

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.25706 OF 2008

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ORDER:

This petition is filed for a writ of *Mandamus* directing the respondents to pay the compensation for the land acquired as per the present market value in respect of the property of the petitioner being an extent of 180 Sq.Ys. situated in R.S.No.233/2, Gunadala Village, Vijayawada Taluq, Krishna District.

The case of the petitioner is that it is a society registered under the provisions of the Societies Registration Act and the petitioner has purchased an extent of 3509.277 Sq.ys, situated in R.S.No.233/2, Gunadala Village, Krishna District from its predecessor-in-title i.e. 'The Roman Catholic Diocese of Hyderabad Deccan Society' for a valuable consideration under a registered sale deed dated 02.02.1979. When the matter stood thus, the respondent Corporation demolished the compound wall which is situated on the northern side to the petitioner's property for road widening without any notice. Aggrieved by the highhanded action of the 1st respondent Corporation, the petitioner has submitted several representations questioning the highhanded action of the respondent Corporation. Though several representations are submitted, the Corporation failed to give any reply. Thereafter, the petitioner has constructed a new compound wall almost 8 feet inside to the old wall and gate. While so, the 1st respondent has issued a notice on 09.06.2008 stating that it is intending to construct drainage and in the event of collapse of the compound wall, it shall not be held responsible. Immediately the petitioner approached the Commissioner of the 1st respondent and submitted a representation.

But, unfortunately, on the same day the entire wall which was constructed newly to a span of almost 40 feet was demolished without any prior notice and intimation. Thereafter, the petitioner submitted another representation dated 26.07.2008 marking a copy of the same to the District Collector, Krishan, Machilipatnam. Having received the said representation either the 1st respondent or the District Collector failed to take any action. Having waited for some time, the petitioner submitted another representation dated 06.10.2008. The petitioner also stated that on a calculation of the correct market value basing on the market value certificate issued by the Joint Sub-Registrar, Gunadala, dated 11.11.2008, the 1st respondent Corporation has occupied an extent of about 180 Sq.Ys. of the petitioner's land for which the market value to be paid is estimated at Rs.26 lakhs which includes the value of construction of a compound wall and the cable. It is also stated that the respondent Corporation through its proceedings dated 06.10.2008, accorded permission for reconstruction of the compound wall agreeing and accepting about the demolition of the compound wall in the road widening process. But, the respondent Corporation having taken possession of the petitioner's property failed to pay a single pie towards the compensation to the petitioner. Aggrieved by the same, present writ petition is filed.

The 1st respondent filed counter affidavit stating that the 2nd respondent has taken up the widening of Eluru Road (Karl Marx Road) Phase-III to a width of 90'-00". Originally, as per the sanctioned zonal development plan of Vijayawada, though the proposed road width of Eluru Road is 120'-00". But on request of the property owners and as per the orders of the District Administration, the widening of Eluru Road was taken up for 90.00", since the

property owners informed orally that they will hand over the site required for road widening to a width of 90-00" at free of cost. Accordingly, most of the property owners have given their consent letters accepting to handover the road widening affected portion of their sites at free of cost, and the road widening process is in progress. It is further stated that the petitioner's society, while taking permission in B.A.No.1288/02, dated 22.10.2002 for construction of additional three storied building in the premises of scheduled property have already given undertaking to Vijayawada Municipal Corporation on Rs.100/- NJS Paper accepting to handover the site required for Eluru Road widening a width of 120-00" as per the sanctioned Zonal Development Plan at free of cost. Subsequently, the 2nd respondent has taken up widening of Eluru road to a width of 90-00" only as stated supra. It is further stated that the petitioner's society has given their consent letter afresh to the answering respondent Corporation dated 18.10.2008 accepting to hand over their site measuring an extent of 62.93 Sq.Ys. affected under road widening of eluru Road to a width of 90-0" subject to the following conditions:

- i) I shall not be eligible for any land compensation for the site affected under road widening.
- ii) I shall be eligible for payment of structural compensation for the building portion affected under road widening as estimated by the Engineering Section of the Vijayawada Municipal Corporation.
- iii) I shall be eligible for additional FAR and other benefits as per the provisions of G.O.Ms.No.33, MA, dated 03.02.2001.

It is further stated that immediately after receipt of the

consent letter from the petitioner's society, the answering Respondent Corporation has issued FAR Bond dated 21.10.2008 to the petitioner society and obtained acknowledgment; and that as per one of the aforementioned conditions, the petitioner's society stated that they are not eligible for any land compensation for the site affected under road widening. It is further stated that the answering Respondent Corporation has never occupied or encroached the site of petitioner's society high handedly; that the petitioner's society though given the undertaking on Rs.100/- NJS paper accepting to handover the required portion of their site i.e. 156.79 Sq.Mts. for widening of Eluru Road to a width of 120-0" at the time of obtaining building permission in their favour from the answering respondent Corporation and consent letter given afresh dated 18.10.2008 accepting to hand over the site i.e. 62.93 Sq.Ys. required for road widening to a width of 90-0" at free of cost. It is further submitted that as per the second condition in the consent letter given by the petitioner's society, the answering Respondent Corporation has prepared to pay the structural compensation of the compound wall affected in the road widening. But, by suppressing all the above facts, the petitioner-society has approached this Court, hence prayed to dismiss the writ petition.

The petitioner-society filed reply affidavit stating that the respondent Corporation under threat obtained consent letters from the land owners and also reiterated the contents in the writ affidavit.

Heard Sri V.S.R.Anjaneyulu, learned counsel for the petitioner and Sri T.Bala Swami, learned counsel for the 1st respondent and Smt.K.Mani Deepika, learned counsel for the 2nd respondent.

When this matter is listed on 29.07.2015, there was no representation on behalf of petitioner and the counsel for the respondent Corporation Sri T.Bala Swamy represented that though the Corporation has agreed for issuance of FAR bonds for acquisition of land from the petitioner, the petitioner filed the present writ petition.

When the matter is listed on 19.08.2015, time was sought by the learned counsel for the petitioner for impleading CRDA. Today, the said implead petition is allowed.

The case of the petitioner is that without following due process, road widening was affected by the 1st respondent Corporation. In the counter it is specifically stated that the petitioner and also other land owners have given consent letters and basing on the same road widening was affected. It is also stated in the counter that petitioner has given an undertaking that they will not claim any land compensation except claiming other benefits and that though the structural compensation was being assessed by the respondent Corporation, the petitioner filed present writ petition. In the reply affidavit the petitioner has not denied the fact that they have given consent letters but states that the respondents obtained the consent letter under coercion. Nothing is stated in the writ affidavit with regard to coercion. Now having given consent letters and having accepted to take other benefits, petitioners are estopped from contending that they are not being paid compensation. More so, the aspect of consent letters has been suppressed in the writ petition and the writ petition is liable to be dismissed on the sole ground.

Since the respondent Corporation in the counter stated that

the petitioners are entitled for structural compensation for the structures which are affected in the road widening process and that it has assessed compensation towards structures as per their entitlement, the writ petition is disposed of with a direction to the 1st respondent Corporation to pay structural compensation to the petitioner. However, it is open for the petitioner to make an application for payment of structural compensation and the same may be considered accordingly to law. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any pending shall stand closed.

A.RAJASHEKER REDDY, J

26.08.2015
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