



W.P(MD)No.19193 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.09.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.19193 of 2014

and

M.P(MD)Nos.2 & 3 of 2014

1.M.Gobinathan

2.A.Syed Ali Fathima

3.Tamilselvi

4.Faritha Begum

... Petitioners

Vs

1.The National Highways Authority of India,
(Ministry of Road Transport and Highways),
G – 5 & 6, Sector 10,
Dwarka,
New Delhi – 110 075.

2.The Project Director,
National Highways Authority of India,
H.No.83/1, SBI First Colony Extension,
Bye Pass Road,
Madurai.

3.The District Collector,
Virudhunagar District,
Virudhunagar.



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4.The Superintending Engineer,
National Highways Division,
Virudhunagar District,
Virudhunagar.

5.The District Revenue Officer,
Virudhunagar District,
Virudhunagar.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, forbearing the respondents from interfering with their right, title possession and enjoyment of the land admeasuring 3.11 acres situated in Survey No. 234/1A1A on the eastern side of NH-7 and further restrain them from putting up any constructions in the manner of obstructing their access to Highways land / road from any part of our premises.

For Petitioners : Mr.N.Dilipkumar

For Respondents : Mr.K.Ashok Kumar Ram
Senior Panel Counsel for R.1

Mr.C.Arul Vadivel @ Sekar
for M/s.Arulvadivel Associates for R.2

Mr.D.Gandhiraj
Special Government Pleader
for R.3 to R.5

ORDER

Heard the learned counsel appearing for the writ petitioners, the learned Senior Panel Counsel appearing for the National Highways Authority



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of India (NHAI), the learned Standing Counsel appearing for the second respondent and the learned Special Government Pleader appearing for the respondents 3 to 5.

2. The writ petitioners jointly purchased 3.11 acres abutting NH7. To the misfortune of the writ petitioners a toll plaza came to be setup by NHAI leading to blocking the petitioner's frontage.

3. The learned counsel appearing for the petitioners states that at present, the frontage has been barricaded by putting up movable containers and one permanent structure. My attention is drawn to the order dated 13.12.2018 in W.P(MD)No.629 of 2018 (C.M.Joshua & another Vs The Project Director & Others). Paragraphs 2 to 8 of the said order read as follows:

“2.The matter was taken up for final hearing. The learned standing counsel drew my attention to Section 28 and 29 of the Control of National Highways (Land and Traffic) Act, 2002 (Central Act 13 of 2003). The said provisions rules as under:



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“28.Right of access- (1) *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 in Section 29.*

(2)*The access to a Highway under subsection(1) shall be subject to the guidelines and instructions issued by the Central Government from time to time.*

(3)*The Highway Administration may, by notification in the Official Gazette, declare a Highway or any portion thereof to be limited for access in the manner as specified in such notification and may also impose any restriction or control on such access to, from or across such Highway as specified in that notification.*

29.Procedure for permission to access to Highway –

(1)*The general permission under subsection (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*



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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 92), 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), 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.”



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3.The learned standing counsel also pointed out that the Central Government has issued guidelines/norms vide letter No.RW/NH-33023/19/99-DO-III dated 24.07.2013. In fact, the format has also been prescribed by the Government. These statutory provisions and circulars cannot take away the rights of access of the land owner whose land is abutting the highways.

4.The learned counsel appearing for the petitioner drew my attention to the decision reported in **AIR 1972 Madras 386** in the case of **Damodara Naidu and others Vs. Thirupurasundari Ammal and another** which states that the right of owners of land adjoining the highway to go upon the highway from any point on their land in a private right distinct from his right to use the highway as a member of public.

5.In fact, in another decision, the Madras High Court has held that this right of access is from every point of contact with the abutting highway. But this will have to necessarily undergo dilution in view of the changing times. But then, there may not be a total or complete denial of right of access altogether. Section 28 (1) of Central Act 13 of



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2003, will have to be construed to mean that the right of the access of adjacent land owner is not absolute or unrestricted but is a right to be regulated. In other words, Section 28(1) cannot be read to mean that the authorities can deny permission. This reading of Section 28(1) derives inspiration from the language of Section 28(2). Section 28(2) specifically states that access to a highway shall be subject to the guidelines and instructions. In other words, right of access is preserved. It is always open to the authorities to put restrictions thereon and regulate the same.

6.A learned Judge of this Court by order dated 15.02.2018 in W.P.(MD)No.21579 of 2014 observed as follows:

“5.It is not so much about whether the petitioners' property was actually acquired or whether the petitioners were before the Land Acquisition Authority. What is significant is, in the garb of acquisition, petitioners' right of access is being denied by the Land Acquisition Authorities, and it does not matter how many families are affected thereby and what the guidelines are issued in this regard. If an owner of the land is denied access to and from his property by such activities of the National Highways Act, it is imperative that they are provided means to access.



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Infringing the right of easement has a lasting effect, an adverse effect in that, as it directly infringes on the fundamental rights of mobility under Article 19 and right to property under Article 300-A of the Constitution. Hence, the respondents concerned are directed to ensure that the petitioners are provided with necessary access to the main road in whatever way possible.”

7. Therefore this writ petition is disposed of by directing the writ petitioners to submit an application to the concerned authority in the prescribed format to the first respondent. The first respondent is obliged to recognise the petitioners right of access. Ofcourse, it is open to him to incorporate appropriate restrictions and conditions in the letter of permission while granting permission. The petitioner shall file such an application within a period of two weeks from the date of receipt of a copy of this order.

8. The first respondent is directed to grant permission to the petitioners on the terms mentioned above within a period of six weeks thereafter.”

I am of the view that the very same approach can be adopted in the present case also. I need to however make one remark. The learned counsel appearing for the petitioners states that their land would have enjoyed 96 meters of frontage if the toll plaza had not been put up.



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4. I therefore direct the second respondent to bear this aspect of the matter in mind. Considering the special facts and circumstances obtaining in this case, the second respondent is called upon to consider granting access 12.19 meters. The second respondent will remember that even if this is granted, the petitioner would still stand to lose to 78 metres of frontage. The Madras High Court had earlier held that any person owing land abutting a highway is entitled to access the highway at every point of contact. I had of course held that this common law principle may no longer apply to present day reality. Yet the highway authority will have to acknowledge the rights of the land owner by bearing in mind the loss which will he have to suffer. If is for this reason, the above direction has been given.

5. This writ petition is disposed of by directing the writ petitioners to submit an application to the concerned authority in the prescribed format to the second respondent. The second respondent is obliged to recognise the petitioners' right of access. Of course, it is open to him to incorporate appropriate restrictions and conditions in the letter of permission. The



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petitioners shall file such an application within a period of two weeks from the date of receipt of a copy of this order.

6.The second respondent is directed to grant permission to the petitioners on the terms mentioned above within a period of six weeks thereafter. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

21.09.2023

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
MGA

To

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(Ministry of Road Transport and Highways),
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Dwarka,
New Delhi – 110 075.
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