

HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

Writ Petition No.21744 of 2007

Date: 08-07-2015

Between:

P.V. Ramana and others

.... Petitioners

AND

The Visakhapatnam Urban Development Authority,
Represented by its Managing Director,
Visakhapatnam.

.... Respondent

HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

Writ Petition No.21744 of 2007

ORDER:

This writ petition is filed challenging the proceedings in Rc.No.11756/94/11, dated 15-10-2003 issued by the respondent and for declaring the action of the respondent in not providing equal extent of plot admeasuring 160 square yards as agreed in O.S.No.635 of 2002 on the file of IV Additional District Munsif, Visakhapatnam dated 25-10-1995.

2. The case of the petitioner is that he is absolute owner and possessor of house site admeasuring 300 square yards situated in Survey No.40/5, Madhavadhara village, Visakhapatnam District. At the time of purchase of the said plot, there is a proposed road on the eastern side of the plot, which is clearly demarcated. But, one Ch. Basavaiah constructed RCC building on the said proposed road and the same was assessed by the Municipal Corporation, Visakhapatnam and there were other encroachments also on the

said proposed road. The respondent authority failed to remove the encroachers on the proposed demarcated road on the eastern side of his plot, and on the other hand, the respondent authority tried to change the alignment through his plot and the petitioner submitted his representation on 02-08-2007 and the respondent without considering the said representation proceeded with the work. Aggrieved by the said action, the petitioner filed O.S.No.635 of 1992 on the file of IV Additional District Munsif, Visakhapatnam and during the pendency of the suit, the respondent laid road through his plot and because of such laying the petitioner lost 160 square yards and at that time of laying road the respondent obtained no objection from the petitioner and the petitioner has given no objection subject to condition of the respondent providing alternative equal extent of site for which the respondent authority agreed, but the same is not provided to the petitioner and when the petitioner made number of representations to provide alternative site, the respondent authority issued proceedings in Rc.No.11756/94/F1, dated 15-10-2003 stating that alternative land admeasuring 74 square yards will be allotted. Aggrieved by the same, the present writ petition is filed.

3. Though the matter is admitted on 01-11-2007 and pending for the last seven years, no counter is filed by the respondent. The learned standing counsel for the respondent Corporation sought time for filing counter, but this court is not inclined to grant time as the respondent is obligated to file counter within six months as envisaged under Rule 12 (i) (a) and (ii) of the Writ Proceedings Rules, 1977.

4. The learned counsel for the petitioner submits that though the impugned proceedings referred to the undertaking alleged to have been given by the petitioner, the petitioner has not given any

such undertaking as alleged and no counter is filed to deny such fact and the same has to be accepted. More so, the official of the respondent authority as DW.1 deposed in O.S.No.635 of 1992 that the 1st respondent therein has agreed to give alternative equal extent of site which was lost in formation of 60 feet road. Admittedly, even as per the impugned proceedings, 140 square yards has been affected by formation of 60 feet road and no such undertaking has been referred to in the impugned proceedings except in the body of the proceedings. Since the contents of the writ affidavit are uncontroverted by filing any counter affidavit, the case of the petitioner has to be accepted treating the contents of the writ affidavit as true.

5. In view of the same, when the respondent authority have laid the 60 feet road by which the petitioner's property was affected and when they categorically stated in the suit that they provide alternative equal extent of land basing on which the suit was dismissed as infructuous, a duty cast upon the respondent authority to provide equivalent alternative site to the extent of 140 square yards as affected in formation of road to the petitioner as agreed in the suit.

6. Accordingly, the writ petition is allowed directing the respondent authority to provide alternative equal extent of land as indicated above. There shall be 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

Date: 08-07-2015

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