

(2000) 06 GAU CK 0048
In the Gauhati High Court
Case No : Civil Rule No. 170 of 1992

Nongmaithem Ongbikunjabati Devi and Others	APPELLANT
Vs	
District Magistrate and Others	RESPONDENT

Date of Decision : 29-06-2000

Acts Referred:

Constitution of India, 1950 — Article 162, 226, 300A
Criminal Procedure Code, 1973 (CrPC) — Section 133
Imphal Municipalities Act, 1976 — Section 110, 110(1), 111, 113, 114
Manipur Land Revenue and Land Reforms (Allotment of Land) Rules, 1962 — Rule 13, 13(1)
Manipur Municipalities Act, 1994 — Section 62
Manipur Town and Country Planning Act, 1975 — Section 16(1), 26, 36(1)
Police Act, 1861 — Section 23, 34

Citation : (2004) GLT 127 Supp

Hon'ble Judges : A.K. Patnaik, J

Bench : Single Bench

Advocate : L. Nandakumar Singh and L. Shashibhushan, for the Appellant; T. Nandakumar Singh and M.I. Lalit Kumar Singh, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Patnaik, J.—In this application under Article 226 of the Constitution, the Petitioners have prayed for a writ of Mandamus quashing the order dated 15.2.1992 of the District Magistrate, Imphal District, Manipur requesting the Superintendent of Police, Imphal District, Manipur to take immediate necessary action u/s 34 of the Police Act to dismantle the alleged unauthorized construction of the structure or otherwise to furnish a detailed report to him for taking further necessary action u/s 133 of the Code of Criminal Procedure.

2. The case of the Petitioners in the writ petition is that in between Mushafirkhana road and Bhairoran Hindi School compound in Imphal Town, there is a passage of 15 feet width and 65 feet length. The said passage was earlier used by the residents of the locality for dumping garbage which caused

obnoxious smell affecting the students studying in the said school and pedestrians passing through the road. To prevent such garbage being dumped in the said passage, the Municipal Board of Imphal in consultation with the State Government decided to construct some stalls on the said passage. As per the said decision of the Municipal Board, originally six small stalls were to be constructed of the size of 7'8" x 7'7" and the remaining portion of the aforesaid passage was to be used as office of the Municipal staff engaged in the collection of Octroi. The aforesaid decisions were taken in the meeting held on 10.9.1977 under the Chairmanship of the Chief Minister, Manipur. The said decisions were communicated by the Government of Manipur, Local Self Department in its letter dated 24.9.1977 to the Executive Officer, Imphal Municipality, in which it was stated and six (6) stalls on the Musafirkhana road were to be put to public auction and allotted to persons who bade the highest monthly rent, and the costs of the stalls were not to be taken from such allottees. Accordingly, a notice dated 26.10.1977 was issued by the Deputy Commissioner (Central), Manipur, Imphal Municipality, the six wooden stalls on Mushafirkhana road would be put to public auction on 9.11.1977 at 2.00 p.m. at Imphal Municipal Office and would be allotted to persons who would bid highest monthly rent. As per the said notice, public auction was held on 9.11.1977 and the predecessor-in-interest of the Petitioners No. 1 to 7 and the Petitioner No. 8 were declared as successful bidders. By an order dated 9.1.1977 of the Imphal Municipality passed by the Deputy Commissioner (Central) on behalf of the Imphal Municipal Board, the successful bidders were required to deposit a sum of Rs.500/- only as security for each stall and also deposit the rent for the first month in advance on 14.11.1977 by 1.00 p.m. at the latest. Pursuant to the said order dated 9.11.1977, the predecessor-in-interest of the Petitioners No. 1 to 7 and the Petitioner No. 8 deposited the security amount of Rs. 500/- for each stall as well as the monthly rent in advance for the first month and took possession of the six stalls. On abolition of octroi duty, the adjacent building measuring 7' 8" width and 24" length in which the Municipal staff were carrying on the work of octroi collection was also settled with the Petitioners No. 1 and 2 by the Imphal Municipality on payment of monthly rent. The case of the Petitioners further is that while they were running their business in the said six stalls and the adjacent building, a decision was taken by the Imphal Municipal Board to convert the wooden stalls into semi-pucca stalls as per the terms and conditions contained in the Annexures to the order dated 2.1.1992 issued by the President of the Imphal Municipal Board. By the said order dated 2.1.1992, the construction of semi-pucca stalls was to be completed within four months and each of the lessees was to deposit a security money of 5,000/- with the office of the Imphal Municipal Board within 15 days. The Petitioners who agreed with the said terms for construction of semi-pucca stalls at their own costs, submitted an application dated 25.1.92 to the President of the Imphal Municipal Board requesting him to pass an order directing the Engineering Officer, Imphal Municipality for supervision of the said work with effect from 27.1.1992. The further case of the Petitioners as stated in paragraph 7 of the writ petition is that the Petitioners

started construction of semi-pucca stalls over their respective stall area by engaging a common contractor. They dismantled some wooden stalls but were yet to dismantle some of the stalls. They also invested a sum of Rs. 50,801/- towards the construction of the part of the stalls by way of purchase of materials, payment of labourers, charges to the common contractor, etc. On 15.2.1992, however, the President of All Manipur Road Transport Drivers" and Motor Workers" Union addressed a letter to the Deputy Commissioner, Imphal District, Manipur stating that the said stalls caused traffic inconvenience by narrowing down the road. In the said letter dated 15.2.1992, the President of All Manipur Road Transport Drivers" and Motor Workers" Union requested the Deputy Commissioner to take early action to stop construction of permanent nature in the congested place. The Deputy Commissioner, Imphal District, Manipur then issued the impugned communication dated 15.2.1992 to the Superintendent of Police, Imphal District requesting him to take immediate necessary action u/s 34 of the Police Act to dismantle the alleged un-authorised construction of the structure or otherwise to furnish a detailed report to him for taking further necessary action u/s 133 of the Code of Criminal Procedure. It is further alleged in paragraph 10 of the writ petition that on receipt of the impugned communication dated 15.2.1992, the Respondents No. 2 to 4 by abusing their official position visited the spot with armed police and started dismantling the newly constructed semi-pucca structures and forcibly took away all building materials including bricks, stones, holders, MS Rods, stone chips and cement stored in the vacant portion of the plot with help of truck belonging to the Police Department. On these facts, the Petitioners have moved this Court in the present writ petition contending, inter alia that the District Magistrate, Imphal had no jurisdiction to issue the impugned communication to the Superintendent of Police, Imphal District to remove the structures u/s 34 of the Police Act when the constructions had been made under the authority of the Respondents No. 5 and 6, the State of Manipur and the Imphal Municipal Board and that the acts of the Respondents No. 1 to 4 amounted to deprivation of the property of the Petitioners in violation of Article 300A of the Constitution of India.

3. At the hearing, Mr. L. Nandakumar Singh, learned senior Counsel appearing for the Petitioners, submitted that all public roads are part of the Municipal properties and in support of this submission relied on the provisions of Section 59 of the Imphal Municipalities Act, 1976 (for short, "the Act, 1976"), and Section 62 of the Manipur Municipalities Act, 1994 (for short "the Act, 1994"). According to Mr. L. NandaKumar Singh therefore even if it is held that part of the land on which wooden stalls were constructed and on which semi-pucca stalls were to be constructed was part of the public road, the Imphal Municipal Board had the powers under the said Acts to lease such part of the public road to the Petitioners for such construction of wooden stalls or semi-pucca stalls. He argued that since the Petitioners were in occupation of wooden stalls and had been granted permission by the Imphal Municipal Board to construct semi-pucca stalls in place of wooden stalls, they were not trespassers. He cited the decision of the

Supreme Court in *Bishan Das and Others Vs. The State of Punjab and Others*, in which it has been held that a person who bonafide puts up constructions on land belonging to others with their permission would not be a trespasser. He also relied on the observations of the Supreme Court in *Bishambhar Dayal Chandra Mohan and Others Vs. State of Uttar Pradesh and Others*, to the effect that the State Government cannot while taking recourse to the executive power of the State under Article 162 of the Constitution, deprive a person of his property and such power can be exercised only by authority of law and not by a mere executive fiat or order because the executive power under Article 162 is subject to Article 300A of the Constitution which provides that no person shall be deprived of his property save by authority of law. Mr. L. Nandakumar Singh also relied on paragraph 10 of an unreported judgment delivered on 9.9.1989 by a Division Bench of this Court in *Sri M.K. Lakshmikanta Singh v. Shri Iringbam Tompok Singh* (Civil Rule No. 172/82,258/83), in which it has been held that it is settled law that even the State cannot take possession of any property belonging to the State if it is in unauthorized occupation of some other persons without taking action under the provisions of law. He also relied on a decision of a single Judge of this Court in *Khuraijam Indrajit Singh v. State of Manipur* (Civil Rule No. 1037/1994) delivered on 18.12.1997, to the effect that where a person is dispossessed from a particular land without following the procedure as laid down by law and in particular procedure laid down by the Manipur Municipalities Act, 1976, he is entitled to a writ of Mandamus or an order in the nature of Mandamus for restoration of possession of the said land. Mr. L. Nandakumar Singh pointed out that pursuant to the orders passed by this Court in the present case on 24.7.1992, the Registrar of this Court made a spot enquiry and submitted a report alongwith a sketch map of the spot which would go to show that there was a passage measuring 8 feet width and 75 feet 6 inches length available between the Musafirkhana road and the boundary wall of Bhairordan High School and that the whole contention of the Respondents that the wooden stalls were located and the semi-pucca stalls were being constructed on the Mushafirkhana road itself is factually not correct. He also referred to the inventory of building materials filed by the police pursuant to the orders passed by this Court on 26.2.1992 to show that in fact materials were taken away by the police from the spot. He argued that the police had absolutely no power u/s 34 of the Police Act to take away the said materials or demolish any construction and that the whole action of the police was unauthorized, illegal and violative of the rights of the Petitioners under Article 300A of the Constitution. Finally, Mr. L. Nandakumar Singh contended that at the time when the writ Petitioner was filed, demolition of the wooden stalls and part of semi-pucca stalls had not been made, but soon after the filing of the writ petition, the aforesaid wooden stalls and part of the semi-pucca stalls were completely dismantled and the building materials were taken away by the police. In these circumstances, this Court while quashing the impugned order dated 15.2.1992 of the District Magistrate, Imphal as prayed by the Petitioners in the writ petition should grant additional relief of restoration of possession of the land on which stalls were located to the Petitioners. He relied

on the observations of the Supreme Court in *Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another*, that the High Courts are enabled under Article 226 of the Constitution to mould the reliefs to meet the peculiar and complicated requirement of this country. According to Mr. L. Nandkumar Singh, therefore, this is a fit case in which this Court should take into consideration the peculiar facts of the case and mould the relief and direct restoration of possession of the land from which the Petitioners were dispossessed after filing of the writ petition.

4. In reply to the aforesaid submissions, Mr. T. Nandakumar Singh, learned Advocate General, Manipur, appearing for Respondents-1 and 5, submitted relying on the affidavit-in-opposition filed by the Respondents-1 and 5 on 8.7.1992 and the affidavit-in-opposition filed by Respondents 3 and 4 on 15.7.1992 that there is absolutely no space between the Mushafirkhana road and the Bhairordan Hindi High School compound and that the 8" width space that is available there is part and parcel of the Mushafirkhana road and the drain. In support of this contention, he relied on the true copies of Dag Chitha in respect of the land covered by CS Dag No. 2778 and the land covered by CS Dag No. 2779 to show that they are Mushafirkhana road and the adjacent drain respectively. In this context, he submitted that Section 2 (xxxix) of the Act, 1976, defines "Public road" to include "the drains attached to any such road". He explained that it is for this reason that the Registrar of this Court in his spot enquiry report has included the drain in the road and has not shown the drain separately. Mr. T. Nandakumar Singh argued that u/s 62 of the Act, 1994, on which reliance was placed by Mr. L. Nandakumar Singh, learned Counsel for the Petitioners, any property maintained by the Government is not part of the Municipal property as would be clear from the express language used in Section 62 of the Act, 1994. He submitted that since the Mushafirkhana road was maintained by the Public Works Department of the Government of Manipur, the said road was not part of the property of the Imphal Municipality. Mr. T. Nandakumar Singh referred to the copy of the letter dated 24.2.1992 annexed to the affidavit-in-opposition of Respondents-1 and 5 in which the Chief Town Planner, Town Planning Department, Imphal, Manipur has stated that the area on which the semi-pucca stalls were to be constructed fell within the area earmarked for road/roadside land in the Master Plan for Greater Imphal area and sectoral plan for the Khwairamband Bazar area and that in order to avoid traffic congestion, it was not desirable to construct any structure within the boundary of the Mushafirkhana road. According to Mr. T. Nandakumar Singh, once a Master Plan for development of any area is adopted by the State Government in the area shown as part of road/road side land no new structure on such land covered by the Plan or no change in the existing structure of any building located on such land covered by the Plan can be made within the area except with the permission of the Authority u/s 16(1) of the Manipur Town and Country Planning Act, 1975, (for short, "the Act, 1975"). He also referred to the provisions of Rule 13(1) of the Manipur Land Revenue and Land Reforms (Allotment of Land) Rules, 1962

(for short "the Rules, 1962""), which provides that no land lying within fifteen metres of the centre line of any public road in a town shall be allotted without the prior sanction of the Administrator. According to Mr. T. Nandakumar Singh, therefore, the resolution of the Imphal Municipal Board allowing conversion of wooden stalls into semi-pucca stalls on the land in question was contrary to the bare provisions of Section 26 of the Act, 1975 and Rule 13 of the Rules, 1962. He referred to the averments in para-6 of the Affidavit-in-opposition filed on behalf of Respondents-1 and 5 to show that the said resolution adopted on 11.9.1991 by the Imphal Municipal Board was not within the knowledge of the Deputy Commissioner, Imphal and the State Government and had the said resolutions been brought to the notice of either the Deputy Commissioner or the State Government, the same would have been suspended u/s 198 of the Act, 1976. He referred to the provisions of Section 50 of the Act, 1976 to show that copies of the minutes of the proceedings of all meetings of the Imphal Municipal Board are to be forwarded to the Deputy Commissioner and to the State Government. He however, stated that the Deputy Commissioner and the State Government had not suspended the said resolution on account of interim orders passed by this Court on 18.2.1992 in the present writ petition. In reply to the contention that the whole action of the District Magistrate and the police in dismantling the constructions was not authorised by Section 34 of the Police Act, 1861, Mr. T. Nandakumar Singh submitted that the averments in para-8 of the affidavit-in-opposition filed on behalf of Respondents-1 and 5 would show that the Petitioners had not started construction of their semi-pucca stalls and had only started assembling building materials on the road for construction of said semi-pucca stalls and such building materials assembled on the road were causing great obstruction to the pedestrians and the vehicles. According to Mr. T. Nandakumar Singh, the police were competent u/s 34 of the Police Act, 1861, to remove such building materials assembled on the road which were creating obstruction to the traffic and the District Magistrate, Imphal who was incharge of all law and order in the district was also competent to direct the police to carry out their duties under the said Act, 1861. He referred to a decision reported in AIR 1947 132 (Oudh) in support of this contention. He argued that in any case since disputed questions of fact have arisen for decision in this case, the High Court should not decide this writ petition under Article 226 of the Constitution and that relief of restoration of possession which has not been claimed in the writ petition cannot be granted to the Petitioners. In support of his aforesaid submission, he cited the decisions of the Supreme Court in D.L.F. Housing Construction (P) Ltd. Vs. Delhi Municipal Corpn. and Others, , Md. Ibrahim v. City Magistrate, Varanasi, (1983) 2 SCC 153 , State of Punjab Vs. Dial Chand Gian Chand and Company, , and Krishna Priya Ganguly and Others Vs. University of Lucknow and Others, Regarding the decisions of the Division Bench and the single Judge of this Court in Shri M.K. Lakshmikanta Singh v. Sri Iringbam Tompok Singh and Khuraijam Indrajit Singh v. State of Manipur (supra), cited by Mr. L. Nandakumar Singh, learned Counsel for the Petitioners, he submitted that the aforesaid decisions are cases where the Petitioners claimed to be owners of

patta lands and the High Court directed restoration of possession in favour of the Petitioners having found that they had been dispossessed from their lands by the police without following the procedure laid down in law. But, to the present writ petition the case of the Petitioners is not that they are owners of any patta land, but their case is that they have been allowed by the Imphal Municipal Board to construct semi-pucca stalls on a public road which is not permissible under law. According to Mr. T. Nandakumar Singh, therefore, no restoration of possession can be directed in the present writ petition. Finally, he submitted that out of the eight (8) Petitioners, only Petitioner No. 8 is one of the allottees of the wooden stalls pursuant to auction held on 9.11.1977 by the Imphal Municipality and Petitioner Nos. 1 to 7 are not the allottees pursuant to the said auction held on 9.11.1977 and, therefore, they have no locus-standi to file the present writ petition.

5. Mr. I. Lalitkumar Singh, learned Counsel appearing for the Imphal Municipal Board, proforma Respondent No. 6, on the other hand, supported the case of the Petitioners. He relied on the affidavit-in-opposition filed on behalf of Proforma Respondent No. 6 and submitted that the original decision in 1977 for allotting six (6) stalls on the Mushafirkhana road through a public auction was taken under the Chairmanship of the Chief Minister, Manipur and had the full approval of the State Government of Manipur and pursuant to the said decision taken in 1977 the Petitioners were running their business in their respective stalls for more than 13 years without any complaint from any quarter. The Imphal Municipal Board in its resolution adopted on 25.10.1989 and resolution adopted on 11.9.1991 decided to convert the wooden stalls into semi-pucca stalls on certain terms and conditions. Pursuant to the said decisions of the Imphal Municipal Board, the construction work was taken up by the Petitioners under the supervision of the Engineering Officer of the Imphal Municipal Board so that there was no expansion or extension beyond the area of wooden stalls at the time of such conversion. But the police intervened and demolished the unfinished construction as indicated in para 6 of the Affidavit-in-opposition filed on behalf of pro forma Respondent No. 6. Mr. Lalitkumar Singh vehemently argued that the Imphal Municipal Board had full authority under law to allot the stalls to the Petitioners and had in fact done so as per the direction of the higher authorities of the State Government. He further contended that the State Government and the District Magistrate could have suspended the resolution of the Imphal Municipal Board adopted on 25.10.1989 and 11.9.1991, but so long as the said resolutions are not suspended, the District Magistrate, Imphal and the police had no authority under the law to demolish the unfinished construction and prevent the construction authorised by the Imphal Municipal Board in accordance with the provisions of law. In this context, he referred to the copy of the letter dated 22.2.1992 of the Superintendent of Police, Imphal District to the President of the Imphal Municipal Board in which the Superintendent of Police has stated that the District Police, Imphal would not allow such construction as it obstructed the flow of traffic, and submitted that the said letter affected the authority of Imphal

Municipal Board under the Act, 1976 and the Act, 1994 to allow the wooden stalls to be used by the Petitioners and to allow the Petitioners to construct semi-pucca stalls in their places.

6. In view of the aforesaid submissions made by the learned Counsel appearing for the parties, the first question which needs to be decided in the present writ petition is whether the Imphal Municipal Board could under law allot the wooden stalls located on the Mushafirkhana road by public auction to the predecessors of the Petitioners 1 to 7 and to the Petitioner No. 8 in the year 1977. Pursuant to auction held on 9.1.1977, the Imphal Municipal Board had allotted to the successful bidders in the auction six (6) wooden stalls on monthly rent. The cost of the said wooden stalls was borne by the Imphal Municipal Board. The wooden stalls therefore were the property of the Imphal Municipal Board, and the Board could let out the said stalls to any person or the Petitioners on payment of monthly rent. The objection of Respondents 1 to 5 however, is that the Imphal Municipal Board had no authority under the law to lease out any portion of a public road which is maintained by the Public Works Department of the State Government and allotment of land within 15 metres of the centre line of a public road in a town was prohibited by Rule 13(1) of the Rules, 1962. But, by allotting the wooden stalls in 1977, the Imphal Municipal Board had not leased out or allotted any land to the allottees, but had only permitted them to occupy the wooden stalls on the public road for their business. Section 110 of the Act, 1976 which provides for use of public road by persons is quoted hereinbelow:

110. Use of public road or place by vendors and other persons and penalty thereof-

(1) Subject to the provisions of this Act and the Rules and bye-laws made thereunder, no itinerant vendor, or any other persons shall use or occupy any public road or place for the sale of articles or for the exercise of any calling, or for setting up any booth or stall without the permission of the Board.

(2) Whoever violates the provisions of Sub-section (1) shall be punishable with fine which may extend to two hundred and fifty rupees, and with fine which may extend to five hundred rupees for every subsequent offence after the first conviction.

A plain reading of Sub-section (1) of Section 110 of the Act, 1976, would show that no vendor or person can use or occupy any public road or place for sale of articles or for exercise of any calling or for setting up any booth or stall without the permission of the Board. By implication, therefore, a permission can be granted by the Municipal Board to a person for setting up any booth or stall on a public road. The aforesaid provisions in Section 110 of the Act, 1976 was in force when the predecessors of the Petitioners-1 to 7 and the Petitioner No. 8 were allotted the wooden stalls on the Mushafirkhana road at Imphal on 9.11.1977 through public auction. The Imphal Municipal Board, therefore, was well within its authority under the provisions of the Act, 1976 to permit the predecessors of

Petitioners 1 to 7 and the Petitioner No. 8 to use or occupy the wooden stalls located in the Mushafirkhana road in the year 1977. Moreover, the Imphal Municipal Board appears to have allotted the stalls to the predecessors of the Petitioners 1 to 7 and the Petitioner No. 8 pursuant to orders of the Government of Manipur, Local Self Department communicated in the letter dated 24.9.1977 to the Executive Officer, Imphal Municipality. In paragraph-5 of the affidavit-in-opposition filed on behalf of Respondents-1 and 5, it has been stated that in the year 1977, when the areas were not developed, the proposal for construction of six (6) temporary wooden stalls and their temporary lease on payment of monthly rent was approved. It thus appears that the Government of Manipur did not have any objection to the letting out of the said six wooden stalls on the Mushafirkhana road in the year 1977 by the Imphal Municipal Board as the said area was not developed by them.

7. But, in the aforesaid paragraph-5 of the said affidavit-in-opposition filed on behalf of Respondents 1 and 5, the Government has taken a stand that the Imphal Municipal Board had no jurisdiction and authority to give on lease any road or nullah without the prior approval of the Town Planning Department and the Town Planning Department had seriously objected to any construction over the space in question in its letter dated 24.2.1992 to the Deputy Commissioner, Imphal. In the said letter dated 24.2.1992, it has been stated that the area in question fell within the area earmarked for road/roadside land in the Master Plan for Greater Imphal area and sectoral plan for the khwairambad Bazar area, and in order to avoid traffic congestion, it was not desirable to construct any structures within the boundary of Mushafirkhana road.

8. Hence, the next question which needs to be decided in this case is whether the Imphal Municipal Board could under law adopt the resolutions in its meetings held on 25.10.1989 and 11.9.1991 for converting the aforesaid wooden stalls into semi-pucca stalls without allowing any extension or expansion in the area of stalls by such conversion. As would appear from para 5 of the Affidavit-in-opposition filed on behalf of Respondents-1 and 5, and the letter dated 24.2.92 of the Town Planning Department, Manipur to the Deputy Commissioner, Imphal, that a Master Plan for the greater Imphal including the sectoral plan for Khwairambad Bazar area had already been prepared, and in the said Master Plan, the area in question had been earmarked for road/road side land. Sections 16(1) and 36(1) of the Act, 1975, which are relevant for deciding the aforesaid question are quoted hereinbelow:

26(1). After the Plan has been adopted by the State Government in the foregoing manner, no person shall use any land, sub-divide any land or set up any new structure on any land, covered by the Plan or change the existing structure of any building or use of any building or land within the area except on the permission of the Authority.

36(1). The authority shall, from time to time, with the sanction of the State Government, specify the minimum width for different classes of public roads

according to the nature of the traffic likely to be carried there, the localities in which they are situated, the heights upto which buildings abutting thereon may be erected and other similar considerations.

It would be clear from the said Section 26(1) that after the Plan has been adopted by the State Government, no person shall use any land, subdivide any land or set up any new structure on any land covered by the Plan or change the existing structure of any building or use of any building or land within the area except on the permission of the Authority. Thus, assuming that the wooden stalls allotted to the predecessors of Petitioners No. 1 to 7 and the Petitioner 8 were in existence before the Plan had been adopted, any conversion of the wooden stalls into semi-pucca stalls would amount to changing the existing structure of the stalls within the area covered by the Plan, and such change in the existing structure of the stalls could not be made except on the permission of the Authority. Moreover, a plain reading of Sub-section (1) of Section 36 of the Act, 1975, would show that the Authority has to specify the minimum width for different classes of public roads according to the nature of the traffic likely to be carried there, the localities in which they are situated, the heights upto which buildings abutting thereon may be erected and other similar considerations. The Authority while considering whether or not to grant permission under Sub-section (1) of Section 26 for changing the existing wooden structure of the stalls to semi-pucca structure of the stalls on Mushafirkhana road would have to find out the minimum width of the Mushafirkhana road to be maintained according to the nature of the traffic to be carried there, the locality in which they were situated, the heights upto which buildings abutting thereon might be erected, and other similar considerations. It is not the case of the Petitioners or the proforma Respondent No. 6, Imphal Municipal Board, that any such permission of the Authority was obtained before the resolutions were adopted by the Imphal Municipal Board on 25.10.1989 and 11.9.1991 for converting the wooden stalls into semi-pucca stalls or that after the said resolutions were adopted, such permission of the Authority was taken either by the Petitioners or by the proforma-Respondent No. 6, i.e. Imphal Municipal Board. In my considered opinion, therefore, the resolutions of the Imphal Municipal Board adopted in its meeting held on 25.10.1989 and 11.9.1991 for conversion of the wooden stalls into semi-pucca stalls were contrary to the provisions of the Act, 1975.

9. In case, however, pursuant to the said resolutions dated 25.10.1989 and 11.9.1991 of the Imphal Municipal Board and pursuant to orders of the President of the Imphal Municipal Board dated 2.1.1992, the Petitioners constructed semi-pucca stalls could such semi-pucca stalls be demolished u/s 34 of the Police Act, 1861, which are relevant in this case, are quoted hereinbelow:

23. Duties of Police Officers-

It shall be the duty of every police officer promptly to obey and execute all orders and warrants lawfully issued to him by the competent authority; to collect and communicate the intelligence affecting the public peace; to prevent the

commission of offences and public nuisance; to detect and bring offenders to justice and to apprehend all persons whom he is legally authorised to apprehend, and for whose apprehension sufficient ground exists; and it shall be lawful for every police officer, for any purpose mentioned in this section, without a warrant, to enter and inspect any drinking shop, gambling-house or other place or resort of loose and disorderly characters.

34. Punishment for certain offences on Roads, Etc.- Power of Police Officers-

Any person who, on any road or in any open place or street or throughfare within the limits of any town to which this section shall be specially extended by the State Government, commits any of the following offences, to the obstruction, inconvenience, annoyance, risk danger or damage of the residents or passengers shall, on conviction before a Magistrate, be liable to a fine not exceeding fifty rupees or to imprisonment with or without hard labour not exceeding eight days; and it shall be lawful for any police officer to take into custody, without a warrant, any person who within his view commits any of such offences namely;

First, slaughtering cattle, furious riding, etc. - Any person who slaughters any cattle or cleans any carcass; any person who rides or drives any cattle recklessly or furiously or trains or breaks any horse or other cattle;

Second, cruelty to animals - Any person who want only or cruelly beats, abuses or tortures any animal;

Third, Obstructing passengers - Any person who keeps any cattle or conveyance of any kind standing longer than is required for loading or unloading or for taking up or setting down passengers, or who leaves any conveyance in such a manner as to cause inconvenience or danger to the public;

Fourth, Exposing goods for sale - Any person who exposes any goods for sale;

Fifth, Throwing dirt into street - Any person who throws or lays down any dirt, filth, rubbish or any stones or building materials, or who constructs any cowshed, stable or the like, or who causes any offensive matter to run from any house, factory, dung heap or the like;

Sixth, Being found drunk or riotous - Any person who is found drunk or riotous or who is incapable of taking care of himself.

Seventh, Indecent exposure of person - Any person who wilfully and indecently exposes his person, or any offensive deformity or disease, or commits nuisance by easing himself, or by bathing or washing any tank or reservoir not being a place set apart for that purpose;

Eight, Neglect to protect dangerous places - Any person who neglects to fence in or duly to protect any well, tank or other dangerous place or structure.

From a reading of the provisions of Section 34, quoted above, it will be clear that it does not empower the police to demolish any structure/building located on any

road or in any open place or street or throughfare within the limits of any town to which the section is extended by the State Government. It however states in the fifth clause that any person, who throws or lays down any building materials on any road or in any open place or street or throughfare within the limits of any such town, commits an offence and it shall be lawful for any police officer to take into custody, without a warrant, any such person. Section 23 of the Police Act, 1861, enumerates the duties of police officers and one of the duties of police officers indicated therein is to prevent commission of offences and public nuisances. Thus, with a view to prevent the commission of offence u/s 34 of the Police Act, 1861, the police officers were well within their authority to remove the building materials or prevent assembling of building materials on the Mushafirkhana road. But, they were not authorised under the said Sections 23 and 34 of the Police Act, 1861, to demolish the constructions already made. The District Magistrate, Imphal, could have requested the Superintendent of Police, Imphal District to remove the building materials assembled on Mushafirkhana Road, but could not have requested him to dismantle the structures even if he had taken a view that such structures were unauthorized construction. It is not as if that the District Magistrate had no remedy at all where a structure on the road was an unauthorized construction. Section 114 of the Act, 1976 provided that a District Magistrate" or a Sub-Divisional Magistrate shall on being so required by the State Government, order any person responsible for any obstruction or encroachment or projection as specified in Sections 111 and 113 to remove or alter such obstruction or encroachment or projection within a period not less than forty eight hours and on non compliance with such order may take steps to remove such obstruction or encroachment or projection and realize the expenses thereby incurred from the person concerned as fine in a criminal court. Section 111 of the Act, 1976 refers to power to remove obstructions, encroachments, and projection in or on public road, etc. and Section 113 refers to projections from buildings over-hanging the public road. The proper course for the District Magistrate, Imphal District was to have referred the complaint of the President of All Manipur Road Transport Drivers and Motor Workers" Union about the permanent structures sought to be erected by the Petitioners on Mushafirkhana road to the State Government and after receiving the orders from the State Government to have taken action under the said Section 114 of the Act, 1976. Instead of adopting the aforesaid course provided under law, the District Magistrate, Imphal District has hastily requested the Superintendent of Police, Imphal District to dismantle the structures after taking a view that the structures were unauthorized construction.

10. In paragraph 8 of the affidavit-in-opposition filed on behalf of Respondents-1 and 5, it has however been denied that the Petitioners had started construction of the building, i.e. semi-pucca stalls, and it has been stated instead that they had only started assembling building materials on the road for construction of the said semi-pucca structures and were causing great obstruction to the pedestrians and vehicles and that police were competent to remove any

obstacles on the public road according to law, and that the Respondent No. 1, District Magistrate, Imphal in order to maintain law and order was competent to direct the Respondent No. 3 to remove any obstruction on the public road. Thus, the Respondents 1 to 5 do not admit the case of the Petitioners that they had partly constructed the semi-pucca stalls. The case of the said Respondents-1 to 5 is that there were some building materials assembled on the Mushafirkhana road. As has been held above, the police officers were well within their authority and duty to remove such building materials assembled on the road u/s 34 read with Section 23 of the Police Act, 1861. Since the parties are in dispute as to whether or not the semi-pucca stalls were partly constructed as claimed by the Petitioners, this Court cannot under Article 226 of the Constitution record a finding on such a disputed question of fact.

11. To sum up, my conclusions are:

(i) The Imphal Municipal Board had the authority u/s 110 of the Act, 1976 to permit the predecessors of the Petitioners No. 1 to 7 and the Petitioner No. 8 to use the wooden stalls located on the Mushafirkhana road pursuant to the letter dated 24.9.1977 of the Government of Manipur, Local Self Department to the Executive Officer, Imphal Municipality.

(ii) But the Imphal Municipal Board could not have allowed the Petitioners to convert the aforesaid wooden stalls on the Mushafirkhana road into semi-pucca stalls by resolutions adopted on 25.10.1989 and 11.9.1991 without the permission of the Authority u/s 16(1) read with Section 36(1) of the Act, 1975.

(iii) Police Officers had the authority and were under a duty u/s 34 read with Section 23 of the Police Act, 1861 to remove the building materials assembled on the Mushafirkhana road.

(iv) But Police Officers had no authority u/s 34 read with Section 23 of the Police Act, 1861 to dismantle the constructions of semi-pucca stalls, if they were already constructed, and hence the District Magistrate, Imphal District could not have requested the Superintendent of Police, Imphal District to dismantle the unauthorized constructions. Instead he could have taken action u/s 114 of the Act, 1976.

(v) No finding can be recorded under Article 226 of the Constitution on the disputed question of fact as to whether or not semi-pucca stalls were partly constructed by the Petitioners when the police officers went to the spot pursuant to the impugned order dated 15.2.1992 of the District Magistrate, Imphal District.

12. Since the case of the Petitioners is that they have themselves dismantled the wooden stalls, no Mandamus can be issued to restore possession of the wooden stalls to the Petitioners. Further, since the resolutions of the Imphal Municipal Board adopted on 25.10.1989 and 11.9.1991 permitting the Petitioners to convert the wooden stalls into semi-pucca stalls were contrary to the provisions of Section 26(1) read with Section 36(1) of the Manipur Town and Country

Planning Act, 1975, no Mandamus can be issued to the Respondents to allow the Petitioners to construct semi-pucca stalls on the Mushafirkhana road in accordance with the said resolutions of the Imphal Municipal Board and take possession of the same. However, it is directed that the materials belonging to the Petitioners and taken away by the police be returned to the Petitioners, if not already returned.

In the result, the writ petition stands dismissed. Considering however the entire facts and circumstances of the case, I leave the parties to bear their respective costs.