

HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

Writ Petition No.18440 of 2014

Date: 27-01-2015

Between:

Punna Kour @ Punna Bai

.. Petitioner

AND

The State of Telangana, represented by its Principal
Secretary, Municipal Administrations, Secretariat,
Hyderabad and 2 others

.. Respondents

HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

Writ Petition No.18440 of 2014

ORDER:

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This writ petition is filed for a mandamus declaring the action of the respondents in demolishing the petitioner's mulgies and house bearing No.2-4-28 to 37 situated at Sikhwadi, Karimnagar Town, Karimnagar without following the procedure under the Land Acquisition Act and without paying compensation as illegal and arbitrary and for a consequential direction to the respondents to initiate the land acquisition proceedings.

2. The case of the petitioner is that she is aged 75 years and owner and possessor of the property bearing No.2-4-28 to 37 (Old Nos.2-4-41 and 2-4-49) situated at Sikhwadi, Karimnagar Town, Karimnagar District and he constructed the said house after obtaining permission from the then Karimnagar Municipality in the year 1980 and 1988 respectively. The petitioner constructed shops in the ground floor and the first floor after obtaining

permission from the 3rd respondent and is paying taxes to the Corporation regularly. It is stated that the Government issued G.O.Ms.No.585, dated 29-12-2011 for widening the road from 80 feet to 100 feet road Jublee Kaman Chowrastha to Geeta Bhavan Chowrastha and after issuance of the said G.O., the Corporation had started road widening process and without giving any notice and without acquiring the property and paying any compensation, the 3rd respondent demolished the mulgies on 24-02-2014, consequent upon which, the petitioner got issued a notice on 02-03-2014 to the 2nd respondent complaining about the demolition. The 3rd respondent demolished the entire 13 shops and house consisting of ground and first floors bearing H.No.2-4-28 to 37 affected in road widening scheme from Jublee Kaman road to Geetha Bhavan. Thereafter, the petitioner made a representation to the 2nd respondent for allotment of 13 shops to her in the Municipal Shopping Complex as she is incurring a loss of Rs.1.00 lakh per month to carry out the business in fresh mulgies and the petitioner sought for allotment of Government land in Survey No.285 and that the respondent authorities have demolished his mulgies without issuing any notice and without acquiring the land under due process of law. Aggrieved by the same, the present writ petition is filed.

3. The 3rd respondent filed its counter admitting road widening from Kaman Chowrastha to Geetha Bhavan Chowrastha to 100 feet road from existing 80 feet road and as per the resolution of the 3rd respondent in resolution No.598, dated 06-03-2010, the 3rd respondent Corporation conducted a meeting with the affected persons on 12-05-2011 and 20-05-2011 wherein the petitioner agreed for 100 feet wide road proposal. Thereafter, the

3rd respondent Corporation submitted proposals to the Government for sanctioning of 100 feet road and the Government issued G.O.Ms.No.585 MA & UD (H1) Department, dated 29-12-2011 for widening the road from 80 feet to 100 feet from Jublee Kaman Chowrastha to Geetha Bhavan Chowrastha. It is also stated that after issuance of the G.O. and as per the consent given by the affected persons including the petitioner, the 3rd respondent Corporation had taken up the road widening process and challenging the said G.O., some of the affected persons including the petitioner filed W.P.No.1372 of 2012 and this Court granted status quo on 25-01-2012 and as per the orders of the Court, the 3rd respondent Corporation demolished Government buildings only and on 24-06-2012 the petitioner and other building owners approached and informed the authorities that they voluntarily removed their respective structures affected by road widening by engaging their own labour and that the petitioner and other building owners, who gave their consent for widening of 100 feet road in the meeting held on 12-05-2011, cannot ask for any compensation. It is further stated that the petitioner along with all building owners abutting the road have already given their consent for road widening from 80 feet to 100 feet during the year 2011 and accordingly, they voluntarily demolished their respective buildings up to the affected depth during the year 2012 and the petitioner also got demolished her building up to depth of 10 feet to an extent of a portion of a building and the portion of the building consisting of 3 shutters was left as usual and that the entire building of the petitioner was constructed against the sanctioned plan without any set-backs and also by encroaching into the road and the balcony of un-demolished portion of the building was projecting to the extent of 5 feet towards the road. It is further stated that as per the

consent given by the petitioner, the Corporation started removing the balcony and encroached portion, but the petitioner on the ill-advice of her relatives and family members, again came and protested for removing the affected portion of the remaining building, and hence, the Corporation partly removed the road affected area and stopped. It is further stated that the petitioner along with all other persons whose buildings were affected have voluntarily on their own accord and without demanding any compensation got removed the road affected portion of the buildings, and hence, the 3rd respondent sought for dismissal of the writ petition.

4. The petitioner filed her reply affidavit stating that the petitioner has never given any consent to the Corporation for 100 feet road widening and even after granting status quo orders by this Court in W.P.No.1372 of 2012, the 3rd respondent demolished the properties violating the orders of this Court and the petitioners therein filed C.C.No.867 and 1212 of 2012 and the same is pending. The petitioner denied that she herself demolished mulgies voluntarily. It is further stated that the petitioner, after purchasing the property, constructed the building after obtaining permission from the then Municipality and there is no deviation and there is no encroachment on the road. The 3rd respondent demolished the structures after taking police protection vide proceedings dated 22-02-2014 and the petitioner made a representation dated 09-07-2011 to the respondent authorities not to demolish the structures in his land and requested to widen the road duly following RDP plan 4/87 and suggested certain other systems.

5. Heard the learned counsel for the petitioner and the learned standing counsel for the respondents.

6. The fact that the petitioner is the owner and possessor of

the premises bearing No.2-4-28 to 37 (Old Nos.2-4-41 and 2-4-49) situated at Sikhwadi, Karimnagar Town, Karimnagar District is not denied or disputed by the 3rd respondent Corporation. It is not in dispute that the petitioner obtained permission for construction of the structures in her land. It is also not in dispute that the proposed wide road is passing in front of the house of the petitioner Jublee Kaman to Geetha Bhavan affecting some portion of her house. The only issue that is to be considered herein is whether the petitioner herself given consent for the proposed road widening scheme affecting some portion of her house. In the counter, the 3rd respondent Corporation stated that as per the resolution dated 06-03-2010, the Corporation conducted a meeting with the affected persons on 12-05-2011 and 20-05-2011 convincing them for deprivation of their properties and the necessity of the proposed road widening and it is further stated that the owners including the petitioner have given their consent for handing over their affected portions for road widening purpose without claiming any compensation. This itself shows that the 3rd respondent has not denied the title and construction of the shops and residential portions. The 3rd respondent further stated that consents were obtained before undertaking road widening programme. When the learned standing counsel for the 3rd respondent was asked to produce the consent letter alleged to have been given by the petitioner, he produced some proceedings of the meetings in which the petitioner's signature is not found and no consent letter given by the petitioner is found in the same, thus, the 3rd respondent has blatantly made false statements in the counter affidavit. The 3rd respondent being a public authority is not expected to file such false affidavits before the Court that too in a

Constitutional Court. The other defence taken by the 3rd respondent Corporation in the counter that the petitioner herself demolished the structures on her own and she is not entitled for compensation cannot be accepted and the officer representing the 3rd respondent Corporation should have minimum basic knowledge that compensation should be paid to the affected persons, who are deprived of their properties in road widening programme undertaken by the respondent Corporation. It is unbelievable that the petitioner herself demolished the structures having obtained status quo orders in another writ petition challenging the G.O. issued by the Government for road widening. This is nothing but a high handed action of the officials of the 3rd respondent Corporation in laying the road without following the procedure envisaged under the law. The officers of the 3rd respondent Corporation are not expected to take the law into their own hands and demolish the properties of citizens. Even the petitioner has complained about violation of the orders and filed contempt case with a fond hope that she will be at least be paid compensation or allotted alternative shops, for which purpose, she made a representation to the 3rd respondent Corporation, but the learned standing counsel for the 3rd respondent Corporation casually says that the 3rd respondent Corporation will consider the same. The 3rd respondent, even after demolishing the structures illegally and laying road, did not take the issue of payment of compensation seriously, but filed the counter with untenable grounds which cannot be countenanced.

In view of above facts and circumstances, the action of the 3rd respondent in laying the road on the property of the petitioner without following the due procedure envisaged under the

law is highly arbitrary, illegal and unconstitutional and violative of Article 300-A of the Constitution of India and the same is deprecated.

In view of above facts and circumstances, the writ petition is allowed directing the 3rd respondent Corporation to take necessary steps immediately for allotment of shops to the petitioner as per its resolution dated 14-09-2013 within a period of three (3) months from the date of receipt of a copy of the order. In case the 3rd respondent Corporation is unable to allot shops as per resolution dated 14-09-2013 within the aforesaid period, it shall take steps for payment of compensation according to law within three (3) months thereafter. In view of the insensitive and adamant attitude of the 3rd respondent Corporation for untenable grounds in the counter and high handed action of the 3rd respondent Corporation, the 3rd respondent is directed to pay costs of Rs.25,000/- (Rupees twenty five thousand only) to the writ petitioner and the same shall be recovered from the salary of the concerned officials, who are responsible for such actions.

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

A. RAJASHEKER REDDY, J

Date: 27-01-2015

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