

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.13684 OF 2008

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ORDER:

This petition is filed for a writ of *Mandamus* declaring the high handed action of the respondent in forming a road leading from Madhurawada to Kapulauppada in the months March & April, 2006 on the Eastern side of petitioner's land in an extent of 60 cents from out of Ac.2.17 cents in Sy.No.109, T.D.No.2666 of Madhurawada, Visakhapatnam and not paying any compensation in spite of oral request and legal notice dated 28.04.2007 nor providing any suitable alternate land of equal potentialities, as illegal and arbitrary and for a consequential direction to the respondent to initiate the land acquisition proceedings under the Land Acquisition Act.

The case of the petitioner is that he is the owner of an extent of Ac.2.17 cents of land in Sy.No.109, T.D.No.2666 of Madhurawada, Visakhapatnam having purchased the same through a registered sale deed dated 23.01.2006 from Budumuri Appala Tata and others for a consideration of Rs.20 lakhs and obtained possession. While so, the respondents have formed a road leading from Madhurawada to Kapulappada in an extent of Ac.0.60 cents through the Eastern side of the petitioner's land, without acquiring the same and without paying compensation and without following due process of law under Land Acquisition Act in the month of March & April, 2006. Questioning the said action of the respondents, present writ petition is filed.

The 1st respondent filed counter stating that the said road is a Master plan road and original formation of work of this road was

done during the years 1995-1997 and afterwards further development of this road was done during the period 2005-2007 and it seems that the petitioner after formation of the road, had purchased the subject property for claiming compensation; and that the Engineering Wing of the VUDA had taken up the execution of work as per the road alignment fixed according to the Master plan proposals and peg marking was made on the ground by the Planning Wing of VUDA at that point of time and there was no objection from the petitioner's vendor nor from the petitioner. It is further stated that the petitioner with an ill motive, created a registered sale deed dated 23.01.2006 in his favour as if he purchased an extent of Ac.2.17 cents of land situated in Sy.No.109, T.D.No.2666 of Madhurawada, Visakhapatnam from one Sri Budumuri Appala Tata and others. The 1st respondent further denied the issuance of legal notice to it by the petitioner without having any legal or possessory rights in the subject land at the time of claiming compensation from VUDA on the basis of spurious sale deed document created by him and finally the respondents sought for dismissal of the writ petition.

The petitioner filed reply affidavit denying the contention of the respondents that in the year 1995-1997 itself original formation of work of the road was done. It is also stated that in the year 1997 there was a small road which was extended and developed during the year 2006 after purchase of the subject land by him. He further states that he issued a legal notice dated 28.04.2007 to the respondents, but they have failed to respond to the same. The petitioner also filed postal acknowledgment in proof of receipt of legal notice by the respondents. The petitioner also disputed the fact that he never raised any objection at the time of formation of

road. He further states that after his sale only the extension of the road was done including its development. It is not the case of the respondents that in the year 1995-1997 compensation was paid to my vendor and that the road was laid in their land or in the government land. If really the entire road was formed during the years 1995-1997 the land should have been acquired by the respondents and compensation would have been paid to his vendor. But the respondents have not produced any record to show that compensation was paid to his vendor.

In this case, the petitioner in support of his contention filed registered sale deeds through which he purchased the subject land of Ac.2.17 cents in Sy.No.109, T.D.No.2666 of Madhurawada, Visakhapatnam, from its owner and the same is not disputed by the respondents. The respondents also admitted the laying of road. The only issue that arises in this petition is whether the road was laid in the period 1995-1997 i.e. before purchasing of land by the petitioner. The 1st respondent in its counter stated that originally the road was laid in the year 1995-1997 and the same was further developed between the years 2005-2007. But, though this Court granted time, the learned Standing Counsel failed to produce any record to that effect. As such, the contention of the petitioner that the road was laid through his land after his purchase i.e. in the period 2005-2007, has to be accepted. Further, since the petitioner in the writ affidavit as well as in the reply affidavit stated that he objected when the respondents are trying to lay road through his land, the respondent cannot take a plea that there is no objection from the petitioner at the time of formation of road. Even according to the counter it is not the case of the respondents that the road was laid in the government land or that compensation was paid to

the petitioner's vendor. It is also not the case of the respondents that the road was laid as per any lay out plan. The plan produced by the Standing Counsel is only a master plan and even if any road is shown in the master plan the respondents have to acquire the land for laying road by paying compensation. In view of the same, the writ petition is deserves to be allowed.

Accordingly, the writ petition is allowed directing the respondents to initiate land acquisition proceedings in respect of the subject lands which are affected by laying of road through the said lands by the respondents within four months from the date of receipt of a copy of this order. Since it is stated by the learned Standing Counsel that similarly effected persons also made applications for grant of compensation, the petitioner has to further prove that he is the owner of the lands while receiving compensation. 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

09.09.2015
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