

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF APRIL, 2021



PRESENT

THE HON'BLE MR. ABHAY S. OKA, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

WRIT PETITION NO.13736 OF 2019 (GM-RES-PIL)

BETWEEN:

D. S. RAMACHANDRA REDDY
AGED 68 YEARS,
SON OF LATE S V SRINIVASA RAGHAVA REDDY
ADVOCATE, NO.13 "PADMALAYA"
SIRUR PARK ROAD, GHESHADRIPURAM
BANGALORE-560 020

... PETITIONER

(BY SRI. J. PRASHANTH, ADVOCATE)

AND:

1. THE COMMISSIONER OF POLICE
BANGALORE CITY, INFANTRY ROAD
BANGALORE-560 001

2. THE BRUHAT BANGALORE MAHANAGARA PALIKE
N R SQUARE, HUDSON CIRCLE
BANGALORE-560 002
REPRESENTED BY ITS COMMISSIONER

3. STATE OF KARNATAKA
REP. BY ITS SECRETARY TO GOVERNMENT
HOME DEPARTMENT VIDHANA SOUDHA
DR AMBEDKAR VEEDHI
BANGALORE-560 001

... RESPONDENTS

(BY SRI. VIJAYAKUMAR A. PATIL, AGA FOR R1 & R3;
SRI. K. N. PUTTEGOWDA, ADV. FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE AN ORDER/DIRECTION/WRIT IN THE NATURE OF WRIT OF MANDAMUS TO THE RESPONDENTS TO CLEAR ALL ENCROACHMENTS OF FOOT PATHS IN BANGALORE CITY PARTICULARLY ON SOUTH END ROAD, MALLESHWARAM AND SIRUR PARK ROAD, SHESHADRIPURAM AND TO PREVENT FUTURE ENCROACHMENTS IN THE INTEREST OF JUSTICE AND EQUITY AND ETC.

THIS WRIT PETITION COMING ON FOR PRELIMINARY HEARING, THIS DAY, **CHIEF JUSTICE** MADE THE FOLLOWING:

ORDER

We have heard the learned counsel appearing for the petitioner, the learned Additional Government Advocate for the first and third respondents and the learned counsel appearing for the second respondent.

2. The petitioner who is a member of the Bar has filed this public interest litigation inviting the attention of the Court to the encroachments made on foot paths/ footways in a particular location in the city. The second prayer is for making a particular street for one-way street and the third prayer is for ensuring that all road signals are erected. There are compliance reports filed on record. In fact, as per the order dated 18th January 2021 passed by this Court, the Member Secretary of the District Legal Services Authority, Bengaluru, visited the street subject matter of this petition and has

submitted a report dated 1st February 2021 along with the photographs. We must note here that in the affidavit filed by the petitioner on 25th March 2021, he has stated that positive actions have been taken by the authorities. He has expressed an apprehension that with the passage of time and after change of present set of officers, their successors may not take any action.

3. A large number of photographs are placed on record of the footways (popularly known as footpaths) which are being used for parking of two wheelers and four wheelers. In fact, the report submitted by the Member Secretary of the District Legal Services Authority also shows that the footways are being used for parking of vehicles and particularly two wheelers and there are other encroachments on the footways.

4. There is an apprehension expressed by the petitioner that with the passage of time, positive action which was taken after appropriate directions were issued by the Court may not be taken. There is some basis for the apprehension that after this Court ceases to monitor the implementation, the officers of the Bruhat Bengaluru Mahanagara Palike ('BBMP') and the Police department will show laxity.

5. Therefore, with the assistance of the learned counsel appearing for the parties, we have perused the various provisions of law dealing with the use of the footways or footpaths. As far as the rights of the citizens in relation to footways are concerned, there is a detailed order passed by this Court on 31st July 2019 in W.P.No.42927/2015. In the said order, this Court has examined the provisions of the Karnataka Municipal Corporations Act, 1976 (for short 'the said Act of 1976') including the mandatory obligations of the Corporation under the said Act of 1976. After referring to the various provisions of the said Act of 1976, in paragraph 12, this Court held that it is the statutory obligation of the BBMP to properly maintain public streets by carrying out repairs and improvements thereto. The definition of 'public street' under the said Act of 1976 includes a 'footway'. Even under the Bruhat Bengaluru Mahanagara Palike Act, 2020 (for short 'the said Act of 2020'), the definition of 'street' includes any footway, subway or riding path or passage over which the public have a right of passage or access. Even under the Karnataka Police Act, 1963, clause 20 of Section 2 defines 'street' which includes footways.

6. After considering the issue, this Court in paragraphs 14 to 17 of the aforesaid order has held thus:

"14. During the last three or four decades, the Apex Court has considerably extended the scope of the right to life guaranteed by Article 21 of the Constitution of India. **The Apex Court has held that the right to life as guaranteed under Article 21 of the Constitution of India includes a right to live a meaningful and dignified life. After all, the footways or footpaths are provided so that the citizens can comfortably walk from one place to another.** The streets are provided for the citizens so that they can travel comfortably by using vehicles. If there are potholes on the footpaths or on the streets, or if the same are not in good condition, the life of the citizens is exposed to danger. There are number of cases wherein, due to bad condition of the roads, accidents have happened resulting in either loss of human life or causing injuries to the citizens more so, in case of persons plying or traveling by two-wheelers. Hence, exposing the citizens to any danger due to bad condition of streets will amount to violation of their rights under Article 21. **In other words, a right to have streets including footways in a good and reasonable condition will have to be held as an essential part of the fundamental rights conferred on the citizens under Article 21 of the Constitution of India.**

15. Once we hold that the right to have roads and footways in a reasonable condition is a part of the right guaranteed under Article 21 of the Constitution of India, serious consequences may follow in the event there is a breach or violation of the said right guaranteed by the Constitution of India, by the BBMP or any other Corporation established under the said Act of 1976 which are a state within the meaning of Article 12 of the Constitution of India.

16. *In the case of SUDHIR MADAN AND OTHERS vs. MUNICIPAL CORPORATION OF DELHI AND OTHERS¹, the Apex Court held that the citizens have a fundamental right to use the roads, parks and other public conveniences provided by the State. If the streets or footways are in bad condition, the citizens are deprived of the effective use of the same thereby infringing their constitutional rights. If roads are not in good condition or if roads are not sufficiently lighted or if the same are full of potholes, they expose the citizens to a grave danger. As observed earlier, under Section 58 of the said Act of 1976, various obligatory functions of the Corporation are set out. One of the mandatory functions is of lighting of public streets.*

17. *There have been instances where bad condition of the roads including presence of potholes has caused road accidents. As observed earlier, road accidents cause loss of life or result in injuries to the citizens, some of which may lead to permanent disability. If a citizen suffers loss due to bad condition of the road, obviously, this would result in violation of Article 21 of the Constitution of India."*

(emphasis added)

Hence, apart from the statutory right created in favour of the citizens under the Municipal laws due to corresponding obligation to maintain the streets and footways in a reasonable condition, this Court has held that a right to have streets including footways in a good and reasonable condition will

¹ (2009) 17 SCC 332

have to be held as an essential part of the fundamental rights conferred on the citizens under Article 21 of the Constitution of India. Thus, it follows that if the footways or public streets are encroached upon in any manner including by parking of vehicles, it will amount to violation of fundamental rights guaranteed under Article 21 of the Constitution of India as held by this Court. It is in this context that the provisions of various laws will have to be considered. There are two aspects of the matter. The first aspect is that apart from the fundamental right of the citizens, there are statutory provisions dealing with footpaths or footways and parking of vehicles. The issue of indiscriminate parking on footways is also involved in this petition. The second aspect will be enforcement of the provisions of law by setting the criminal law in motion.

7. In exercise of the powers conferred under Section 118 of the Motor Vehicles Act, 1988 (for short 'the MV Act'), the Rules of the Road Regulations, 1989 (for short 'the said Regulations of 1989') have been framed. Regulation 15 of the said Regulations of 1989 deals with restrictions on parking. Rule 15 reads thus:

"15. Parking of the vehicle.-(1) Every driver of a motor vehicle parking on any road

shall park in such a way that it does not cause or is not likely to cause danger, obstruction or undue inconvenience to other road users and the manner of parking is indicated by any sign board or markings on the road side, he shall park his vehicle in such manner.

(2) A driver of a motor vehicle shall not park his vehicle:-

- (i) at or near a road crossing, a bend, top of a hill or a humpbacked bridge;*
- (ii) on a foot-path;**
- (iii) near a traffic light or pedestrian crossing;*
- (iv) in a main road or one carrying fast traffic;*
- (v) opposite another parked vehicle or as obstruction to other vehicle;*
- (vi) alongside another parked vehicle;*
- (vii) on roads or at places or roads where there is a continuous white line with or without a broken line;*
- (viii) near a bus stop, school or hospital entrance or blocking a traffic sign or entrance to a premises or a fire hydrant;*
- (ix) on the wrong side of the road;*
- (x) where parking is prohibited;**
- (xi) away from the edge of the footpath."*

(emphasis added)

8. The power under Section 118 of the M.V. Act to make regulations has been again exercised in the year 2017 by the Government of India by issuing the Motor Vehicles (Driving) Regulations, 2017 (for short 'the said Regulations of 2017').

These regulations contain more comprehensive provisions.

Regulation 3 of the said Regulations of 2017 is material which reads thus:

"3. Duty towards other road users and the general public.- No vehicle shall be driven, stopped or parked on a road or in a public place in such a manner as is likely to endanger the safety of, or cause inconvenience to, other road users."

(emphasis added)

It follows that if a vehicle is stopped or parked on a footway or footpath, it will cause inconvenience to the users of the footway or footpath. Hence, such a parking is prohibited. Another important provision in the said Regulations of 2017 is clause (5) of Regulation 5 which reads thus:

"5. Duties of drivers and riders.-(5) The driver shall ensure that his vehicle, while moving or when stationery, does not cause any hindrance or undue inconvenience to other road users or to the occupants of any properties."

9. Regulation 22 is material which deals with stopping and parking. Under clause (i) of sub-regulation (1) of Regulation 22, there is a prohibition on stopping and parking at a place where the road is narrow or where the view is obstructed. Sub-regulation (2) of Regulation 22 deals with prohibition on parking

of a vehicle. Sub-regulation (2) of Regulation 22 is material which reads thus:

"22. Stopping and parking.-

(2) A vehicle shall not be parked-

(a) *at a place where stopping a vehicle is prohibited under sub-regulation (1);*

(b) *on a main road or at a stretch of a road where the notified maximum speed limit is fifty kilometres per hour or more;*

(c) on a footpath, cycle track and pedestrian crossing;

(d) *before or after an intersection or a junction up to a distance of fifty meters from the edge of the intersection or junction;*

(e) where it would block access to designated parking spaces;

(f) *near a bus stop, at the entrance to an educational institution or a hospital or if it is likely to block a traffic sign or a fire hydrant;*

(g) *in a tunnel;*

(h) *in a bus lane;*

(i) *in front of the entrance or exit of a property;*

(j) *where there is a continuous yellow line installed or painted on the carriageway on the kerb side;*

(k) *away from the edge of the footpath;*

(l) *opposite another parked vehicle;*

(m) if it is likely obstruct any other vehicle or cause inconvenience to any person;

- (n) *alongside another parked vehicle;*
- (o) *beyond the specified duration at a place where parking is permitted for a specified duration only;*
- (p) *in a place where parking is permitted for a specified category or categories of vehicles and the vehicle does not belong to the specified category;*
- (q) *by a driver who is not differently abled in a parking space reserved for vehicles driven by differently abled drivers;*
- (r) *in a manner other than that specified in the parking bays in a designated parking lot or in such a manner as to occupy excessive space; and*
- (s) *where parking is prohibited by a "No Parking" sign."*

(emphasis added)

Thus, there is a complete prohibition on parking a vehicle at a place where the road is narrow or the view is obstructed. There is a complete prohibition on parking a vehicle on footpaths and cycle tracks. Clause (k) provides that a vehicle shall not be parked away from the edge of the foot path. This provision is obviously made to ensure that the use of adjacent public street should continue to remain unaffected by the parking. Clause (m) prohibits of parking of vehicles in such a manner that other vehicles will be obstructed or inconvenience will be caused to any person. Thus, not only on

footpaths/footways, but there is a prohibition on parking of vehicles in such a manner that it will obstruct the other vehicles or cause inconvenience to any person. All this will have to be appreciated in the light of definition of 'parking' under clause (j) of Regulation 2 of the said Regulations of 2017 which reads thus:

"(j) "parking" means the bringing of a vehicle to a stationary position and causing it to wait for any purpose other than that of immediately taking up or setting down persons, goods or luggage, and includes stopping for more than three minutes;"

10. Regulation 39 is also material which reads thus:

39. Pedestrian crossings, footpaths and cycle tracks.- (1) *While approaching an uncontrolled pedestrian crossing, the driver shall slowdown, stop and give way to pedestrians, users of invalid carriages and wheelchairs.*

(2) If traffic has come to a standstill, the driver shall not drive the vehicle on the pedestrian crossing if he is unlikely to be able to move further and thereby block the pedestrian crossing.

(3) When any 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 such movement have been displayed."

(emphasis added)

The provisions of both the Regulations of the year 1989 and 2017 to which we have made a reference are mandatory in nature.

11. As could be seen from Section 177A of the Motor Vehicles Act, 1988, any contravention of the Regulations made under Section 118 is punishable with fine which shall not be less than five hundred rupees and the maximum fine prescribed is one thousand rupees. It reads thus:

"177A. Penalty for contravention of regulations under section 118. - Whoever contravenes the regulations made under section 118, shall be punishable with fine which shall not be less than five hundred rupees, but may extend to one thousand rupees."

Thus, violation of the said Regulations attracts penal provision under Section 177A.

12. We may also make a reference to the provisions of the Karnataka Traffic Control Act, 1960 (for short 'the said Act of 1960'). Section 8 thereof prohibits leaving a vehicle on a public place in such a manner that it will cause danger, obstruction or undue inconvenience to the other users. Public place has been defined under clause (h) of Section 2 of the said Act. It includes a road, street, way or other place, whether a

thoroughfare or not, over which the public have a right of access or over which they have a right to pass. Obviously, footways will be included in the definition of public place. Under Section 18 of the said Act of 1960, any violation of the provisions of the said Act of 1960 or of any Rule made thereunder is an offence for which, unfortunately, a very mild punishment is prescribed of fine which may extend to ten rupees or in case of successive offence, it may extend to fifty rupees. This is a legislation of 1960. We hope and trust that the Legislature will consider whether Section 18 needs an amendment for providing for stringent punishments.

13. The Karnataka Traffic Control Rules, 1979 (for short 'the said Rules of 1979') have been framed in exercise of the powers under Sections 14 and 16 of the said Act of 1960. Use of footpaths is provided in Rule 6 which reads thus:

"6. Use of foot-paths.-(1) No person other than the person leading by foot, a bicycle, tricycle or a perambulator shall without reasonable cause, proceed on the carriage-way where foot-paths either on both sides or one side to such a carriage-way have been provided for the exclusive use of pedestrians.

(2) No person shall, without reasonable cause proceed on the carriage-way except on its left side, if no foot-path for the exclusive use of pedestrians adjoins such carriage way.

(3) No vehicle other than an invalid carriage or a toy vehicle or a cycle ridden by a person below ten years of age shall be used or kept on a foot-path.

(4) No person shall cross the roads except.-

(i) at pedestrian crossing where such crossing are provided; or

(ii) where the green signal is on for pedestrians to cross whenever automatic electronic signalling device has been installed for the purpose of regulating the traffic; or

(iii) on the direction of a police officer present on duty."

14. Now, we come to the provisions of the MV Act. Section 117 deals with parking places and halting stations. The said provision provides for determination of places where motor vehicles may stand either indefinitely or for a specified period of time. Section 122 of the MV Act is material which reads thus:

"122. Leaving vehicle in dangerous position.- No person in charge of a motor vehicle shall cause or allow the vehicle or any trailer to be abandoned or to remain at rest on any public place in such a position or in such a condition or in such circumstances as to cause or likely to cause danger, obstruction or undue inconvenience to other users of the public place or to the passengers."

This provision is applicable when a motor vehicle is abandoned causing inconvenience to other users of a public place which will include footways. Under sub-section (1) of Section 127,

there is a power of vesting in the authorities to deal with abandoned vehicles by a towing the same.

15. Coming back to the penal provisions of the MV Act, Section 177 provides that whoever contravenes any provisions of the MV Act or Rules, Regulations or notification made thereunder can be punished for the first offence, with a fine which may extend to five hundred rupees. There is one more penal provision which is Section 201 dealing with obstruction to free flow of traffic.

16. There are penal provisions under the Indian Penal Code, 1860 (for short 'IPC'). The first and foremost is under Section 188. An offence punishable under Section 188 is made out when there is a disobedience to order duly promulgated by a public servant. Indiscriminate parking on footways is a public nuisance within the meaning of Section 268 of IPC. Section 283 deals with danger or obstruction to a public way or line of navigation.

17. The upshot of the above discussion is that there is a complete prohibition on parking of any vehicle on footways. The restriction is found in the Regulations framed under

Section 118 of the MV Act as well as under the Rules framed under the said Act of 1960.

18. However, the laws relating to footways and public streets are rarely effectively implemented. At this stage, we make a reference to the decision of the Apex Court in the case of **AHMEDABAD MUNICIPAL CORPORATION vs. NAWAB KHAN GULAB KHAN AND OTHERS**². In paragraph 8 of the said decision, the Apex Court has held thus.

*"8. It is for the court to decide in exercise of its constitutional power of judicial review whether the deprivation of life or personal liberty in a given case is by procedure which is reasonable, fair and just or it is otherwise. **Footpath, street or pavement are public property 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 roads. The main reason for laying out pavements is to ensure that the pedestrians are able to go about their daily affairs with a 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. The claim of the pavement-dwellers to construct huts on the pavement or road is a permanent obstruction to free passage of traffic and pedestrians' safety and security. Therefore, it would be impermissible to permit or to make use of the pavement for private purpose. They should allow passing and repassing by the***

² (1997)11 SCC 121

pedestrians. No one has a right to make use of a public property for their private purpose without the requisite authorisation from the competent authority. **It would, therefore, be but the duty of the competent authority to remove encroachments on the pavement or footpath of the public street obstructing free flow of traffic or passing or repassing by the pedestrians.**"

(emphasis added)

19. In paragraph 22 of the said decision, the Apex Court has made the following observations:

"22. Empirical study of urban and rural population in India discloses that due to lack of civic facilities and means of livelihood people from rural areas constantly keep migrating to the urban areas resulting in mushroom growth of slums and encroachment of the pavements/footpaths etc. **Every Municipal Corporation has statutory obligation to provide free flow of traffic and pedestrians' right to pass and re-pass freely and safely; as its concomitance, the Corporation/Municipality have statutory duty to have the encroachments removed. It would, therefore, be inexpedient to give any direction not to remove, or to allow the encroachments on the pavements or footpaths which is a constant source of unhygienic ecology, traffic hazards and risk-prone to lives of the pedestrians. It would, therefore, be necessary to permit the Corporation to exercise the statutory powers to prevent encroachment of the pavements/footpaths and to prevent construction thereon. As held earlier, the Corporation should always be vigilant and should not allow encroachments of the pavements and foot paths. As soon as they**

notice any encroachments they should forthwith take steps to have them removed and would not allowed them to settle down for a long time. It is stated in their affidavit that they are giving 21 days' notice before taking action for ejectment of the encroachers. That procedure, in our view, is a fair procedure and, therefore, the right to hearing before taking action for ejectment is not necessary in the fact-situation. But the Commissioner should ensure that everyone is served and if it is not possible for reasons to be recorded in the file, through fixture of the notice on the hutment, duly attested by two independent panchas. This procedure would avoid the dispute that they were not give opportunity; further prolongation of the encroachment and hazard to the traffic and safety of the pedestrians."

(emphasis added)

20. In the decision in the case of **SUDHIR MADAN AND OTHERS vs. MUNICIPAL CORPORATION OF DELHI AND OTHERS** (supra), it is reiterated that a right to use footway or footpath is a right of citizens. All this has to be appreciated in the light of the fundamental right guaranteed under Article 21 of the Constitution of India. Therefore, all the penal provisions which we have discussed above must be scrupulously enforced by all the concerned.

21. The State Government will have to invite attention of the concerned authorities to the penal provisions of the aforesaid statutes and Regulations/Rules. The State Government must

ensure that the penal provisions are strictly enforced. Unless the penal provisions are properly enforced, the aforesaid provisions of law will remain only on paper.

22. We, therefore, pass the following order:

(i) We hold that it is the duty of the respondents to ensure that the footways and public streets are kept free of obstructions including illegal parking thereon. It is also their responsibility to ensure that violations of the aforesaid provisions of law are not taken casually and criminal law is promptly set in motion;

(ii) We direct the State Government and the traffic Police Department to make effective implementation of the provisions contained in Sections 117, 122, 127, 177A and 201 of the Motor Vehicles Act, 1988 on a complaint made by a citizen or otherwise. If any violation of the said provisions is made, apart from taking action of removal of illegally stopped, parked or abandoned vehicles on footways, criminal law must be set in motion immediately;

(iii) The respondents shall ensure strict implementation of the provisions of the said Act of 1960 and the said Rules of 1979. As noted earlier, the said Act of 1960 contains penal provisions for violation. Therefore, the relevant provisions of the said Act of 1960 and the said Rules of 1979 shall be scrupulously followed.

(iv) We direct the respondents to strictly implement the prohibitions noted above under both the Regulations framed in exercise of the powers under Section 118 of the M.V. Act. It is the duty of the State Government and its agencies and instrumentalities to ensure that the aforesaid relevant provisions under the M.V. Act, the said Act of 1960, the rules framed under the said Act of 1960 as well as the Regulations framed under Section 118 of the M.V. Act concerning footways are strictly implemented. They shall ensure that criminal law is promptly set in motion against the offenders and violators;

(v) We direct the State Government as well as the BBMP to issue directions to its officers for the

purpose of implementation of the above directions within a period of six weeks from today;

(vi) We may also note here that non-implementation of the aforesaid provisions which we have discussed in the body of the judgment may even amount to violation of right to life guaranteed to the citizens under Article 21 of the Constitution of India;

(vii) The petition is disposed of in the above terms;

(viii) However, for reporting compliance by both the BBMP and the State Government, the petition shall be listed on 21st June 2021;

(ix) Compliance shall be reported by 17th June 2021;

(x) The pending interlocutory application does not survive and is accordingly disposed of.

**Sd/-
CHIEF JUSTICE**

**Sd/-
JUDGE**