
(2010) 04 AP CK 0065

In the Andhra Pradesh High Court

Case No : Writ Petition No. 7636 of 2010

Karanam Manjunath

APPELLANT

Vs

District Collector

RESPONDENT

Date of Decision : 30-04-2010

Acts Referred:

Andhra Pradesh Panchayat Raj Act, 1994 — Section 53, 98, 98(2), 99
Constitution of India, 1950 — Article 19(1), 19(6)

Citation : (2010) 3 KLT 778

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

V.V.S. Rao, J.—The petitioners, who are six in number, are petty business people engaged in small vocations like running a tailor shop, beedi shop, vegetable shop, cycle repair shop etc. Their predecessors occupied a portion of Gram Panchayat road in Jonnagiri Village and constructed small bunks/kiosks. They also allege that they obtained electricity connection from the concerned Electricity Distribution Company and they also say that they are paying ground rent to Gram Panchayat. The Gram Panchayat, third respondent herein, issued notice to petitioners to remove, their bunks and further informing them if they failed to do so on or before 12.4.2010, Gram Panchayat will remove those shops. The petitioners contend that their occupation of the Gram Panchayat land is no way causing obstruction to the users of the road, that if their bunks are removed, they would suffer hardship and that Gram Panchayat having permitted them to set up the bunks and having accepted the ground rent, cannot be permitted to remove the bunks.

2. Counsel for petitioners made submissions reiterating the contentions as above. Initially when he made submissions on 7.4.2010, he did not make any effort to demonstrate the right of the petitioners that can be enforced in exercise of Mandamus jurisdiction of this Court. When the Court pointed out the law of

streets, expounded by Supreme Court in *Sodan Singh v. New Delhi Municipal Committee* (I) AIR 1989 SC 1988, he sought time and on 13.4.2010, he relies on the said Judgment and submits that there is no obstruction for users of the road, and unless and until alternative accommodation is shown, the petitioners cannot be evicted. Per contra, standing counsel for third respondent Panchayat submits that at present the bunks of the petitioners are situated on the road leading to Gram Panchayat/Village and causing obstruction to the users of the road.

3. Petitioners have filed permission letters given by Sarpanch of Gram Panchayat enabling petitioners or their predecessors to raise temporary constructions for livelihood. They also annexed the xerox copies of the tax receipts, evidencing payment of ground rent to the Gram Panchayat. The receipt of Electricity Distribution Company in respect of one petitioner is also filed. Petitioners, however, do not dispute that all of them have occupied Gram Panchayat road. They only contend that if they are removed from the place, they would deprive their livelihood and suffer hardship.

4. The question involved in this Writ Petition is a right to carry on trade and business guaranteed under Article 19(1)(g) of Constitution of India. The right of a citizen to carry on trade on the street in tune with Article 19(1)(g) read with Article 19(6) is recognised. The Supreme Court in *Sodan Singh (I)* (supra), *Ahmedabad Municipal Corporation Vs. Nawab Khan Gulab Khan and others*, and various other Judgments of Supreme Court, considered various aspects of the rights and restrictions subject to which such right can be enjoyed. Following the Judgments in *Secunderabad Bunks (KIOSKS) Owners Association Vs. The Commissioner, Municipal Corporation of Hyderabad, and others*, and *Slum Dwellers Welfare Association v. District Collector, Ranga Reddy District* (2002) Supp.(1) ALD 697 (D.B.), this Court in an unreported Judgment, dated 30.4.2004, in W.P. No. 15413 of 1994 (*Venkatesh v. M.C.H., Hyderabad*), reiterated the law as under.

Insofar as the submission that a citizen has right to carry on business on the street is concerned, there cannot be any dispute with the principle of law in view of the decision of the Supreme Court in *Sodan Singh (I)* (supra). However, the right to carry on business on the street either by moving from one place to another, squatting at one particular place is concerned, it is also well settled that no citizen can cause obstruction to the traffic or pedestrians because the roads and pathways are essentially meant for to pass and re-pass and use for conveyance. A reference may be made to judgment of a Division Bench of this Court, to which I was a member, in *Slum Dwellers Welfare Association* (supra). After referring to important case law on the point in *Municipal Board, Manglaur Vs. Sri Mahadeoji Maharaj, , Pyare Lal etc. Vs. New Delhi Municipal Committee and Another, , Himat Lal K. Shah Vs. Commissioner of Police, Ahmedabad and Another, , K. Sudarsan and Others Vs. The Commissioner, Corporation of Madras and Others, , M.A. Pal Mohammed and Others Vs. R.K. Sadarangani and Others, , Bombay Hawkers" Union and Others Vs. Bombay Municipal Corporation and*

Others, , Olga Tellis and Others Vs. Bombay Municipal Corporation and Others, , Municipal Corporation of Delhi Vs. Gurnam Kaur, , P.K. Wariyar Vs. State of Kerala and Others, , Saudan Singh and Others Vs. N.D.M.C. and Others, , Gainda Ram and Others Vs. M.C.D., Town Hall and Others, , Gainda Ram (II) v. M.C.D., (1994) 5 SCC 52 , Secunderabad Bunks (Kiosks) (supra), N. Jagadeesan, etc. Vs. District Collector, North Arcot and Others, , Bapujinagar Khudra Byabasai Association Vs. State of Orissa and Others, , Sodan Singh Vs. N.D.M.C. and Others, , Sodan Singh Vs. N.D.M.C. and Others, , Gainda Ram and Others Vs. M.C.D. and Others, and State of Maharashtra Vs. Alka B Hingde, , the Division Bench laid down as under.

The law of the streets is well-settled. The road is primarily meant for citizens to pass and repass and use for conveyance....The right to carry on business, trade or profession being a fundamental right under Article 19(1)(g) of the Constitution of India any total prohibition of carrying on business on the road is unconstitutional. However, no citizen can claim absolute right to squat on the road either for the purpose of business or for the purpose of residence. Roads are not meant for building houses and residential huts. Roads are basically meant for citizens for passing and repassing. As long as the citizens' activity in relation to road does not offend or effect the rights of other citizens, in that the use of the road does not obstruct the other citizens, no objection can be taken. But, when once a citizen claims a right to squat on the road either by raising temporary structure or permanent structure for business or residence, the law does not recognise such right.

5. The right of petitioners to occupy Gram Panchayat road margin - even if it is with permission of the Panchayat - is subject to the right of users of the road. The roads are meant for passing and re-passing by the users and they are not meant for squatters to carry on business. Sections 98 and 99 of Andhra Pradesh Panchayat Raj Act, 1994 (the Act, for brevity) empower, nay, cast a duty on the Gram Panchayat to remove all the encroachments and keep the roads vested in Gram Panchayat u/s 53 of the Act free from encroachments. Section 98(2) of the Act speaks of prescriptive right of a person in occupation of Gram Panchayat land/ road and even in such cases, the person squatting on the road margin does not get a right of occupation and if such prescriptive right is proved, he is only entitled for compensation. Therefore, the petitioners have no right to enforce by filing a Writ Petition.

6. It is well settled that a writ of Mandamus can be issued only when the petitioner shows enforceable right (see Director of Settlements, Andhra Pradesh and Others Vs. M.R. Apparao and Another, The petitioners have no right to continue to occupy the margin of Gram Panchayat road, especially when the same is causing obstruction for the users.

7. The question of provision of alternative land has also been considered by Supreme Court in Ahmedabad Municipal Corporation (II) (supra). While rejecting the argument of provision of alternative accommodation is a condition precedent

for ejecting road encroachments, the Apex Court laid down as under:

It is true that in all cases it may not be necessary, as a condition for ejectment of the encroacher, that he should be provided with an alternative accommodation at the expense of the State which if given due credence, is likely to result in abuse of the judicial process. But no absolute principle of universal application would be laid in this behalf. Each case is required to be examined on the given set of facts and appropriate direction or remedy be evolved by the Court suitable to the facts of the case. Normally, the Court may not, as a rule, direct that the encroacher should be provided with an alternative accommodation before ejectment when they encroached public properties, but, as stated earlier, each case requires examination and suitable direction appropriate to the facts requires modulation. Considered from this perspective, the apprehension of the appellant is without force.

(emphasis supplied)

8. The petitioners have no right that can be enforced in the Writ Petition. The Writ Petition is misconceived and is accordingly dismissed. No costs.