

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

WRIT PETITION No.17872 of 2012

-
ORDER:-
-

This Writ Petition, under Article 226 of the Constitution of India, is filed by the petitioner, seeking the following relief/s:-

“....to issue an order or direction more particularly one in the nature of Writ of Mandamus declaring the illegal action of the respondents in trying to lay the road through the petitioner's house site in Sy.No.477-5 to an extent of 64 sq. yards situated in Kotapalle Village, Piler Mandal, Chittoor District, without issuing any notice and without acquiring the same, as illegal, arbitrary and in violation of Articles 14, 19 and 300-A of the Constitution of India and consequently direct the respondents to take up the aforesaid road work after acquiring the petitioner's house site which is needed for laying the road and pass such order or orders as this Hon'ble Court may deem fit and proper in the interest of justice.”

I have heard the submissions of the learned counsel for the writ petitioner and the learned Government Pleader for Panchayat Raj (AP) for the respondents. I have perused the material record.

The grievance of the writ petitioner is that the respondents are trying to lay a road through his house site in an extent of 64 square yards in survey no.477-5 situated in Kotapalle Village, Piler Mandal of Chittoor District without issuing a notice and without acquiring the same and that therefore, the attempted action of the respondents is illegal, arbitrary and is in violation of the provisions of the Constitution of India.

Resisting the writ petition, the fifth respondent had filed counter affidavit. Other averments apart, it is also stated in the counter affidavit that the petitioner had filed this writ petition presuming that a CC road will be laid in/over his house site; and, that after the petitioner had raised an objection for laying of the CC road, the work of laying of CC road was stopped and no damage was caused to the petitioner's property and that the petitioner has also given a letter stating that since the road was not laid in his land, he would withdraw the writ petition filed by him.

Though it is stated in the counter affidavit that a copy of the letter

dated 12.08.2014 said to have been given by the petitioner is enclosed to the counter affidavit, no such letter is enclosed to the counter affidavit filed before this Court.

The learned Government Pleader for Panchayat Raj and Rural Development (AP) appearing for the respondents had pointed out from the counter affidavit the contents to the effect that after the formation of CC Road was sanctioned by the Government and the road was laid upto the subject property of the petitioner, the work was stopped, when the petitioner had raised an objection; and, that the respondents are not aware of the right and title of the petitioner over the subject property and that therefore, he is put to strict proof of the same.

At the time of hearing, the learned counsel for the writ petitioner would submit that now that the work is stopped, the writ petition may be disposed of directing the respondents to acquire the land of the petitioner and pay adequate compensation to the petitioner or in the alternative, negotiate with the petitioner for consent award, if any, to be passed and pay adequate compensation, in case they intend to lay the road in/over the subject land of the petitioner.

The fact remains that the road was laid up to the subject property of the petitioner, but the work was stopped in view of the writ petition filed by the petitioner and as on today, no road was laid in and over the property being claimed by the writ petitioner. The fifth respondent had only stated in the counter affidavit that the respondents are not aware of the right and title of the petitioner over the subject land but, did not specifically deny the averment in the writ petition that the petitioner is having right and interest in the subject land of 64 square yards.

Be that as it may. In the fact and circumstances of the case, the respondents cannot lay the CC road over the property of the writ petitioner without acquiring the land and paying the compensation and following the procedure established by law. Hence, this Court finds that there is merit in the submission of the learned counsel for the writ

petitioner, which is alternatively made at the time of hearing and which is adverted to supra.

In the result, the writ petition is allowed in part directing the respondents to acquire if necessary, the required extent of land of the writ petitioner in accordance with the procedure established by law or in the alternative negotiate with the petitioner for a consent award to be made and pay adequate compensation and then lay the road in and over his property, in case, laying of such a road is necessary. There shall be no order as to costs.

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

M.Seetharama Murti, J

03rd December, 2015
Bvv