

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.26717 of 2008

ORDER:

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The case of the petitioner is that he is the owner of the land admeasuring Ac.0-08 cents in Sy.No.52 of Serlingampally Village and Mandal, Ranga Reddy District and the petitioner's name is also entered in revenue records. It is stated that there is a "Nala" through which 2" feet extent of water flow from the land of the petitioner. The respondents wanted to widen the said "Nala" and the petitioner's request for alternative land in lieu of portion of the land for widening was rejected. The same is evident through proceedings No.LC/144852003, and letter No.G/160/BP/1369/93, dated 11-06-2002 of the 5th respondent.

The petitioner claims that Executive Engineer, North Tank Division, Greater Hyderabad Municipal Corporation (G.H.M.C.) issued proceedings dated 15-03-2008, which shows that the respondents have already constructed "Nala". According to the petitioner, an extent of 122 square yards has been encroached by the respondents for widening of the said "Nala" and also an extent of 81.5 square yards, which the petitioner would be deprived of for widening of road. Thus total extent of 203.5 square yards belongs to the petitioner will be affected. Since aggrieved by the action of the respondents without initiating the land acquisition proceedings have made construction of "Nala" and also in view of road widening without paying compensation, this writ petition is filed.

Counter affidavits are filed by respondents 2 to 5 respectively stating that since no requisition is made by the requisitioning department, the

question of initiating land acquisition proceedings does not arise and payment of compensation does not arise. The requisitioning department has not issued any proceedings and as such no compensation will be paid without initiating land acquisition proceedings under the Land Acquisition Act.

In the additional counter affidavit filed by respondents 3 and 4, it is stated that then Commissioner of Serlingampally Municipality addressed a letter on 11-06-2002 to Mandal Revenue Officer stating that waste water and rain water is flowing through the petitioner's site and a 20" feet wide "nala" is required to be constructed and requested for alternative land to be allotted to the petitioner but the allotment was refused. It is submitted that Municipality constructed drainage along the government school premises. Alternatively, a separate "nala" was also constructed for regulating the natural flow of rain water and water from the water body/cheruvu which is far away from the petitioner's site. Due to the construction of the drain/nala, the petitioner was able to construct shed and presently there is a furniture shop in the said premises. It is also stated that existing drains as on the date of formation of G.H.M.C. are vested with the GHMC as per Section 291 of G.H.M.C. Act, 1955.

It is further stated that whenever a piece of land is converted in the plotted development, the developer has to earmark roads, drains, open spaces and provision for common amenities like transformers, garbage places etc., and the same has to be maintained by the local body. Keeping in view of the public health, the existing drainage was developed with proper design and channalized the flow of the drainage. Therefore, the action of G.H.M.C. in formation of drainage facility is done in the interest of public health. It is further averred that the petitioner is said to have applied for permission of construction of rooms and compound wall. As per plan submitted by the petitioner, the total area was 931.70 square yards and the road affected area is 127.11 square yards and the net area

is $931.70 - 127.11 = 807.03$ square yards. Whereas the averments in the affidavit are contrary to the plan, wherein it is stated that total extent of land is 968 square yards, out of which 122 square yards has been taken for widening of "nala" and an extent of 81.5 square yards would be depriving the petitioner's property in view of the proposed road widening. Further it is stated that as per the sale deed dated 06-07-2010 executed by the petitioner, the total extent is 846 square yards. As per the contention of petitioner, the land to an extent of 122 square yards has been taken for "nala" is not correct. As per his affidavit 968 square yards is the total extent out of which, he made application along with plan showing total area 931.70 square yards. Therefore, the remaining extent would be $968 - 931.70$ square yards = 36.30 square yards. It is further stated that after conducting survey by the competent authorities and assessing the extent of the land of the petitioner used for construction of "nala", the same will be compensated by following due process of law.

It is also stated that the boundaries mentioned in the G.P.A. which the petitioner is relying in respect of the property are different from the sale deed through which the petitioner sold away the lands.

Heard learned counsel for the petitioner and learned Standing Counsel for G.H.M.C. and learned Government Pleader for Respondents 1, 2 and 5.

In this case, it is to be seen that the petitioner asserts that he is the owner of 968 square yards in Sy.No.52 of Serlingampally Village and Mandal. He also asserts that about 203 square yards is being affected due to extension of "nala", which is passing through the land of the petitioner and also due to road widening. The respondent-authorities though constructed "nala" by expanding the same and by utilizing the land of the petitioner are denying to pay the compensation. In the counter, the respondent-Corporation disputing the identity of the property. However, states after proper survey and after the petitioner's land is identified necessary compensation will be paid.

In view of the facts and circumstances of the case, since disputed questions of fact cannot be decided in the writ petition and in view of the averments stated in the counter, the respondent-Corporation shall initiate survey proceedings in accordance with law after issuing notice to the petitioner and the petitioner shall also file necessary documents in proof of his title and after conducting the survey, the 2nd respondent shall take appropriate decision for payment of compensation in respect of the land, which is affected in respect of expansion of “Nala”.

Accordingly, the writ petition is disposed of. As a sequel thereto, miscellaneous petitions, if any, pending in this Writ Petition, shall stand closed.

A.RAJASHEKER REDDY,J

29-09-2015

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