



2023:KER:69565

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

FRIDAY, THE 10TH DAY OF NOVEMBER 2023 / 19TH KARTHIKA, 1945

WP(C) NO. 8177 OF 2023

PETITIONER:

ANANTHAPURI HOSPITALS & RESEARCH INSTITUTE,
CHACKA NH BYPASS,
THIRUVANANTHAPURAM, PIN-695024,
REPRESENTED BY ITS CHAIRMAN AND
MANAGING DIRECTOR, DR. A MARTHANDA PILLAI,
AGED 76 YEARS, S/O. ANANTHANARAYANA PILLAI,
RESIDING AT TC 36/475, ASWINI,
PALKULANGARA,
THIRUVANANTHAPURAM, PIN - 695024

BY ADVS.

SRI.R.BINDU (SASTHAMANGALAM)

SRI.G.RAJAGOPAL (KUMMANAM)

SRI.R.JAYAKRISHNAN

RESPONDENTS:

- 1 CORPORATION OF THIRUVANANTHAPURAM,
CORPORATION OFFICE,
THIRUVANANTHAPURAM, PIN - 695033
REPRESENTED BY ITS SECRETARY.
- 2 THE SECRETARY,
CORPORATION OF THIRUVANANTHAPURAM,
CORPORATION OFFICE,
THIRUVANANTHAPURAM, PIN - 695033
- 3 NATIONAL HIGHWAYS AUTHORITY OF INDIA,
REPRESENTED BY ITS PROJECT DIRECTOR,
NATIONAL HIGHWAY AUTHORITY OF INDIA,
TC 36/414(3),
NEAR NSS HIGHER SECONDARY SCHOOL,



- PALKULANGARA, PETTAH (P.O.),
THIRUVANANTHAPURAM, PIN - 695024
- 4 THE PROJECTOR DIRECTOR,
NATIONAL HIGHWAY AUTHORITY OF INDIA,
G-5 & 6, SECTOR-10, DWARAKA,
NEW DELHI, PIN - 110075
- 5 DISTRICT COLLECTOR,
DISTRICT COLLECTOR'S OFFICE,
COLLECTORATE, KUDAPPANAKKUNNU,
THIRUVANANTHAPURAM, PIN - 695014
- 6 THE ASSISTANT COMMISSIONER OF POLICE
(TRAFFIC NORTH),
THIRUVANANTHAPURAM, PIN - 695004
- 7 THE DEPUTY COMMISSIONER OF POLICE,
THIRUVANANTHAPURAM, PIN - 695036
- 8 THE S.H.O.,
VANCHIYOOR POLICE STATION,
THIRUVANANTHAPURAM, PIN - 695035
- *9 VALSALA,
KUNNUMPARAMBIL VEEDU,
KARALI, VALLAKKADAVU P.O.,
THIRUVANANTHAPURAM PIN - 695 008
- *10 RADHA,
PANAYIL VEEDU,
VAYYAMOOLA, KARALI,
VALLAKKADAVU P.O.,
THIRUVANANTHAPURAM PIN - 695 008

*(ADDL. RESPONDENTS 9 AND 10 ARE IMPEADED AS PER
ORDER DATED 12/04/2023 IN I.A. NO.2/23 IN W.P.(C)
No.8177/2023)

BY ADVS.

SMT.DEVISHRI R, GOVT. PLEADER
SRI.SUMAN CHAKRAVARTHY, SC, THIRUVANANTHAPURAM
CORPORATION
SRI.K.A.SALIL NARAYANAN
SRI.SAJU J PANICKER



2023:KER:69565

W.P.(C) No.8177/23

-:3:-

SRI .KURIAN K JOSE

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 25.10.2023, THE COURT ON 10.11.2023 DELIVERED THE
FOLLOWING:**



BECHU KURIAN THOMAS, J.

W.P.(C) No.8177 of 2023

Dated this the 10th day of November, 2023

JUDGMENT

Petitioner is a hospital situated in the capital city of Thiruvananthapuram. It seeks a writ of mandamus to remove the encroachers, the bunk shops and other temporary sheds used for conducting illegal business on the property of the National Highway Authority adjacent to the hospital.

2. Petitioner alleges that several illegal street vendors have set up their stalls in front of the hospital, virtually blocking or restricting the free ingress and egress of patients, doctors, staff and management of the hospital apart from causing traffic congestion. The obstructions are, according to the petitioner, resulting in accidents, especially when ambulances come to the hospital carrying patients requiring emergency treatment. Petitioner also alleges that various vehicles parked in front of the bunk shops, apart from the illegal businesses being conducted by them and the encroachments



made into the pavements of the National Highway, cause a serious threat to the free traffic movement on the National Highway.

3. Though complaints were filed before the Regional Transport Officer and the National Highway Authority, the illegal street vendors have not been evicted. Petitioner alleges that even if the vendors are evicted, the Corporation and other statutory authorities fail to remove the bunk shops, and therefore, immediately after such eviction, other persons start occupying the sheds and bunk shops and continue the business. Petitioner alleges that whatever little actions have been initiated against the street vendors, they have all been ineffective. Petitioner also alleges that the Association of Vyapari Vyavasayi had even called for a total strike on 28.02.2023 and despite all these, the police are lethargic and have failed to act in accordance with law. Petitioner further alleges that the property of the National Highway is excluded from the Scheme of the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 (for short 'the Act'), and therefore, there is a bounden duty upon the statutory authorities to remove the bunk shops and sheds put up on the National Highway.

4. A statement has been filed on behalf of the Corporation of



Thiruvananthapuram stating that the food stalls and other bunks situated in and around the hospital premises create difficulties for bringing patients, especially in times of emergency. It was further stated that apart from the stalls and the bunk shops, the hospital has not provided any two-wheeler parking even for its staff or the patients and therefore, those vehicles are also parked in front of the hospital, which contributes to the obstruction for the smooth ingress and egress. The statement further alleges that under the Kerala Street Vendors (Protection of Livelihood Regulation of Street Vending and Licensing) Scheme, 2019, institutions such as Secretariats, Courts, District Collectorates, Hospitals, etc., are of utmost prominence and priority with 50 metres from the entrance of such institutions declared as vending free zones. The stalls functioning within the said limit of the petitioner hospital are, therefore, liable to be removed, and the respondents are taking steps by issuing notices to the encroachers.

5. In the counter affidavit filed by respondents 8 and 9, who are two of the alleged street vendors, it is stated that they are entitled for protection under the Act and that they have been conducting their business for the last more than two decades. They denied the allegation that street vendors have encroached into the National



Highway or that they are causing any inconvenience to the public or to the traffic. According to them, they depend for their livelihood in the businesses conducted in the bunk shops, and thus, they cannot be evicted.

6. I have heard Sri. Bindu R. Sasthamangalam, the learned counsel for the petitioner, Sri. Suman Chakravarthy, the learned Standing Counsel for the Corporation, Smt.R.Devishree, the learned Government Pleader, Sri. K. Salil Narayan, the learned Standing Counsel for the National Highway Authority and Sri. Saju J. Panicker, the learned counsel for respondents 9 and 10.

7. Respondents 9 and 10 do not have a case that they have a certificate of vending under the Act to carry on business as street vendors. It is not disputed that the scheme prepared under the Street Vending Act excludes an area of 50 metres around the premises of a hospital as vending-free zones. Therefore, under no circumstances can even a licensed street vendor occupy the premises or claim a right to set up a bunk shop within 50 metres of a hospital.

8. Further, the hospital run by the petitioner is situated adjacent to the National Highway. The area in front of the hospital,



which includes service roads, is part of the National Highway. Under the National Highways Act, 1956, no person can occupy any part of a National Highway. The Act does not give any right of street vending on a National Highway nor can any person use any part of a National Highway for street vending. Reference to the decisions in **Cherian Philip T.P. v. National Highways Authority of India, New Delhi and Others** (2015 (4) KHC 379) and in **Project Engineer, Kerala Road Fund Board, Tvm v. Thankappan and Others** (2015 (5) KHC 477) are relevant.

9. In the decision of the Supreme Court in **Bombay Hawkers Union v. Bombay Municipal Corporation** [(1985) 3 SCC 528], it has been observed that *"No one has any right to do his or her trade or business so as to cause nuisance, annoyance or inconvenience to the other members of the public. Public Streets, by their very nomenclature and definition, are meant for the use of the general public. They are not laid to facilitate the carrying on of private trade or business. If hawkers were to be conceded the right claimed by them, they could hold the society to ransom by squatting on the centre of busy thoroughfares, thereby paralysing all civic life. Indeed, that is what some of them have done in some parts of the city. They have made it impossible for the pedestrians to walk on footpaths or even on the streets properly so called"*.



The free flow of traffic will be affected if road margins are occupied by vendors, especially when they are on the side of the National Highway. This principle applies in equal force to the service roads as well.

10. As stated by the Corporation, the illegal occupants have already been given notices. Though notices are allegedly issued to street vendors, the Supreme Court had observed that unauthorised constructions on roads and road margins can be removed without even a notice unless they have been in occupation for a very long time. Reference is invited to the decision in **Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan** [(1997) 11 SCC 121]. In such circumstances, respondents 1 to 4 are bound to initiate appropriate action to remove all encroachments and also to prevent such encroachers from returning.

11. While S.367(1) of the Kerala Municipality Act, 1994 provides for notice for removal of encroachment in or over any street, which includes even a foot-way going by the definition of 'public street' under S.2(34)(b), sub-section (3) of S.367 empowers the Secretary to summarily evict encroachments on any road or public street, including footpath where the Secretary is satisfied that such



road or public street including footpath is encroached upon by any person in any form, either temporarily or permanently so as to cause obstruction or hindrance or inconvenience to traffic and users of the street. Thus, even summary eviction of encroachment from public streets or footpaths can be resorted to and notice itself is not necessary when the Secretary is satisfied that 'encroachment causes obstruction or hindrance or inconvenience to traffic and users of the street'. There is no reason to assume that encroachment on the footways and the area in front of the petitioner hospital is not causing obstruction, hindrance or inconvenience to traffic, including for ambulances and other users of the street. Therefore, encroachments can be removed even without any such notice in the instant case.

12. No removal of encroachment would be effective unless and until steps are taken to prevent them from returning and occupying the same position immediately after eviction. Unless strict actions are initiated against such illegal occupants and encroachers, the evil of encroachment will not come to an end. The illegal occupation of road margins is even more evil when the occupation is in front of a hospital. The vice of such occupation has its tentacles rooted in several anti-social activities as well. Therefore it is essential



that the Corporation, the Police as well as the District Administration and even the National Highway Authorities act in unison to remove such encroachers and prevent a repetition of such offending acts.

13. In the above circumstances, there will be a direction to respondents 1 to 6 and 7 to initiate appropriate action, as expeditiously as possible, to remove all encroachments in the form of bunk shops and temporary sheds in front of petitioner hospital and from the National Highway adjacent thereto. Necessary action shall be initiated in a concerted manner. Respondents 1 to 6 and 7 shall also ensure that appropriate measures are taken to prevent the encroachers from returning again.

The writ petition is allowed as above.

Sd/-

**BECHU KURIAN THOMAS,
JUDGE**

vps

APPENDIX OF WP (C) 8177/2023

PETITIONER'S/S' EXHIBITS

- Exhibit P1 TRUE COPY OF THE LETTER ISSUED BY THE 3RD RESPONDENT TO THE 6TH RESPONDENT DATED 28-06-2019
- Exhibit P2 TRUE COPY OF THE LETTER ISSUED BY THE 3RD RESPONDENT TO THE REGIONAL TRANSPORT OFFICER, THIRUVANANTHAPURAM 12-02-2020
- Exhibit P3 TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT DATED 06-05-2020
- Exhibit P4 TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER TO THE 5TH RESPONDENT DATED 23-01-2023
- Exhibit P5 TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER TO THE 6TH RESPONDENT DATED 23-01-2023
- Exhibit P6 TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER TO THE 7TH RESPONDENT DATED 23-01-2023
- Exhibit P7 TRUE COPY OG THE REPRESENTATION SUBMITTED BY THE PETITIONER TO THE 4TH RESPONDENT DATED 25-01-2023
- Exhibit P8 TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER TO THE 3RD RESPONDENT DATED 25-01-2023
- Exhibit P9 TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER TO THE 8TH RESPONDENT DATED 20-01-2023