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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2021

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.23342 of 2014

and

M.P.Nos.1 and 2 of 2014

Indian Public School (P) Ltd.,
Repted by its Chairman A.Ashokkumar,
Sathy Road, Sarkkar Samakkulam Po.,
Coimbatore.

...Petitioner

Vs.

1. Assistant Divisional Engineer (C&M),
Highways Department,
Annur, Coimbatore District.

2. Divisional Engineer,
Highways Department, Coimbatore - 18

3. The Superintending Engineer,
Office of Highways Department,
Coimbatore - 641 018

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent relating to his proceedings Lr.No.553/ 2014/ Ee.Va.Aa/ dated 24.07.2014 and quash the same and forbearing the respondents, their men, agent, employees etc., from removing foot over-bridge at 0/8 km in Devampalayam to Pethanaickenpalayam Highway.

For Petitioner : Mr.R.Kannan

For Respondents: Mr.M.Rajendiran
Additional Government Pleader

O R D E R

The proceedings dated 24.07.2014 directing the petitioner to stop construction and remove the encroachment is under challenge in the present writ petition.

2.The petitioner is a Private Limited Company and registered under Indian Companies Act. The petitioner Company



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was established with an object to promote literacy among the public and provide basic education to the children in and around the locality by establishing a school premises. Accordingly, the petitioner established a School in the name of "Indian Public School". The petitioner submitted an application for construction of foot over bridge abutting the highways road for the purpose of crossing the road. The competent authorities of the Highways Department sought for certain informations from the petitioner in letter dated 11.11.2011. The Highways Department had categorically stated that an estimate is to be prepared and necessary permission also is to be obtained for the purpose of construction of foot over bridge on the highways. When the process of seeking particulars were in progress, the petitioner without any permission commenced the construction work and during the pendency of the writ petition, completed the construction work. Even before the completion of the construction work, the first respondent issued a notice impugned on 24.07.2014 categorically stating that the petitioner should stop construction of foot over bridge on the highway which was constructed without obtaining permission from the Highways Department and further it is stated that the foot over bridge constructed across the road in violation of the Government rules would cause hindrance to free traffic flow in that locality. Thus, the petitioner was directed to remove the foot over bridge, failing which, action will be taken.

3.Challenging the said order, the learned counsel for the petitioner made a submission that students are studying in the School and the foot over bridge is constructed for the benefit of the students studying in the School. The students will not be in a position to cross the road and therefore, they have constructed. It is contended that the petitioner submitted an application seeking permission and the permission was not granted and under those circumstances, the petitioner completed the construction work and the foot over bridge is in usage now.

4.The learned Additional Government Pleader appearing for the respondents opposed the said contention by stating that illegal construction cannot be allowed as the foot over bridge across the highways would cause hindrance to free flow of traffic and further, it is in violation of the Government Rules in force. Thus the writ petition is to be dismissed.

5.The learned Additional Government Pleader assisted by Mr.S.Pirathaban, Superintendent, Highways C/M, Annur Sub Division, Coimbatore District informed this Court that there is a proposal for widening the road and the work is yet to be commenced.

6.This Court is of an opinion that Chapter V of the Tamil



Nadu Highways Act, 2001 provides for Prevention of unauthorized occupation of and encroachment on a highway and removal of encroachment. Section 26 deals with Prevention of unauthorized occupation of highways, Section 27 provides Power to cancel permission and Section 28 enumerates Prevention of Encroachment. Even in cases where permission is granted, the authorities competent are empowered to cancel the permission if any of the conditions are violated.

7.As far as Section 28 is concerned, the Highways authorities are bound to prevent encroachments. Sub-Section (1) contemplates that the Highways Authority or any person authorised by it in this behalf shall, at such time as may be considered necessary, conduct such checks and periodical inspection of the highway boundaries, with the view to ensure the prevention of unauthorised encroachment and the removal of such encroachment. Sub-section (2) contemplates that the Highways authority or any person authorised by it in this behalf, may- (i) remove, without any notice, any movable temporary structure, enclosure, stall, booth, any article whatsoever hawked, exposed or displayed for sale or any other thing whatsoever by way of encroaching the highway or in any area where the construction or development of a highway is undertaken or proposed to be undertaken and (ii) remove any immovable structure, whether permanent or temporary in nature, encroaching the highway or in the area vested with Government under this Act, after issuing a show cause notice against such removal, returnable within a period of seven days from the date or receipt thereof.

8.Thus, the Highways authorities are empowered to remove the encroachments. In the present case, notice was issued to the petitioner and further, the petitioner constructed the foot over bridge knowing the fact that the petitioner has not obtained any permission from the competent authorities. Thus, the construction of foot over bridge was made intentionally and knowing the consequences. When the petitioner School was aware of the fact that it is an illegal construction and they have no authority to put up any construction in the highways land, more so, without the permission of the authorities there is no reason to approve the construction or the conduct of the petitioner in proceeding with the illegal construction knowing the consequences.

9.Any construction of foot over bridge or otherwise is to be made only with the permission of the Highways Department and by following the procedures as contemplated under law. Now, it is brought to the notice of this Court that road widening project is proposed and the project is yet to be commenced. The pendency of the writ petition and the foot over bridge



constructed is causing hindrance to the authorities to implement the project for expansion of road in that locality.

10.This being the factum established, the Highways authorities are empowered to remove the encroachments by exercising the power conferred under Sections 27 and 28 of the Tamil Nadu Highways Act, 2001. In the present case, the petitioner was informed about the illegal construction and the petitioner knowing the consequences completed the foot over bridge across the highways road. This being the factum, the petitioner has not established even a semblance of legal right so as to sustain the conduct of constructing an illegal foot over bridge in the highways for the usage of their Institution which can never be approved by this Court.

11.Consequently, the petitioner is granted with a liberty to remove the foot over bridge immediately within a period of one week, failing which, the respondents are directed to remove the foot over bridge within a period of three weeks from the date of receipt of a copy of this order.

12.With these directions, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

cse

To

1. The Assistant Divisional Engineer (C&M),
Highways Department,
Annur, Coimbatore District.

2. The Divisional Engineer,
Highways Department, Coimbatore - 18

3. The Superintending Engineer,
Office of Highways Department,
Coimbatore - 641 018

+lcc to Mr.R.Kannan, Advocate, S.R.No.64262

+lcc to the Government Pleader, S.R.No.64807

W.P.No.23342 of 2014

KG(CO)

RGA(27/12/2021)