

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.2642 of 2009

ORDER:

This writ petition is filed under Article 226 of the Constitution of India seeking the following relief:

“To issue a writ, order or direction, more particularly in the nature of Writ of Mandamus, directing the Respondent to follow the procedure before laying any road through petitioner's property bearing Dr.No.25/2-2163, Jangala Veedhi, Ummareddy Gunta, Nellore, Nellore district at the instance of its Corporator by declaring such action of laying road through petitioner's property is illegal, arbitrary, violative of principles of natural justice and Article 14 and 300-A of the Constitution of India”.

2. Heard Sri P.Rajasekhar, learned counsel for the petitioner and Sri A.Panduranga Rao, learned Standing Counsel for Respondent Corporation, apart from perusing the material available on record.

3. The petitioner claims to be absolute owner and possessor of house property bearing D.No.25/2-2-163, constructed in an extent of 21 Ankanams 4 sq.yards, situated in Jangala Veedhi, Kondayyapalem Gate, Ummareddy Gunta, Nellore, Nellore district having purchased the same under registered sale deed dated 8.6.2005 from one Pokuru Seshananda Sarma for valid consideration. It is pleaded by the petitioner that he is paying property tax under Assessment No.3031191864 regularly. The grievance of the petitioner in the present writ petition is that the Respondent Municipal Corporation, at the instance of Corporator of 22nd Division proposed to lay road through his property without following due procedure. It is also the case of the petitioner that he has submitted representation on 5.2.2009 to the respondent, requesting to stop laying the road without following the procedure and it is also the complaint of the petitioner that without considering his representation, the respondent is taking steps to lay road at the instance of the Corporator.

4. This Court, while issuing rule nisi on 12.2.2009, granted status quo order in W.P.M.P.No.3379 of 2009 and the said order is subsisting till date.

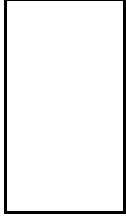
5. No counter affidavit has been filed by the Respondent Corporation, either in the direction of denying the averments made in the affidavit filed in support of the writ petition or in the direction of justifying the impugned action.

6. Right to property is a constitutional right as enshrined under Article 300-A of the Constitution of India, which in clear and unequivocal terms, mandates that no citizen of this country shall be deprived of his or her property except in accordance with the procedure established by law. In the instant case, the only grievance of the petitioner is that the Respondent Corporation is trying to lay road without following the due procedure established by law. In the considered opinion of this Court, the said action, in the absence of denial by way of filing counter cannot be approved by this Court. In the absence of any counter by the Respondent Corporation, the averments made in the affidavit filed in support of the writ petition are required to be construed as correct.

7. For the aforesaid reasons, the writ petition is disposed of, directing the respondent Corporation not to lay any road through the petitioner's property bearing D.No.25/2-2-163, Jangala Veedhi, Ummareddy Gunta, Nellore, Nellore district without following the due procedure established by law. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: 12.2.2015
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Between:

PULimi Adisesha Reddy

... Petitioner

and

The Municipal Corporation,
represented by its Commissioner,
Nellore, Nellore district.

... Respondent