



**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

WRIT PETITION No. 28811 of 2022

DHARMENDRA AND OTHERS

Versus

***THE STATE OF MADHYA PRADESH DEPARTMENT OF URBAN
DEVELOPMENT AND HOUSING AND OTHERS***

Appearance:

*Shri R. S. Chhabra- Senior Advocate with Shri Rohit Sinnarkar-
Advocate for the petitioners.*

Shri Vishal Singh Panwar- G.A. for the State.

Shri Kamal Nayan Airen- Advocate for the respondent No.4.

Reserved on : 28.01.2025

Pronounced on : 01.04.2025

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*This petition having been heard and reserved for orders, coming on
for pronouncement this day, the court passed the following:*

ORDER

Heard finally with the consent of the parties.

2] This petition has been filed by the Petitioners (33 in numbers), who have their shops in the building *One Centre*, opposite 56 shops (*hereinafter referred to as 56 Dukan* as they are popularly known), Indore, under Article 226 of the Constitution of India, seeking the following reliefs:-

“In view of the facts mentioned above, the petitioners pray for the following relief(s) :-

a. A writ in the nature of mandamus or any other appropriate order, writ or direction be issued for directing the respondents for opening the 30 meter wide access available to the aforesaid building from MG Road and for removal of the encroachment made by the



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respondents 3 to 5 on the parking space/MOS of the aforesaid building.

b. A writ in the nature of mandamus or any other appropriate order, writ or direction be issued for directing the respondents for opening the 100 feet wide Master Plan Road (Ramnarayan Shastri Marg) by removing all the obstructions as also for construction of the aforesaid road as a 100 feet wide road in accordance with the Indore Development Plan.

c. Costs of the petition be awarded to the petitioners from the respondents.

d. Any other relief which this Hon'ble Court may deem fit in the facts of the present case be granted in favour of the petitioners.”

3] The grievance of the petitioners is that the respondents including the State Government, as also the Municipal Corporation, Indore, have restrained the petitioners from free access to their shops from M.G. road, Indore, by erecting steel pillars, and also by encroaching upon the parking space/MOS of the aforesaid building.

4] In brief, the facts of the case are that the petitioners are the owners of their respective shops in the building by the name of *One Centre*, opposite 56 Dukan, Indore. The site plan of the said building was approved by the Municipal Corporation way back in the year 1995 and was also subsequently modified. According to the petitioner, the Indore Development Master Plan shows 30 m (100 ft.) wide road towards the western side of One Centre. On 13.04.1999, a notice was issued by the respondent No.4 to the builder of One Centre, disputing the sanctioned map. It is further the case of the petitioner that on 11.04.2000, the respondent No.4 Municipal Corporation also issued a notice to the builder for modification of the sanctioned map, prohibiting use of road towards the 56 Dukan for accessing shops facing 56 Dukan. The aforesaid notice was challenged in W.P. No.919/2000, which was allowed vide order dated 26.04.2001, quashing the notice dated 13.04.1999.



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5] The order passed by this Court on 26.04.2001 was also challenged by the respondent No.4 before the Division Bench of this Court by filing LPA No.297/2001, but it was dismissed on 22.11.2004, and the Civil Appeal No.5031/2005 was also dismissed by the Supreme Court on 24.02.2010.

6] The contention of the petitioners is that in the judgement dated 24.02.2010, the Supreme Court has also recorded a finding to the effect that the front access to the aforesaid building is from MG Road, Indore. It is further the case of the petitioners that occupancy certificate was also issued after completion of the building, and the petitioners, after purchasing the shops in the aforesaid building, have also started their respective businesses, however, the respondent Nos.3, 4 and 5 have obstructed the main entrance of the building from MG Road, by constructing shops on the open space/MOS parking in the premises of the aforesaid building, which are being used by the respondent No.4 for running flower shop, pan shop, feeding center and public toilet etc., blocking the main entrance of the building. Thus, the petitioners' grievance is that the encroachments have been made by the respondent Nos.3 to 5 on the MOS of their building, and the said respondents have also mounted barriers/blockades at the exit gate of the building, hence the entry and exit of the vehicle in and out of the building has also become impossible. The photographs showing the obstruction put up by the respondent Nos.3 to 5 on the 100 ft. wide road have also been filed on record.

7] Counsel for the petitioners has submitted that due to the barriers constructed by the respondents on the south side of the building, the vehicles, including two wheelers and four wheelers cannot approach the building from MG Road side which has caused extreme financial prejudice to the shop owners.



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8] Counsel for the petitioner has also filed a written synopsis citing various judgements in support of his contentions. Reference has also been made to Section 317 of the Municipal Corporation Act, 1956 (hereinafter referred to as ‘the Act of 1956’), which relates to closing of public streets, and Section 318, which refers to prohibition of projection upon streets.

9] So far as availability of the remedy Section 307 of the Act of 1956 is concerned, the petitioner’s contention is that since no disputed questions of fact are involved, hence, the petitioner cannot be relegated to the District Court. Thus, the petitioners have filed this petition seeking the aforesaid reliefs.

10] Respondent No.1 State has not filed its reply.

11] A reply to the petition has also been filed by the respondent Nos.4 and 5 Indore Municipal Corporation, traversing the averments made by the petitioners. Counsel for the respondents has submitted that no case for interference is made out, as the customers visiting the disputed building can use the parking space of the building through its northern side. It is also submitted that a Commissioner was also appointed by this Court, who has also found that the building can be approached through the northern gate. It is also submitted that the vehicles have been deliberately restrained from coming to the 56 Dukan area from MG Road, with a view to reduce the traffic jam, otherwise, the traffic on the said street would be unmanageable. It is also stated that earlier, the said food street 56 Dukan was having vulnerable traffic conditions and completely unorganized street with no proper utilities, although being one of the most visited street food hub of Indore, and only with a view to transform the same, the aforesaid steps of blocking the entry of the vehicle from MG road had to be taken by the Municipal Corporation. So far as the construction in the MOS is concerned,



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it is submitted that the petitioner can take resort to the provisions as contained in Section 307(5) of the Act of 1956.

12] Counsel for the respondents has also submitted that only on account of the erection of the barriers/blockades, per day footfall in the 56 Dukan area has increased, which is beneficial to the petitioners also.

13] Heard counsel for the parties and perused the record.

14] From the record it is found that so far as the grievance of the petitioner is concerned, it is twofold. One is with respect to the alleged encroachment made by the respondent Nos.3 to 5 on the parking space/MOS of the disputed building, which is the One Centre. The other relief is in respect of removal of obstructions, and for construction of the road and thereby, opening the 100 ft. wide master plan road in accordance with the Indore Development Plan.

15] So far as the grievance regarding the encroachment is concerned, under the facts and circumstances of the case, where various disputed question of facts are involved, this Court finds it expedient to relegate the petitioner to take recourse of the statutory remedy under Section 307(5) of the Act of 1956, which provides for removal of any encroachment by filing an application before the District Court.

16] So far as the issue of removal of obstructions raised on the road is concerned, wherein the directions have been sought for opening the 100 feet wide Master Plan Road (Ramnarayan Shastri Marg) by removing all the obstructions as also for construction of the aforesaid road as a 100 feet wide road, this Court finds that the road is only partially barricaded, as certain steel barricades have been erected only with a view to restrain the vehicles, including the two and the four wheelers to enter into the 56 Dukan area from MG road. This Court is also of the considered opinion



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that 56 Dukan itself is a place of prominent tourist attraction in Indore, being the most visited street food hub. It is also found that due to its location and growing popularity, the Municipal Corporation and the State Government have made certain arrangements for proper traffic regulation, and the vehicles' entry from the MG road to 56 Dukan area has been restricted. This, in the considered opinion of this Court cannot be said to be an arbitrary action, especially when the road itself is not blocked/closed and cannot even be said to be partially closed, because being partially closed means that only a certain part of the road is closed and not the entire road, whereas, in the present case, only the entry of vehicles is restricted, and not the entry of the people as the pedestrians are allowed to walk through the steel barricades.

17] So far as the power of the Municipal Corporation regarding the closing of the public streets is concerned, it is provided under Chapter XXVI of the Act of 1956, and Section 317 of the same reads as under:-

“317.Closing of public streets.-

(1) The Corporation may with the previous sanction of the Government permanently close the whole or any part of a public street: Provided that no such street or part thereof shall be closed unless for a period of not less than one month before the date of the meeting of the Corporation at which the matter is to be decided, a notice has been posted in the street or part thereof which it is proposed to close informing the residents of the proposal and until any objections to the proposal made in writing at any time before the day of the said meeting have been received and considered by the Corporation.

(2) When any public street or part thereof is permanently closed under subsection (1), the site of such street, or of the part thereof which has been closed may be disposed of, subject to the provisions of section 80 as land belonging to the Corporation.”

18] A perusal of the aforesaid provision would clearly reveal that the Corporation has the power to close the whole, or any part of the public street with the previous sanction of the State Government. Thus, the action



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of the Municipal Corporation to restrict the entry of the vehicles from MG road, and not to close the road itself, cannot be said to be illegal or arbitrary.

19] It is also found that this Court vide its order dated 02.11.2023 had also appointed Shri Himanshu Joshi, Advocate, as the Commissioner, who was asked to submit his report after conducting a spot inspection in the presence of the parties. And as per the report submitted by Shri Joshi, enclosed with the photographs of the area, it is also found that the disputed building *One Centre* has a parking space in the basement area, and at the time of inspection, certain four wheelers and two wheelers were also found to be parked in the parking lot. Thus, apparently the vehicles can be parked in the basement of the said building, although as per the inspection report, the entrance from New Palasia/*Chain Singh ka Bagicha* area is a bottleneck while entering the building, however, once it is found that the building has the parking space, it can be managed by deputing the security guards for a proper ingress and egress of the vehicles.

JUDICIAL NOTICE OF TRAFFIC AT (56 SHOPS) CHAPPAN DUKAN.

20] Traffic jams are not new to the world and are known to be highly contagious, and a judicial notice can also be taken of the fact that if the vehicles are allowed to enter in the 56 Dukan area from MG road, it would lead to a total chaos, because it would not only lead to heavy congestion at the 56 Dukan area itself but also on the MG road, and no reasonable person can shut its eyes on the same. It is often seen that even now when the vehicles are not allowed in the 56 Dukan zone from M.G. Road due to barricading, in order to avoid a mile long roundabout with a couple of traffic lights, many vehicles, including two wheelers and four wheelers



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stop or park on the M.G. Road as their occupants crave for Poha, Jalebi, Samosa, Kachori or any other food items, but these small stops of countless vehicles also create a traffic congestion on the M.G. Road, and since it is in close proximity to one of the heaviest traffic zones viz., Palasia Square on AB Road (Agra-Bombay Road), any traffic congestion at Palasia further leads to traffic jam at Geeta Bhavan square on the south side, and Palasia Police Station Triangle and Industry House Square on the North side. In such facts and circumstances of the case, this Court is also of the considered opinion that the decision of barricading of the road as aforesaid by the Municipal Corporation is a well thought and well considered decision, taken in larger public interest only, and cannot be interfered with.

21] In such facts and circumstances of the case, this Court is of the considered opinion that the petitioner has not been able to make out any case for interference. Accordingly, the petition being devoid of merits, is hereby *dismissed* so far as it relates to relief No.(b).

22] So far as relief No.(a) regarding the encroachment made by the respondents 3 to 5 on the parking space/MOS of the aforesaid building is concerned, the petitioner shall be at liberty to take recourse of the remedy as is available to them under law.

23] With the aforesaid, the petition stands *dismissed* and *disposed of*.

(SUBODH ABHYANKAR)
JUDGE