larger public interest as also balancing the interest of the petitioners to have access from their lands to the National Highway. Till appropriate orders in accordance with law are passed, no further construction blocking entire frontage in question be carried on. However construction can be carried on leaving some space till petitioners' application are disposed off.

11. With the above directions, the writ petition, WP No.9405 of 2018 is disposed of. For the reasons stated above, similar directions shall follow in writ petition, WP No.22653 of 2018. Miscellaneous petitions if any pending shall stand disposed of. There shall be no order as to costs.



A.RAJASHEKER REDDY, J

Dated: 01-11-2018
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HON'BLE SRI JUSTICE A.RAJASHEKER REDDY



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