



2024:KER:39455

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE M.A.ABDUL HAKHIM

TUESDAY, THE 4TH DAY OF JUNE 2024 / 14TH JYAISHTA, 1946

WP (C) NO. 25489 OF 2020

PETITIONER:

ELSY ABRAHAM
AGED 65 YEARS
W/O.ABRAHAM, PALAKKUDIYIL HOUSE, POOVARANI P.O.,
KOTTAYAM, -686 577

BY ADVS.
PEEYUS A.KOTTAM
SHRI. HRITHWIK D. NAMBOOTHIRI

RESPONDENTS:

- 1 STATE OF KERALA,
REPRESENTED BY ITS SECRETARY, LSGD, SECRETARIAT,
TRIVANDRUM-695 001
- 2 DISTRICT SUCHITWA MISSION,
KOTTAYAM , REPRESENTED BY ITS CO-ORDINATOR,
PIN-686 513
- 3 MEENACHIL GRAMA PANCHAYAT,
MEENACHIL, IDAMATTOM P.O., KOTTAYAM, REPRESENTED BY
ITS SECRETARY, PIN-686 577
- 4 THE DISTRICT COLLECTOR,
KOTTAYAM, PIN-686 002
- 5 ADDL.R5. THE EXECUTIVE ENGINEER,
PWD (STATE HIGHWAY), KOTTAYAM. IS SUO MOTU
IMPLEADED AS PER ORDER DATED 19-11-2020 IN WP(C)
- 6 FR.JOSE PRINGAMALA
AGED 74 YEARS, S/O.LATE THOMAS, ST.PAULS MISSION
HOUSE, PRRVARANI, PALA, KOTTAYAM DISTRICT-686 577.
- 7 SUNNY JOHN, AGED 53 YEARS,
S/O.JOHN PUNNATHANATH, POOVARANI,
PALA, KOTTAYAM DISTRICT-686 577.
ARE IMPLEADED AS PER ORDER DATED 03-02-2021 IN IA
2/21.

BY ADVS.



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WP(C) No.25489 of 2020

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**SRI.P.C.HARIDAS
P.K.SOYUZ
SRI.JELSON J.EDAMPADAM**

OTHER PRESENT:

SRI.BIMAL K NATH-SR.GP

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 04.06.2024, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:**



M.A ABDUL HAKHIM, J

WP(C) No.25489 of 2020

Dated this the 04th June, 2024

JUDGMENT

1. The petitioner is the owner in possession of 1 Acre 40 cents of property abutting Punaloor-Muvattupuzha State Highway which runs through the eastern boundary of the petitioner's property.
2. The case of the petitioner is that on realignment of the original road for avoiding the curve in front of the petitioner's property, the road was pushed towards the eastern side and the land through which the original road was passing is kept unused; and that the petitioner has road frontage extensively on its eastern side to the existing State Highway thorough the said unused land. The grievance of the petitioner is that the 2nd and 3rd respondents are attempting to utilise the said unused land in front of her property for constructing a Hotel-Cum-Public-Latrine-Complex. According to the petitioner if such a complex is constructed, her access to the Highway will be lost which is clearly impermissible in law as she has got the right of access



on all points of her property touch the highway in view of the settled position of law. When the petitioner and her neighbours came to know that the 2nd and 3rd respondent are attempting to construct the said Hotel-Cum-Public-Latrine-Complex in the said unused land, the husband of the petitioner, along with other persons submitted representations stating their grievances and objections before the 2nd and 3rd respondents, they are proceeding to construct the said Hotel-Cum-Public-Latrine-Complex without considering those representations.

3. The petitioner filed this writ petition seeking direction to the respondents 2 to 4 not to proceed with the construction of the said Hotel-Cum-Public-Latrine-Complex before taking any decision on the representation submitted and in such a way denying the petitioner's right to have access to the State Highway from her property.
4. When the 3rd respondent Grama Panchayat filed Counter Affidavit producing Ext.R3(h) Order rejecting the representation, the petitioner amended the writ petition and included the challenge against Ext.R3(h) and a declaratory relief that she has every right to use the old road portion for her ingress and



egress to enter into the State Highway formed after widening, from her property abutting to the road and also that the 3rd respondent has no right to obstruct or to interfere the right of the petitioner to have free ingress and egress to the road from every inch of her property.

5. The 3rd respondent filed a Counter Affidavit dated 07/01/2021 opposing the prayers in the Writ Petition. After amendment of the Writ Petition the 3rd respondent filed an Additional Counter affidavit dated 06/10/2021 to the amended writ petition. The sum and substance of the contentions of the 3rd respondent is that the 3rd respondent proposes to construct a Community Sanitation Complex as a part of the project '**take a break**' by which the State Government has decided to construct 2165 quality Community Sanitation Complex throughout the state, on the sides of National Highways and State Highways for the purpose of providing refreshment options to the travelers; that Suchitwa Mission is the nodal agency for implementing the Project through Local Self Government Institutions; that the 3rd respondent was asked to construct Community Sanitation Complex within its limits as Punaloor- Muvattupuzha State Highway is passing through it; that there are heavy traffic through



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the Highway especially during Sabarimala season; that the 3rd respondent identified the strip of land between the petitioner's property and the State Highway as a suitable place for the purpose; that it is the only available suitable land available within the limits of the 3rd respondent to implement the Project; that the Community Sanitation Complex with provision for snacks and beverages will be helpful for large number of Sabarimala pilgrims and other travelers through the road; that the petitioner's property is not abutting the highway; the access of the petitioner's property to the highway will not be obstructed by the proposed construction; that the proposed construction is having plinth area of 79.65 Sq.Meters in about 2-3 cents; that as per Ext.R3(g) proceedings issued by District Collector only maximum extent of 3 cents could be used for construction of Community Sanitation Complex under '**take a break**' Project; that since the land is vested with PWD and has been remaining as Puaramboke, the 3rd respondent obtained Ext.R3(k) NOC from the PWD which contains several conditions taking care of traffic safety also;and that the petitioner cannot have any kind of right over PWD Puramboke.



6. I heard the learned Counsel for the petitioner Sri.Peeyus.A.Kottam, the learned Counsel for the 3rd respondent Sri.P.C.Haridas, the learned Counsel for the Additional Respondents Sri.P.K.Soyus and Learned Senior Government Pleader Sri.Bimal.K.Nath who represented Respondents 1,2,4 & 5.

7. The petitioner has raised two grounds in support of her claim. The first ground is based on the Common Law Principle followed by the Courts in India that an owner of a land adjoining a highway is entitled to access to the highway at any point at which his land actually touches the highway, even though the soil of the highway is vested in the State. The second ground is that the construction of the Complex is objectionable on the ground of traffic safety as revealed from Ext.P10.

8. With respect to the first ground based on the common law principle there are long line of decisions following the common law principles in India. The learned counsel for the petitioner has cited three of such decisions in support of her claim - **(1) Municipal Board, Manglaur v. Mahadeoji Maharaj [AIR 1965**



SC 1147], (2) Tanoor Panchayat v. Kunhiamutty [1978 KLT 813] & (3) P.K. Wariyar v. State of Kerala [1989 (2) KLT 867].

9. In **Mahadeoji Maharaj's** case, the Hon'ble Supreme Court considered the question of the right of the Municipality to a vacant piece of land adjacent to metalled public road. The case arose from a title suit instituted by a person having property on the side of public road. In that case, the subject matter of the property is a vacant site lying in between the nalis and the road in which the Municipality attempted to erect a structure to install a statute of Mahatma Gandhi with two rooms on either sides for piyo and library. The public road as well as the said vacant land originally belonged to the landowner/plaintiff in the suit. Dispute was essentially with respect to the title of the said vacant land. The question was whether the land lying on the side of the metalled road is a part of the public road or not. The Hon'ble Supreme Court found that the suit site is a part of the public pathway and hence the suit so far as it asked for decree for possession is dismissed. But at the same time the Hon'ble Supreme Court granted decree for permanent injunction restraining the Municipality from putting up the structures on the disputed land holding that the Municipality cannot put up any



structure on the public pathway which are not necessary for the maintenance or the user of it as a pathway and that putting up of the structures intended by the Municipality are not necessary for the maintenance or the user of the road as a public highway.

10. When the Hon'ble Supreme Court holds that the Municipality cannot put up any structure on the public pathway which are not necessary for the maintenance or the user of it as a pathway, it by necessary implication holds that any structure on the public pathway which are necessary for the maintenance or the user of it as a pathway is permissible.

11. In the case on hand, the construction intended by the panchayat is a Community Sanitation Complex under the project **take a break** by which the State Government has decided to construct 2165 quality Community Sanitation Complex throughout the state, on the sides of National Highways and State Highways for the purpose of providing refreshment options to the travelers. Hence the construction of Community Sanitation Complex intended by the Panchayat is a



permissible one in view the said decision of the Hon'ble Supreme Court.

12. In **Tanoor Panchayat's** case, the land involved was a strip of land belonging to the Panchayat lying on the side of the road. The construction proposed by the Panchayat was a library for the benefit of local fishermen. The said construction was not intended to cover the entire road margin and even after construction there would have ample space left for the land owner therein for access to the road. This Court followed the aforesaid common law principle and the Supreme Court decision in **Mahadeoji Maharaj**. This Court referred to the principle that the width of the highway, that is, the extent of land subject to the public right of passage is a question of fact and that the side lands are ordinarily included in the road for their necessary proper maintenance of the road. This case also arose from a civil suit. Even though this Court found the legal principles in favour of the land owner/ plaintiff in the suit, the claim of the land owner was rejected holding that the eastern strip separates the road from the property of the land owner and it is not be treated as part of the road as necessary for its



maintenance nor can it be treated otherwise as there is no proof that it is subject to the public right of passage. This Court held that the land owner/plaintiff cannot therefore claim that the panchayat should keep the road margin vacant for his use as part of the road especially when the construction proposed by the panchayat leaves the plaintiff's ample space on its north and south for access to the road. In the case on hand, there cannot be any objection to the construction proposed by the 3rd respondent as the petitioner is having extensive road frontage for his 1.40 acres of land and the proposed construction which are beneficial for the users of the public road occupies only a small portion of the petitioner's frontage.

13. In **P.K. Wariyar's** case, this Court was dealing with the right of the respondent/Municipal Corporation to put up a large hoarding on the road margin of M.G.Road, Ernakulam substantially blocking the view of the petitioner's property, namely Kottakkal Arya Vydhyasla. The claim of the petitioner is that the right of the petitioner as an adjoining owner and as a member of the public are invaded by putting up such a huge hoarding. Following the Supreme Court decision in **Mahadeoji**



Maharaj, this Court held that the Municipal Corporation can use a street only qua street and in no other manner and that an adjoining owner has rights, in the nature of property and these rights cannot be invaded by the Corporation, which is in the possession of a trustee, and a trustee cannot act against the interest of the beneficiary. This Court held that the act of erecting hoarding and display boards in the frontage or along the boundaries of the petitioner's property is an act in excess of the authority and it has the vice of lack of authority. Accordingly, this Court directed to remove the subject hoardings and display boards fixed in front of the petitioner's property namely Kottakkal Arya Vaidya Sala. This decision also clearly distinguishable on facts available in the present case. The said hoarding was not necessary for the maintenance or user of the road. Secondly, such a huge hoarding unreasonably violates the rights of adjoining property owner.

14. The learned counsel for the 3rd respondent Panchayat cited the decision of this Court in **Ummaya Hamza v. Calicut Corporation and Ors. [2020 (6) KLT 674]** in which the grievance of the petitioner therein was that on account of

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raising of height of footpath on the side of Mavoor Road in Kozhikode, his access to the main road is completely lost. This Court found that the petitioner is having a road frontage of 22 mtrs and petitioner is having vehicular access at a length of 7 mtrs even after raising the footpath. Though this Court referred to the aforesaid common law principle this Court did not apply the same in stricto sensu. This Court referred to the principle that the private right of access is subject to the public right of passage which the higher right; and that it may also possible for a statutory authority to erect obstruction in the highway such as electric posts, telephone posts, but shelter, etc., which may invade the private right of landowners abutting the highway as the same is in public interest. Thereafter it was held that the right of the owner of the land to access across the footpath for reasonable enjoyment of the land will not be an impediment for adopting necessary measures in public interest for the safety of pedestrians and it is open to the authorities to plant even barriers separating the footpath and the highway. Finding that the petitioner has no case that the construction of the footpath by the Corporation at a higher level from the carriage way is not one made in public interest, this Court held that there is no

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illegality in the conduct of the Corporation in constructing the footpath at a higher level on the side of the road abutting the land of the petitioner. This Court added that if the proposition canvassed by the petitioner is accepted, footpaths can never be constructed at a higher level on the sides of the busy public roads, for footpaths in the same level of the carriageway would not serve any purpose. In the light of these principles also, the objection from the petitioner to the construction proposed by the 3rd respondent is unsustainable.

15. Since the land in the present case became vacant on account of change of alignment of the road, it can not be said to be a part of road margin. State is bound to provide several amenities for the users of the public road. In normal case, it cannot suitably be located in the road margin since the same is intended for the passage of pedestrians and there may not be sufficient width for locating such amenities in the road margin. The State and other local authorities are having so many valuable vacant lands on the side of the public road which do not form part of road margin. If the State and the local authorities are not allowed to put up constructions in such vacant lands for



providing public amenities on the ground that it would affect the access of neighbouring private land owners, there will not be any space available for the State and local authorities to provide the necessary amenities to the users of the road. If the aforesaid common law principle is enforced in stricto sensu there cannot be any development or change to the public road. The access of the private land owners would be restricted when new roads are constructed or the level of the road is increased or lowered or when bridges are constructed. If such developments are not permitted on the ground that it violates private right of access on the basis of the aforesaid common law principle, the consequences would be disastrous. Since the vacant land herein was formed on account of the abandoning of the old road, it does not form part of the road margin and hence the petitioner cannot claim right of his private access to the public road through the said vacant land. Hence, the contention of the petitioner that the said vacant land cannot be used for constructing the Complex is unsustainable.

16. Nevertheless, since the property of the petitioner lies on the immediate western side of the said vacant land and the

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petitioner is having access to the public road through the said vacant land, the access of the petitioner cannot unreasonably be restricted by the respondents. The respondents are entitled to use the said vacant land only after ensuring reasonable access from the petitioner's property to the public road. What is a reasonable access is a question of fact. If the petitioner's contention is upheld the valuable vacant land belonging to the Government will have to be kept unutilized forever. The position of the State is that of Trustee with respect to public properties and are bound to protect the interest of its subjects who are the beneficiaries. The State is bound to see that when public properties are utilized for any purpose, it is done in a manner which is least inconvenient and least injurious to the its subjects. Viewed from this angle, the respondents are bound to ensure that the construction proposed is done in a manner which is least inconvenient and least injurious to the petitioner.

17. With respect to the second ground of challenge of the petitioner with reference to traffic safety, the petitioner relies on Ext.P10 Report prepared by the Village Officer, which is obtained by the petitioner under the Right to Information Act. Ext.P10 is a



Report prepared by the Village Officer addressed to the Taluk Officer for the purpose of giving instructions in the present writ petition. In Ext.P10 it is stated that the place identified by the 3rd respondent is not suitable on the point of traffic safety. Though 1st and 4th respondent have not filed any Counter affidavit, the learned Senior Government Pleader submitted that he has got instructions from the 4th respondent/District Collector that place identified by the 3rd respondent is not suitable for construction of Community Sanitation Complex on the ground of traffic safety as stated in Ext.P10 Report. This Court does not have the technical expertise to comment on the suitability of the place identified by the 3rd respondent for construction of Community Sanitation Complex on the ground of traffic safety. It is a matter for the authorities to decide.

18. In view of the aforesaid propositions of law and in view of the traffic safety involved in the matter, I set aside Ext.R3(h) Order passed by the 3rd respondent and direct the 4th respondent/District Collector to take a fresh decision with respect to the suitability of the place identified by the 3rd respondent for constructing Community Sanitation Complex under the **take a**



break Project with reference to traffic safety after hearing petitioner as well as the 3rd respondent within a period of three months from the date of receipt of copy of this judgment. If the vacant land in front of the petitioner is found suitable, the 4th respondent shall find out a location which would cause least inconvenience and injury to the petitioner.

Writ petition is disposed of accordingly.

Sd/-

M.A ABDUL HAKHIM, JUDGE

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APPENDIX OF WP (C) 25489/2020

PETITIONER EXHIBITS

- EXHIBIT P1 THE TRUE COPY OF THE MINUTES DATED 23.10.2020 OF THE COMMITTED OF 3RD RESPONDENT
- EXHIBIT P2 TRUE COPY OF THE REGISTERED SALE DEED NO.12854/1991 OF MEENACHIL SRO
- EXHIBIT P3 TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONERS HUSBAND AND OTHER NEIGHBORING PEOPLE BEFORE THE SECRETARY MEENACHIL GRAMA PANCHAYAT DATED 06.10.2020
- EXHIBIT P4 TRUE COPY OF THE ACKNOWLEDGMENT RECEIPT ISSUED FROM THE OFFICE OF THE MEENACHIL GRAMA PANCHAYAT TOWARDS THE RECEIPT OF EXT.P3 REPRESENTATION
- EXHIBIT P5 THE TRUE COPY OF THE REPRESENTATION DATED 14.10.2020 SUBMITTED BY THE BISHOP OF UJJAIN DIOCESE BEFORE THE PANCHAYAT
- EXHIBIT P6 THE TRUE COPY OF THE RECEIPT ISSUED BY THE 3RD RESPONDENT PANCHAYAT TOWARDS OF EXT.P5 REPRESENTATION
- EXHIBIT P7 TRUE COPY OF THE PAPER REPORT PUBLISHED IN MALAYALA MANORAMA DAILY DATED 20.09.2020 PERTAINING TO THE ACCIDENT BEING HAPPENED IN THIS PARTICULAR AREA DUE TO THE PECULIAR LIE AND NATURE OF THE ROAD
- EXHIBIT P7A TRUE COPY OF THE PAPER REPORT PUBLISHED IN DESHABHIMANI DAILY DATED 20.09.2020 PERTAINING TO THE ACCIDENT BEING HAPPENED IN THIS PARTICULAR AREA DUE TO THE PECULIAR LIE AND NATURE OF THE ROAD
- EXHIBIT P8 THE PHOTOGRAPHS SHOWING THE LIE OF THE STATE HIGHWAY IN FRON OF THE PETITIONERS PROPERTY
- EXHIBIT P9 THE TRUE COPY OF THE SKETCH ISSUED FROM POOVARANI VILLAGE OFFICE SHOWING THE LIE AND NATURE OF THE PUNALLOOR-MUVATTUPUZHA ROAD



RESPONDENT EXHIBITS

- EXHIBIT R3 A TRUE COPY OF THE RESOLUTION NO-5 DATED 13/09/2020
- EXHIBIT R3 B TRUE COPY OF THE LETTER DATED THIS TEAM 09/20 OF THE 3RD RESPONDENT TO THE EXEWCUTIVE ENGINEER PWD
- EXHIBIT R3 C TRUE COPY OF THE APPLICATION FOR BUILDING PERMIT DATED 22/0/2020 SUBMITTED BY THE PETITIONER
- EXHIBIT R3 D TRUE COPY OF THE SIDE LOCATION PLAN AND EXHIBIT R3C
- EXHIBIT R3 E TRUE COPY OF THE LETTER DATED 16/11/2020 OF THE 3RD RESPONDENT TO THE PETITIONER
- EXHIBIT R3 F TRUE COPY OF THE PROCEEDINGS DATED 02/11/2020 OF THE DISTRICT COLLECOT KOTTAYAM
- EXHIBIT R3 G TRUE COPY OF THE PROCEEDINGS DATED 03/11/2020 OF THE DISTRICT COLLECTOR, KOTTAYAM
- EXHIBIT R3 H TRUE COPY OF THE ORDER DATED 06/11/2020 OF THE RESPONDENT
- EXHIBIT R3 1 TRUE COPY OF THE TENDE NOTICE DATED 03-11-2020