

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.12456 OF 2015

ORDER:

This petition is filed for a writ of *Mandamus* declaring the action of the respondents in attempting to demolish the building covered by D.No.36-46-11/1, near Urvasi Theatre, Kancharapalem Main Road, Visakhapatnam in an extent of 150 sq.ys. consisting of ground and first floors and in which the petitioner is the owner and possessor of the first floor as upheld by the I Addl.Senior Civil Judge, Visakhapatnam in OS.No.355/1987, without paying them any compensation and issuing any TDR certificate and without resorting to any acquisition proceedings, as illegal and arbitrary and for a consequential direction to the respondents not to demolish any part of the above said construction without paying any compensation and issuance of TDR certificate and without resorting to any proceedings of acquisition or any other mode of law to acquire the same.

The case of the petitioner is that he is the owner and possessor of first floor of the building bearing D.No.36-46-11, situated at main road of Kancharapalem, Visakhapatnam. Initially there was only one floor containing six shops. But, subsequently, petitioner's father constructed the first floor by raising walls with asbestos roof containing four portion and bequeathed the ground floor to the 3rd respondent who is the step-brother of the petitioner and first floor to the petitioner, under two different wills. Aggrieved by the same, the 3rd respondent filed OS.No.355 of 1987 on the file of Addl.Senior Civil Judge, Visakhapatnam, seeking declaration of title and possession of the said first floor from the petitioner. Apprehending forcible dispossession, the petitioner filed OS.No.176 of 1985 on the file of VII Addl.District Munsif Court, Visakhapatnam which was transferred to the I Addl.Senior Civil Judge with OS.No.210 of 1992. Thereafter, both the suits were clubbed and a common

judgment was passed by the I Addl.Senior Civil Judge on 07.02.2002 decreeing the suit for injunction and dismissed the suit against 3rd respondent, holding that by virtue of the will executed by the petitioner's father, petitioner has valid title. Against the same the 3rd respondent filed AS.No.988 of 2002, but no interim order was passed. While the matter stood thus, there was a move for widening the road in which petitioner's property is situated. The 2nd respondent also issued notice dated 21.12.2011 stating that there was a proposal to widen the above said road from 80 feet to 100 feet and that for the said purpose an extent of 69.0 sq.ys. belonging to the petitioner and 3rd respondent is going to be affected. In the said notice it is also stated that there was a proposal to give them, structural compensation and TDR certificates and requested them to handover the said property to execute the said project. Thereafter, the petitioner represented the 2nd respondent officials that if compensation and TDR certificates are issued to the petitioner, the property could be taken over by the respondent Corporation. The grievance of the petitioner is that the 3rd respondent, by influencing the 2nd respondent officials, is trying to grab the entire compensation and TDR certificate benefits by misrepresenting the facts. As such, the petitioner again filed representation before the 2nd respondent on 11.01.2013 requesting them to pay the compensation and to issue TDR certificates to him also. Subsequently, at the influence of 3rd respondent, the 2nd respondent-Zonal Commissioner issued notice under Section 456 of the HMC Act dated 12.08.2014 stating that the building in question is in ruinous condition and also directed the petitioner to pull-down the said construction within seven days. Thereafter, though the petitioner personally met the 2nd respondent and stated the real facts, they did not heed the words of the petitioner and are trying to demolish the property of the petitioner. Aggrieved by the same, present writ petition is filed.

Learned counsel for the petitioner submits that without granting any structural compensation and issuing TDR certificates to the petitioner, the respondent Corporation is trying to demolish the property of the petitioner.

On the other hand, Sri S.Laxmi Narayana Reddy, learned Standing Counsel for respondent Corporation submits that in the notice, dated 21.12.2011, issued by the 2nd respondent, itself it is stated that the respondent Corporation will issue TDR certificate and pay structural compensation for the affected property. He also submits that until the structural compensation is paid and TDR certificates are issued, question of demolition shall not arise. Having consented for the acquisition, the petitioner cannot object for handing over possession of the affected land. He also submits that the respondent Corporation will follow Rule-17 of the A.P.Building Rules, 2012 for grant of Transferable Development Right (TDR) certificates.

It is not in dispute that the petitioner has already consented for surrendering land which is affected in the process of road widening. The only dispute in the writ petition is regarding issuance of TDR certificates and payment of structural compensation. In the notice dated 21.12.2011, issued by the 2nd respondent it is stated that the Corporation will pay the structural compensation and TDR certificates to the petitioner. Now the grievance of the petitioner is that the ground floor is occupied by the 3rd respondent and when once the ground floor is demolished, petitioner's property which is in the first floor is also affected. As such, the respondent Corporation has to pay compensation to him. Since the learned Standing Counsel for the respondent Corporation stated that the Corporation is willing to pay structural compensation and to issue TDR certificate to the petitioner, recording the same, the writ petition is disposed of directing the 2nd respondent to issue TDR certificate and to pay structural compensation to the petitioner as per notice dated 21.12.2011 and thereafter take appropriate action. Till such exercise is done the petitioner shall not be evicted from the property in question. Petitioner shall also cooperate with the respondent corporation in handing over possession of the affected portion.

With the above direction, the writ petition is disposed of. No order as to costs.

As a sequel thereto, miscellaneous petitions if any pending in the writ petition shall stand closed.

A.RAJASHEKER REDDY, J

28.04.2015

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