

HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.17208 of 2015

Date: 02.09.2015

Between :

Mohd Amanullah Shareef, s/o. late Mohd. Manzoor Shareef,
Aged about 42 years, r/o.20-3-330 Moosabowli Hussainalam,
Hyderabad.

.... Petitioner

and

The State of Telangana, rep., by its Principal Secretary,
Municipal Administration and Urban Development,
Secretariat, Hyderabad and others.

.... Respondents

This Court made the following :

HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.17208 of 2015

ORDER :

This writ petition is filed praying for grant of following reliefs:

To issue a writ, order or direction more particularly one in the nature of writ of mandamus declaring the action of the respondent authorities in granting house permit to respondents Nos.5 and 6 on 11.05.2015 in the name of House Nos.20-3-327, 20-3-328/1 and 2-3-328/2 as illegal, arbitrary and unconstitutional and consequently declare that the authorities could not have granted permission for construction of house adjacent to the compound wall of house Nos.20-3-325, 20-3-325/1, Houssainialam, Hyderabad and direct the official respondents to remove the structures put up by respondents 5 and 6 adjacent to house Nos.20-3-315 and 20-3-325/1, Hussainialam to keep the road drainage and water lines free from being encroached after setting aside the permit No.41762/DC/SZ/CIR-V/2015 vide File 14148/19/03/2015 issued in favour of respondents 5 and 6, respectively.

2. Shorn of details, the brief facts are, petitioner is the owner of house bearing No.20-3-330, Mossabowli Hussain Alam, Hyderabad. His grievance is, the house owners of two adjacent house numbers i.e., house no.20-3-325/1 (Respondent No.5) and 20-3-325 (respondent No.6) have obtained two building permissions on 11.05.2015 to construct ground plus first floor in house Nos.20-3-327 and 20-3-328. Petitioner challenges the grant of such building permissions and consequential undertaking of ground plus first floor building by the respondents 5 and 6.

3. According to the petitioner, as per the revenue records, the road width is 27 feet. This road width was already shrunk and as reported by the revenue authorities, as early as in the year 2009, there were encroachments to the said road and the revenue authorities have advised the Greater Hyderabad Municipal Corporation (GHMC) to remove the illegal encroachments. Because of the construction now undertaken by the respondents 5 and 6, the road width has come down to 13.5 feet. It is further contended that the extent of construction taken up by the respondents 5 and 6 is on 13.6 feet and, therefore, the road width drastically reduced obstructing usage of the road. It is further case of the petitioner that house plot of width of 13.6 feet in house nos.20-3-325 and 20-3-325/1 do not exist and on a non-exist house plots construction permission is granted.

The houses are constructed on the existing drainage. Alleging that though several complaints were made by the residents of the locality and the petitioner, they were not acted upon and the respondents 5 and 6 are undertaking construction, this writ petition is instituted.

4. Earlier petitioner filed W.P.No.16383 of 2015. During the course of hearing of the said writ petition, petitioner was informed that building permissions were granted to respondents 5 and 6 on 11.05.2015. Petitioner filed this writ petition challenging the said building permissions and withdrew the W.P.No.16383 of 2015.

5. In the representations submitted by the people of the locality, the gravamen of allegations were, 1) houses are constructed over the graveyard and 2) there was a garbage point at the same place and on account of further construction taken up by respondents 5 and 6, colony people are left with no space for putting the garbage bin. In the representation submitted by the petitioner, he has also alleged illegal encroachment of public road.

6. Learned counsel for respondents 5 & 6 seriously disputed the allegations. According to him, petitioner is using his premises as godown, that heavy trucks come to load and unload goods and apprehends that if these houses are constructed, petitioner cannot bring in heavy trucks, engineered false complaints.

7. Having regard to the contentions urged by the petitioner and as there was no clarity from the respondent municipal corporation, the Court appointed the Advocate-Commissioner to inspect the site, take measurements and record his impressions of physical features. The Advocate-Commissioner visited the location, inspected the site and took physical measurements and noted down the physical features on the site in the presence of Officers of GHMC and Hyderabad Metropolitan Water Supply and Sewerage Board (HMWS&SB) and counsels representing petitioner and respondents 5 and 6.

8. According to the report of the Advocate-Commissioner, the road width is not constant. It is varying from place to place. In front of house no.20-3-324 road width is 21 feet; from the stage of pillar constructed by the respondent 6, road width is 14.4 feet; from the stage of construction of building by respondent no.5, road width is 15.4 feet and at the starting of the lane, the road width is 12 feet.

9. Learned Advocate-Commissioner reported that hardly there is no space between the existing manhole and the plinth beam constructed by the respondent no.5 and one manhole cover is stuck between the CC road and the construction made by respondent no.6 and is found to be very near to plinth beam of respondent no.6. According to the opinion of the Officers of respondent Board, presently there is no damage to two manholes, but there is a possibility of damage in future and collapse of the manholes. The Advocate-Commissioner also noted another manhole in front of house of respondent no.6 which is very close to the construction. According to the report of the Advocate-Commissioner, the construction of the building is as per the building permission granted and there are no deviations.

10. The report of the Advocate-Commissioner settles two issues: 1) that there is no consistency in road width at the subject place; and 2) construction is affecting the existing drainage system.

11. There is serious contest on the status of the property claimed as owned by the

respondents 5 and 6. According to the learned counsel for petitioner, there existed a graveyard and illegally respondents 5 and 6 have constructed the houses by closing graveyard and according to the revenue records, the house bearing no.20-3-327 does not exist. After house no.20-3-326, the next house number recorded as 20-3-328 and 330. House nos.20-3-327, 20-3-328/1 and 20-3-328/2 are created on paper by the respondents 5 & 6 in connivance of the municipal authorities to grab the road and to make illegal constructions.

12. Learned counsel for petitioner contended that earlier petitioner filed W.P.No.6301 of 2010 against illegal encroachments of public road. Petitioner relied on the letter of Tahsildar, Bahadurpura Mandal, dated 30.09.2009, wherein the Tahsildar clearly indicated encroachments into the road. This Court disposed of the said writ petition directing the respondent authorities to take further course of action in accordance with law in pursuant to the letter of Tahsildar, dated 30.09.2009. It is thus contended that when encroachments are identified, without taking action on the alleged encroachments, in spite of directions issued by this Court, it is illegal on the part of the respondent municipal corporation to grant building permissions to the respondents 5 and 6.

13. Learned counsel appearing for respondents 5 and 6 contended that they have purchased the property bearing municipal no.20-3-325 to an extent of 281 square yards and 180 square yards, respectively, constructed houses and have been living there. Respondents 5 and 6 separately purchased 56 square yards and 30 square yards abutting existing houses, obtained building permissions and undertaking constructions strictly in accordance with building permission granted. They have purchased the piece of land on which present construction is taken up after due verification of the title to the property. The specific assertion of the learned counsel for the respondents 5 and 6 is that petitioner has been harassing them. He has earlier instituted false litigation before this Court and obtained the orders behind their back. He contended that they have not blocked the public road as alleged. The property on which constructions were being taken up by them is a private property. He admits of small mistake committed by the respondents 5 and 6 in describing the road width from the point of proposed construction of the building as 20 feet and petitioner cannot try to take advantage of such minor error when other material clearly point out that construction is taken up on private property and road width is not 27 feet as alleged by the petitioner.

14. Learned counsel for the respondents 5 and 6 further contended that petitioner instituted O.S.No.45 of 2015 before the Andhra Pradesh Wakf Tribunal alleging that respondents are in occupation of land which was originally earmarked as graveyard. Since petitioner has already availed remedy under the A.P.Wakfs Act, this writ petition is not maintainable.

15. Learned standing counsel submitted that building permissions were granted after due verification of documents submitted by respondents and on due compliance of Building Permission Rules. He submitted that Corporation cannot go into the correctness of title claim. Counter-affidavit filed on behalf of respondents 2 and 3 is blissfully silent on road width.

16. In order to ascertain what exactly the road width in this particular stretch, standing counsel representing respondent municipal corporation was directed to place before this Court the relevant record. On instructions, learned standing counsel stated before this Court that there is no record which would disclose road width on this particular stretch and in the absence of record, respondent corporation cannot state that respondents 5 and 6 have encroached on to the public road.

17. Three issues on which contest is made are, 1) property on which respondents 5 and 6 are undertaking construction does not exist in revenue/municipal records; 2) there is encroachment into public road; and 3) the drainage manholes maintained by the Hyderabad Water Supply and Sewerage Board are affected.

18. With reference to the first aspect, suffice it to note that according to the GHMC Act, whenever a person applies for building permission, the GHMC is required to look in to the documents presented for its satisfaction as to *prima facie* existence of title, but it cannot go deep into the nature of title claimed by the applicant. *Prima facie*, it appears that the respondents 5 and 6 are owners of the subject property. The building permission granted can be cancelled only if it is brought to the notice of the GHMC that there was a misrepresentation or playing of fraud. If there is a dispute of title, person disputing the title claim of another, has to avail civil law remedy. In the instant case, petitioner is not staking claim of ownership of subject properties and there is no intense dispute. He only contends that respondents 5 and 6 do not have valid title and they are encroaching public road. To establish his claim he has to avail appropriate remedy as available in law. He has filed O.S.No.45 of 2015 before the Wakfs Tribunal alleging that on burial ground houses are constructed. Thus, at this stage no view can be expressed on merits, that may have a bearing on the said litigation.

19. There is no clarity by respondent municipal corporation or by the petitioner on the exact road width at the subject location. As per the report of the Advocate-Commissioner, there is no consistency in the road width. The road width ranges between 12 feet and 20 feet at various points. In the absence of official record showing the road width, it cannot be said that respondents 5 and 6 have encroached on to the public road. Therefore, it cannot be said that building permissions were illegally granted by the municipal corporation warranting interference by this Court.

20. The only issue that remains is affecting of drainage existing very close to the

building under construction. As reported by the learned Advocate-Commissioner, the Water Supply and Sewerage Board has expressed that there is a possibility of damage to the drainage system in future because of the construction of building very close to drainage. Having regard to the apprehensions expressed by the Board, which appears to be valid, it is the responsibility of the respondents 5 and 6 to ensure that drainage system is not affected. They shall apply to the respondent board to shift the location of drainage system/strengthen the existing system so that no damage can be caused. It is for the respondent board to levy appropriate charges for undertaking the job of shifting the location of drainage system/strengthening the drainage system. Respondents 5 and 6 shall pay the charges as determined by the respondent Board. Until the location of drainage system is shifted or existing drainage system is strengthened, respondents 5 and 6 cannot undertake construction at the place where the drainage manholes are existing. Petitioners shall obtain certificates from the respondent Board and the same should be submitted to GHMC before commencement of construction. It is needless to observe that if respondents 5 and 6 deviate from the sanctioned plan, it is always open to the petitioner to complain against such deviations.

21. With the above directions, this writ petition is disposed of. There shall be no order as to costs. Miscellaneous petitions if any pending in the writ petition shall stand closed.

JUSTICE P.NAVEEN RAO

Date: 02.09.2015
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HON'BLE SRI JUSTICE P.NAVEEN RAO

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WRIT PETITION No.17028 of 2015

Date: 02.09.2015

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