



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07-12-2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.20058 of 2014

and

M.P.No.1 of 2014

M.Balasubramaniam

... Petitioner

Vs

1.The District Collector,
Cuddalore District,
Cuddalore.

2. The Executive Officer,
Sethiyathope Town Panchayat,
Sethiyathope,
Cuddalore District.

3. The Divisional Engineer,
National Highways,
National Highways NH-45c,
Tanjore Division, Tanjore.

...Respondents

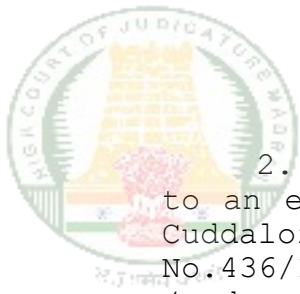
PRAYER : Writ Petition filed Under Article 226 of the Constitution of India, to issue a writ of Mandamus, forbearing the respondents from putting up any construction over the National Highway NH-45C in blocking the access to the petitioner's property bearing Survey No.204/1L4 at Sethiyathope.

For Petitioner :Mr.P.R.Thiruneelakandan

For Respondents:M/s.N.Senthil Selvi
Government Advocate
[For R1 to R3]

O R D E R

The relief sought for in the present writ petition is to forbear the respondent from putting up any construction over the National Highway NH-45C in blocking the access to the petitioner's property bearing Survey No.204/1L4 at Sethiyathope.



2. The petitioner states that he purchased a piece of land to an extent of 715 Sq.ft in Survey No.204/1L4 at Sethiyathope, Cuddalore District through a registered sale deed in Document No.436/1993. The petitioner had put up two storied building (underground + basement + 1st floor + 2nd floor), in which, he started hardware business in the name of "Muniaiayah hardware".

3. The learned counsel for the petitioner states that the Highway Authorities proposed to construct a Bus stop in the Highways Road in front of the property belongs to the petitioner. It is contended that the right of access to the property cannot be taken away by constructing a Bus stop. The petitioner has got a right of property, so also to run his business in a peaceful manner. In the event of allowing any construction in the Highways, the petitioner will be deprived of his right of business in the particular locality.

4. The learned counsel for the petitioner relied on the judgment of this Court in Second Appeal No.678 of 2004 decided on 27.08.2012 and contended that "the right of immediate access is ensured in the said judgment and paragraph 13 of the Judgment is as under:

"13. The right of immediate access from the private property to a public highway, is a private right available to the owner of the premises, solely by virtue of existence of the property, adjoining the highway. This private right is distinct from the right of the owner of that property to use the highway itself as one of the public."

5. The learned Government Advocate appearing on behalf of the respondent disputed the contention by stating that construction of Bus stop for the benefit of the public at large was proposed from and out of the MLA Constituency Development Fund and it was sanctioned on 23.12.2013. Construction commenced and thereafter, the petitioner filed the writ petition and by virtue of the interim order granted, the respondents are unable to proceed with the construction.

6. It was proposed to construct a Passengers shelter near Rajiv Gandhi Statue at Sethiyathope under the Bhuvanagiri MLA Constituency Development Scheme for the year 2012-13 and administrative sanction for the work proposal was also accorded by the first respondent. An amount of Rs.15 lakhs was allotted for this purpose. Technical sanction was estimated. It is contended that the proposed construction of the Bus shelter lies on the eastern side of the Vikravandi - Kumbakonam - Tanjore National Highways Road. The length and breadth of the proposed construction is 24 and 4 metres respectively.



7. The Special Tahsildar (Land Acquisition), National Highways, Kattumannarkoil has informed the project Director (Land Acquisition), Tanjore that there is no proposal for the acquisition of the land for National Highways in the site proposed for the construction of bus shelter at Sethiyathope. The Project Director (LA), Tanjore has forwarded a copy of the report of the Special Tahsildar to the Executive Officer, Sethiyathope Town Panchayat for taking necessary action. Tenders for the construction work was called for five times and on 20.12.2013, the lowest tender was accepted and work order was issued on 23.12.2013.

8. The request of the petitioner was considered and the meeting was convened in the presence of the MLA Bhuvanagiri, President of the Business Association, the Sub-Inspector of Police, the President of the Sethiyathope Town Panchayat and the Executive Officer. In that meeting, it was agreed by all the participants that the shelter construction area may be divided into two, one on the eastern side of the road and the other on western side of the road without giving any disturbance both for the business people and for the traffic.

9. The petitioner having not satisfied with the decision taken in the meeting, filed the present writ petition.

10. The learned Government Advocate made a submission that the Bus shelter is proposed for the benefit of the people at large and the construction works had commenced. Under these circumstances, the writ petition is to be rejected.

11. The Right of access to a private property must be ensured. No doubt, the petitioner is running a business by constructing a building in his property. But, the respondents states that the constructions made are in violation of the building rules. However, it is for the authorities to conduct an inspection and initiate appropriate action.

12. As far as the present writ petition is concerned, the petitioner states that his right of access is denied. In this regard, there is no dispute that the right of access cannot be denied to any person, who is running a business in his property.

13. The learned Government Advocate states that the right of access is not denied to the petitioner and construction of bus shelter will not affect the access to the petitioner's private property. In this regard, the grievances of the petitioner was considered and the meeting was convened in the presence of the MLA Bhuvanagiri, President of the Business Association, the Sub-Inspector of Police, the President of the Sethiyathope Town



Panchayat and the Executive Officer. In the said meeting, it was agreed that the shelter construction area may be divided into two, one on the eastern side of the road and the other on the western side of the road. However, the decision taken in the meeting was not agreeable to the petitioner. Thus, the writ petition is filed.

14. Public interest will prevail over the private interest. Construction of Bus shelter for the benefit of the public at large is of paramount importance. No doubt, property right of an individual is also to be protected. However, if necessary, for execution of such public project, the Government is empowered to invoke the acquisition laws. But, in the present case, there is a finding that there is no such proposal as of now for acquisition of the private property. A proposal is to construct a Bus shelter in the Highways land and an alternate solution is also considered in the meeting.

15. This being the factum, mere construction of Bus shelter will not deny access to the petitioner's property. However, if any building violations are committed by the petitioner, then he may not have any right to claim any portion of the Highways property.

16. It is a growing practice in urban areas that the traders and businessmen are frequently encroaching the Highways land and constructing the Commercial Buildings in violation of the Building Rules, more specifically, by not providing any space for parking as required under the Building Rules. Such illegal constructions and violations are causing greatest hindrance to the free flow of traffic in the Highways and further causing nuisance to the road users. Public roads are being occupied for the purpose of parking vehicles. Unguided and haphazard parking of vehicles are posing a threat to the road users. Further such illegal constructions and illegal parkings are the reasons for road accidents on many occasions. The Authorities are not initiating any action against such illegal constructions and violations in the Highways land. Thus, it is duty mandatory on the part of the Highways Authorities, Police Department, Revenue Department and other Government Departments to ensure that free flow of traffic is being maintained, illegal parkings are controlled by enforcing the law and all appropriate actions are initiated to evict the encroachers so also to demolish the illegal constructions in order to develop the Highways road and other areas for the benefit of the public at large and more-so, to avoid road accidents in such areas.

17. Mostly, these kind of writ petitions are filed since the businessmen have constructed the Commercial Buildings in such a manner without following the Building Plan Approval and in



violation of the Building Rules in force. No doubt, while constructing the Bus Shelters, the Authorities are bound to ensure access to the Commercial Buildings constructed in the Highways. But it does not mean that the traders can file writ petitions preventing the Authorities from constructing the Bus Shelters for the benefit of the people at large. Thus the Bus Shelters are to be constructed ensuring access to the Commercial Premises of that locality. Equally the encroachments, building violations and illegal parking of vehicles are also to be dealt with in accordance with law and all suitable actions are to be initiated by following the procedures.

18. With these observations, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

kak/Svn
To

1.The District Collector,
Cuddalore District,
Cuddalore.

2.The Executive Officer,
Sethiyathope Town Panchayat,
Sethiyathope,
Cuddalore District.

3.The Divisional Engineer,
National Highways,
National Highways NH-45c,
Tanjore Division, Tanjore.

W.P.No.20058 of 2014

rsi(CO)
A.SK(21.12.2021)