



W.P(MD)No.11069 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 14.03.2024

Delivered on : 14.06.2024

CORAM :

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

W.P(MD)No.11069 of 2021

and

W.M.P(MD)No.8688 of 2021

and

W.M.P(MD)No.20445 of 2023

James

... Petitioner

Vs.

1.The Regional Director,
National Highways Authority of India (NHAI)
Regional Director Office, Madurai.

2.The Project Director,
National Highways Authority of India (NHAI)
New No.6, 1st Floor, 3rd Main Road,
Ponnagar, Trichy.

3.Team Leader,
LN.Malaviya Infra Projects Pvt, Ltd.,
48/1, Valar Tamil Nagroor 40ft Road,
Koothur No.1, Tollgate, Trichy.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to



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call for the records relating to the impugned order issued by the second respondent vide NHIA/PD/TRY/Utility/Retail/Outlet/NH 45/T-D/2021/363, dated 03.03.2021 and quash the same as irrational and erroneous and may consequently, direct the respondents 1 and 2 to grant access permission to the petitioner to the length of 120m and 10 m width for ingress and egress to his property comprised in S.No.324/5 of Konalai Village through the S.Nos.324/3B and 324/4 of Konalai Village to reach the abandoned road abetting on the western side.

For Petitioner : Mr.K.P.Narayanakumar

For Respondents : Mr.M.Pozilan,
for Mr.Arul Vadivel Associates, for R1 & R2.

: No Appearance, for R3.

ORDER

The Writ Petition is directed against the order, dated 03.03.2021 passed by the second respondent and for direction to the respondents 1 and 2 to grant access permission to the petitioner to the length of 120m and 10 m width for ingress and egress to his property comprised in S.No.324/5 of Konalai Village through the S.Nos.324/3B and 324/4 of Konalai Village to reach the abandoned road abetting on the western side.



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2. The case of the petitioner is that he entered into a sale agreement with one Soosaivanakkam to purchase the properties measuring 7.75 acres situated in S.No.324/3B, 324/4 and 324/5 of Konalai Village, Lalkudi Taluk, Trichy District for sale consideration of Rs.3.5 crores; that the said property is lying in a single stretch, facing National Highway on the western side; that the National Highway Authority of India has acquired the land in S.Nos.324/3B and 324/4 for laying four-way track, that the said Soosaivanakkam after acquiring of lands in S.Nos.324/3b and 324/4, refused to execute the sale deed in respect of remaining land situated in S.No.324/5 of Konalai Village in favour of the petitioner; that the petitioner was then constrained to file a suit in O.S.No.22 of 2010 claiming the relief of specific performance of the agreement or alternatively to refund the advance amount of Rs.1 crore with interest; that the I Additional District Court, Trichy after trial has decreed the suit partly, directing the defendant therein to return Rs.1 crore with interest and costs; that the defendant has then preferred an appeal in A.S(MD)No.83 of 2018 before this Court and that this Court also directed the judgment debtor to pay part of amount received by him, but he did not comply the same.



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3. It is the further case of the petitioner that since the judgment debtor has not paid the amount, he filed the execution petition in E.P.No. 360 of 2012 for sale of the property situated in S.No.324/5 of Konalai Village; that since there was no bidder, the petitioner was permitted to bid at the auction; that the petitioner was declared as successful bidder and the sale was confirmed on 01.02.2009; that the petitioner has then filed an application in E.P.No.489 of 2019 seeking delivery and possession of the said property was handed over to him and that thereby, the petitioner is having title and interest over 2.148 acres of land in S.No.324/5 of Konalai Village, Trichy District.

4. The main contention of the petitioner is that the earlier National Highway runs abetting the S.No.324/3b and the same was abandoned as they have laid new four lane road on the further west to the abandoned road; that since the land in S.No.324/4 and 324/3b are situated in front of the petitioner's property i.e., S.No.324/5, the petitioner has lost his natural and automatic public pathway to the abandoned road and that therefore, the petitioner has sought for an entry to his property at the width of 10 meters and length of 120 meters through the northern side of the acquired property in S.No.324/4 and 324/3b of Konalai Village and submitted an



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application dated 16.09.2020, but the same was rejected by the second respondent vide order, dated 03.03.2021, wherein the following the reasons were assigned :

(i) The minimum distance between merging points of two access on the same side of carriageway shall be 300m. But the distance measured at site is 240m.

(ii) As per MoRT & H guideline given that, if the distance available is less than the distance specified. Service road to be extended/provided to cover both the access.

(iii) The provision of service road is not shown in drawing and also the site is very nearer to the truck lay bue at 302/400.

Challenging the above impugned order, the present writ petition came to be filed.

5. It is not in dispute that the land situated in S.Nos.324/3 and 324/4 were acquired by National Highway Authority of India and the land in S.No.324/5 owned by the petitioner is situated on the east of the acquired lands. It is also not in dispute that the National Highways Authorities of India has laid a new four way lane on the west of old NH road. The petitioner by alleging that he has lost his existing right of way to the old



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NH road, due to the acquisition of lands in S.Nos.324/3 and 324/4, is now seeking a pathway for a length of 120 meters and width of 10 meters in S.No.324/3A and 324/4 to reach his property in S.No.324/5 from the old NH road.

6. The learned counsel for the petitioner would submit that the old NH road has been closed by NHAI; that the old NH road has been used by the public for reaching a school as well as a church situated on the northern side of S.No.324/3, 324/4 and 324/5; that the petitioner has been seeking pathway only to the old abandoned road and not to the newly formed four way lane; that though they have allowed the public to use the abandoned road to reach the school as well as the church without any restrictions, but refused to give permission to the petitioner to reach the old NH road from his land and that in the guidelines/norms for access permission of Ministry of Road Transport and Highways, dated 24.07.2013, it has been stated that in the rural area direct access for the residential properties can be granted and it was also specified that no license fee should be collected for residential properties in rural area.



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7. The learned counsel for the petitioner would further submit that Section 28 of the Control of National Highways (Land and Traffic) Act, 2002, gives power to the respondents 1 and 2 to provide access through any property coming under National Highways and Section 30 of the said Act stipulates 'where an existing access is diverted, the alternative access given lieu thereof shall not be unreasonably distant from the existing access; that the right of the pathway to the private land situated behind to S.Nos.324/3A and 324/4 is inevitable otherwise, the petitioner's property will be landlocked and as such, he is entitled to get pathway to his property situated in S.No.324/5 of Konalai Village.

8. The defence of the respondent is that the said lands were acquired for the purpose of providing truck parking and rest place in the Padalur – Trichy section; that the concessionaire has established and running a restaurant/way side amenities and truck lay by in the old highway portion which is the frontage of the land acquired in S.No.324/3B and 324/4; that the land is also required for further improvements, developments and extending the wayside amenities already provided in the said location; that the petitioner has applied for access for his own private land an extent of 1200 sq.meters of land acquired for breach of purpose



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only for his exclusive use as pathway to his private property; that the criteria stipulated by MoRT & H guidelines were not fulfilled, the Team Leader had not recommended the proposal of the petitioner for seeking access permission from km.304/000 to km.304/010; that the access sought from National Highway to private property is not feasible within NHAI lands for exclusively providing access to the private property; that the S.No.324/5 is not abutting the existing National Highway as averred by the petitioner and that the power to give permission for access to National Highway lies with the Highway Administration as per the Highway Administration Rules, 2004, framed under the Control of National Highways (Land and Traffic) Act, 2002 and all such permissions to the National Highways are to be given under Sections 28 and 29 of Chapter IV and Section 38 of Chapter VI of the Control of National Highways (Land and Traffic) Act, 2002.

9. It is the further stand of the respondents that if there is no other way for access on such other sides, all the abetting land owners should form a service road in their lands along the road to reach them.



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10. The learned counsel for the petitioner would submit that every member of public has got a right to pass and repass over a highway or public street and the right of public to pass and repass extends over whole width of the highway or the street and relied on the following two decisions of this Court :

(i) ***K.Sudarsan and others vs. The commissioner, Corporation of Madras and others*** reported in ***AIR 1984 Madras 292***.

“ The highway is a passage over which 10 members of the public are entitled pass and repass. The essential characteristic of a highway is that every person should have the right to use it for the appropriate kind of traffic. The road or part over which only a particular class of people or a few individuals are allowed to pass and repass cannot be a highway. The right of the public to pass and repass extends over the whole width of the highway or the street, in other words over every inch of the street. A member of the public cannot be compelled to confine himself to a part of the street at the choice of another. The owner of a property adjacent to a highway or a public street has got a right of access to such highway or street at any point of which his land actually touches it. His right of access from his premises to the highway and vice versa is a private right. However his right to use such



highway or public street as soon as he is "on the highway" or the public street becomes a public right. Case law discussed."

(ii) *Arulmighu Palapattarai Mariamman Tirukoil Vs Pappae and others* reported in 2022 (3) L.W 201.

19.From the above decisions the following principles emerge. Every member of the public has got a right to pass and repass over a highway or a public street. The said right of the public is a right to pass along the highway for the purpose of legitimate travel, not to be "on it" except to the extent their presence is attributable to a reasonable and proper user of the highway as such. The right of the public to pass and repass extends over the whole width of the highway or the street, in other words, over every inch of the street. A member of the public cannot be compelled to -confine himself to a part of the street at the choice of another. The owner of a property adjacent to a highway or a public street has got a right of access to such highway or street at any point at which his land actually touches it. His right of access from his premises to the highway and vice versa is a private right. However, his right to use such highway or public street as soon as he is "on the highway" or the public street becomes a public right.

11. There is absolutely no dispute about the legal position above referred. But in the case on hand, the petitioner has not claimed any right



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to pass and repass over National Highway or even, over old National Highway, but he is claiming permission to use the portion of the acquired lands in S.Nos.324/3B and 324/4 as pathway to reach old NH road from his land i.e., S.No.324/5.

12. It is not the specific case of the petitioner that his land in S.No.324/5 is situated abetting the old NH road. But admittedly, in between the old NH road and his land in S.No.324/5 acquired land in S.No.324/3B and 324/4 are existing. To put it in other way, the petitioner is claiming the pathway right in the lands acquired by NHAI. Hence, the decisions above referred cannot be made applicable to the case on hand.

13. Chapter IV of the Control of National Highways (Land and Traffic) Act, 2002 deals with control of access to the National Highways, wherein Section 28 provides right of access to Highway, which contemplates that no person shall have a 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 and that the access to a Highway shall be subject to the guidelines and instructions issued by the



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Central Government from time to time. Section 29 speaks about the procedure for permission to access to Highway.

14. At this juncture, it is also necessary to refer Section 25 of the said Act.

“25. Grant of lease or licence of highway land for temporary use : The Highway Administration or the officer authorised by such administration in this behalf may, having regard to the safety and convenience of traffic and subject to such conditions as may be prescribed and on payment of prescribed rent or other charges, grant lease or licence of highway land to a person for temporary use :

Provided that no such lease shall be valid for more than five years at a time from the date on which such lease has been granted unless renewed by the Highway Administration or such officer.”

15. The above Section gives power to the Highway Administration to grant lease or license of Highway land on prescribed rent for temporary use, which shall be valid for a period of five years at a time and subject to the prescribed conditions.



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16. The learned counsel for the petitioner by referring to the above Sections would submit that the petitioner is ready to pay the rent or other charges to NHAI.

17. The learned counsel for the respondents would submit that the lease or license granted under Section 25 of the said Act is only temporary in nature and the same cannot be applicable to the petitioner.

18. Admittedly, the petitioner's land in S.No.324/5 is lying vacant. According to the petitioner, he is going to construct a residential building in the said land and he is in need of pathway to reach the old NH road from his property. Assuming for argument sake that if such a permission is granted, the petitioner after constructing his residential building has to necessarily seek for renewal again and again and that will definitely make as permanent, which is against the provision of Section 25 of the said Act. Moreover, if the petitioner is permitted to lay a pathway from his land to the old NH through the acquired land, as rightly contended by the learned counsel for the respondent NHAI will not be in a position to use that portion of the land or the entire land at a stretch.



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19. The learned counsel for the petitioner would mainly contend that old NH road has been closed by NHAI and they have not restrained the public from using the said road for reaching Church as well as School situated therein.

20. The learned counsel for the respondents would contend that NHAI has not prevented anybody from using the old NH road and the public has been using the said road for reaching the Church and School; that the petitioner was also not prevented from using the old NH road, but he cannot be permitted to use the acquired land as a pathway to reach old NH road from his property.

21. It is the specific case of the respondent that they have never closed the old NH road and according to them, the very purpose of acquiring lands in S.Nos.324/3B and 324/4 is for providing truck parking and rest place in the Padalur – Trichy section and the land is required for further improvements, developments and extending the wayside amenities. It is their specific contention that the old Highway road portion, which is in frontage of the land acquired in S.No.324/3B and 324/4 is used as a



truck lane by and the learned counsel for the respondent has relied on the judgment of the Hon'ble Division Bench of this Court in W.A(MD)Nos. 310 and 323 of 2009, dated 20.04.2009, wherein also the lands were shown to be acquired for providing facilities like truck parking, spare parts shops, minor repairs and vulganizing facilities etc. The Hon'ble Division Bench has observed as follows :

“5. Now, as can be seen from Section 3-A quoted above, it speaks of building, maintenance, management and also operation of a National Highway. The operation of a National Highway would certainly include the facilities to be provided to the operators on the National Highway, such as, the trucks, buses and other vehicles. The land will be required for providing facilities to them so that the National Highway is utilized and maintained properly.

6. Mr.Wilson, learned Additional Advocate General submits that these facilities at certain intervals on the Highway are necessary as per the standards laid down by the Indian Road Congress for the safe driving and relaxation by the truck drivers.

7.The learned counsel for the appellants submits that a similar provision under the Tamil Nadu Highways Act, 2001 provides for in section 15 that if a land is required for any purpose incidental or ancillary, acquisition can be restored to.



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He submits that such a specific provision is not there under the National Highways Act, 1956.

8. In our view, such a specific provision is not necessary. The term “operation of a National Highway” will cover providing these facilities and, in any case, building, maintenance, management or operation of a National Highway are different facets of public purpose. The principal part of the Section permits the Central Government to acquire a land for public purpose and some facets of public purpose are mentioned as building, maintenance, management or operation of a National Highway.

9. In our view, the view taken by the learned single Judge is correct. Both the writ appeals stand dismissed. Consequently, the connected Miscellaneous Petitions are also dismissed. There shall be no order as to costs.”

22. The next contention of the petitioner is that the petitioner is not having any other pathway to reach the road; that since the respondents have acquired the lands, they have to provide alternative access even as per Section 30 of the Control of National Highways (Land and Traffic) Act, 2002 and that therefore, the impugned order rejecting the permission sought for cannot be sustained.



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23. Section 30 of the said Act contemplates for providing alternative access only when the existing access is diverted. In the case on hand, it is not the specific case of the petitioner that there existed a pathway to reach the old NH road from his land and the same was diverted. According to the respondents, the petitioner is already having access for his land through the existing road on the southern side road of the land in S.No.324/3B and 324/4. The petitioner has not specifically disputed the said factum.

24. Admittedly, the petitioner has not claimed easementary right over the respondents land. As rightly contended by the learned counsel for the respondent, the petitioner cannot seek pathway in another man's land as of right. Admittedly, the lands in S.Nos.324/3B and 324/4 were not owned by the petitioner earlier and was owned by some other persons, from whom, the NHAI had acquired.

25. The learned counsel for the respondents would submit that the petitioner has already been informed of the fact of alternative remedy for getting access permission to his private property from the Authority competent as per their office letter, dated 03.03.2021 and the petitioner is



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not entitled to get the relief as claimed. Viewing from any angle, this Court has no hesitation to hold that the petitioner is not entitled to the relief claimed. Hence, this Court concludes that the Writ Petition is devoid of merits and the same is liable to be dismissed.

26. In the result, the Writ Petition is dismissed. Consequently, connected Miscellaneous Petitions are closed. No costs.

14.06.2024

NCC :Yes/No
Index :Yes/No
Internet : Yes/ No
das

To

- 1.The Regional Director,
National Highways Authority of India (NHAI)
Regional Director Office, Madurai.
- 2.The Project Director,
National Highways Authority of India (NHAI)
New No.6, 1st Floor, 3rd Main Road,
Ponnagar, Trichy.



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K.MURALI SHANKAR, J

das

Pre-delivery order made in
W.P(MD)No.11069 of 2021
and
W.M.P(MD)No.8688 of 2021
and
W.M.P(MD)No.20445 of 2023

14.06.2024