

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Writ Petition No.18800 of 2011

ORDER:

This writ petition is filed seeking the following relief/s:

..to issue a Writ, Order or Direction more particularly one in the nature of Writ of Mandamus declaring the action of the respondents in giving markings relating to the shop of the admeasuring 2 ¼ gadis or 15 sq.meters bearing T.S.No.9/2 Ward No.2, situated at Kurnool Road, Ongole within boundaries North: KUrnool road, South: Sagar property, West: Sangeetha mobiles, East: Sagar shop without issuing any notice to the petitioner as illegal, arbitrary, non est in law and against the Article 300-A of the Constitution of India and against the fundamental rights under Article 14 of the Constitution of India as well as against the principles of natural justice and consequently direct the respondents not to demolish the petitioner shop, and pass such other order...'

[Reproduced verbatim]

2. I have heard the submissions of the learned counsel for the petitioners and the learned Standing Counsel appearing for the Municipal Corporation, Ongole/2nd respondent. I have perused the material record.

3. The grievance of the writ petitioners is that the 2nd respondent, without giving any notice as mandated under law and without any acquisition proceedings being initiated under the Land Acquisition Act, 1894 and without following any rules and regulations that may be applicable, had given markings to the shop of the petitioners to an extent of 10 feet width and 16 feet depth for the purpose of widening the Kurnool Road and that the said acts of the 2nd respondent are against the Acquisition and Transfer of Immovable Properties Rules, 1967 as well as G.O.Ms.No.661, Municipal Administration as amended by G.O.Ms.No.235 dated 06.06.1973 and hence, the action of the respondents in giving markings without following the due procedure is *per se* illegal.

4. The 2nd respondent had filed a counter affidavit *inter alia* contending as follows: 'All of a sudden markings were given to the building of the petitioner is not correct. Since three months, several paper notifications were being given and the building owners were being informed from time to time regarding the proposed road widening; and meetings were also conducted. A notice under Sections 171 to 179 was issued to the petitioners. For marking of sites and buildings for road widening, no permission is required to be taken. The petitioners have attended the meeting convened by the Ongole Municipality on 05.03.2011 with regard to the Kurnool Road widening as per the Master Plan sanctioned by the Government in GOMs.No.1038, MD Dt.18.12.1978. In that meeting the reasons for the widening of the road were discussed among the respondents and the petitioners. All the building owners, who are affected by such road widening, had agreed to give away the extents of sites and buildings falling in Kurnool Road widening as per the Master Plan. In the notices issued to the building owners, it was clearly mentioned that they will be given additional F.S.I of 1:1.50 as per GOMS.No.15 M.A and U.D Dept.Dt.15.01.1998 in lieu of the sites and buildings affected in the road widening. The intention of the 2nd respondent is to follow the procedure strictly as per law and as per the provisions of the A.P. Municipalities Act, 1965 and other relevant laws, regulations, Rules under the Acquisition and Transfer of Immovable Property Rules 1967 as well as the Rules in GOMs.No.661 M.A as amended by G.O.Ms.No.2335 dated 06.06.1974 while taking up the road widening in public interest and for public purpose.'

5. At the time of hearing, the learned counsel for the petitioners would submit that in view of the submissions of the 2nd respondent in the counter that the 2nd respondent's intention is to strictly follow the procedure as per law and the provisions of the relevant laws, the writ petition may be disposed of giving directions to the 2nd respondent to follow the procedure established by law before demolishing the property of the petitioners and before taking up the road widening in the public interest and for the public purpose.

6. The learned Standing Counsel would submit that the 2nd respondent is prepared to follow the procedure established by law and, therefore, necessary orders may be passed directing the 2nd respondent to proceed in accordance

with the procedure established by law.

7. Recording the submissions of the learned counsel for both the sides, the Writ Petition is disposed of directing the 2nd respondent to scrupulously follow the procedure established by law while taking up the road widening work.

Miscellaneous petitions pending, if any, in this writ petition shall stand closed.

M. SEETHARAMA MURTI, J

4th December 2015

Vjl