

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

Writ Petition No. 7301 of 2011

-
ORDER :

-
It is the case of the petitioner that he purchased a plot of land bearing plot No.9, forming part of Survey No.102, admeasuring 286 sq.yards vide registered sale deed bearing document No.2110/1989, dated 17.08.1989 from Smt. Anjana Devi in the office of Sub-Registrar, Mahabubnagar. That he is the sole, absolute and exclusive owner and possessor of the house bearing Municipal No.8-2-40/B, situated at Teachers' Colony, Mahabubnagar, having built the same after obtaining due and necessary permission for its construction from Mahabubnagar Municipality in the year 1998. The plot No.9 is bounded by East – 30' road, West – Compound Wall of Government Hospital, North –Plot No.7 and South – 50' road.

2. When the petitioner sought permission initially during the year 1992, to construct a house, permission was accorded deducting an area of 3.05 metres from the total extent of his plot, stating that the said area was being affected by Master Plan Road. He could not take up construction within the stipulated period then. Subsequently when he applied for the same, permission was accorded in the year 1998, deducting an area of 3.05 metres on the ground that the same was being affected by Master Plan Road. The said Master Plan Road is approved by the Director of Town and Country Planning, Andhra Pradesh Hyderabad. When certain strangers encroached upon the municipal road abutting the southern side of his house by carrying out excavation work, dumping materials etc., for the purpose of unauthorized construction thereon, the petitioner made representation to the municipal authorities. It is the case of the petitioner that 90 feet road is running from the southern side of his plot as per the Master Plan of the respondent authorities and when the same was being

encroached, the petitioner filed representation dated 02.10.2000 and subsequent representations for taking up appropriate action to remove the encroachments in order to see that 90 feet road exists as per the Master Plan. As no action is being taken, the present writ petition is filed.

3. Counter affidavit is filed by the 5th respondent denying the averments in the affidavit filed in support of the writ petition stating that this respondent is preventing encroachments and un-authorized constructions in the area covered by road in the revised Layout Plan # 4/87 to TP # 33/62 for Teachers Colony in Mettugadda, Mahabubnagar. It is stated that plot No.9 in Sy.No.102 of Mahabubnagar is also not part of the approved revised Layout Plan 4/87 boundary and it falls outside the layout boundary of L.P.No.4/87 and that Narasimha Chary, Advocate has made an unauthorized layout and sold it to the petitioner. The petitioner had not requested for the revised layout Plan No.4/87 to TP No.33/62 for Teachers Colony in Mettugadda, Mahabubnagar approved by the Director of Town & Country Planning, A.P, Hyderabad. This respondent municipality had accorded permission to construct a residential building to the petitioner showing the 3.05 mtr. 10'-0" depth on entire southern side of his plot affecting the proposed 90'-0" road, duly following the pattern approved by the Director of Town & Country Planning in revised layout plan for Teachers Colony vide Layout Plan No.4/87 to TP No.33/62. It is stated that the petitioner himself constructed compound wall by covering the road affected portion into his premises which is left for widening of proposed road in L.P.No.4/87 to a depth of 3.05 Mtr on the entire southern side of his plot and earmarked in the proposed building permission plan accorded to the individual. The plot purchased by the petitioner falls in an unauthorized layout made by Narasimha Chary, Advocate, without following layout pattern, and it falls out of layout boundary of L.P.No.4/87 approved by the Director of Town & Country

Planning, A.P, Hyderabad. It is further stated that the proposed layout road is in L.P.No.4/87 and this respondent is preventing the unauthorized constructions over the proposed layout road. That the proposed road is a layout road in L.P.No.4/87 and it is not a Master Plan road in the then Master Plan to Mahabubnagar and at present GTP Scheme to Mahabubnagar Town, which was approved by the Government of Andhra Pradesh as recommended by the Director of Town and Country Planning, A.P, Hyderabad. It is stated that at the time of according building permission to the petitioner, the then Commissioner and Sub-ordinate of this respondent Municipality, by overlooking has written the proposed road as Master Plan instead of 90 feet wide road in L.P.No.4/87 which was approved by the Director of Town and Country Planning, Hyderabad in which a high transmission line is passing.

4. Heard Sri Md. Abdul Hameed, learned counsel for the petitioner, Sri N.Praveen Kumar, learned Standing Counsel for the 5th respondent Municipality, Sri K.Venkat Ram Reddy, learned counsel for the respondents 6 to 9.

5. It is the case of the petitioner that when petitioner made an application for permission to construct residential building, the respondent Municipality accorded permission on the condition of his leaving set back towards southern side of his plot to an extent of 3.05 meters on the ground that the said extent would be affected by Master Plan Road. But now, in spite of filing representations before the authorities concerned, the respondent Municipality is not preventing encroachments on 90 feet Master Plan Road on the southern side of the petitioner's plot.

6. In the counter affidavit of the 5th respondent, it is categorically stated that the subject layout road is approved by of Master Plan by Government of Andhra Pradesh, which was recommended by the

Director of Town and Country Planning, A.P., Hyderabad and that at the time of according building permission to the petitioner, the then Commissioner and Sub-ordinate of the respondent Municipality, by overlooking has written the proposed road as Master Plan instead of 90' feet wide layout road in L.P.No.4/87, which was approved by the Director of Town and Country Planning, A.P., Hyderabad. The respondent Municipality has specifically taken a stand that it is preventing unauthorized construction over the proposed layout road. The original layout produced by the petitioner does not show that the said road extends to the petitioner's house.

7. Learned Standing Counsel for the respondent Municipality, on instructions submits that the 90 feet road does not extend beyond the point and it does not cover the petitioner's house. It has to be seen that even if the existing 90 feet road is approved in the Master Plan Road, unless compensation is paid to the affected parties, the respondent Municipality cannot lay the road.

In view of the above categorical statements in the counter affidavit of the respondent Municipality, I do not see any merit in the writ petition and this Court cannot issue writ of mandamus for expansion of 90 feet road, which is not in existence as per the Master Plan Road and the writ petition is liable to be dismissed.

Accordingly, this writ petition is dismissed. There shall be no order as to costs. As a sequel thereto, miscellaneous applications, if any pending in this Writ Petition, shall stand closed.

A.RAJASHEKER REDDY, J

13.07.2015.
KVS

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

W.P. No.7301 OF 2011

Date: 13-07-2015

KVS

-
-
-
-
-
-
-
-

