

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR.JUSTICE MURALI PURUSHOTHAMAN

MONDAY, THE 10<sup>TH</sup> DAY OF APRIL 2023 / 20TH CHAITHRA, 1945

WP(C) NO. 11886 OF 2021

**PETITIONERS:**

- 1 THE TRIVANDRUM CHAMBER OF COMMERCE AND INDUSTRY,  
REPRESENTED BY ITS PRESIDENT, CHAMBER BUILDING, T.T.C. ROAD,  
JAWAHAR NAGAR, KOWDIAR, THIVANANTHAPURAM-695003.
- 2 S.N. RAGHUCHANDRAN NAIR,  
S/O. LATE V. NARAYANA PILLAI, AGED 64 YEARS, PRESIDENT, THE  
TRIVANDRUM CHAMBER OF COMMERCE AND INDUSTRY, ADVAITHA-  
KALLADANTHI, BNRA NO.125, BHAGAVATHY LANE, JAWAHAR NAGAR,  
KOWDIAR, THIRUVANANTHAPURAM-695003.  
BY ADVS.SHASHANK DEVAN  
ADV.ADARSH KUMAR  
ADV.K.M.ANEESH  
ADV.BIJU VARGHESE ABRAHAM

**RESPONDENTS:**

- 1 STATE OF KERALA, REPRESENTED BY ITS CHIEF SECRETARY,  
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695001.
  - 2 THE DIRECTOR GENERAL OF POLICE (STATE POLICE CHIEF),  
KERALA STATE POLICE HEADQUARTERS, VAZHUTHACAUD,  
THIRUVANANTHAPURAM, KERALA-695010.
  - 3 THE COMMISSIONER OF POLICE,  
THIRUVANANTHAPURAM, POLICE GROUND, C.V. RAMAN PILLAI ROAD,  
THYCAUD, THIRUVANANTHAPURAM, KERALA-695014.
  - 4 STATION HOUSE OFFICER  
CANTONMENT POLICE STATION, CONTONMENT STATION ROAD, STATUE,  
PALAYAM, THIRUVANANTHAPURAM, KERALA-695001.
- ADDL. R5. THE ADDITIONAL CHIEF SECRETARY,  
HOME DEPARTMENT, GOVERNMENT SECRETARIAT,  
THIRUVANANTHAPURAM-695001.
- ADDL. R6. THE ADDITIONAL CHIEF SECRETARY  
LOCAL SELF GOVERNMENT DEPARTMENT, GOVERNMENT SECRETARIAT,  
THIRUVANANTHAPURAM-695001.
- ADDL. R7. THE TRANSPORT COMMISSIONER,  
KERALA, 2ND FLOOR, TRANS TOWERS, VAZHUTHACAUD, THYCAUD,  
THIRUVANANTHAPURAM-695014.

***(ADDITIONAL R5 TO R7 ARE SUO MOTU IMPLEADED AS PER ORDER DATED  
08/06/2021 IN WPC 11886/2021)***

BY ADV.SHRI.N.MANOJ KUMAR, STATE ATTORNEY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 10.04.2023,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

## JUDGMENT

Dated this the 10<sup>th</sup> day of April 2023

### S.MANIKUMAR, C.J.

In this public interest litigation, petitioners are challenging the unlawful protests, campaigns or such other assembly of people being staged at public spaces meant for public use and thus not designated as "protest zones" or spaces earmarked for such an assembly. Hence the instant petition is filed seeking for directions to the competent among the State and Police authorities to remove unlawful assemblies of people around the Raj Bhavan and State Secretariat areas, Thiruvananthapuram.

2. Reliefs sought for in this writ petition are as follows:

- i) Issue a writ of Mandamus or other appropriate Writ, direction or order directing the respondent State authorities as well as the law enforcement agencies including the Police authorities are to formulate and issue guidelines with respect to the earmarking of certain public areas in the state for the purpose of holding mass assemblies, including protests, campaigns, demonstrations etc;
- ii) Issue of Writ of mandamus or other appropriate Writ, direction or order directing the respondent State authorities as well as the law enforcement agencies including the Police authorities to remove assemblies staged around the Secretariat area and the Raj Bhavan area including the adjoining footpath;

iii) Declare that the staging or holding of assemblies including protests, campaigns, demonstrations etc. along the areas around the Raj Bhavan Area and the Secretariat and adjoining foot-path area is unconstitutional, illegal, unreasonable, arbitrary, untenable and unsustainable.

3. According to the petitioners, various organisations and political parties are staging protests, demonstrations, etc., in public places, including footpaths/pavements, causing serious inconvenience to general public and also commercial and other establishments set up at such places. It is also submitted that the police authorities as well as such other competent law enforcement authorities have been constantly failing and omitting to prevent unlawful assemblies from being staged in the areas around the Secretariat and the Raj Bhavan when in fact there are certain areas in and around the city which can be earmarked for the purpose of holding such assemblies such as the Thycaud Police Ground, Shanmugham beach, Puthirikkandam Maidan, Poojappura Maidan near the Poojappura Central Jail area etc.

4. It is further submitted by the petitioners that there have been instances wherein campaigns or protests on

footpaths, which initially started on temporary basis, attained the nature of permanence. In connection with such campaigns or protests, sheds and other structures have come up on footpaths, which provide shelter to the campaigners/protesters. Such structures, which gradually become permanent constructions, cause hindrance to the general public using footpath for the purpose for which it was constructed.

5. At this stage, it is also relevant to note Clause (a) of sub-section (1) of Section 2 of the Kerala Public Ways (Restriction of Assemblies and Processions) Act, 2011 which defines 'footpath' as any area comprised in a public way earmarked for movement of pedestrian having a width of not less than one meter but not exceeding three meters on either side of the public way, after leaving sufficient space for the movement of vehicles. As per clause (d) of sub-section (1) of Section 2, 'public way' includes any highway, bridge, causeway, road, lane, footpath, square, courtyard, garden-path, channel or passage, accessible to the public, which is not owned by a private person.

6. As per Section 3 of the said Act, which deals with rights of the public for movement on public ways, on all public ways the public shall have, subject to the laws governing the control of traffic and safety of public, the right to unobstructed movement by vehicles along carriage ways and on foot along footpaths. Section 4 of the Act deals with prohibition of obstruction on public ways. As per sub-section (1) of Section 4, no person shall cause any obstruction by conducting any business or meeting or assembly or procession or demonstration on any public way or part thereof. As per sub-section (2) of Section 4, no meeting or assembly shall be conducted so as to obstruct any portion of the carriage way or footpath. As per sub-section (3) of Section 4, no demonstration or procession shall be conducted in such a manner that the entire carriage way or free flow of traffic is fully obstructed.

7. Section 5 of the Kerala Public Ways (Restriction of Assemblies and Processions) Act, 2011 deals with regulation of conduct of festivals, assemblies, meetings, etc. In *Basil Attipetti v. State of Kerala and others* [2012 (2) KHC 85] a Division Bench of this Court declared clause (c)

of sub-section (1) of Section 5 of the Kerala Public Ways (Restriction of Assemblies and Processions) Act, 2011 as violative of the fundamental rights of the citizens conferred under Article 19(1) (d) and Article 21 of the Constitution of India, by virtue of the operation of Article 13(2) of the Constitution. The Division Bench upheld the constitutional validity of clauses (a) and (d) of subsection (1) of Section 5 of the Act, subject to limitations and restrictions on permissions to be granted, as stated in Paras.9 to 11 of the judgment.

8. This court vide order dated 8.6.2021 observed that despite the enactment of the Kerala Public Ways (Restriction of Assemblies and Processions) Act, 2011 by the State Legislature and the law laid down by the Apex Court and this Court in the decisions referred to supra, the 1<sup>st</sup> respondent State and the law enforcement machinery have not taken necessary steps to ensure strict enforcement of the relevant statutory provisions and also the Guidelines for Pedestrian Facilities formulated by Indian Roads congress [IRC:103-2012], in order to prevent encroachment of any nature, in any form, either temporary or permanent,

on the right of way or on the pedestrian facilities on public roads, since any such encroachment will adversely affect the mobility and safety of all pedestrians including those with disabilities and reduced mobility.

9. Once roads are constructed as per the standards and guidelines prescribed by the Indian Roads Congress, it has to be maintained as such without any encroachment on the right of way or on the pedestrian facilities provided as per such standards and guidelines. Footpaths are not intended for stocking articles for trade or for display of goods by traders, in front of their shops or establishments. Similarly, footpaths are not intended for the purpose of holding campaigns, demonstrations, etc., by political parties and other organisations, by causing any obstruction whatsoever to free movement of pedestrians. No political party or organisation can be permitted to encroach footpath or right of way of public roads, in connection with any such protest, demonstrations, etc., by erecting any temporary structures on the right of way or on the pedestrian facilities, forcing pedestrians including those with disabilities and reduced mobility to walk in unsafe

circumstances.

10. On 8.6.2021, a Honourable Division Bench of this court has passed the following order:

“2. This writ petition is one filed by Trivandrum Chamber of Commerce and Industry along with its President seeking a writ of mandamus commanding the respondents as well as law enforcement agencies including Police to formulate and issue guidelines for earmarking certain public areas in State of Kerala for the purpose of holding mass assemblies, including protests, campaigns, demonstrations, etc. The petitioners have also sought for a writ of mandamus commanding the respondents as well as the law enforcement agencies including Police to remove assemblies staged around Government Secretariat and Raj Bhavan, including the adjoining footpaths; and a declaration that staging or holding of assemblies including protests, campaigns, demonstrations, etc., around Government Secretariat, Raj Bhavan and the adjoining footpaths is illegal and unconstitutional.

3. In the writ petition, it is alleged that various organisations and political parties are staging protests, demonstrations, etc., in public places, including footpaths/ pavements, causing serious inconvenience to general public and also commercial and other establishments set up at such places. For the last several years, footpaths in front of Government Secretariat and Raj Bhavan and also the nearby areas are the targets for such protests, demonstrations, etc. Exts.P1, P1(A) to P1(c) are printouts of news items regarding such protests, demonstrations, etc., appeared in online news portals. Ext.P2 is a copy of reply dated 09.01.2021 of the Public Information Officer, Cantonment Police Station, Thiruvananthapuram and Ext.P3 is a copy of reply dated 20.01.2021 of the State Public Information Officer, Museum Police Station, Thiruvananthapuram, obtained under the provisions of the Right to Information Act, 2005, wherein it is stated that various organisations have conducted strikes and protests in front of Government Secretariat and Raj Bhavan



causing traffic congestion and difficulties to pedestrians. There have been instances wherein campaigns or protests on footpaths, which initially started on temporary basis, attained the nature of permanence. In connection with such campaigns or protests, sheds and other structures have come up on footpaths, which provide shelter to the campaigners/protesters. Such structures, which gradually become permanent constructions, cause hindrance to the general public using footpath for the purpose for which it was constructed.

4. In *C.S.S. Motor Service v. Madras State* [AIR 1953 Madras 279] a Division Bench of the Madras High Court held that all public streets and roads vest in the State, but that the State holds them as trustee on behalf of the public. The members of the public are entitled as beneficiaries to use them as a matter of right and this right is limited only by the similar rights possessed by every other citizen to use the pathways. The State as trustees on behalf of the public is entitled to impose all such limitations on the character and extent of the user as may be requisite for protecting the rights of the public generally. In *Saghir Ahmad v. State of U.P. and others* [AIR 1954 SC 728] a Constitution Bench of the Apex Court agreed with the statement of law made by the Division Bench of the Madras High Court in Para. 24 of the decision in *C.S.S. Motor Service*.

5. In *Sodan Singh v. New Delhi Municipal Committee* [1989 (4) SCC 155] a Constitution Bench of the Apex Court held that the primary object of building roads is undoubtedly to facilitate people to travel from one point to another. P. Duraiswami Aiyangar in his book dealing with the Law of Municipal Corporations in British India (1914 Edn.) has observed that the primary and paramount use of the street is public travel for man, beast and carriage for goods. Public have a right of passing and re-passing through a street, but have no right 'to be on it', which Sri Aiyangar has mentioned at page 542 of his book. Halsbury's Laws of England (Vol. 21 Para. 107) it has been stated that the right of the public is a right to pass along a highway for the purpose of legitimate travel, not to be on it, except so far as the public's presence is attributable to

a reasonable and proper user of the highway as such. What is required of him is that he should not create an unreasonable obstruction which may inconvenience other persons having similar right to pass; he should not make excessive use of the road to the prejudice of the others. Liberty of an individual comes to an end where the liberty of another commences. Subject to this, a member of the public is entitled to legitimate user of the road other than actually passing or re-passing through it. As to what will constitute public nuisance and what can be included in the legitimate user can be ascertained only by taking into account all the relevant circumstances including the size of the road, the amount of traffic and the nature of the additional use one wants to make of the public streets. This has to be judged objectively and here comes the role of public authorities.

6. The Indian Roads Congress has formulated Guidelines for Pedestrian Facilities, vide IRC:103-2012. In Chapter 1 of IRC:103-2012 'footpath' is defined as a portion of right of way of road used for the movement of pedestrian. Chapter 2 of IRC:103-2012 deals with introduction. As per Para.2.3, all pedestrian facilities ensure social equity. Chapter 3 of IRC:103- 2012 deals with its scope. As per Para.3.2, the guidelines cover engineering design and planning aspects of pedestrian facilities on roadside and at road crossing in urban and semi-urban areas. As per Para.3.3, the guidelines are intended for use by the local authorities responsible for creating and maintaining semi-urban and urban road transport facilities. As per Para. 4.2, efforts should be made to create such conditions that pedestrians are not forced to walk in unsafe circumstances and that motorists respect the position of pedestrians. As per Para.4.5, the mobility and safety of all pedestrians including those with disabilities and reduced mobility should be ensured to promote inclusive mobility and universal accessibility. As per para 4.7, while planning and designing pedestrian facilities, overall objectivity could be continuity and overall safety.

7. In *Shali v. State of Kerala* [(2019) 5 KHC 118] this Court held that, as per Para.4.2 of the Guidelines for Pedestrian Facilities [IRC:103-2012], an effort should be made to create such conditions that

pedestrians are not forced to walk in unsafe circumstances, and that the motorists respect the position of pedestrian. The Guidelines for Pedestrian Facilities have the approval of the Ministry of Road Transport and Highways (MoRTH). Every local authority in the State is bound to provide pedestrian facilities on public roads in conformity with these guidelines.

8. In Kottamom (Kottiyar Mangalam) Sri. Darmasastha Temple Advisory Committee v. State of Kerala [2019 (5) KHC SN 27] this Court held that, in view of the Guidelines for Pedestrian Facilities formulated by the Indian Roads Congress, vide IRC:103-2012, no parking of vehicles is legally permissible on the 'footpath', which is the portion of right of way of road used for the movement of pedestrians. Any such parking of vehicles on the footpath of public streets will force pedestrians to walk in unsafe circumstances, which will adversely affect the mobility and safety of all pedestrians including those with disabilities and reduced mobility.

9. In exercise of the powers under Section 118 of the Motor Vehicles Act, 1988 and in supersession of the Rules of Road Regulations, 1989, the Central Government made the Motor Vehicles (Driving) Regulations, 2017, vide G.S.R.634(E) dated 23.06.2017. Regulation 5 of the Motor Vehicles (Driving) Regulations, 2017 deals with duties of drivers and riders. As per clause (4) of Regulation 5, the driver and the riders shall take special care and precautions to ensure the safety of the most vulnerable road users such as pedestrians, cyclists, children, elderly and the differently-abled persons. Regulation 22 deals with stopping and parking. As per sub-clause (c) of clause (2) of Regulation 22, a vehicle shall not be parked on footpath, cycle path and pedestrian crossing. Regulation 39 deals with pedestrian crossing, footpath and cycle track. As per sub-clause (3) of Regulation 39, when a road is provided with a footpath or cycle track, no vehicle shall drive on such footpath or track, except on the directions of a Police Officer in uniform or where traffic signs permitting some movements have been displayed.

10. In *Sivaprasad v. State of Kerala and others* [2020 (6) KHC 373] this Court held that, in view of the law laid down in *Kottamom (Kottiyar Mangalam) Sri. Darmasastha Temple Advisory Committee* [2019 (5) KHC SN 27], once the National Highways/State Highways are constructed as per the standards and guidelines prescribed by the Indian Roads Congress, it has to be maintained as such without any encroachment on the right of way or on the pedestrian facilities provided as per such standards and guidelines.

11. In *Sivaprasad* this Court held that, the primary object of building roads is to facilitate people to travel from one point to another and carriage of goods. Footpaths or pavements are public properties which are intended to serve the convenience of the general public. They are not laid for private use and indeed, their use for a private purpose frustrates the very object for which they are carved out from portions of public streets. The main reason for laying out pavements is to ensure that the pedestrians are able to go about their daily affairs with reasonable measure of safety and security. That facility, which has matured into a right of the pedestrians, cannot be set at naught by allowing encroachments to be made on the pavements.

12. In *Sivaprasad* this Court held further that, removal of encroachments on the footpaths or pavements over which the public has the right of passage or access cannot be regarded as unreasonable, unfair or unjust. The State, being the principal protector of the rights of its citizens, keeping in view the doctrine of public trust, should not permit any encroachments on the footpaths or pavements. Nobody has got a right to erect any structures on roads. The State is not an exception. The National Highways and State Highways constructed by acquiring private property and by using public funds, can be used only for the travelling needs of public. It cannot be converted for other collateral purposes like erection of statues and memorials.

13. In *Dr.Mary Anita v. Corporation of Kochi and others* [2020 (6) KHC 298], a Division Bench of this

Court was dealing with a public interest litigation in which the petitioner pointed out the hardships, inconvenience, dangers and threats to the life frequently faced and confronted by differently abled children, men and women, due to lack of safe and proper footpaths and allied facilities within the area of Kochi Municipal Corporation. The Division Bench held that Kochi Municipal Corporation as well as the Public Works Department are duty bound under law to make necessary arrangements in the footpaths and roads so as to enable the differently abled persons to access the roads and footpaths to their convenience. The Division Bench disposed of that writ petition directing Kochi Municipal Corporation, its Nodal Agencies and also the Public Works Department to maintain and repair and make arrangements for the roads and footpaths under their respective control so as to enable the differently abled persons to access them appropriately.

14. Clause (a) of sub-section (1) of Section 2 of the Kerala Public Ways (Restriction of Assemblies and Processions) Act, 2011 defines 'footpath' to mean any area comprised in a public way earmarked for movement of pedestrian having a width of not less than one meter but not exceeding three meters on either side of the public way, after leaving sufficient space for the movement of vehicles. As per clause (d) of sub-section (1) of Section 2, 'public way' includes any highway, bridge, causeway, road, lane, footpath, square, courtyard, garden-path, channel or passage, accessible to the public, which is not owned by a private person.

15. As per Section 3 of the said Act, which deals with rights of the public for movement on public ways, on all public ways the public shall have, subject to the laws governing the control of traffic and safety of public, the right to unobstructed movement by vehicles along carriage ways and on foot along footpaths. Section 4 of the Act deals with prohibition of obstruction on public ways. As per sub-section (1) of Section 4, no person shall cause any obstruction by conducting any business or meeting or assembly or procession or demonstration on any public way or part thereof. As per sub-section (2) of Section 4, no meeting or assembly shall be conducted so as to obstruct any

portion of the carriage way or footpath. As per subsection (3) of Section 4, no demonstration or procession shall be conducted in such a manner that the entire carriage way or free flow of traffic is fully obstructed.

16. Section 5 of the Kerala Public Ways (Restriction of Assemblies and Processions) Act, 2011 deals with regulation of conduct of festivals, assemblies, meetings, etc. In *Basil Attipetti v. State of Kerala and others* [2012 (2) KHC 85] a Division Bench of this Court declared clause (c) of sub-section (1) of Section 5 of the Kerala Public Ways (Restriction of Assemblies and Processions) Act, 2011 as violative of the fundamental rights of the citizens conferred under Article 19(1) (d) and Article 21 of the Constitution of India, by virtue of the operation of Article 13(2) of the Constitution. The Division Bench upheld the constitutional validity of clauses (a) and (d) of subsection (1) of Section 5 of the Act, subject to limitations and restrictions on permissions to be granted, as stated in Paras.9 to 11 of the judgment.

17. It is pertinent to note that, by the order dated 18.01.2013 in SLP(Civil)No.8519 of 2006 [*Union of India v. State of Gujarat and others*], the Apex Court issued a general direction to the effect that, from the date of that order the Government of Kerala shall not grant any permission for installation of any statue or construction of any structure in public roads, pavements, sideways and other public utility places. The Apex Court made it clear that the said order shall not apply to installation of high-mast lights, street lights or construction relating to electrification, traffic, toll or for development and beautification of streets, highways, roads, etc., and relating to public utility and facilities. The above order was made applicable to all other States and Union Territories and the concerned Chief Secretary/Administrator is directed to ensure compliance of that order. Paragraphs 2 to 5 of the order dated 18.01.2013 in I.A.No.10 of 2012 in SLP(Civil)No.8519 of 2006 read thus;

“2. Mr. M.T. George, learned counsel for the State of Kerala placed before us a copy of the

order dated September 7, 2011 passed by the Government of Kerala granting permission for installation of statue of late Shri N. Sundaran Nadar, Ex-Deputy Speaker of Kerala Legislative Assembly near to Neyyattinkara – Poovar Road in the curve turning to the KSRTC Bus Stand Neyyattinkara in the Kanyakumari National Highway near bus stand.

3. We have our doubt whether such permission could have been granted by the State Government for installation of statue on the national highway.

4. Until further orders, we direct that the status quo, as obtaining today, shall be maintained in all respects by all concerned with regard to the Triangle Island where statue of late Shri N. Sundaran Nadar has been permitted to be sanctioned. We further direct that henceforth, State Government shall not grant any permission for installation of any statue or construction of any structure in public roads, pavements, sideways and other public utility places. Obviously, this order shall not apply to installation of high mast lights, street lights or construction relating to electrification, traffic, toll or for development and beautification of the streets, highways, roads, etc. and relating to public utility and facilities.

5. The above order shall also apply to all other states and union territories. The concerned Chief Secretary/ Administrator shall ensure compliance of the above order.”

(underline supplied)

18. The order of the Apex Court dated 18.01.2013 in I.A.No.10 of 2012 in SLP(Civil)No.8519 of 2006 was in relation to the permission granted by the State of Kerala, by an order dated 07.09.2011, for installation of statue of late Shri.N.Sundaran Nadar, Ex-Deputy Speaker of Kerala Legislative Assembly near to Neyyantinkkara-Poovar Road in the curve turning to KSRTC bus stand, Neyyatinkkara in Kannyakumari National Highway.

19. By the order dated 05.07.2013 in SLP(Civil) No.8519 of 2006, the Apex Court directed the States and Union Territories to state on affidavit the position with regard to unauthorised structures including unauthorised religious structures on public roads, pavements, sideways and other public utility places as existing on 30.06.2013 in their respective States and the steps taken up to 30.06.2013 for removal of such unauthorised structures. In the said order, the Apex Court noticed the submission of the learned counsel for the States of Madhya Pradesh, Kerala, Punjab and Rajasthan that they have already filed their affidavits. By the order dated 05.07.2013, the Apex Court directed the States of Madhya Pradesh, Kerala, Punjab and Rajasthan to file fresh affidavits indicating the position as on 30.06.2013.

20. By the order dated 31.01.2018 in SLP(Civil) No.8519 of 2006 and connected cases, the Apex Court ordered that the implementation of its orders should be supervised by the concerned High Courts. Consequently, the Apex Court remitted the matters to the respective High Courts for ensuring implementation of orders in an effective manner. While ordering transmission of concerned records to the respective High Courts, the Apex Court ordered that, the interim orders wherever passed shall continue, until the matters are considered by the High Courts. In case any clarification is required, it would be open to the parties to approach the Apex Court. The High Court will have the jurisdiction to proceed in the contempt of any of the orders passed by the Apex Court.

21. Despite the enactment of the Kerala Public Ways (Restriction of Assemblies and Processions) Act, 2011 by the State Legislature and the law laid down by the Apex Court and this Court in the decisions referred to supra, the 1st respondent State and the law enforcement machinery have not taken necessary steps to ensure strict enforcement of the relevant statutory provisions and also the Guidelines for Pedestrian Facilities formulated by Indian Roads Congress [IRC:103-2012], in order to prevent encroachment of any nature, in any form, either temporary or permanent, on the right of way or on the



pedestrian facilities on public roads, since any such encroachment will adversely affect the mobility and safety of all pedestrians including those with disabilities and reduced mobility.

22. Once roads are constructed as per the standards and guidelines prescribed by the Indian Roads Congress, it has to be maintained as such without any encroachment on the right of way or on the pedestrian facilities provided as per such standards and guidelines. Footpaths are not intended for stocking articles for trade or for display of goods by traders, in front of their shops or establishments. Similarly, footpaths are not intended for the purpose of holding campaigns, demonstrations, etc., by political parties and other organisations, by causing any obstruction whatsoever to free movement of pedestrians. No political party or organisation can be permitted to encroach footpath or right of way of public roads, in connection with any such protest, demonstrations, etc., by erecting any temporary structures on the right of way or on the pedestrian facilities, forcing pedestrians including those with disabilities and reduced mobility to walk in unsafe circumstances.

23. Showing scant regard to the law laid down in the decisions referred to supra, political parties and various organisations are permitted to put up structures on footpaths and even on the right of way of public roads, all over the State. The protesters/agitators having political backing are even permitted to lay carpet and place chairs on the footpath. On account of such encroachments, pedestrians including those with disabilities and reduced mobility are forced to walk through the right of way of public roads, in unsafe circumstances.

24. Considering the nature of issues involved in this writ petition, this Court deem it appropriate to suo motu implead the Additional Chief Secretary, Home Department, Government Secretariat, Thiruvananthapuram-695 001; the Additional Chief Secretary, Local Self Government Department, Government Secretariat, Thiruvananthapuram-695 001; and also the Transport Commissioner, Kerala, 2nd Floor, Trans Towers, Vazhuthacaud, Thycaud,

Thiruvananthapuram-695014 as additional respondents 5 to 7. Registry to carry out necessary corrections in the cause title.

25. Admit.

26. The learned Senior Government Pleader takes notice for the respondents 1 to 4 and also for additional respondents 5 to 7. The learned counsel for the petitioner to provide additional copies of the writ petition to the learned Senior Government Pleader, within two days.

27. The learned Senior Government Pleader shall ensure that the counter affidavit of the 1st respondent is placed on record within a period of four weeks. In the counter affidavit the 1st respondent shall explain the steps already taken to ensure strict enforcement of the orders of the Apex Court and the judgments of this Court referred to supra, the relevant statutory provisions and also the Guidelines for Pedestrian Facilities formulated by Indian Roads congress [IRC:103-2012], in order to prevent encroachment of any nature, in any form, either temporary or permanent, on the right of way or pedestrian facilities on public roads.”

11. Pursuant to the direction of this court, Mr.N.Manoj Kumar, learned State Attorney has filed a detailed counter affidavit wherein, it is stated that the Government have taken all earnest steps to comply with the directions of the Apex Court and this Hon'ble Court so as to prevent encroachment of any nature, in any form, on the right of way or pedestrian facilities on public roads. Therefore, according to the learned State Attorney, at present, there is no necessity to formulate and issue guidelines with respect to

earmarking certain public areas in the State for the purpose of holding mass assemblies including protests, campaigns, etc.

12. Relevant portion of the abovesaid counter affidavit reads thus:

“9. It is respectfully submitted that the Law Enforcement Authority is strictly enforcing the provisions of the Kerala Public Ways (Restriction of Assemblies and Processions) Act, 2011 and several cases have been booked against the persons for violating the provisions of the Act.

10. As per order dated 08.06.2021, this Hon'ble Court had directed the respondent to file counter affidavit explaining the steps already taken to ensure strict enforcement of the orders of the Apex Court and the judgments of the High Court referred to therein, the relevant statutory provisions and also the Guidelines for Pedestrian Facilities formulated by Indian Roads Congress (IRC:103-2012), in order to prevent encroachment of any nature, in any form, either temporary or permanent, on the right of way or pedestrian facilities on public roads.

11. In compliance of the said order, the Chief Secretary had convened a High Level Meeting on 15.06.2021 in which the following persons attended:

- (1) The Additional Chief Secretary, LSGD
- (2) The Principal Secretary, Transport
- (3) The Principal Secretary, Revenue,
- (4) The Secretary, PWD
- (5) The Secretary (E&IT)
- (6) The State Police Chief, Thiruvananthapuram
- (7) The Commissioner, Road Safety Commissionerate Thiruvananthapuram and
- (8) The Commissioner, Motor Vehicle Department, Thiruvananthapuram.

In the said Meeting, it was decided to take speedy

and effective steps to comply with the directions contained in the orders of the Hon'ble Court. All authorities concerned namely, PWD, LSGD, SPC, Road Safety Authorities, Motor Vehicle Department and Revenue Department were directed to take urgent steps to find out existing obstacles/ encroachments on the public roads and pathways and submit report to various authorities with specific instances of such obstacles/ encroachment and to take action for removing the same immediately. The Enforcement authorities and concerned Departments are directed to take immediate action to remove the same on receiving such a report from the said authorities.

12. It is submitted that, action taken report was submitted by Public Works Department that prompt actions are being taken by the Kerala State Transport Project for the removal of encroachments on State Highways. Section 15 of the Kerala Highways Protection Act, 1999 empowers the KSTP to remove any encroachment on the Highway and for that purpose, the Executive Engineers of KSTP have already been appointed as Highway Authorities. Besides, section 22 of the Act empower the Highway Authorities to take action for the prevention of danger arising from obstruction of view or distraction of attention of persons using the highways and for the removal of any advertisement post, bill boards, etc abutting the highways. No encroachment either by constructing temporary or permanent structure shall be allowed on any part of the highways constructed as per Indian Road Congress (IRC) and World Bank norms. The median, shoulders and the foot path of every road undertaken for improvement or upgradation by KSTP are designed and constructed as per the Ministry of Road Transport and Highways (MoRTH) specification and any unauthorized structure constructed or erected or displayed on the roads shall immediately be removed by Kerala State Transport Project (KSTP). The road from the North Gate to south gate of Secretariat is coming under the ambit of Kerala Road Fund Board. The project corridor is under the possession of concessionaire M/s. Thiruvananthapuram Road Development Company Limited (TRDCL) for the Operation and Maintenance (O&M) period and routine

maintenance, which is being done to facilitate the free flow of traffic and usage of foot path for pedestrians. Any encroachments in the footpath/ Right of Way (RoW) are being removed immediately. As per the condition of Contract Agreement KRFB has neither accorded sanction nor permission for conducting meetings or public gathering within the ROW's of the project roads. Regarding National Highways, all Executive Engineers are directed to take appropriate action to comply with the judgment.

13. It is submitted that the State Police Chief has given an action taken report to the Government on 28.06.2021. In the action taken report, they have stated that usually no permission or sanction are being given by Police to conduct any type of protest programs in public places including at road, foot paths and pavements. Also no permission are being given to construct pandal/shed on temporary/permanent basis at road, foot paths and pavements to conduct any form of agitation and other programs organized by any one. Moreover, notices will be issued to organizers with a direction to refrain from illegal activities which may cause any hindrance to normal traffic and pedestrians. If the agitators are found to be violating the existing rules, stringent legal action will be taken by Police against violators. The final reports of these cases are being submitted before the Courts concerned in a rapid manner.

14. It is submitted that even though stringent action is being taken by the Police, political parties and various associations are conducting different types of protest programs at public places to invite the attention of the Government/authorities. Being the Capital City of Kerala State, various type of agitation programs are frequently held at Thiruvananthapuram especially before Raj Bhavan, Legislative Assembly complex, Public Office compound (Museum Police Station limit), Government Secretariat, Accountant General Office (Cantonment Police Station), General Post Office (Vanchiyoor Police Station) to mark their protest before the State/Central Government and other statutory bodies. As part of these programs, special security/traffic arrangements are being taken by

Thiruvananthapuram City Police well in advance to control the agitators and traffic with an intention to ensure the safety, security and smooth inflow of general public and vehicles including the pedestrians. Moreover, often traffic diversions would be arranged by Police with an intention so as to avoid inconvenience to the general public. In this regard, additional Police Force will be deployed to ease the difficulties of public during these occasions. Press releases will be published in printed/visual medias and messages will be posting through the Social Media platforms of Police well in advance to aware the public regarding the anticipated traffic congestion and diversions made by Police. In no circumstances, Police will allow to erect any shed or structures on footpath. In the meantime, if any agitators attempted to erect such sheds, legal actions will be taken against those violators under the relevant Sections of IPC and other Acts. In addition to this, shed will be removed by the Municipal Corporation authorities in the presence of Police as per the requests forwarded by Local Police. In this regard, 54 crime cases had been registered in Thiruvananthapuram City alone, from 01.01.2021 to 20.06.2021. Such types of crime cases were also registered at Police Stations situated at other Police districts while reporting similar nature of incidents. Necessary guidelines were issued to field level officers on daily basis regarding the traffic regulations and enforcement and reviewing the same by Sub Division Officers and District Police Chiefs. Moreover traffic enforcement units are working in urban areas, headquarters of Taluks and other congested places. As part of routine duties, the bike patrol team of Traffic and Local Police are frequently visiting traffic congested areas to ensure smooth traffic and to remove obstruction if any hinder pedestrian and motorists. In addition to this, traffic enforcement and regulations are being handled by the Local Police in their respective jurisdictional limits. Also additional Police forces is being provided from Battalions and other special units of Police as per the requirement to control traffic during peak hours and in view of large/major agitations/protest programs. All efforts are being taken by Police to remove obstructions or encroachments. If needed, special drives are often conducted with the

active participation of the officials of Local Self Government Institutions to remove obstructions and encroachments.

15. It is submitted that the Road Safety Commissioner, Kerala Road Safety Authority has submitted an action taken report dated 06.07.2021 to the Government. In the action taken report submitted by Kerala Road Safety Authority, directions were issued to all stakeholders, District Collectors and DRSC-Chairman, in conformity with Section 14 of Kerala Road Safety Authority Act 2007, to remove all dangerous objects as listed in the High Court Order within a period of two months. Compliance of the directions have been received from district authorities, Police, LSGD and Local Bodies. Subsequent to review of Chief Secretary on Black spot Rectifications on 25/05/2021, instructions were issued to identify dangerous installations on public road and pedestrian walkway, and trees or branches of trees overhanging from private and public properties, after inspections and enquiries by a Task Force consisting of Police, PWD, LSGD and MVD officers at district level and take steps to remove them. District Collectors are advised to coordinate the activities in their jurisdiction and to report the action taken in this regard. Road Safety Funds are sanctioned to stakeholder department and Department-Related Parliamentary Standing Committees (DRSCS) for improvement of pedestrian facilities, procurement of traffic signals, speed checking equipments, enforcement equipment for Police, Motor Vehicles Department (MVD) and DRSCS.

16. It is submitted that in the action taken report submitted by the Motor Vehicles Department, it was stated that they have conducted a Special Drive across the state for removal of encroachments, obstructions and clearing of abandoned vehicles on the roadways. The RTO-Enforcement of Safe Kerala Project team and MVD, launched a mass drive called 'Operation Clear Pathways' in consultation with District Collectors and DRSC- Chairman.

17. It is most respectfully submitted that the Government have taken all earnest steps to comply

with the directions of the Apex Court and this Hon'ble Court so as to prevent encroachment of any nature, in any form, on the right of way or pedestrian facilities on public roads. Any further direction issued by this Hon'ble Court will also be scrupulously followed by the Government.

18. It is submitted that in view of the consistent steps taken by the State Government for implementing the directions of the Hon'ble Court and the Apex Court, at present there is no necessity to formulate and issue guidelines with respect to earmarking certain public areas in the State for the purpose of holding mass assemblies including protests, campaigns, etc. The further prayer to declare that staging or holding of assemblies including protests, campaigns, demonstration, etc. above the area around the Raj Bhavan area and the Secretariat and adjoining footpath area is unconstitutional is not maintainable. The petitioners have not made out any case for interference by this Hon'ble Court exercising jurisdiction under Act 226 of the Constitution of India. In view of the facts stated above, there is no merit in the Writ Petition and the same is liable to be dismissed.”

13. Our attention has also been drawn to the Circular bearing No.RC4/187/2016/LSGD dated 16.8.202, which is produced along with memo dated 31.1.2023. Circular dated 16.8.2021 is reproduced below:

“GOVERNMENT OF KERALA

No: RC4/187/2016/LSGD  
Local Self Government (RC) Department  
Thiruvananthapuram,  
Dated: 16/08/2021

CIRCULAR

Sub: Local Self Government Department - Eviction of Encroachment of roads / footpaths and Unauthorized constructions – Instructions - reg.



Ref:1) Order of the Hon'ble Supreme Court in Special Leave to Appeal (Civil) No. 8519/2006 dated 18.01.2013.

2) Interim order of the Hon'ble High Court of Kerala dated 08.06.2021 in WP(C) No. 11886/2021.

The Hon'ble Supreme Court in Special Leave to Appeal (Civil)No.8519/2006 dated 18.01.2013, directed that until further orders, State Government shall not grant any permission for the installation of any statue or construction of any structure in public roads, pavements, sidewalks and other public utility places except for installation of high mast lights, street lights or construction relating to electrification, traffic, toll or for the development and beautification of the streets, roads, highways etc. and relating to public utility and facilities.

In the interim order dated 08.06.2021 in WP(C) No. 11886/2021, the Division Bench of the Hon'ble High Court of Kerala, has directed to place on record the steps taken to ensure the strict enforcement of the orders of the Hon'ble Supreme Court in SLP (Civil) No. 8519/2006 and connected cases and various judgements of the Hon'ble High Court of Kerala in connection with the implementation of the statutory provision and the guidelines for pedestrian facilities formulated by Indian Roads Congress (IRC) to prevent encroachment of any nature of the right of way or pedestrian facilities on public roads.

The Kerala Panchayat Raj Act 1994 Section 170 states that it shall be the duty of the Panchayat to maintain properly the roads vested in it and to prevent encroachment on it. The Village Panchayat shall keep all public roads and important public paths in its area free from garbage, sewage and other waste materials and shall protect such roads and public paths from encroachment.

As per the Kerala Panchayat Raj Act 1994 Section 220, no person shall build any wall or erect any fence or other obstruction or projection or make any encroachment whatsoever, whether permanent or temporary, in or over any public road. Construct any building or structure other than a compound wall in any land abutting any National Highway, State High way, District roads or any other roads notified by the village

panchayat within a distance of three meters from the boundary of his land abutting the road.

The Kerala Panchayat Raj (Removal of encroachment and imposition and recovery of penalty for unauthorized occupation) Rules 1996 Rule 3(1), envisages prevention of encroachment stating that no person shall occupy any land belonging to or vested in a Panchayat without the permission of the Panchayat or not in accordance with the Act or the rules made thereunder or except in accordance with the terms and conditions of the license issued by the Panchayat. Any person unauthorisedly occupying any land belonging to or vested in a Panchayat and liable to pay a fine under the rules shall, in addition, be liable to pay such sum as may be fixed by the Panchayat as compensation for the loss or damage caused to the Panchayat by such unauthorised occupation. Whoever occupies any land belonging to or vested in a Panchayat contrary to the provisions shall be liable to be evicted from such unauthorized occupation by Rules (4) & (5).

Similar provisions are also available in the Municipal Act and Rules prevailing in the state. Section 364, 366 to 375 of the Kerala Municipal Act 1994 deals with the provisions to avoid encroachment on streets. Section 369 of the Act denotes that no person shall except with the written permission of a Municipality erect or set up within a municipal area any wall, fence, rail, post, step, booth or other structures or fixtures in or upon any public street or upon or over any open channel, well or tank in any street so as to form an obstruction, or an encroachment upon or a projection over, or to occupy any portion of such street, channel, drain, well or tank. Like wise, Section 372 establishes that the Secretary may, without notice, can remove unauthorized constructions. As per section 376, where any person without the previous sanction of a Municipality occupies any land belonging to it or vested in it or under its control, he shall, from time to time, pay in respect of such occupation such sums by way of penalty as may be demanded by the Municipality, subject to such limits as may be prescribed.

In addition to the above provisions, Government have adopted several measures to ensure the enforcement of orders of the Apex Court since 2006 and related orders of the Hon'ble High Court of Kerala. Even if such provisions, as mentioned above, are prevailing in

the State, it is noticed that they are either being violated frequently or not properly executed by the implementing agencies. Therefore, the Government, in compliance with the court orders under reference, hereby, direct that the Director of Urban Affairs and the Director of Panchayats shall not grant any permission for the installation of any statue or construction of any structure in public roads, pavements, sideways and other public utility places except for installation of high mast lights, street lights or construction relating to electrification, traffic, toll or for the development and beautification of the streets, roads, highways etc. and relating to public utility and facilities, in compliance with the direction of the Hon'ble Supreme Court. The Director of Urban Affairs and the Director of Panchayats shall instruct LSGs accordingly and shall regularly monitor removal of unauthorized constructions from the roads as per the provisions in the respective statutes, in compliance with the directions in the orders under reference.

SARADA MURALEEDHARAN IAS

ADDITIONAL CHIEF SECRETARY"

14. Considering the entire facts and circumstances of the case particularly, taking note of the counter affidavit filed on behalf of the first respondent – State of Kerala as well as the circular dated 16.8.2021, general directions as prayed for cannot be issued.

15. Having regard to the judgment of the Hon'ble Supreme Court and the Division Bench of this court, Government have issued circular dated 16.8.2021. It is also evident from the said circular that the Government have taken note of the statutory provisions in various enactments

and adopted several measures to ensure the enforcement of orders of the Apex Court since 2006 and related orders of the Hon'ble High Court of Kerala.

16. In such circumstance, we direct the respondents to comply with the directions issued by the Apex court as well as this court from time to time in this regard, and strictly implement the circular dated 16.8.2021 in letter and spirit.

With the abovesaid directions, writ petition is disposed of.

**SD/-  
S.MANIKUMAR  
CHIEF JUSTICE**

**SD/-  
MURALI PURUSHOTHAMAN  
JUDGE**

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**APPENDIX**

**PETITIONER'S EXHIBITS:**

- Exhibit P1        A TRUE COPY OF THE SAID PUBLICATION DATED 27/02/2020  
VIDE THE ONLINE NEWS PORTAL OF THE EXPRESS NEWS  
SERVICES.
- Exhibit P1(A)     A TRUE COPY OF THE SAID PUBLICATION DATED 26/02/2020  
VIDE THE ONLINE NEWS PORTAL OF THE TIMES OF INDIA.
- Exhibit P1(B)     A TRUE COPY OF THE SAID PUBLICATION DATED 16/09/2020  
VIDE THE ONLINE NEWS PORTAL OF THE EXPRESS NEWS  
SERVICES.
- Exhibit P1(C)     A TRUE COPY OF THE SAID PUBLICATION DATED 10/02/2021  
VIDE THE ONLINE NEWS PORTAL GERMANE OF THE TIMES OF  
INDIA.
- Exhibit P2        A TRUE COPY OF THE RTI REPLY DATED 09/01/2021 SENT BY  
THE PUBLIC INFORMATION OFFICER, CONTONMENT POLICE  
STATION, THIRUVANANTHAPURAM TO THE EXECUTIVE  
OFFICER OF THE PETITIONER.
- Exhibit P3        A TRUE COPY OF THE RTI REPLY DATED 20/01/2021 ISSUED BY  
THE STATE PUBLIC INFORMATION OFFICER, MUSEUM POLICE  
STATION, THIRUVANANTHAPURAM TO THE EXECUTIVE  
OFFICER OF THE PETITIONER.
- Exhibit P4        A TRUE COPY OF THE ORDER DATED 30/10/2020 BEARING  
GO(MS0 NO.205/2020/HOME, ISSUED BY THE HOME  
DEPARTMENT, GOVERNMENT OF KERALA.
- Exhibit P5        TRUE COPY OF THE LIST OF CASES REGISTERED BY THE  
POLICE AT DIFFERENT STATIONS IN TRIVANDRUM FROM  
1.1.2021 TO 20.6.2021.
- Exhibit P5(b)     TRUE COPY OF THE ACTION TAKEN REPORT DATED 6.7.2021  
OF THE ROAD SAFETY COMMISSIONER ALONG WITH  
ENCLOSURES.

// TRUE COPY //

P.S. TO JUDGE