

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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Writ Petition No.18799 of 2011

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ORDER:

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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 241 sq. meters bearing Survey No.199/2, Patta No.107, Door No.37-1-179(A) situated at Kurnool Road, Ongole within boundaries North: Kurnool road, South: Puvvada Sivaiah shop, West: Sowmya Lodge, East: Harsha Lodge 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 petitioner and the learned Standing Counsel appearing for the Municipal Corporation, Ongole/2nd respondent. I have perused the material record.

3. The case of the writ petitioner, in brief, is this:

The property was acquired by the mother of the writ petitioner by virtue of a registered sale deed dated 30.04.2003. On her death, the property devolved upon the writ petitioner. He had given the subject shop on lease to a third party and the tenant is running a business in the name and style of 'Ramya Fast Foods' in the aforesaid property for the last 12 years. The business of the tenant is the only source of livelihood for him; and, the rents from the said property are the only source of livelihood for the writ petitioner and his family. While so, the 2nd respondent, for the purpose of extending the

road i.e., Kurnool Road had given markings to the shop of the petitioner to an extent of 36 feet width and 16 feet depth. Thus, a major portion of the shop of the petitioner is marked for the purpose of road widening. The 2nd respondent had issued a notice dated 08.04.2011; however, the same was affixed to the hotel on 03.07.2011 and it was addressed to the late mother of the petitioner. In the said notice, it is averred that the building was constructed without taking permission and that as per the Master Plan, the petitioner has to surrender some extent of property for obtaining building permission and that as the petitioner did not give consent for the extension of the road, the petitioner is required to surrender free of cost to an extent of 68.55 square meters and that in case of failure to surrender the said extent within seven days, appropriate action will be initiated. The said acts of the 2nd respondent are against rules and regulations as contained in 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. The respondents also did not initiate any steps under the Land Acquisition Act, 1894. Hence the action of the respondents in giving markings to the property of the petitioner without following the due procedure is *per se* illegal. In the circumstances, there is every likelihood of the major portion of the property of the petitioner being demolished. Hence, the petitioner is constrained to file this writ petition.

4. The 2nd respondent had filed a counter affidavit *inter alia* contending as follows: 'All of a sudden markings were given to the petitioner's building 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. The 2nd respondent gave a notice dated 08.04.2011 in Rc.No.1996/2011G1 to the petitioner but, the petitioner had refused to receive the same. Therefore, it was affixed to the wall of the building of the petitioner on 03.07.2011. The building was not covered by any permission. The petitioner also did not produce any such permission till date. The Master Plan for Ongole Town is in force from December 1978. For marking of sites and buildings for road widening, no permission is required to be taken. The petitioner had 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. The building of the petitioner is constructed in deviation and in violation of the Rules and even without permission though the building falls in the Master Plan Road widening of Kurnool Road. The building of the petitioner was constructed newly i.e., about seven years ago and unauthorisedly. The 2nd respondent has not started demolition of buildings falling in the Mater Plan Road widening, but, had removed certain encroachments like shades and sheds which were temporarily erected in the road margins. The 2nd respondent will follow the due process of law for the road widening. As per Section 18 of the A.P. Town Planning Act, 1920 it is the obligation on the part of the owner of the building to comply with the Master Plan. Hence the petition may be dismissed.'

5. At the time of hearing, the learned counsel for the petitioner 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 petitioner 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