

HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

WP No.23511 of 2012

ORDER::

This writ petition is filed seeking to issue a writ of mandamus to declare the endorsement of the 2nd respondent-Commissioner, GHMC, Hyderabad, in No.982/ACP/C9/TPS/GHMC/2012, dated 17-07-2012, basing on the representation of the 5th respondent, dated 02/07/2012 for demolition of the compound wall of the property to an extent of 192 square yards, situated at H.No.3-5-911, AITUC Lane, Himayath Nagar, Hyderabad, without any notice to the petitioner as being illegal, arbitrary and contrary to the order passed by this Court in Writ Petition No.18358 of 2006, dated 30-10-2006 and to quash the same and pass consequential orders thereon.

2. The case of the petitioner is that he is owner and possessor of the property bearing H.No.3-5-911, AITUC Lane, Himayath Nagar, Hyderabad, admeasuring 192 square yards, having purchased under registered sale deed bearing document No.2324 dated 03/07/1974 and since then he has been in peaceful possession and enjoyment of the same. That he constructed ground, first and second floors in the said property and the boundary

wall of the said property extends to opposite building, till which, private road is said to be laid by the petitioner and his neighbours. There is no throughfare along the road and the road is closed by the compound wall of the petitioner. That the petitioner since 30 years has been in peaceful possession and enjoyment of the same without any hindrance from anyone. While matters stood thus, the 5th respondent, which is an educational institution wanted access to its premises from Himayathnagar side. When the respondents forcefully sought to create a road, the petitioner and his neighbours opposed the same, then the respondents reluctantly restrained themselves from forming a road from Himayathnagar side. That after attempts of the respondents to form a road failed, they somehow connived with the staff of the respondents 2 to 4 and influenced them to demolish the petitioner's compound wall. Under those circumstances, the petitioner on earlier occasion approached this Court by way of filing writ petition being WP No.18358 of 2006 against the respondents and this Court by order dated 30/10/2006 disposed of the writ petition directing the 2nd respondent-Commissioner, GHMC not to proceed with any demolition activity of the compound wall in question, unless and until due process of law is followed. It is stated that the compound wall covering the private land

formed by the petitioner and his neighbours is in existence for more than three decades and at no point of time anybody had any passage through the said private road. As such, the 5th respondent, on failing to forcibly create a passage has now resorted to the act of influencing respondents 2 to 4 and threatening the petitioner and his neighbours to demolish the compound wall and create way for the 5th respondent-educational institution. That since the compound wall is purely private property, it is unconstitutional for the respondents to deprive the petitioner and his neighbours of the property and create a road for the 5th respondent.

3. That that the 2nd respondent-Commissioner, GHMC passed the impugned order under the nomenclature of endorsement vide No.982/ACP/C9/TPS/GHMC/2012, dated 17/07/2012, basing on the representation dated 020/7/2012 said to have been made by the 5th respondent, which categorically states “with reference to your representation cited, permission is hereby accorded to re-open the old gate of Keshava Memorial Girls High School, premises No.3-5-984/4, towards 15 feet wide land beside Agarawala Mithai Shop, which is leading to Himayathnagar main road.

4. It is also stated that the petitioner filed suit OS No.1707 of 2012 on the file of IV Junior Civil Judge, City Civil Court at Hyderabad, for perpetual injunction against respondent 2 to 5 and pending suit, an interlocutory application IA No.458 and 2012 filed for grant of temporary injunction was refused, against which an appeal has been filed in which notices are ordered and the same is pending adjudication. It is stated that on 28/07/2012, at around 10.30 p.m., when the petitioner was taking rest, the 5th respondent with the assistance of the respondents 2 to 4 came over to the said compound wall for demolition and partly damaged the wall.

5. The grievance of the petitioner is that the said impugned endorsement has been passed by the 2nd respondent without reference to the earlier order passed by this Court in WP No.18358 of 2006 and the petitioner was not given any prior notice, muchless afforded any opportunity of personal hearing in the matter and, therefore, the impugned order is liable to be quashed.

6. Counter affidavit is filed 4th respondent-Assistant City Planner, GHMC, Hyderabad, on his behalf and also representing respondents 2 & 3. It is stated that petitioner has already filed suit OS No.1707 of 2012 seeking for perpetually injunction against respondents

and the same is pending, and pending suit, the petitioner again filed the present writ petition seeking the self same relief, as such, the writ petition is not maintainable. That 5th respondent-institution has approached the respondents through letter dated 02/07/2012 seeking to permit him to reopen the old gate leading to Himayathnagar main road connecting to their institution and upon receiving the said letter, the officials of the Corporation inspected the site and found that an old gate is existing facing the road and a wall is also existing against the said road. That if the said wall is removed, the gate can be used for ingress and egress of the school students of 5th respondent-institution. That the Corporation in exercise of its discretionary powers issued the impugned letter dated 17/07/2012 and accorded permission to reopen the old gate of 5th respondent-institution facing towards 15 feet road leading to Himayathnagar main road. That the petitioner is not the exclusive owner of the lane and he has no right and title over the private road and it is vested with the Corporation and the petitioner cannot claim exclusive right over the said road. When once the Corporation takes over the property and provide amenities like electricity, water and drainage through the said road and

the road is made available to public use for ingress and egress, it shall become a public road. That in respect of all public roads, title vests with the Corporation. That even as per the provisions of Public Premises Act, the said road is a public road and no individual can claim any exclusive right by defining the same as private road. That the discretionary power exercised by the respondent is in the interest of the public at large to use the road. That the officials of the Corporation, on inspection found that there is an old gate existing facing the Himayathnagar road and as such the petitioner had no vested right to object re-opening of the gate which is already in existence.

7. 5th Respondent-Keshava Memorial Educational Society, Hyderabad, also filed counter affidavit stating that 5th respondent- institution was functioning since 1940 and rendering services to the society. Earlier, the Society was running a Girls school and as there was a minimal strength, for some time, the gate in question was not used and a wall was constructed, when the gate was damaged. That at present the 5th respondent-institution is being run in this premises with good strength of students. That the other entrance of the institution opens into a lane where there is a mosque it

becomes crowded in peak hours and for the convenience of the students, gate was restored. The wall at the existing gate was of the 5th respondent and the petitioner has nothing to do with the said compound wall as the compound wall does not pertain to the property of the petitioner. The compound wall protects the property of the 5th respondent and not the property of the petitioner. That petitioner has not filed any document to show that he has an exclusive right over the public lane. That the lane vests with the GHMC which made the road. That as the strength of the students of the school increased, the 5th respondent-institution wanted to reopen the old gate which was already in existence earlier. That the petitioner has already filed civil suit for the same relief, and, therefore, cannot maintain parallel proceedings in two forums.

8. Heard the learned counsel for the petitioner, learned Government Pleader for Municipal Administration for R-1, learned Standing Counsel for GHMC appearing for respondents 2 to 4 and learned counsel for R-5.

9. The grievance of the petitioner is that the vendor of his land formed a kutchra road of 15 feet width in between the plots from south to north up to

Himayathnagar main road for joint enjoyment of the owners of the respective plots owners and the petitioner is entitled to use the kutchra road without blocking or creating any structures thereon exclusively by him and other plot owners. But the contention of the respondents is that the road that was formed in front of the petitioner's house, is not for the exclusive use of the petitioner and he has only limited right to the extent of ingress and egress as amenities *viz.*, electricity, water and drainage are provided by the respondent-Corporation. It is not disputed by the petitioner that the respondent-Corporation has provided the civic amenities. It is also not disputed by the petitioner that there was a gate at the end of the road. The reason assigned by the 5th respondent-institution for closing the gate earlier was that at that time, the strength of the students in the high school was minimal and, therefore, due to security reasons it was closed. It is nobody's case that the gate is erected recently. When once civic amenities are provided by the respondent-Corporation, it becomes a public road and the petitioner cannot claim exclusive right over the said road. If the gate is re-opened and used for ingress and egress of the children of the 5th respondent-institution it is only for the convenient ingress and egress of the students.

Moreover permission to reopen the gate was given to open an existing old gate and not a new gate to be created. That apart, the petitioner cannot maintain parallel proceedings seeking for the self same relief in two forums. Under these circumstances, there is no merit in the contention of the petitioner that the respondent-Corporation erred in granting permission to the 5th respondent-institution to re-open the old gate. The writ petition is meritless and it is accordingly dismissed. Miscellaneous petitions, if any pending in this case shall also stand dismissed. There shall be no order as to costs.

A. RAJASHEKER REDDY, J

Dated: 15-09-2015

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HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

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Dated: 18-09-2015

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