

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF AUGUST, 2021

PRESENT

THE HON'BLE Mr.JUSTICE SATISH CHANDRA SHARMA

AND

THE HON'BLE Mr.JUSTICE SACHIN SHANKAR MAGADUM

WRIT PETITION No.36314 OF 2019 (LB-RES) PIL

BETWEEN:

SRI DAYANANDA B SHETTY
S/O LATE KAMALA B SHETTY,
AGED ABOUT 73 YEARS,
KAJAL NIVAS, SANTEKATTE,
BANGLE ROAD,
NADSAL VILLAGE - 574 111,
KAUP TALUK, UDUPI DISTRICT.

...PETITIONER

(BY SRI CHANDRANATH ARIGA K, ADVOCATE)

AND:

1. THE EXECUTIVE ENGINEER
NATIONAL HIGHWAY AUTHORITY
KUNDAPURA SUB-DIVISION,
KUNDAPURA 576 201.
2. ASSISTANT EXECUTIVE ENGINEER
NATIONAL HIGHWAY AUTHORITY,
NO.3-29, BETHEL, THARE THOTA,
NEAR PUMPWELL,
MANGALORE - 575 002.

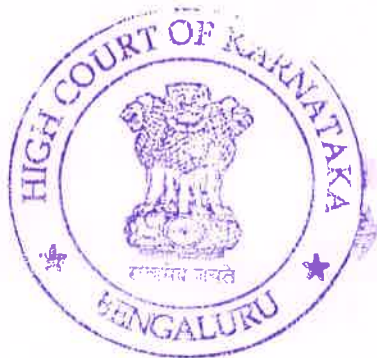


This Certified copy contains... 9 ... Pages
And Copying charges of ₹. 27/- is
Received

3. THE ASSISTANT EXECUTIVE ENGINEER
PUBLIC WORKS DEPARTMENT,
UDUPI - 576 101.
4. THE ASSISTANT EXECUTIVE ENGINEER
ZILLA PANCHAYAT,
MANIPAL - 576 104,
UDUPI.
5. URBAN DEVELOPMENT AUTHORITY
UDUPI, RAJATADRI,
MANIPAL - 576 104, UDUPI.
6. PANCHAYAT DEVELOPMENT OFFICER
PADUBIDRI GRAMA PANCHAYAT,
PADUBIDRI - 574 111,
UDUPI TALUK.
7. SUJATHA V KARKERE
D/O LATE SMT.MEERA BAI,
AGED ABOUT 58 YEARS.
8. SUMALATHA N SUVARNA
D/O LATE SMT.MEERA BAI,
AGED ABOUT 56 YEARS.
9. SRI Y.SUDHIR KUMAR
S/O LATE SMT.MEERA BAI,
AGED ABOUT 54 YEARS.
10. SRI Y.SUKUMAR
S/O LATE SMT.MEERA BAI,
AGED ABOUT 51 YEARS.

RESPONDENTS NO.6 TO 10
ARE RESIDENTS OF MEERA MAHAL,
NADSAL VILLAGE - 574 111,
KAUP TALUK, UDUPI DISTRICT.

...RESPONDENTS



(BY SRI VIJAYAKUMAR A PATIL, AGA FOR R3 & R5;
SRI UDAYA HOLLA, SR.ADVOCATE FOR
SRI R.V.NAIK AND SRI NITHYANANDA.M.K, ADV FOR R2;
SRI ASHOK N NAYAK, ADVOCATE FOR R4;
SRI JOSEPH ANTHONY, ADVOCATE FOR R7 TO R10
SRI A.MOHAMMED TAHIR, ADVOCATE FOR R6)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE BUILDING LICENSE NO.97/09-10 AND 58/09-10 DATED 19.01.2010 ISSUED BY R-6 [ANNEXURE-D]; QUASH THE BUILDING LICENSE NO.58/2017-18 DATED 01.08.2017 ISSUED BY R-6 [ANNEXURE-E] AND DIRECT THE R-1 TO 5 TO REMOVE THE CONSTRUCTION ON SY NO.47/4A, 47/5 AND 47/6 OF NADSAL VILLAGE, KAUP TALUK, UDUPI DISTRICT.

THIS WRIT PETITION COMING ON FOR FINAL DISPOSAL THIS DAY, **SATISH CHANDRA SHARMA J.**, MADE THE FOLLOWING:

ORDER

The petitioner before this Court has filed the present petition stating that Respondent Nos.6, 7, 8, 9 and 10 have illegally constructed the structures crossing the building line adjoining the National Highway, i.e., National Highway - 66. It has been further stated that no construction is permitted in "no construction zone" and as per the Circular issued by the State Government dated 22nd December, 2005, "no construction zone" in respect of National Highway is upto 40



meters, State Highway is upto 40 meters and District main road is upto 25 meters. This Court by an order dated 26th February 2021, as the petitioner is a neighbor of the private respondents has treated the present Public Interest Litigation as a *suo motu* petition. Reply has been filed in the matter by Respondent Nos.6, 7, 8, 9 and 10 and it is not in dispute that the construction is in "no construction zone".

2. The learned Senior Counsel appearing for National Highway Authority of India has argued before this Court that no construction can take place in the "no construction zone", keeping in view of Sections 7 and 9 of the Karnataka Highways Act, 1964 read with the Circular dated 22nd December, 2005 issued by the State Government. He has also stated that similar controversy has already been adjudicated in Writ Petition No.2039 of 1998 decided by the Division Bench on 01st December, 1999. It is not in dispute that the construction is within 40 meters from the National Highway and the statutory



provisions have been violated while carrying out construction by Respondent Nos.7, 8, 9 and 10. The learned counsel for Respondent Nos.7, 8, 9 and 10 has also argued before this Court that the construction has been carried out after obtaining permission from the competent Authorities and the respondents are not at fault in the matter. It is true that permission was granted from time to time for construction of the building but the fact remains that the construction is in "no construction zone" and contrary to the statutory provisions. The Division Bench of this Court in the case of Sri A.R.Srinivasa Reddy Vs. Sri Singh and others in Writ Petition No.2039 of 1998 decided on 01st December, 1999 has passed the following order:

"This is a writ petition filed by the petitioner in the nature of public interest litigation. The facts alleged in the writ petition are that the Bangalore-Bellary Road is National Highway No.7 and there is a Sales-Tax Checkpost situated after the Railway crossing outside the Bangalore City limits on N.H.7 and the entire land surrounding the checkpost office belongs to the State Government, Railway administration as well as to the



Indian Medical Research Centre. It is alleged that the 1st respondent has constructed and running a hotel/Dhaba in the name and style of M/s.Shiva Bar and Restaurant, without any authority over the land and in utter violation of the National Highway Act. That is challenged in the writ petition.

When the facts were disputed, we had appointed a Commissioner to visit the spot and submit a report. The Commissioner has submitted a report stating therein that the 1st respondent's Dhaba comes within 40 Mts. of the center of the road. The notification issued by the Government in this regard provides:

"1. No building should be constructed on either side of the National Highway, State Highways and District Main roads to a width shown below. To such construction of shops, restaurants, hotels, no permission should be granted:

From the Center of the Road

- | | |
|------------------------------|------------------|
| <i>a) National Highways</i> | <i>40 Meters</i> |
| <i>b) State Highways</i> | <i>40 Meters</i> |
| <i>c) District Main Road</i> | <i>25 Meters</i> |

The Dhaba of the 1st respondent is within 40 Mts. from the Centre of the road and in violation of the conditions prescribed in Annexure-A i.e., circular of the



Government dated: 09.05.1988. Therefore, we direct the 1st respondent to remove the entire construction within a period of four months from today. In case of failure to remove the same, the 2nd respondent is directed to demolish and recover the cost from the 1st respondent and to report compliance to the Registrar of this Court within two weeks after the expiry of the said four months.

Respondents-Authorities are directed to strictly comply with the conditions in Annexure-A so that no construction is made on the Highways within the limits prescribed therein and they are further directed not to allow any construction to remain on the Highways which are constructed within the prescribed limits, within period of two months from today.

Government Advocate is directed to communicate this order to all the authorities of the Government concerned.

Writ petition allowed accordingly.

3. The aforesaid judgment will make it very clear that there cannot be any construction within the area of 40 meters from the centre of the road being National Highway.



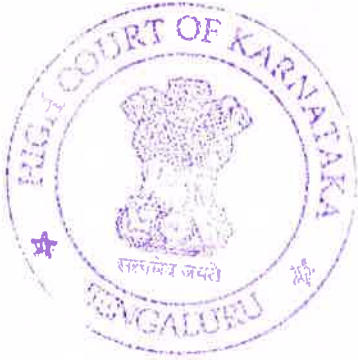
4. In the light of the aforesaid judgment and also keeping in view of the statutory provisions and also as per the Circular dated 22nd December, 2005 issued by the Government of Karnataka, the buildings constructed crossing the building line have to be demolished to the extent they are crossing the building line. The other important aspect of the matter is that the Authorities who have granted permission for such unauthorized constructions also deserves to be proceeded in accordance with law.

Resultantly, the writ petition stands disposed of with the following terms:

i) Respondent Nos.1 to 6 shall ensure that the constructions, which are within the "no construction zone", i.e., within 40 meters of the National Highway - 66 i.e, upto 40 meters away from the centre of the road are to be demolished within a period of sixty days from today.



ii) The Chief Secretary or an Officer nominated by the Chief Secretary shall hold a fact finding enquiry in the matter for fixing the responsibility upon the persons who have granted such illegal permission in respect of the various building permissions granted within "no construction zone" and after conducting a fact finding enquiry, the State of Karnataka shall be free to initiate departmental enquiry/criminal prosecution, if law permits in accordance with law. The exercise of conducting fact finding enquiry be concluded within a period of two months from today.



Sd/-
JUDGE

Sd/-
JUDGE

- DH
- The date on which the application was made 20/8/21
 - The date on which charges and additional Charges if any are called for
 - The date on which charges and additional Charges if any are deposited/Paid
 - The date on which the copy is ready 06/9/21
 - The date of ... stating that the copy is ready For delivery 06/9/21
 - The date on which the applicant is required to appear on or before 13/9/21
 - The date on which the copy is delivered to the Applicant
 - Examined by 7/9/21

TRUE COPY
[Signature]
 Section Officer
 High Court of Karnataka
 Bengaluru - 560 001
 6/9/21

