**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 27TH DAY OF SEPTEMBER, 2023**

**BEFORE**

**THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ**

**WRIT PETITION NO. 13696 OF 2022 (LB-RES)**

**C/W**

**WRIT PETITION NO. 4870 OF 2023 (LB-RES)**

**IN WP No.13696/2022**

**BETWEEN:**

MR. SEVERINE LOBO
AGED ABOUT 81 YEARS
S/O LATE SEBASTIAN LOBO
RESIDING THE SUNKADAKATTE
PADUPERAR VILLAGE
MANGALURU-574142.

...PETITIONER

(BY SRI N.S. SRIRAJ GOWDA, ADVOCATE FOR
SRI RAKESH KINI, ADVOCATE)

**AND:**

1 . THE STATE OF KARNATAKA
DEPARTMENT OF RURAL DEPARTMENT
AND PANCHAYATH RAJ
M S BUILDING,
BANGALORE-560001.
REPRESENTED BY ITS PRINCIPAL SECRETARY.

2 . PADUPERAR GRAMA PANCHAYATH
REPRESENTED BY ITS PANCHAYATH
DEVELOPMENT OFFICER
PADUPERAR,
MANGALURU TALUK-574142.

3 . THE EXECUTIVE ENGINEER
PWD, HAMPANKATTA
MANGALURU-575003.

4 . THE ASSISTANT EXECUTIVE ENGINEER
PWD, NO.(1) SUB-DIVISION
MANGALURU-575003.

5 . THE AUTHORISED OFFICER
MESCOM, BAJPE
MANGALURU-574142.

6 . THE EXECUTIVE ENGINEER
MESCOM, KAVOOR
MANGALURU-575015.

7 . SMT. SAROJA
W/O NOT KNOWN
AGED ABOUT NOT KNOWN
RESIDING AT MATHRASHREE
PADUPERAR, GRAMA PANCHAYAT
MANGALURU TALUK-574142.

…RESPONDENTS

(BY SRI NAVEEN CHANDRASHEKHAR, AGA FOR R1, R3 & R4;
SRI SHARANJITH SHETTY K., ADVOCATE FOR R2;
SRI H.V. DEVARAJU, ADVOCATE FOR R5 & R6;
SRI NAGARAJA HEGDE, ADVOCATE FOR R7)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED LICENSE DATED 22.10.2020 ISSUED BY THE R-4 VIDE ANNEXURE-A. QUASH THE IMPUGNED LETTER DTD 21.02.2022 ISSUED BY R-2 VIDE ANNEXURE-K. ETC.

**IN WP No.4870/2023**

**BETWEEN:**

SMT. SAROJA M SALYAN,
W/O MUTTAIAH SALYAN
AGED ABOUT 62 YEARS,

R/AT MATRUSHREE,
SUNKADAKATTE,
PADUBARE VILLAGE
MANGALURU TALUK,
DAKSHINA KANNADA-574142

...PETITIONER

(BY SRI NAGARAJA HEGDE, ADVOCATE)

**AND:**

1 . STATE OF KARNATAKA
PUBLIC WORK DEPARTMENT,
VIDHANA SOUDHA,
BENGALURU-560001
REP BY ITS SECRETARY

2 . ASST. EXECUTIVE ENGINEER
PUBLIC WORKS DEPARTMENT,
NO.1, SUB DIVISION,
MANGALURU
DAKSHINA KANNADA DISTRICT-575001.

3 . PANCHAYATH DEVELOPMENT OFFICER (PDO)
PADU PERRA VILLAGE,
MANGALORE TALUK,
DAKSHINA KANNADA DISTRICT-574142

…RESPONDENTS

(BY SRI NAVEEN CHANDRASHEKHAR, AGA FOR R1 & R2; SRI SHARANJITH SHETTY K., ADVOCATE FOR R3;

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASHING THE NOTICE DT 10.02.2023 PASSED BY THE R-3 PANCHAYATH DEVELOPMENT OFFICER (PDO), IN NO,PPGP/230/2022-23, WHICH IS PRODUCED AT ANNX-A. DIRECTION BY DIRECTING THE R-3 PDO TO ALLOW THE PETITIONER TO CONTINUE HER NANDINI MILK PARLOR WITHOUT THERE BEING ANY OBSTRUCTIONS.

THESE WRIT PETITIONS COMING ON FOR ORDERS AND HAVING BEEN RESERVED FOR ORDERS ON 07.09.2023, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

**ORDER**

1. The petitioner-Mr.Severine Lobo in WP No.13696 of 2022 has sought the following reliefs:

   *i. Issue writ of certiorari or any other appropriate writ or order, quashing the Impugned License dated 22.10.2020 issued by Respondent No.4* ***(Annexure-A);*** *bearing No.ಸಂ.ಸಕಾಇಂ/ಲೋಇ/ಉವಿಮಂ/ನ.ಕ್ಷೇ.ಮ/2020–21.*

   *ii. Issue writ of certiorari or any other appropriate writ or order, quashing the impugned letter dated 21.2.2022 bearing No.ಪ.ಪಿ.ಗ್ರಾ.ಪಂ:340/2021–22 issued by respondent No.2* ***(Annexure-K);***

   *iii. Issue writ of mandamus, directing the respondent No.2 and/or respondent No.3 to demolish the illegal construction, constructed on the road margin on the southern portion of the schedule property* ***(Annexure-N);***

   *iv. Issue such other writ or directions, declarations and orders as this Hon'ble court may deem fit; and*

   *v. Grant costs of this petition.*

2. The petitioner-Ms.Saroja M Salyan in WP No.4870 of 2023 has sought the following reliefs:

   *i. Issue a Writ of Certiorari or any other appropriate Writ, Order or Direction, quashing the notice dated 10.02.2023, passed by the 3rd respondent Panchayath Development Officer (PDO), in*

*No.PPGP/230/2022-23, which is produced at Annexure-A.*

*ii. Issue writ of Mandamus or any other appropriate writ, order or direction by directing the 3rd respondent PDO to allow the petitioner to continue her Nandini Milk Parlor, without there being any obstructions.*

*iii. Pass any other appropriate Order, Writ, or Directions as this Hon'ble court may deem fit considering the facts and circumstances of the case, to meet the ends of justice and equity.*

3. The petitioner-Mr.Severine Lobo in WP No.13696 of 2022 claims to be the absolute owner of the immovable property bearing No.41 situated at Paduperar Village, Mangalore Taluk comprised in Sy.No.150-1C (as per RTC Sy.No.105-1C2) measuring 0-050 cents with a building and improvement thereon. It is contended that the southern side of the said property there is a road Gurupura Kaikamba to Bajpe Airport Road in between the property of the petitioner and the said road there is space which constitutes a road margin which provides access to the petitioner to the schedule property.

4. Respondent No.2-Grama Panchayath attempted to put up a structure in front of the property of one Mrs.Irene Lobo who is the neighbor of the petitioner, who had filed a suit in OS No.509/2007 seeking for injunction for restraining the respondent No.2 and its officials from putting up any structure. In the said suit an *ex-parte* injunction was granted which came to confirmed after trial and as such no construction was put up in front of the Mrs.Irene Lobo property.

5. However, on 8.7.2020 respondent No.7-Ms. Saroja who is the petitioner in WP No.4870 of 2023 sought permission from respondent No.3 to put up construction of Nandini Milk Parlor in front of the property of the petitioner. Respondent No.7 vide its letter dated 22.7.2020 had written to the Managing Director, D.K. District Milk Union Limited seeking a recommendation for running a Nandini Milk Parlor. In pursuance thereof, on 24.7.2020 the D.K., Co-operative Milk Parlor Limited addressed a letter to

the respondent No.3 contending that have issued a license to respondent No.7 to run a Nandini Milk Parlor and pursuant thereto, they requested respondent No.3 to give 15/15 Sq.ft. site in Paduperar Village to respondent No.7.

6. In pursuance thereof, respondent No.4-Assistant Executive Engineer issued a letter to the Managing Director, D.K., Co-operative Milk Producers Union Limited accepting their request and permitted the respondent No.7 to put up construction of the Nandini Milk Parlor in the empty space in front of the property of the petitioner. In pursuance thereof, respondents commenced putting up of structure on the said empty space. The petitioner objected the same, no heed was paid to the said objection, the said construction blocking the access to the petitioner's property and causing harm and injury to the petitioner. The petitioner also got legal notice

issued through her advocate to the respondents despite which no action was taken.

7. The complaints were filed by the petitioner, in pursuance thereto the Panchayath Development Officer conducted an inspection and issued notice to respondent No.7 under Section 64 and 65 of The Karnataka Gram Swaraj and Panchayat Raj Act, 1993 indicating that the panchayath has not granted any permission to respondent No.7 and as such directed respondent No.7 to stop the construction.

8. Despite the same on 21.09.2021, respondent No.4 issued one more letter stating that permission has been granted by the Public Works Department for construction of Milk Parlor. Despite the earlier notice dated 20.9.2021, the Panchayath Development Officer issued a letter to respondent No.5-MESCOM to provide electricity in his letter dated 21.2.2022.

9. There being several complaints in relation thereto, again no action was taken and illegal construction proceeded with. It is in that background the WP No.13696/2022 has been filed seeking for the aforesaid reliefs.

10. Respondent No.7 in WP No.13696/2022 has filed WP No.4870/2023 alleging that on the basis of the complaint made by the petitioner in WP No.13696/2022, the Panchayath Development Officer has issued a notice on 10.2.2023 calling upon the petitioner in WP No.4870/2023 to vacate the premises on or before 28.2.2023 and it is aggrieved by the same that the aforesaid reliefs has been sought for in WP No.4870/2023.

11. Sri.N.S. Sriraj Gowda., learned counsel appearing for the petitioner-Mr.Severine Lobo in WP No.13696/2022 would submit that;

11.1. Respondent No.3 or 4 could not have permitted respondent No.7 to put up any construction on the road margin of a State Highway which was situate in front of the petitioner's house thereby blocking the accesses of the petitioner's house.

11.2. That the road margin cannot be used for any construction in as much as the same posed an obstacle in or beside the Highway.

11.3. There is no allotment of the property made by the Panchayath in favour of respondent No.7 in WP No.13696/2022 in as much as what has been requested by the Managing Director, D.K. Co-operative Milk Producers Union Limited is for allotment of a site which allotment has not happened. Without such allotment a public property situate in front of the house of the petitioner cannot be made use of, to put up construction of a Nandini Milk parlor which would amount to usurpation of the public land,

thereby causing inconvenience and hardship to the petitioner.

11.4. The entire construction which had been put up being illegal in as much as there is no allotment of the property nor there is any plan sanction issued by any authority. The Public Works Department could neither have granted permission nor permitted construction on the said property. On all these grounds he submits that the petition in WP No.13696 of 2022 is required to be allowed and WP No.4870 of 2023 is required to be dismissed.

12. Sri. Nagaraja Hegde., learned counsel appearing for petitioner-Ms.Saroja M. Salyan in WP No.4870/2022 and respondent No.7 in WP No.13696/2022 submits that;

12.1. A recommendation having been made by the Milk Producers Union Limited to provide a

dealership for operation of Nandini Milk Parlor the setting up of the Milk Parlor and operation thereon is in the interest of the general public as such the public land could be directed to be used by the Public Works Department and no objections could be raised in relation thereto.

12.2. A dealership having been granted by the Milk Producers Union Limited what has been permitted is only use of the public land next to the road and the same is in accordance with law.

12.3. By putting up the said construction the Ms.Saroja has not obstructed the access of Mr.Severine Lobo in as much as there is enough and more space for Mr.Severine Lobo to access his property.

12.4. The petition filed by Mr. Severine Lobo as also the complaint filed by him is only to spite

Ms.Saroja and there is right vested in Mr.Severine Lobo which has been infringed upon. If Ms.Saroja is directed to stop the operation of the Milk Parlor and remove the construction her livelihood would get affected, on that basis he submits that this Court may be pleased to allow WP No.4870 of 2023 and dismiss the WP No.13696 of 2022 and thereby permit Ms. Saroja to continue her business in the aforesaid property.

13. Sri. Naveen Chandrashekhar., learned AGA submits that the Public Works Department was not aware of the non-allotment of the property and as such the Public Works Department has by way of its notice dated 7.9.2023 called upon Ms.Saroja to vacate the premises and demolished the construction which has been put up which notice is yet to be replied to by Ms. Saroja. Upon a reply being received and after

following principles of natural justice, necessary action would be taken.

14. Sri.Sharanjith Shetty.K., learned counsel appearing for the Panchayath, would submit that the panchayath has not allotted any land to Ms.Saroja and it is in that background that the Panchayath had issued a notice earlier calling upon Ms.Saroja to stop construction and thereafter has called upon Ms.Saroja to vacate the premises vide it notice dated 10.2.2023. In sofar as the letter addressed by the Panchayath to the MESCOM for providing electricity, he submits that the said letter was based on the application made by Ms.Saroja and that by itself does not confer any title or interest on Ms.Saroja as regards the aforesaid property.

15. Heard Sri.N.S.Sriraj Gowda., learned counsel appearing for the petitioner, Sri.Naveen Chandrashekhar., learned AGA appearing for respondents No.1, 3 and 4, Sri.Sharanjith Shetty.K.,

learned counsel appearing for respondent No.2, Sri.H.V.Devaraju., learned counsel appearing for respondents No.5 and 6 and Sri. Nagaraja Hegde., learned counsel appearing for respondent No.7. Perused papers.

16. The points that would arise for consideration in the present matter are;

1. **Whether the Public Works Department can permit construction on the road Margin of a State Highway or a Major Highway?**

2. **Whether a private person can put up construction of a Milk Parlor on the road margin without allotment of land and without sanction of plan?**

3. **What order?**

17. I answer the above points as under;

18. **<u>Answer to Point No.1:</u> Whether the Public Works Department can permit construction on the road Margin of a State Highway or a Major Highway?**

18.1. A State highway or any Major road is vested with the Public Works Department along with

the said road, the road margin also vests with the Public Works Department and any construction to be put up adjacent to the said road would have to be comply with the requirement of the building line in as much as the width/extent as may be shown with regard to the building line would have to be maintained without any construction or obstruction. This obligation is not only as regards a private party but would apply equally to a public authority. Since it is only if the public authority were to follow the applicable law that it can except of private parties to follow said law.

18.2. The Public Works Department by itself cannot permit any construction on any property without the Municipal Authority approving the sanction of building plans for such construction or to put it in other words merely because the

Public Works Department were to permit a private party to put up such construction, such construction cannot be put up without such private party obtaining necessary sanction of plan and/or building license in relation thereto.

18.3. Thus, it is clear that the Public Works Department cannot permit construction on the road margin thereby causing any obstruction.

18.4. Merely because road margin vest with the Public Works Department, the access to a private party of its own property cannot be disturbed, it is no ground to contend that the construction will be put up only on portion of a frontage, even after putting up construction they would still be sufficient space to access the property of a private party. A private party having frontage to the road would be entitled to the entire frontage including the visibility of the building from the road. The same cannot be

taken over by the Public Authority including the Public Works Department by putting up any construction on the footpath or the road margin in front of the property of a private party.

18.5. Thus, looked at from any angle, the Public Works Department cannot by itself sanction or allot a road margin area to any private party for putting up of construction of any nature including construction of Nandini Milk Parlor even if such construction is for public convenience. Furthermore, no construction can be put up anywhere much less in the road margin area without obtaining a sanction of plan for such construction as also building license.

18.6. Hence, I answer point No.1 by holding that the Public Works Department cannot permit construction on the road margin on a State Highway or a Major Highway.

19. **<u>Answer to point No.2:</u> Whether a private person can put up construction of a Milk Parlor on the road margin without allotment of land and without sanction of plan?**

19.1. That the road margin as aforesaid belongs to and is vested with the Public Works Department. The said land cannot on a basis of a letter be permitted to be used for putting up of construction of Milk Parlor or any other construction. In the event of public land to be granted to a private person or entity, the same would amount to distribution of State Largesse, which cannot be done without calling for a tender or the like.

19.2. A public entity cannot enter into a private negotiation or favour particular private person for allotment of any land. In the present case apparently the Public Works Department has sought to permit a private entity to put up construction of Milk Parlor by entering into

private negotiations. There is no allotment of land by way of tendering the land for auction in favour of such a private person. Furthermore, there is no plan sanction for said construction.

19.3. In that view of the matter, I answer point No.2 by holding that the no private person can be allotted any land without complying with the Transparency Act and bringing the property for auction. The allotment could be made to the successful bidder who thereafter would have to obtain necessary plan sanction and building license for construction.

20. **Answer to point No.3: What order?**

20.1. in view of my answer to points No.1 and 2 in the present case D.K. Co-operative Milk Producers Union Limited had only permitted Ms. Saroja to carryon business of a Milk Parlor.

20.2. The place and location had not been identified. It was therefore for Ms. Saroja to make an application to respondent No.3 for allotment of suitable land for the said purpose by following the applicable procedure.

20.3. Ms. Saroja could not have, on the basis of the said letter, called upon the Public Works Department to allot a portion of the road margin.

20.4. The Public Works Department has permitted the construction on the road margin free of cost without following the principles of the Transparency Act. Thereafter Ms.Saroja sought to put up construction of a Milk Parlor without obtaining any license or the plan sanction or building license from the jurisdictional Municipal Authority which is not permissible.

20.5. As such I pass the following;

**ORDER**

i. The writ petition in WP No.13696/2022 is ***allowed***.

ii. Alleged license dated 22.10.2020 issued by respondent No.4 at Annexure -A bearing No.ಸಂ.ಸಕಾಇಂ/ಲೋಇ/ಉವಿಮಂ/ನ,ಕ್ಷೀ.ಮ/2020–21. is hereby quashed.

iii. A certiorari is issued, the letter dated 21.2.2022 issued by respondent No.2 at Annexure-K bearing No.ಪ.ಪೆ.ಗ್ರಾ.ಪಂ:340/ 2021–22 is hereby quashed.

iv. A mandamus is issued, respondents No.2 and 3 are directed to demolish the construction put up on the road margin within 60 days of the receipt of this notice within which time Ms. Sarjo would be entitled to remove all her fittings,

furniture, things etc., from said construction.

v. The writ petition No.4870/2023 stands ***dismissed***.

**Sd/-**
**JUDGE**

SR