



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **09.09.2019**

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.A. (MD)No.907 of 2019

and

C.M.P. (MD)No.8162 of 2019

1.R.Jenitha Selva Rani

2.N.Nadine

3.N.Kevin Samuel

4.N.Rithik Samuel

... Appellants

Vs.

1.The Divisional Engineer,
National Highways,
Old Employment Exchange Building,
Opposite to Lakshman Mahal Kalyana Mandapam,
Nagercoil, Kanyakumari District.

2.The Assistant Divisional Engineer,
National Highways,
Kuzhithurai Sub-division,
Kuzhithurai, Kanyakumari District.

3.The Junior Engineer,
National Highways,
Kuzhithurai, Kanyakumari District.

4.SPL Infrastructure Private Limited,
No.15, Kasturirangan Road,
Alwarpet, Chennai-600 018.

5.SPL Infrastructure Private Limited,
2nd Floor, Skoda Showroom,
Opp. To Bensam Hospital,
Nagercoil-629 001,
Kanyakumari District.

6.The Divisional Engineer (Highways),
Construction and Maintenance,
Tamil Nadu State Highways Department,
P.W.D., Compound, Veppamoodu Junction,
Nagercoil, Kanyakumari District,
Pin:629 001.



7.The Assistant Divisional Engineer (Highways),
Construction and Maintenance,
Tamil Nadu State Highways Department,
Kuzhithurai, At Mathandam,
Kanyakumari District.

8.Union of India,
Represented by its Secretary,
Department of Road Transport and Highways,
New Delhi.

9.The National Highways Authority of India,
G5 and 6, Sector 10, Daurkha,
New Delhi-110 075,
Represented by its Chairman.

10.The Regional Manager,
Regional Office,
National Highways Authority of India,
Sri Tower, 3rd Floor,
DP34, Industrial Estate,
Guindy, Chennai-600 032.

11.The Project Director,
National Highways Authority of India,
Nagercoil, Kanyakumari District.

..Respondents

PRAYER: Writ Appeal is filed under Clause 15 of the Letter Patent Act, to set aside the order passed in W.P.(MD)No.3311 of 2019 dated 08.05.2019 and allow this writ appeal.

PRAYER IN W.P.(MD)NO.3311 OF 2019:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondents to permit the petitioners to make their space in the southern portion, that is, the space of about thirty-three feet in length and about eleven-and-a-half feet in width between their Ebenezer Building and National Highway 47, in their property of 12.745 cents (5.16 ares) of land in Re.Survey Nos.D3/63, D3/62-1 and D3/65-1 (Old Survey No.2313A) of Kuzhithurai Town Village (Former Nalloor Village), Vilavancode Taluk, Kanyakumari District, and the adjoining footpath of about five feet in width to slope towards National Highway 47, so as to make the same in the same level as that of the motorable road therein so as to be fit for taking in vehicles into their said property, and taking the same out of the property, by removing necessary portion of the obstructing retaining wall by the side of National Highway 47, at their expense with a time to be fixed by this Court.



For Appellant : Mr.K.N.Thambi
For R1 to R3 and
R9 to R11: Mr.Srinivasan

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For R6 and R7 : Mr.A.K.Basakara Pandian
Special Government Pleader
For R8 : Mr.K.Balasundaram
Central Government Standing Counsel

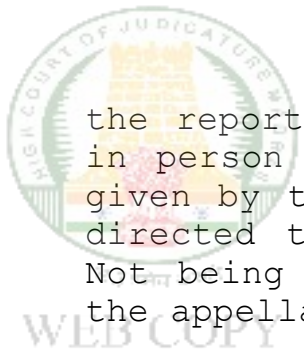
JUDGMENT

[Judgment of this Court was made by **T.S.SIVAGNANAM, J.**]

The writ petitioners are the appellants before us challenging the order dated 08.05.2019. The petitioners are carrying of textile business under the name and style of P.Samuel Textiles. They approached the writ Court praying for issuance of writ of mandamus to direct the respondents to permit the appellants to make their space in the southern portion, that is, the space of about thirty three feet in length and about eleven-and-a-half feet in width between their Ebenezar Building and National Highways 47, in their property of 12.745 cents (5.16 ares) of land in Re.Survey Nos.D3/63, D3/62-1 and D3/65-1 (Old Survey No.2313A) of Kuzhithurai Town Village (Former Nalloor Village), Vilavancode Taluk, Kanyakumari District and the adjoining footpath of about five feet in width to slope towards National Highway 47, so as to make the same in the same level as that of the motorable road therein so as to be fit for taking in vehicles into their said property, and taking the same out of the property, by removing necessary portion of the obstructing retaining wall by the side of National Highway 47, at their expense, wit a time to be fixed by this Court.

2. The grievance of the appellants is that after a new over bridge was constructed, the access to the appellants' shop was completely blocked, as a result of which they had suffered severe setback in their business. Therefore, they approached the respondents by way of representations, since the same did not yield any result, the appellants had filed the writ petition for the aforementioned relief. Before the writ Court, the petitioner produced an opinion of an expert nominated by them namely one Bharath Constructions, who had opined that there is a feasibility for providing access to the appellant shop. The learned writ Court, while disposing of the writ petition took note of the report of the expert and directed the appellants to move the

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the reports before the authority, who has to hear the appellants in person and permit them to demonstrate as to how the proposal given by them is feasible of compliance. The said authority was directed to dispose of the representations within a time frame. Not being satisfied with the direction issued by the writ Court the appellants are before us.

3. We have heard Mr.K.N.Thambi, learned counsel for the appellants, Mr.Srinivasan, learned counsel for the respondents 1 to 3 and 9 to 10, Mr.A.K.Basakara Pandian, learned Special Government Pleader, for the respondents 6 and 7 and Mr.K.Balasundaram Central Government Standing Counsel, for the eighth respondent.

4. Mr.R.Kalidasan, Assistant Divisional Engineer, National Highways, Kuzhithurai Sub division, Nagercoil, Kanyakumari District is present before this Court and produced sketch and photographs. Mr.K.N.Thambi, learned counsel appearing for the appellants has also produced photographs. We had called the Assistant Divisional Engineer as well as Mr.K.N.Thamni, learned counsel, to explain their respective stand. The appellants' request to the authorities is to provide direct access to the National Highways, which is not feasible and not permissible in the light of the settled guidelines formulated for such purpose.

5. On perusal of the sketch, we find that the appellants can have access only through a ramp and as a result of which the customers cannot bring their vehicle to the appellants shop. It appears that it is not only the appellants will be affected but also the other neighbouring shops will also be affected. In our considered view, the writ court cannot examine the issue as to which would be the appropriate place for the appellants to be provided access and these are all to be left to the decision of the authorities concerned. However, we need to point out that any decision, by the authority should be in public interest as well as taking into consideration the hardship that may be caused to the persons, who own the property carrying business in the area adjoining National Highway.

6. As observed earlier, the appellant cannot have direct access to the national highways. However, we are of the view that the decision can be taken by the authorities by examining as to whether there is any feasibility for the authorities to permit the appellants to have an access to the service road instead of an elevated platform.

7. The learned counsel for the appellants submitted that the appellants are also willing to bear reasonable charges for constructing a separate ramp, so that the customers of the



appellants can access to the shop. We did not wish to express any opinion on the issue.

8. The writ court while disposing of the writ petition, directed the appellants to give representation to the higher authorities. We are informed that Dr.R.Arul Mozhi, Superintending Engineer, National Highways, Tirunelveli is the immediate higher authority to the Divisional Engineer, Highways, Nagercoil. However, the said authority is not a party to this proceedings. Nevertheless, we are inclined to issue the following directions, so that a reasonable solution will be arrived:-

(a) the Superintending Engineer, National Highway, Tirunelveli, is directed to cause an inspection of the area in the presence of his subordinates after notice to the appellants.

(b) the appellants are entitled to produce before the Superintending Engineer the reports obtained by them through their contractors and after making a thorough study of the matter, a reasonable decision can be arrived at.

(c) We make it clear that the appellants are not be entitled to access directly to the national highways. But the authorities can examine the feasibility of having access to the parking area in front of the appellants' shop.

(d) The above direction shall be complied with within a period of three weeks from the date of receipt of a copy of this order.

9. In the light of the above, this writ appeal is disposed of by partially modifying the directions issued by the writ Court.

10. Since the Superintending Engineer is not a party to the proceedings, the Registry is directed to mark a copy of this order to the said authority. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

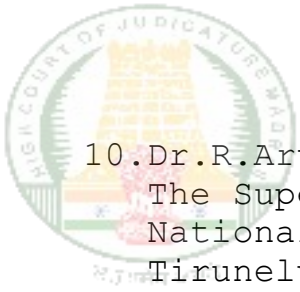
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Sub Assistant Registrar (CS)



To

- 1.The Divisional Engineer,
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Opposite to Lakshman Mahal Kalyana Mandapam,
Nagercoil, Kanyakumari District.
- 2.The Assistant Divisional Engineer,
National Highways,
Kuzhithurai Sub-division,
Kuzhithurai, Kanyakumari District.
- 3.The Junior Engineer,
National Highways,
Kuzhithurai, Kanyakumari District.
- 4.The Secretary, Union of India,
Department of Road Transport and Highways,
New Delhi.
- 5.The National Highways Authority of India,
G5 and 6, Sector 10, Dawrka,
New Delhi-110 075,
Represented by its Chairman.
- 6.The Regional Manager,
Regional Office,
National Highways Authority of India,
Sri Tower, 3rd Floor,
DP34, Industrial Estate,
Guindy, Chennai-600 032.
- 7.The Project Director,
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- 8.The Divisional Engineer (Highways),
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Kuzhithurai, At Mathandam,
Kanyakumari District.



10.Dr.R.Arul Mozhi
The Superintending Engineer
National High Ways
Tirunelveli

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- +1 CC to M/s.K.N.THAMPI, Advocate (SR-86013[F] dated 09/09/2019)**
+1 CC to M/s.K.BAALASUNDHARAM, Advocate (SR-86176[F] dated 10/09/2019)
+1 CC to M/s.SU.SRINIVASAN, Advocate (SR-86178[F] dated 10/09/2019)
+1 CC to M/s.GP (SR-86143[F] dated 10/09/2019)

ORDER MADE IN
W.A. (MD) No. 907 of 2019
09.09.2019

_KM/ (20.09.2019) 7P 15C