
(2008) 02 AP CK 0086

In the Andhra Pradesh High Court

Case No : Writ Petition No. 22125 of 2002

Kuli Srinivasa Rao

APPELLANT

Vs

Vaidana Gram Panchayat and Others

RESPONDENT

Date of Decision : 15-02-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) 3 ALD 550 : (2008) 4 ALT 187

Hon'ble Judges : C.Y. Somayajulu, J

Bench : Single Bench

Advocate : K.V. Subrahmanyannarusu, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

C.Y. Somayajulu, J.—This writ petition is filed questioning the action of the first respondent-Gram Panchayat in constructing a bus shelter on the Western side of the main road near the hotel being run by the petitioner.

2. The case of the petitioner is that he, an unemployed graduate, purchased Ac.0.40 cents of land abutting R&B road on the Western side under a register sale deed by mortgaging his agricultural land and started a small hotel in the year 2001 and is eking out his livelihood from the income of the hotel. Though there is a bus shelter abutting the R&B road on the Eastern side from 10 years, some persons having considerable political power in the village, and who did not like his starting hotel business, with an intention to cause loss to him asked the Sarpanch to construct a bus shelter opposite to the hotel being run by him and so the bus shelter is being constructed there, which would block his ingress and egress to the hotel, and thereby causing loss to his business completely and thus his only source of livelihood would be lost.

3. On behalf of the first respondent-the Sarpanch of the Gram Panchayat filed his counter affidavit inter alia stating that at the request of the public of the Vaidana

village and surrounding villages, the local M.P. agreed to release Rs. 1,00,000/- from the MP lads for construction of bus shelter at Vaidana bus stage on the Western side of Medarametla to Narketpalli Highway, whereupon the Panchayat authorities decided to construct a bus shelter and obtained necessary permission from higher authorities. The bus shelter on the Eastern side of the R&B road is at a distance of 200 yards North-East of the petitioner's site and is useful only to the persons going towards Medarametla side. As there is no bus shelter for the public going towards Narketpalli side, the new bus shelter was proposed to be constructed. The averment that the persons having considerable political power in the village did not take kindly to the petitioner starting of the hotel business is not true, similarly the averment that the proposed bus shelter would block the ingress and egress of the petitioner's site and would lead to his closing of the business is not true. Along with his counter affidavit he filed a sketch showing the typography of the roads and the existing bus shelter and the proposed bus shelter.

4. Heard the learned Counsel for the petitioner. There is no representation on behalf of the respondents.

5. The contention of the learned Counsel for the petitioner is that inasmuch as the proposed bus shelter would block the ingress and egress of the petitioner's site and thereby leading to loss of the source of livelihood of the petitioner and as nobody can be deprived of his right to life and livelihood, petitioner had no other go except to approach this Court. It is his contention that as there is a bus shelter on the opposite side of the road, there is no need or necessity for construction of another bus shelter near the hotel of the petitioner and as the construction of the bus shelter was taken up only at the instance of the persons who have political influence and are opposed to the petitioner, respondents may be restrained from constructing a bus shelter near the hotel of the petitioner.

6. The averment in the counter affidavit filed on behalf of the first respondent that the proposed bus shelter is coming up on the R&B main road between the Medarametla and Narketpalli is not denied or disputed. In the counter affidavit filed on behalf of the first respondent it is stated that the existing bus shelter is serving the needs of the people going towards Medarametla side and as there is no bus shelter for the public going towards Narketpalli side, need for construction of a bus shelter on the other side of the road was felt and at the request of the residents of that village and the neighbouring villages, the MP of the area released funds from the MP lads for construction of a new bus shelter to serve the needs of the people going towards Medarametla (sic. Narketpalli). As existence of a bus shelter on the opposite side of the road would not serve the needs of the people going towards Narketpalli the contention of the petitioner that in view of the existence of a bus shelter on one side of the highway, construction of a bus shelter on the other side of the highway is unnecessary or is superfluous, and intended to cause harm to him, cannot be believed or accepted. People intending to go towards Narketpalli side cannot be expected to

take shelter on the other side of the road and run across the road which is a highway for boarding the bus to reach their destination towards Narketpalli side.

7. The contention of the petitioner that the proposed bus shelter, if built, would completely block the way to his hotel and his right of ingress and egress from and to the main road would be lost, is denied in the counter affidavit filed on behalf of the first respondent. Right of ingress and egress is an easementary right. If such right of the petitioner is sought to be infringed, he cannot, by filing a writ petition under Article 226 of Constitution seek intervention of the High Court. His remedy is to file a Civil Suit and. establish that the proposed construction would interfere with his right of ingress and egress into and from his site to the main road. The space between the hotel of the petitioner and the proposed bus shelter, the location of the proposed bus shelter its size and the size of the hotel of the petitioner are questions of fact, relating to which evidence has to be adduced. Court can take judicial notice of the fact that in several places there are bus shelters in front of several business premises and in spite of existence of the bus shelters in front of their shops, owners of those shops are carrying on business. So the apprehension of the petitioner that the proposed bus shelter may hamper his business and thereby it would result in loss of his livelihood may be a mere apprehension and may not be true. As stated above petitioner has an effective alternative remedy of filing a suit in a civil Court.

8. Therefore, I find no merits in the writ petition. Hence, the writ petition is dismissed. No costs.