

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.11976 OF 2012

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ORDER:

This petition is filed for a writ of *Mandamus* declaring the proceedings dated 13.03.2012, issued by the respondents 1 and 2 in respect of petitioners' property admeasuring in all 2000 Sq.Ys. bearing T.D.No.1263, covered by Sy.No.39/1A1/1A of Madhavadhara Village, within the limits of Greater Visakhapatnam Municipal Corporation, as illegal and arbitrary and for a consequential direction to the 3rd respondent to reconsider the building application submitted by the petitioners herein on 25.05.2011 and for a direction to the respondents not to dispossess the petitioners from the above said land.

The 4th petitioner is the Proprietor of 3rd petitioner firm and also the GPA holder of petitioners 1 and 2. The case of the petitioners is that the land admeasuring 2000 Sq.Ys bearing TD.No.1263, covered by Sy.No.39/1A1/1A of Madhavadhara Village, belongs to petitioners 1 and 2, each having 1000 Sq.Ys. and they have entered into a Development Agreement coupled with General Power of Attorney dated 05.08.2008 in favour of the 3rd petitioner of which the 4th petitioner is the Proprietor. Thereafter, the 4th petitioner submitted an application on 25.05.2011 seeking permission to the Greater Visakhapatnam Municipal Corporation (for short 'GVMC') for construction of a residential apartment in the aforesaid land. Thereupon the GVMC passed an order dated 04.06.2011 asking the 4th petitioner to get a clearance from the Visakhapatnam Urban Development Authority-1st respondent. Thereafter, the 4th petitioner approached the said authority by making an application dated 14.06.2011. Thereupon the 1st respondent passed the impugned proceedings dated 13.03.2012 in RC.No.21406/11/L4, rejecting the proposals for approval and also informed the 4th petitioner that the proposed site is effected in road widening i.e. Master Plan Road. Aggrieved by the same, present writ petition is filed.

The 1st respondent filed its counter justifying its action and also stated that the petitioner's request for site approval with a revised 60-0 road alignment was rejected by VUDA as the petitioner's site is getting affected in the proposed 60-0' road as per sanctioned master plan. It is also stated that the existing Master Plan was prepared by VUDA after making extensive survey of existing road pattern in the locality and sent to Government for approval; that the government has approved the sanctioned Master Plan vide G.O.Ms.No.345 MA & UD Department, dated 30.06.2006; and that the 60' Master Plan road is an important link road proposed on the periphery of residential area abutting to the hill of Simhachalam Devasthanam.

Heard learned counsel for the petitioner and Sri P.Jagadish Chandra Prasad learned counsel for the 1st respondent and Sri S.Laxmi Narayan Reddy, learned counsel for respondents 2 and 3.

The only ground on which the petitioners' application for building permission is returned by the respondents 2 and 3 vide proceedings dated 04.06.2011 is that the approved layout requires approval from the 1st respondent authority. When the petitioner approached the 1st respondent seeking approval, the 1st respondent returned the same on the ground that the site owned by the petitioner is getting affected by road widening. In the Counter it is stated that the 1st respondent after making extensive survey of existing road pattern in the locality sent the same to the Government for approval and thereafter, the Government approved the sanctioned Master Plan vide G.O.Ms.No.345 MA & UD Department dated 30.06.2006.

At the time of hearing the learned Standing Counsel was asked to produce the record as there are no proceedings to show that the petitioners' land is affected by road widening as per Master Plan.

A perusal of the G.O.Ms.No.345, dated 30.06.2006 also does not indicate

that the land owned by the petitioners in Survey No.39/1A1/1A of Madhavadhara Village is affected by the Master Plan. The learned Standing Counsel could not produce any record to show that the petitioners' land is affected by road widening.

Even otherwise, in case of road widening this Court in WP.No.34412 of 2014 held that the respondent authorities are bound to acquire the land by initiating proceedings under Section 32 of the HMDA Act, in accordance with the provisions of the 2013 Act, for acquisition of the portion of the land owned by the petitioner required by them for road widening and pay compensation to the petitioner.

In view of the above, the impugned order dated 13.03.2012, which is passed by the 1st respondent without any application of mind, is set aside. The proceedings dated 04.06.2011 issued by the respondents 2 and 3 are also set aside to the extent of holding that there is a proposed 60 feet wide road is passing through the petitioners' land. Since the learned counsel for the petitioners states that they will comply with conditions 1 and 3 of the proceedings dated 04.06.2011 issued by the respondents 2 and 3, the respondents are directed to consider the application of the petitioners in accordance with law subject to compliance of condition Nos.1 and 3 of the proceedings dated 04.06.2011 and other conditions if any prescribed in the rules and regulations, by the petitioners, within a period of six weeks from the date of compliance by the petitioners.

Accordingly 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

05.10.2015

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