

THE HON'BLE SRI JUSTICE SANJAY KUMAR

WRIT PETITION No.30996 OF 2015

ORDER

The petitioner assails the notice dated 12.01.2014 of the Ponnuru Municipality whereby the permission granted for removal of the bus shelter obstructing his property in Sy.No.47-1B of Nidubrolu Village, Tenali Revenue Division, Ponnuru Sub-Division, Guntur District, was stayed temporarily owing to the objections raised. A consequential direction was sought by the petitioner to the authorities to forthwith remove the said bus shelter.

The petitioner is the owner and possessor of a vacant house site, admeasuring 183.5 square yards, in Sy.No.47-1B of Nidubrolu Village, Tenali Revenue Division, Ponnuru Sub-Division, Guntur District, having purchased the same under registered sale deed dated 26.10.2013. According to him, when he purchased the property it was a vacant site but earlier, there existed a house therein bearing Door Nos.14-1-10, 10/1 and 10/2, which was demolished as it was dilapidated. The petitioner stated that the Lions Club, Ponnuru, Guntur District, the fourth respondent, constructed a bus-shelter right in front of the house site, when there were no dwelling houses in the locality and the entire area was vacant. However, the said bus-shelter completely blocked ingress and egress to and fro the subject site. Desirous of constructing a house in the subject site, the petitioner secured building permission from Ponnuru Municipality under proceedings dated 31.12.2014. Even prior thereto, being mindful of the obstruction caused by the bus-shelter, the petitioner claimed that he approached the authorities seeking removal of the bus-shelter. Thereupon, the District Collector, Guntur District, asked the municipal authorities to take action. After getting the matter enquired, the Ponnuru Municipality issued notice dated 07.01.2014 under Section 193 of the Andhra Pradesh Municipalities Act, 1965, directing the fourth respondent to remove the bus-shelter within a time frame failing which it

proposed to remove the same on its own. However, within five days thereafter, the impugned notice dated 12.01.2014 was issued staying the removal of the bus-shelter temporarily on the ground that objections had been raised.

The petitioner pointed out that under the building sanction dated 31.12.2014, he was required to complete the construction before 30.12.2017, but owing to the failure to remove the bus-shelter, he had already lost nine months as he could not take up the construction. The petitioner further stated that at a distance of about 200 square yards from his site, there was a Government land which was under the control of Ponnuru Municipality and the bus-shelter could be accommodated in front of the said Government land avoiding inconvenience to commuters. He pointed out that the width of his site was 8.3 metres and the bus-shelter admeasured 9.2 metres, thereby blocking the frontage of the site fully. Aggrieved by the inaction on the part of the authorities in heeding his plight, he filed the present writ petition.

Ponnuru Municipality filed a counter through its Commissioner. Therein, it contended that the writ petition was not maintainable as the petitioner had an alternate remedy by way of an appeal under Section 345(A) of the Act of 1965. On facts, it stated that the bus-shelter in question had been constructed as a joint venture with the Lions Club, Ponnuru, the fourth respondent, in the year 1976, in the memory of one Pulikonda Musalaiah. According to the Municipality, no objection had been raised till the year 2013 as to the existence of this bus-shelter. The Municipality pointed out that the petitioner, knowing fully well that a bus-shelter existed in front of the subject house site, acquired the same in the year 2013. The Municipality stated there was a gap of about 13 feet between the petitioner's house site and the bus-shelter and alleged that the petitioner encroached an extent of six feet of the road margin, while constructing a compound wall. The petitioner was allegedly seeking removal of the bus-shelter, not just for the purpose of ingress and egress, but also to increase the commercial value of the property. According to

the Municipality, there was a dire public need for continuing with the bus-shelter as, when the municipal authorities along with the Lions Club attempted to demolish the bus-shelter on 11.01.2014, protests were raised not only by neighbours and social activists but also by the grandchildren of the donor of the bus-shelter, who submitted representation dated 24.10.2014 offering to bear the expenditure for reconstruction or renovation of the bus-shelter for the benefit of the general public. The Municipality however admitted that when the petitioner submitted representation dated 23.09.2013 to the District Collector, Guntur, during the Prajavani program, the same was forwarded to the municipal authorities and notice dated 07.01.2014 was issued thereupon by the Municipality to the Lions Club, Ponnuru, calling upon it to remove the bus-shelter. The Municipality admitted that the petitioner had secured permission to construct a ground plus two floor building in the subject site, but contended that mere grant of such permission did not entitle him to demand removal of the bus-shelter.

Notice having been ordered and served upon the Lions Club, Ponnuru, the fourth respondent, it did not choose to enter appearance. However, the grandsons of the donor who got the bus-shelter constructed through the Lions Club, Ponnur, along with two others, got impleaded in this writ petition contesting the claim of the petitioner. According to them, the distance of 13 feet between the bus-shelter and the subject house site would be sufficient to provide access to the house site and his persistence in seeking removal of the bus-shelter was alleged to be with the oblique motive of enhancing the commercial value of his property.

During the pendency of the writ petition, Ponnuru Municipality undertook to provide a clear approach to the petitioner's house site from the road and filed an action taken report in this regard. Therein, it stated that as per the survey conducted by the Mandal Surveyor, Ponnuru, the northern side and the southern side property owners had caused obstruction for diagonal access to the petitioner's house site from the road, by constructing stairs, and therefore, after giving them due notice,

the said encroachments were cleared thereby providing a 13 feet wide clear approach diagonally to the petitioner's house site. The photographs filed along with this report evidenced the steps taken by the Municipality in this regard. However, the petitioner filed an affidavit along with additional material rebutting the truth of the Municipality's claim. He asserted that no vehicle could pass through the diagonal access provided to the house site.

In his reply affidavit, the petitioner stated that it was incorrect on the part of the Municipality to assert that there was a 13 feet gap between the bus-shelter and the subject house site. According to him, the gap was only about seven feet. As regards the alleged encroachment said to have been made by him, he stated that it would always open to the municipal authorities to take action in accordance with law while denying that such encroachment was ever made by him. According to him, the reports dated 07.01.2014 and 12.01.2014 of the Town Planning Department of the Municipality clearly indicated that there was no possibility of direct access to the subject house site as long as the bus-shelter remains. Admitting that the bus-shelter was constructed long ago, the petitioner asserted that it was being mostly used for consuming liquor in the late hours. He reiterated that a Government property was available at a distance of 100 yards from the existing bus-shelter and that he would bear the cost of shifting and constructing a new bus-shelter at the said location, if the present bus-shelter was removed from this location.

The photographs placed on record clearly demonstrate that the bus-shelter completely blocks the frontage of the petitioner's house site. This aspect is not in dispute. The diagonal access said to have been provided by the Municipality appears to be wholly unrealistic and is no means of access at all. It would not be possible for a vehicle, much less a heavy vehicle, to pass through the said gap as the overhang of the roof of the bus-shelter would not permit passage of vehicles. The photographs also reveal that the bus-shelter is being utilized as a makeshift bar for consumption of liquor. This aspect of the matter also finds mention in the

Municipality's proceedings dated 12.01.2014 and is therefore not open to question.

Though Sri Nimmagadda Venkateswarlu, learned standing counsel for Ponnuru Municipality and Sri Challa Gunaranjan, learned counsel for the newly impleaded respondents, would point out that the bus-shelter has been in existence long prior to the purchase of the subject house site by the petitioner, this Court is of the opinion that this aspect of the matter has no real significance. Irrespective of whether the petitioner purchased the subject site earlier or whether the bus-shelter came into existence earlier, the fact remains that the said bus-shelter completely deprives the petitioner of his right to enjoy his property. This being the situation, this Court is also not inclined to accept the contention of the Municipality that the petitioner should be driven to avail the statutory remedy of appeal. When the petitioner's constitutional right is being trampled upon, it would be open to him to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution. Article 300A of the Constitution posits that no person shall be deprived of his property save by authority of law.

The right of an owner of a private property to have access to a public road is inbuilt in his right to enjoy the said property. In **GOVINDA ASARI V/s. KANCHEEPURAM MUNICIPAL COUNCIL**^[1], the Madras High Court held that owners of houses abutting a public street have the right of access to and from such public street and if anything is done by the Municipality to interfere with such a right, they would have an actionable claim. In **JOY PRAKASH PRAMANIK V/s. CHAIRMAN, KAMARHATI MUNICIPALITY**^[2], the Calcutta High Court pointed out that a municipality, being the owner of public streets, cannot equate such ownership to that of a private individual as it has to discharge certain statutory functions. In a public street, the public have a right of way and if a public thoroughfare is blocked or closed or obstructed owing to which a person living in the locality and using the road or street cannot pass

through it, he can certainly invoke the constitutional writ jurisdiction of the High Court for directing the authorities concerned to perform their statutory duties by removing such closure or blockade or obstruction, as the case may be, on the public road.

That being so, erection of a bus-shelter on the road margin completely blocking access to the petitioner's site amounts to total deprivation of his constitutional right to enjoy his property.

Sri Nimmagadda Venkateswarlu, learned standing counsel, was therefore asked as to whether the Municipality would be willing to acquire the site if it was insistent upon continuing with the bus-shelter at the present location. On instructions, the learned standing counsel informed this Court that the Municipality was not willing to acquire the site. This being the situation and given the irrefutable fact that the Municipality itself found merit, in the first instance, in the petitioner's representation for removal of this bus-shelter and directed its removal, this Court is at a loss to understand as to how it can now justify its changed stance. This Court is also impressed with the offer made by the petitioner to bear the entire expenditure for shifting and construction of a bus-shelter at a new location at a distance of 100 feet, abutting a Government property. Though Sri Nimmagadda Venkateswarlu, learned standing counsel, would deny the existence of such Government land, it is relevant to note that this aspect of the matter was raised by the petitioner in his writ affidavit and again in his reply affidavit but the counter affidavit filed by the Municipality is significantly silent. As the endeavour of the grandsons of the donor, who put up the bus-shelter at the present location jointly with the Lions Club, Ponnuru, is only to safeguard the memory of their ancestor in whose name it was constructed, it would be open to them to name the newly constructed bus-shelter, the cost of which would be borne by the petitioner, after their ancestor.

On the above analysis, the changed stance of the Ponnuru Municipality cannot be countenanced as it now seeks to deny the petitioner his constitutional right to enjoy his property. It is not open to the

Municipality to refuse to remove the obstruction created by the bus-shelter, whereby the petitioner has no access to his house site.

The writ petition is accordingly allowed directing the Ponnuru Municipality to remove or get removed the bus-shelter from the present location. It shall be open to the Municipality to take up the petitioner on his offer to construct forthwith, at his own cost, a new bus-shelter at a location nearby, if found to be feasible, and such construction would necessarily have to be under the guidance of the progeny of the donor of the present bus-shelter so as to perpetuate the memory of their ancestor. The Municipality shall remove or get removed the bus-shelter from the present location within two months from the date of receipt of a copy of this order. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

12th APRIL, 2016

PGS

[\[1\]](#) 1981 (2) MLJ 336

[\[2\]](#) AIR 1991 CALCUTTA 96