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**(1980) 12 MAD CK 0008**  
**In the Madras High Court**  
**Case No : S.A. No. 1443 of 1977**

Govinda Asari

APPELLANT

Vs

The Kancheepuram Municipal Council

RESPONDENT

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**Date of Decision :** 02-12-1980

**Acts Referred:**

Land Acquisition Act, 1894 — Section 4, 5A, 6(1)

Tamil Nadu District Municipalities Act, 1920 — Section 162, 163, 164, 165, 3(21)

**Citation :** (1980) 12 MAD CK 0008

**Hon'ble Judges :** Suryamurthy, J

**Bench :** Single Bench

**Advocate :** K. Raghunathan and M. Kandaswamy, for the Appellant; K. Alagiriswamy and P. Ayyasami, for the Respondent

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## Judgement

Suryamurthy, J.—This is an appeal from the learned District Judge of Chingleput allowing A.S. No. 134 of 1974, filed by the

Kancheepuram Municipal Council, the defendant in the suit and setting aside the judgment and decree of the learned Subordinate Judge of

Kancheepuram and dismissing O.S. No. 43 of 1973, on the file of the Sub-Court, Kancheepuram. The appellant herein is the owner of a

workshop and a petrol bunk situate in T.S. No. 1770/1 of Kancheepuram town, and abutting on a public street comprised in T.S. No. 1784 and

T.S. No. 1770/2. It is alleged in the plaint that the plaintiff has been conducting a workshop in the western portion of the aforesaid S. No. 1770/1,

for more than 30 years prior to the institution of the suit. The approach to his property is through the public street, now called the Bus stand Road

and formerly known as Maduran Thottam Road. This road has been in existence as a public street from time immemorial. These facts alleged in the

plaint have not been specifically denied in the written statement and are also supported by the admissions of D.W. 1 and, therefore, we may take it

as established that the public street on northern portion of T.S. No. 1785 and comprised in T.S. No. 1784, and the western part of T.S. No.

1770/2 has been used by the public as a public street and by the plaintiff as the owner of the adjacent property in exercise of his right as a owner

of the private property for more than 30 years.

2. At the instance of the defendant Municipality, T.S. No. 1785 measuring 8,853 sq. ft. in ward No. 2, of Kancheepuram town adjoining T.S.

1784 and the western portion of T.S. 1170/2, situate south of T.S. No. 1784 and west and south of T.S. No. 1770/2 was acquitted by the

Government in proceedings under the Land Acquisition Act for the purpose of widening the road leading to the bus stand and transferred to the

defendant Municipality with a direction that the land acquired should be classified as Municipal Bus stand Road. Since then, this part which has

been added to the original public street has been in use as a public street and the plaintiff as well as the other members of the public have been

using this public street. In addition to his right to use this public street as a member of the public, the plaintiff claims a right to have access to the

property in T.S. No. 1770/1, by virtue of the fact that his property is abutting on the road.

3. The plaintiff has leased out the property described as item 2 in the plaint which forms part of T.S. No. 1770/1 and which is situate in the south

east of T.S. No. 1770/1 to one Sanjeevi Naidu for running a petrol bunk. Sanjeevi Naidu, who has been appointed as a distributor of a petroleum

company, has installed a petrol bunk in the aforesaid portion of R.S. No. 1770/1. Thereupon, the defendant insisted that unless fee was paid for

the user of the street by the lessee as well as by the plaintiff, no licence would be issued to the lessee. It is alleged in paragraph 7 of the plaint that--

The plaintiff and the lessee to avoid a pitched battle with a headstrong Commissioner agreed to pay under pressure and compulsion a licensee fee

of Rs. 100 each.

The allegation that the plaintiff and his lessee agreed under pressure and compulsion to pay the licence fee and the further allegation that the

Commissioner who was in office at that time was "headstrong" are not denied in

the written statement and may therefore, be taken to have been admitted by the defendant. Subsequently, the fee was raised to Rs. 300 and then to Rs. 600. It is seen from the evidence of D.W. 1 that the only motive which prompted the municipality and its employees to increase the licence fee payable by the plaintiff and his lessee from time to time was the desire to get, or rather extract, as much as possible, from them. When the plaintiff refused to pay the enhanced fee of Rs. 600 per annum, the defendant-Municipal Council, passed a resolution to put up a wall or a building in item 3 from east to west blocking the passage to the plaintiff and his lessee from items 1 and 2 to the public street. Therefore, the plaintiff instituted the suit, which was decreed by the learned subordinate Judge, but on appeal dismissed by the learned District Judge.

4. The respondent-defendant contends that the street south of the plaintiff's properties is not a public street and that the Municipality is the owner of the street, and hence the Municipality has got a right to prevent ingress and egress on the property of the plaintiff abutting the street. I may straightway say that this contention of the defendant Municipality put forward in the written statement signed by the Commissioner is totally false.

T.S. No. 1784 and a part of T.S. No. 1770/2 were not acquired by the defendant Municipality, A part of T.S. 1770/2 and T.S. No. 1784, have

constituted a public street from time immemorial and this fact has been admitted by D.W. 1. A faint endeavour has been made by D.W.1, to show

that this part of the public street was originally a cart stand. However, no record has been filed to prove that this part of the road had been

declared a cart stand by the Municipality and even in the plans filed by the Municipality, this part of the road has not been shown as a cart track.

D.W. 1 concedes that though the western part of T.S. 1770/2 and T.S. No. 1784, were declared a cart stand, the public were using the same as a pathway.

5. S. No. 1785 alone has been acquired by the Government at the instance of the Municipality for widening the road. S.6(1) of the Land

Acquisition Act lays down that--

Subject to the provisions of Part VII of this Act, when the appropriate Government is satisfied, after considering the report, if any, made under

S.5A, sub-S.(2) that any particular land is needed for a public purpose, or for a

company, a declaration shall be made to that effect under the signature of a secretary to such Government or of some officer duly authorised to certify its orders, and different declarations may be made from time to time in respect of different parcels of any land covered by the same notification under S.4 sub-S.(1) irrespective of whether one report or different reports has or have been made (wherever required) under S.5A, sub-S.(2).

It is obvious from this that only after the Government of Tamil Nadu was satisfied after considering the report of the defendant Municipality that

T.S. 1785 was needed for a public purpose, a declaration was made to that effect under the signature of the Secretary to the Government of Tamil

Nadu or of some officer duly authorised to certify its orders though a copy of the order has not been filed by either the plaintiff or the defendant,

6. Under S.165 of the Tamil Nadu District Municipalities Act. 1920--

(1) The Council may acquire--(a) any land required for the purpose of opening, widening, extending or otherwise improving any public street or of making any new public street and the buildings, if any, standing upon such land;.....

The acquisition of T.S. No. 1785 was for the purpose of widening the public street originally comprised in T.S. No. 1784, and a part of T.S.

1770/2. Therefore, the street now covering T.S. No. 1784, 1785 and a part of T.S. 1770/2 is a public street within the meaning of S.3 (21) of the

Tamil Nadu District Municipalities Act.

7. By reason of S. 162 of the Tamil Nadu District Municipalities Act,

(1) The Municipal Council shall, at the cost of the municipal fund cause the public streets and bridges to be maintained and repaired and may from

the same fund meet the cost of all improvements to the same which are necessary or expedient for the public safety or convenience.

The powers of the Municipal authorities have been stated in S.163 of the Tamil Nadu District Municipalities Act as follows--

(1) The council may--

(a) lay out and make new public streets;

(b) construct bridges and sub ways;

(c) turn, divert or with the special sanction of the State Government permanently

close any public street or part thereof;

(d) widen, open, extend or otherwise improve any public street.

(2) Reasonable compensation shall be paid to the owners and occupiers of any land or buildings which are required for or affected by any such purposes.

S.164 of the Tamil Nadu District Municipalities Act lays down that--

When a public street is permanently closed under S.163, the Municipal Council may, with the sanction of the State Government, dispose of the site

or of so much thereof as is no longer required, in such manner as may be approved by the State Government, provided that due compensation is made to any person injured by such closing.

8. This is not a case of the defendant Municipality permanently closing a public street. It is seen from Ss.162 and 163 of the Tamil Nadu District

Municipalities Act extracted above that the defendant council has a duty to maintain and repair the road at its cost; the Municipality may also from

the same fund meet the cost of all improvements to the public street. The powers of the Municipality can be exercised only in cases referred to in

S.163 of the Tamil Nadu District Municipalities Act. The road called the Bus-stand Road, now covering T.S. No. 1784, a part of T.S. 1770/2

and the newly acquired T.S. 1785 is undoubtedly a public street. Otherwise, the Municipality will have no right to do anything in the street. There

can be no street called the Municipal street, as distinguished from a public street, as was sought to be contended by the learned counsel for the

respondent at one stage.

9. Now the question is whether the defendant is entitled to build a wall from east to west completely preventing the plaintiff and his lessee from

having access to this public street from the workshop described as item 1 and the petrol bunk described as item 2 in the schedule annexed to the

plaint ? Items 1 and 2, viz., the southern part of T.S. 1770/1 in which the workshop and the petrol bunk are situate, is abutting the public street.

11. In *Berridge and another v. Ward* (Reports of cases decided at Risi Prius by Foster and Finlason, Vol. II, 1860-62 at page 208.), Cockburn,

C.J., has observed that--

If it be a highway upto the boundary of the plaintiff's land, then, as a matter of

law, the plaintiff has a right of access to it from any part of his land.

11. In *Marshall and another v. The Mayor, Aldermen, and Burgesses of the County Borough of Blackpool* 1935 A.C. 16, the House of Lords

considered this question and Lord Atkin has laid down that--

The owner of land adjoining a highway has a right of access to the highway from any part of his premises..... Subject to special statutory

provisions protecting footpaths, the right of access is not affected by the fact that part of the highway is only dedicated as a footway.....

He has further observed that--

..... it would be remarkable to find this well established right of an adjoining owner taken away and without compensation, especially in a local

Act, unless there were very plain words to that effect.

Certainly, there is no provision in the Tamil Nadu District Municipalities Act empowering the municipality to deprive the owners of properties

abutting on a public street of their right of ingress and egress to the public street.

12. In *William Lyan v. The Warden and Co., of the Fishmongers' Co., and the Conversators of the River, Thames* L.R. 1875-76 A.C. 662, the

House of Lords has distinguished the right attached to a private property from the right held in common with the rest of the public, and has

observed that it becomes a form of enjoyment of the land, the disturbance of which may be vindicated in damages by an action and that--

It is, as was decided by the House in the cases to which I have referred, a portion of the valuable enjoyment of the land and any work which takes

it away is held to be an "injurious affection" of the land, that is to say, the occasioning to the land of an injury, or an infringement of right. The taking

away of river frontage of a wharf, or the raising of an impediment along the frontage, interrupting the access between the wharf and the river, may

be the injury to the public right of navigation, but it is not the less an injury to the owner of the wharf, which, in the absence of any parliamentary

authority, would be compensated by damages, or altogether prevented. It appears to me impossible to say that a mode of enjoyment of land on

the bank of a navigable river which is thus valuable and as to which a landowner can thus protect himself against disturbance, is otherwise than a

right or claim to which the owner of land on the bank of the river is by law entitled within the meaning of such a saving clause as that which I have

read.

13. The right of the owner of a roadside property to have access to the road is a totally different right from the public right to passing and repassing

along the highway, and this right has been recognised in a number of decisions referred to in *William Lyen v. The Wardens and C of the*

*Fishermongers' Company and the Conservators of the River Thames* L.R. 1875-76 A.C. 662, and it has been observed that it was quite clear

that the right of a man to step from his own land on to a highway is something quite different from the public right of using the highway. Lord

Selborne observed referring to the earlier authorities that those authorities ""recognise such a right of immediate access from private property to a

public highway, as a private right, distinct from the right of the owner of that property to use the highway itself, as one of the public.

14. In *"Pratt and Mackenzie's Law of Highways*, 21st Edn. at page 58, the right of access by adjoining owners has been stated thus--

The owner of land adjoining a highway has a right of access to the highway from any part of his premises. This is so whether he or his

predecessors originally dedicated the highway or part of it and whether he is entitled to the whole or some interest in the ground adjacent to the

highway or not. The rights of the public to pass along the pathway are subject to this right of access; just as the right of access is subject to the

rights of the public, and must be exercised subject to the general obligations as to nuisance and the like imposed upon a person using the highway.

And again--

The right of the owner of land adjoining a highway to access to or from the highway from or to any part of his land is a private right distinct from

the right to use the highway as one of the public, and the owner of the land whose access to the highway is obstructed may maintain an action for

the injury whether the obstruction does or does not also constitute a public nuisance. It would be the height of absurdity to say that a private right is

not interfered with, when a man who has been accustomed to enter his house from a highway finds his doorway made impassable, so that he no

longer has access to his house from the public highway. This would equally be a private injury to him, whether the right of the public to pass and

repass along the highway were or were not at the same time interfered with.

Referring to the right of access to or from the highway as a private right, it is again observed thus--

...any interference with it is an interference with a private right; but the latter right is an individual interest in a public right and is enjoyed by the owner as one of the public entitled to use the highway.

Again, it is observed that--

It is well established that where there is a public highway the owners of land adjoining thereto have a right to go upon the highway from any spot on their land...The right of access to a highway enjoyed as a private right by the owner of premises adjoining the highway is not limited to the right to pass from the premises to the highway and vice versa, but includes the right of access to a wall of the premises in which there is no door or other opening. But the premises must actually adjoin the highway;...

An owner of the land which runs right upto a public highway is entitled to access to that highway from his land and that is so whether he is the presumptive owner of the soil of the highway or not...A highway authority has no power, in discharge of the duty of the surveyor of highways to repair, to raise the level of a highway so as to interfere with the adjoining owner's right of access.

Therefore, there is no doubt about the fact that the plaintiff has a right under the common law to go to and from the public street to his property.

14. The mere vesting of the public street in the Municipal Council does not confer any power on the Municipal Council to treat it as a private property of the Municipality, and the power to close any public street temporarily or permanently does not imply a power to cause obstruction to the use of the public street by the owners adjacent to the same. The defendant Municipality cannot exercise any right over the public street except such as are authorised by law.

15. The owners of houses abutting on a public street have right of access to and from the public street and if anything is done by the Municipality to interfere with the rights of such owners, the owners have an actionable claim.

16. In Salmon on the "Law of Torts" (16th Edn.) page 61, it is stated that--

Every person who occupies land immediately adjoining a highway has a private right of access to the highway from his land and vice versa; and any

act done without lawful justification whereby the exercise of this private right is obstructed is an actionable wrong. This right of access is a private

right of property, and if what is complained of is sufficient substantial to constitute an interference with that right, he may recover at least nominal

damages, for, it is an example of an action on the case succeeding without proof of special damage... The private right of access thus protected

includes merely the right to get from the highway into the plaintiff's land, and from his land into the highway...

17. In *Talakchand Dharji Municipality* AIR 1955 Sour. 63, a Bench of the Saurashtra High Court stated with approval referring to the decision in

*Patna Municipality v. Dwarka Prasad* AIR Patna 683 that--

The principle that the owner of the land abutting a roadway is entitled to access to that roadway at all points on his boundary was there accepted.

It was there argued, as has been done for the Municipality before us, that the plaintiff has no real complaint, because he has or can have access to

his property at other points. It was held that it mattered not whether access can be given to them, because the buildings complained of seriously

infringed one of their most valuable rights, namely, a right of access to the highway along the whole length of the boundary, that the buildings were a

serious infringement of the plaintiff's rights and that the plaintiff was entitled to insist on their removal.

In *District Board Hanbhun v. B.N. Rly. Co.* AIR 1945 Pat. 200 in which the plaintiff was the owner of an adjoining land, the above case and

earlier cases of the same High Court in *Pahlad Maharaj v. Gouri Dutt* AIR 1937 Pat. 620 and *Dasrath Mahto Marain Mahtap* AIR 1941 Pat.

249, were relied upon and it was held that the right of access to the highway at all points where a land adjoins the highway belongs not only to the

owner of the land but also to the occupier and the occupier can sue for the removal of an obstruction interrupting his right of access to the highway.

The fact that the owner or occupier of adjacent land has fenced it off or raised a wall for his convenience or opened a gateway on the other side

cannot affect his right of access to the highway as aforesaid.

With respect, I agree with the views stated in the cases cited above. The vesting of the public street in question in the defendant Municipality is only

for the purpose of maintaining it properly as a public street. It is not entitled to

put up any structure along the public street to prevent the owner of properties abutting the same from having access to and from the public street.

18. In *Damodara Naidu v. Thirupurasundari* (1972-2-M.L.J. 4=85 L.W. 381, Raghavan, J. has held that--

..... where there is a public highway the owners of land adjoining the highway have a right to go upon the highway from any point on their land; and

if that right is obstructed by anyone the owner of the land abutting the highway is entitled to maintain an action for the injury, whether the

obstruction does or does not constitute a public nuisance.

With respect, I agree with this view.

19. The defendant has no right to construct a wall on the northern boundary of T.S. No. 1784 and S. No. 1770/2 from east to west so as to

prevent the plaintiff, his lessees and others claiming under him from having access to the public street. The endeavour of the defendant Municipality

to construct a wall from east to west on the southern boundary of the plaintiff's property and the northern boundary of the public street so as to

prevent the plaintiff and his men having access to the public street is not motivated by any interest of the public, and is mala fide. The defendant has

no right to collect any licence fee from the plaintiff or his lessee for having access to the public street. I asked the learned counsel for the

respondent to draw my attention to any particular provision of the Tamil Nadu District Municipalities Act, which empowers the Municipality to

collect a licence fee from any person for using the public road and he has not been able to. The Municipality no doubt is entitled to collect property

tax, and if any fee is payable for licence to conduct a workshop or running a petrol bunk, the defendant Municipality may collect such fees. But, for

merely using the public street the defendant cannot collect any fees under the guise of a licence fee. However, this is not a matter within the scope

of these proceedings. In conclusion, I may observe that the street in question is a public street within the meaning of S. 3 (21) of the Tamil Nadu

District Municipalities Act, that the appellant has a right of access to this public street by reason of his ownership of the property abutting the public

street, and that the defendant is not entitled to construct any wall preventing the plaintiff and his men from having access to the public street south of

his property. Hence, this appeal is allowed, the judgment and decree of the

learned District Judge in A.S. 134 of 1974 are set aside and O.S. No 43 of 1973 on the file of the Sub-Court, Kancheepuram, is decreed with costs throughout, restraining the defendant Municipality from putting up a wall or a building in item 3 or obstructing in any other way the right of the plaintiff, his lessees and men from having access to the public street described as item 3 from the properties described as items 1 and 2 in the schedule annexed to the plaint.