



W.P.(MD)No.22071 of 2022 etc batch

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 19.12.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

**W.P.(MD)No.22071 of 2022
and
W.P.(MD)Nos.3424, 3558, 6903 and 29888 of 2023
and
W.M.P.(MD)Nos.16236, 16243 and 16245 of 2022
and
W.M.P.(MD)Nos.3184, 23820 and 24666 of 2023**

W.P.(MD)No.22071 of 2022:-

K.R.Shanthi,
Represented through her Power Agent,
K.S.D.Kannamma.

... Petitioner

Vs.

- 1.The Project Director,
Project Implementation Unit,
National High Ways Authority of India,
Plot No.3, Surya Towers,
2nd Floor, 1st East Street,
K.K.Nagar, Madurai - 625 020.
- 2.The Assistant Executive Engineer,
Project Implementation Unit,
National High Ways Authority of India,
Plot No.3, Surya Towers,
2nd Floor, 1st East Street,
K.K.Nagar, Madurai - 625 020.



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3.The District Collector,
Collectorate Building,
Madurai.

4.The President,
Kappalur Panchayat,
Tirumangalam Taluk,
Madurai District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent dated 25.06.2022 in proceedings Ref.NHAI/PIU/MDU/NH-7/I/27/2022/1975, quash the same as the same as arbitrary, ultravires, in colorable exercise of power and consequentially direct the respondents to issue no objection certificate for access permission to the properties comprised in S.No.119/3B4, 3B4A and 120/6A1 in Kappalur Village, Thirumangalam Taluk, Madurai District.

For Petitioner : Mr.T.Lajapathy Roy, Senior Counsel,
For Mr.R.G.Shankar Ganesh.

For Respondents : Mr.S.Arul Vadivel Sekar,
Senior Counsel for R1 & R2.
Mr.M.Prakash,
Addl. Government Pleader for R3 & R4.



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W.P.(MD)No.3424 of 2023:-

K.R.Shanthi,
Represented through her Power Agent,
K.S.D.Sivaprasad.

... Petitioner

Vs.

- 1.The Project Director,
Project Implementation Unit,
National High Ways Authority of India,
Plot No.3, Surya Towers,
2nd Floor, 1st East Street,
K.K.Nagar, Madurai - 625 020.
- 2.The Assistant Executive Engineer,
Project Implementation Unit,
National High Ways Authority of India,
Plot No.3, Surya Towers,
2nd Floor, 1st East Street,
K.K.Nagar, Madurai - 625 020.
- 3.The District Collector,
Collectorate Building,
Madurai.
- 4.The President,
Kappalur Panchayat,
Tirumangalam Taluk,
Madurai District.
- 5.The Surveyor,
Usilampatti,
Madurai District.
- 6.M/s.Madurai – Kanyakumari Tollways Ltd.,
State Office ; Kappalur Toll Plaza,
Thirumanagalam Taluk,
Madurai District.



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*(R6 is impleaded vide order dated 27.11.2023 in
W.M.P.(MD)No.22429 of 2023 in
W.P.(MD)No.3424 of 2023 by GRSJ)*

7.The Director of Town and Country Planning,
Chennai. ... Respondents
*(R7 is suo motu impleaded vide order dated
27.11.2023 in W.P.(MD)No.3424 of 2023 by
GRSJ)*

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents 1, 2 to remove the proposed Admin Plaza constructed without any “SET BACK” in contravention to the provisions of “TAMIL NADU COMBINED DEVELOPMENT AND BUILDING RULES 2019” completely blocking the access to the petitioner's commercial complex situated at S.No.120/6A, 119/2B, 119/3B, Kappalur Village, Tirumangalam Taluk, Madurai District on the basis of the representation dated 05.02.2023.

For Petitioner : Mr.T.Lajapathy Roy, Senior Counsel,
For Mr.R.G.Shankar Ganesh.

For Respondents : Mr.S.Arul Vadivel Sekar,
Senior Counsel for R1 & R2.
Mr.M.Prakash,
Addl. Govt. Pleader for R3 to R5 & R7.
Mr.S.Meenashisundaram, Senior Counsel
For Mr.C.Sasikumar for R6.

W.P.(MD)No.3558 of 2023:-

K.R.Shanthi,
Represented through her Power Agent,
K.S.D.Sivaprasad. ... Petitioner

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Vs.

1.The Project Director,
Project Implementation Unit,
National High Ways Authority of India,
Plot No.3, Surya Towers,
2nd Floor, 1st East Street,
K.K.Nagar, Madurai - 625 020.

2.The Assistant Executive Engineer,
Project Implementation Unit,
National High Ways Authority of India,
Plot No.3, Surya Towers,
2nd Floor, 1st East Street,
K.K.Nagar, Madurai - 625 020.

3.The District Collector,
Collectorate Building,
Madurai.

4.The President,
Kappalur Panchayat,
Tirumangalam Taluk,
Madurai District.

5.The Surveyor,
Usilampatti,
Madurai District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents 1, 2 remove the “NEST” to an extent of 7 inches and the container embedded in the form of encroachment beyond the acquired area in the petitioner property comprised in S.No.120/6A, 119/2B,

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119/3B, Kappalur Village, Tirumangalam Taluk, Madurai District on the basis of the petitioner representation dated 24.12.2022 made in consonance with the survey sketch given by the 5th respondent.

For Petitioner : Mr.T.Lajapathy Roy, Senior Counsel,
For Mr.R.G.Shankar Ganesh.

For Respondents : Mr.S.Arul Vadivel Sekar,
Senior Counsel for R1 & R2.
Mr.M.Prakash,
Addl. Govt. Pleader for R3 to R5.

W.P.(MD)No.6903 of 2023:-

K.R.Shanthi,
Represented through her Power Agent,
K.S.D.Sivaprasad.

... Petitioner

Vs.

1.The Project Director,
Project Implementation Unit,
National High Ways Authority of India,
Plot No.3, Surya Towers,
2nd Floor, 1st East Street,
K.K.Nagar, Madurai - 625 020.

2.The Assistant Executive Engineer,
Project Implementation Unit,
National High Ways Authority of India,
Plot No.3, Surya Towers,
2nd Floor, 1st East Street,
K.K.Nagar, Madurai - 625 020.

3.The District Collector,
Collectorate Building,
Madurai.



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4.The President,
Kappalur Panchayat,
Tirumangalam Taluk,
Madurai District.

5.The Surveyor,
Usilampatti,
Madurai District.

6.The Assistant Electricity Engineer,
Tamil Nadu Electricity Board,
Thirumangalam Taluk,
Madurai District.

7.The Executive Engineer,
Tamil Nadu Electricity Board,
Thirumangalam Taluk,
Madurai District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records of the 6th respondent dated 16.12.2022 in proceedings Ka.No.UmiPo/ Pa.Me/Thiruma/Va.AA/Ko.A.No.231/222, quash the same as the same is arbitrary, ultravires, and consequently direct the respondents 6,7 to remove the electric poles erected encroaching upon the property comprised in S.Nos.119/3B, Kappalur Village, Tirumangalam Taluk, Madurai District at the instance of the respondents 1,2 for providing service connection to the proposed Admin Plaza.



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For Petitioner : Mr.T.Lajapathy Roy, Senior Counsel,
For Mr.R.G.Shankar Ganesh.

For Respondents : Mr.S.Arul Vadivel Sekar,
Senior Counsel for R1
Mr.P.Karthik for R2.
Mr.M.Prakash,
Addl. Govt. Pleader for R3 to R5.
Mr.S.Deenadhayalan,
Standing Counsel for R6 & R7.

W.P.(MD)No.29888 of 2023:-

K.R.Shanthi,
Represented through her Power Agent,
K.S.D.Sivaprasad.

... Petitioner

Vs.

1.The Project Director,
Project Implementation Unit,
National High Ways Authority of India,
Plot No.3, Surya Towers,
2nd Floor, 1st East Street,
K.K.Nagar, Madurai - 625 020.

2.The Assistant Executive Engineer,
Project Implementation Unit,
National High Ways Authority of India,
Plot No.3, Surya Towers,
2nd Floor, 1st East Street,
K.K.Nagar, Madurai - 625 020.

3.The District Collector,
Collectorate Building,
Madurai.



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4.The President,
Kappalur Panchayat,
Tirumangalam Taluk,
Madurai District.

5.The Surveyor,
Usilampatti,
Madurai District.

6.The Assistant Director of Survey,
Madurai District, Madurai. ... Respondents
*(R6 is suo motu impleaded vide order dated
19.12.2023 in W.P.(MD)No.29888 of 2023 by
GRSJ).*

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents 3, 5 to take necessary steps for rectifying the infirmities in the Survey Sketch dated 18.05.2023 in consonance with the Field Measurement Sketches dated 27.01.1987, 28.05.1987 in respect of the properties comprised in S.Nos.120/5A, 119/2B, 119/3B, Kappalur Village, Tirumangalam Taluk, Madurai District on the basis of the petitioner's representation dated 09.07.2023.

For Petitioner : Mr.T.Lajapathy Roy, Senior Counsel,
For Mr.R.G.Shankar Ganesh.

For Respondents : Mr.S.Arul Vadivel Sekar,
Senior Counsel for R1 & R2.
Mr.K.Balasubramani,
Spl. Govt. Pleader for R3 to R6



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COMMON ORDER

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Heard the learned senior counsel for the writ petitioner, the learned senior counsel for NHAI, the learned senior counsel for concessionaire, the learned standing counsel for TANGEDCO and the learned Additional Government Pleader for the local body and the district administration.

2.The writ petitioner / Mrs.K.R.Shanthi owns about eight acres near Kappalur Toll Plaza. The petitioner is aggrieved by the construction of the administrative block for NHAI. The petitioner alleges that the construction of administrative block is contrary to the planning norms. Her further grievance is that she has been denied access rights from the main road on the eastern side. This has led to the filing of as many as five writ petitions.

3.The learned senior counsel for the writ petitioner reiterated all the contentions set out in the affidavits filed in support of the writ petitions and called upon this Court to grant relief as prayed for.

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4.The learned senior counsel for NHAI as well as the learned senior counsel for concessionaire pointed out that the statutory rules set out in the Tamil Nadu Combined Development and Building Rules, 2019 cannot be applied in the case of NHAI buildings. They submitted that the petitioner is very much having adequate access on three sides and that therefore, these writ petitions deserve dismissal.

5.I carefully considered the rival contentions and went through the materials on record. The petitioner had inherited a large extent of land abutting NH47 (Old NH7). She has a frontage of 280 feet on the eastern side facing the highways. It is seen that NHAI had already put up a shed, a toilet and also a nest. Apart from the said existing constructions, an administrative block which is 80 feet long is being put up. The common law principle is that a person owning lands abutting highway is entitled to reach the highways at all points of contact. But I have held in quite a few decisions that this old common law principle can no longer be applied in the modern times. My attention is drawn to the order dated 21.09.2023 made in W.P.(MD)No.19193 of 2023. Paragraph Nos.3, 4, 5 and 6 of the said order read as follows:-



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“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:

“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



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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 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 2003, will have to be construed to mean that the right of



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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. 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



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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.

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



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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 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.”

I am inclined to adopt the very same approach in the present case also.

6.The learned senior counsel for the writ petitioner passed on rough sketch of the location through not drawn to scale. It shall form



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part of this order. The concessionaire can very well complete the administrative block mentioned above and it can very well remain there to serve the cause of road users. NHAI in its affidavit had set out the purpose for which the said administrative block is being put up.

7.The petitioner is permitted to submit an application under Section 29(2) of the Control of National Highways (Land and Traffic) Act, 2002 before the Project Director / first respondent seeking access rights between the points starting from NHAI toilet to NHAI building (Administrative Block). This distance is likely to be around 85 feet long. No construction shall be put up by NHAI or any other authority in this region between NHAI toilet to NHAI building (Administrative Block).

8.The learned senior counsel for the writ petitioner felt that since Indian Oil Corporation Limited had been granted permission to lay their pipelines underneath, they may not be able to show this area for access purpose in their lay out plans. I make it clear that the petitioner can very well show this region as their access area for all purposes.



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9.An electric pole has been laid in this area by TANGEDCO.

TANGEDCO is directed to shift to any other appropriate site. The petitioner will bear the cost of shifting. TANGEDCO is directed to be very conservative in the billing and the petitioner shall not be saddled with any unnecessary cost.

10.The Project Director / concerned authority shall issue appropriate proceedings recognizing and granting the petitioner's right of access between NHAI toilet and NHAI administrative block. Of course, it is open to the authority to incorporate appropriate restrictions and conditions in the letter of permission.

11.The petitioner shall submit an application within a period of two weeks from the date of receipt of a copy of this order and the competent authority / Project Director shall accord permission as mentioned above within a period of four weeks thereafter.

12.The petitioner is permitted to submit a fresh application for conducting survey before the Assistant Director of Survey, Madurai. The

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WEB COPY said survey authority shall cause survey to be conducted in the presence of the writ petitioner, NHAI officials and the concessionaire's representative. At the end of survey, survey report and survey sketch shall be served on all the parties concerned. Whatever be the results of the survey, the administrative block of NHAI building shall not be disturbed in any manner and the petitioner through her counsel on record gives her consent for the same.

13. Apart from the right of access granted in favour of the petitioner as mentioned above, it is open to the petitioner to make such other applications as deem fit before concerned authorities including NHAI. It is for the authorities concerned to consider the petitioner's request on merits and in accordance with law and issue appropriate proceedings. I make it clear that I have not considered the issue on merits as far as this aspect of the matter is concerned.

14. On the eastern side of the petitioner's lands, NHAI has put a nest, an administrative block, NHAI toilet and a shed. Apart from these four buildings, further construction shall not be put up.



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15.These writ petitions are disposed of accordingly. No costs.

Consequently, connected miscellaneous petitions are closed.

19.12.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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Note:-

The Registry to mark a copy of this order to the Regional Manager; Indian Oil Corporation Limited, Chokkikulam, Madurai.

To:-

1.The District Collector,
Collectorate Building,
Madurai.

2.The President,
Kappalur Panchayat,
Tirumangalam Taluk,
Madurai District.

3.The Surveyor,
Usilampatti,
Madurai District.

4.The Director of Town and Country Planning,
Chennai.

5.The Assistant Director of Survey,
Madurai District, Madurai.

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G.R.SWAMINATHAN, J.

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**W.P(MD)No.22071 of 2022
and
W.P.(MD)Nos.3424, 3558, 6903 and 29888 of 2023**

**19.12.2023
(2/2)**