
(1999) 11 KL CK 0085

In the High Court Of Kerala

Case No : O.P. No. 21352 and 23580 of 1999

Vasanth Nagar Allottees" Assn

APPELLANT

Vs

District Collector

RESPONDENT

Date of Decision : 19-11-1999

Acts Referred:

Constitution of India, 1950 — Article 19, 19(1)(g), 19(6), 21

Citation : (2000) 1 KLJ 61

Hon'ble Judges : A.S. Venkatachala Moorthy, J

Bench : Single Bench

Advocate : P. Jacob Varghese, Jaiji Ittan, K.R. Michael and Noel Joseph, for the Appellant; K. Balakrishnan and V.M. Kurian, for the Respondent

Final Decision : Allowed

Judgement

1. The above original petitions can be disposed of by a common judgment as the issue involved is one and the same. For the sake of convenience I am adopting the cause title as given in O.P. No. 21352 of 1999. Petitioner is the Vasanth Nagar Allottees Association (Registered), a society registered under the Travancore Cochin Literary and Scientific Societies Registration Act, 1956. The case of the petitioner is that in implementation of their housing scheme, under the provisions of the Kerala State Housing Board acquired properties and constructed 210 different types of residential flats at Kaloor in 1990 and they were allotted to various persons who have formed the petitioner association. The further case of the petitioner is that this housing colony is situated opposite to the International Stadium at Kaloor on its northern side while the main entrance is on the northern side of the Highway. About 60 feet from the entrance towards west on the side of the Highway is the main bus stop. This being a highway there is good flow of traffic. There is foot-path provided on both sides of the road obviously meant only for pedestrians. The grievance of the petitioner is that recently some persons have started selling vegetables, fruits, tender coconuts, etc. by putting up temporary roofs in the entire foot path and in view of this

obstruction the school going children are not in a position to use the foot path and they have to walk on the highway meant for vehicular traffic. This poses a serious risk to the public particularly for the school going children and women. Apart from this, these trespassers who are operating in temporary sheds, occupying the foot path without any board indicating the name of the shop or name of the owner are dumping all the wastes and decayed articles into the compound of the Vasanth Nagar Colony which emanates foul smell, etc. with the result the air is polluted. Apart from this the stray animals like dogs, etc. and the birds gather at the place where the waste are dumped. This has made the life of the allottees miserable. According to the petitioner, they approached the authorities like Assistant Executive Engineer, P.W.D., City Police Commissioner and others, but however the same has not yielded to any result.

2. The respondents are represented by the learned Government Pleader. It is the stand of the respondents that the petitioner in O.P. No. 23580 of 1999 and others are all persons who recently trespassed and occupied a portion of the foot path as submitted by the petitioner in O.P. No. 21352 of 1999 and admit that they have no licence or any kind of permission whatsoever from any authorities to occupy the foot path and cause any inconvenience to the public at large and the school going children in particular. Petitioner also produced photographs before this court to give a clear picture about the problem posed. The respondents too admitted the correctness of the same and according to the respondents the photographs reflects the real state of affairs.

3. O.P. No. 23580 of 1999 is filed by a person by name M.K. Siraj. He is one among the occupants of the foot path. In the original petition he has stated that he is a petty trader dealing in fruits, vegetables and tender coconuts on the western road margin of the public road opposite to International Stadium at Kaloor and he has been doing this business for the last so many years by putting up temporary stalls. According to him he has been earning his livelihood only by doing this business and that apart the nearby residents are in fact really benefitted by his and others running these shops. It is also further contended that the Constitution of India guarantees right to life and livelihood. He also contends that he and others are running business on pavements and they are not causing any nuisance or inconvenience to the public.

4. There is no dispute that some persons including the petitioner in O.P. No. 23580 of 1999 have occupied the foot path in the Highway meant for pedestrians. Equally it is not in dispute that it is opposite to the Kaloor International Stadium.-That being so, this court can accept the case of the authorities that there is heavy vehicular traffic both two wheelers and four wheelers. It has also to be remembered that the petitioner in O.P. No. 23580 of 1999 has in fact only claimed that he and others have put up temporary stalls. A vague statement is made that they have been occupying the premises for years, but however no specific statement is made since when they have been occupying. In these circumstances this court has to proceed on the basis that

they have been occupying the foot path only recently. This court put a pointed question to the learned counsel for the petitioner in O.P. No. 23580 of 1999 as to whether the petitioner disputes the photographs filed by the petitioner in O.P. No. 21352 of 1999. The answer was in the negative. A look at the photographs would show that they are temporary stalls erected with the help of poles and light roofing materials like (coloured) tarpaulins/plastic sheets with no side coverages. On the wooden shelves fruits and other things are kept for sale. All these would show that the petitioner in O.P. No. 23580 of 1999 and others have encroached only recently and the stalls have been put up only temporarily and recently.

5. It is true that Art. 19 of the Constitution deals with "Right to Freedom". According to the said Article, all citizens shall have the right to move freely throughout the territory of India, so also to practice any profession, or to carry on any occupation, trade or business. Art. 21 of the Constitution gives protection of life and personal liberty which is to the effect that no person shall be deprived of his life or personal liberty except according to procedure established by law. But these rights of the citizens are not absolute rights. Or, in other words, while so exercising their rights it should not interfere with the rights of others. In fact Art. 19(6) of the Constitution stipulates that the right to carry on any trade or business shall be subject to reasonable restrictions on the exercise of the right.

6. Every citizen has a right to use the public street vested in the State as a beneficiary, but this right is subject to such reasonable restrictions as the State may choose to impose. Street trading is albeit a fundamental right under Art. 19(1)(g) of the Constitution but it is subject to reasonable restrictions which the State may choose to impose by virtue of clause 6 of Art.19 of the Constitution. The right to street trading under Art. 19(1)(g) of the Constitution does not, however, extend to a citizen occupying or squatting on any specific place of his choice on the pavement regardless of the rights of others, including pedestrians, to make use of the pavements. It is well known that footpaths and pavements are public properties which are intended to serve the convenience of the general public, and not meant for use by certain individuals for their private purposes. The very purpose of providing footpath 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 is in the nature of a right conferred on the citizens, cannot be sacrificed by allowing encroachments to be made on the pavements. The public interest is paramount than the private interest. It is common knowledge that the population is growing day by day and the vehicular traffic, both four wheelers and two wheelers, are on the steady increase. It would be thoroughly unsafe for the pedestrians, more particularly, the school going children to walk on the road proper exposing themselves to risk. The gravity is more in case of this nature, where the road in question is a highway.

7. With regard to the present case this court has no difficulty in coming to the conclusion that the petitioner in O.P. No. 23580 of 1909 and others have trespassed into the foot path and put up temporary stalls with temporary roofs

for the purpose of vending fruits, etc. and their occupation is illegal. The petitioner in O.P. No. 23580 of 1999 and others have occupied the foot path recently which is causing inconvenience and posing risk to the public at large, more in particular to the children, as the public will have to walk through the highway proper meant for vehicular traffic instead of the foot path. As a remedial measure to reduce the accidents in road traffic the State of Kerala has also taken up the task of creating public awareness in following the traffic rules.

8. In this view of the matter, O.P. No. 21352 of 1999 has to be allowed and the respondents be directed to remove the stalls of the petitioner in O.P. No. 23580 of 1999 and others occupying the foot path on the northern side of the highway opposite to the Kaloore International Stadium, between the bus stop and the northern entrance of the Vasanth Nagar Colony.

9. The learned counsel for the petitioner in O.P. No. 23580 of 1999 submits that some time may be granted to the occupants, like the petitioner in O.P. No. 23580 of 1999, to vacate and to make some other alternate arrangements as otherwise they will have to starve. This court is inclined to grant time till 10-12-1999 for them to vacate the place in question so that the pavements in question will be free from any obstruction which would enable the pedestrians to make use of the same. Before parting with this case, this court would like to observe that it is for all the authorities concerned to bestow their immediate attention to make a combined study and take steps to remove (and/or take such other remedial measures that deem fit, feasible and necessary) the unauthorised occupants on the pavements who are posing a problem and risk to the public at large taking into consideration the various rulings of the Apex Court on this aspect. O.P. No. 21352 of 1999 is allowed and O.P. No. 23580 of 1999 is dismissed.