

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.9044 of 2012

ORDER:

This writ petition is filed seeking to issue a writ of *Mandamus* declaring the action of the respondents more particularly, respondent No.2 in directing the petitioners to remove the structures and hand over the vacant land of the premises bearing Door Nos.59A-1-1, 59A-3-3/2B, 59A-4-6, 59A-5-11, 59A-5-12 and 59A-6-11-2 respectively situated in Patamata of Vijayawada Municipal Corporation limits as illegal and arbitrary, and consequently, to direct respondent Nos.2 and 3 to widen the road in accordance with the proceedings vide letter No.C3-1559/79-1, dated 20.3.1981 of respondent No.3.

2. Case of the petitioners is that they are the owners and possessors of the aforementioned properties and the said properties are located on the southern side of road leading from National Highway No.5 to Autonagar Junction known as Gurunanak Road. Petitioner Nos.2 to 6 have constructed buildings in their respective sites after obtaining building permission from competent authority including Vijayawada Municipal Corporation. In respect of the building of petitioner No.2, as there are deviations to the initial sanctioned plan, he has applied for regularization and the Municipal Corporation has regularized the deviations in the year 1996.

Respondent No.3 issued notices bearing Rc.No.G2-45405/07/TPS-IV 17-3 to the petitioners directing them to remove the affected portion of the building within 15 days. The said notices were served on the petitioners during the second week of March, 2012. In the said notices, it is stated that respondent No.3 Corporation has contemplated to widen left over part of Gurunanak Road to a width of 80'-0" as per the sanctioned master

plan from NH-5 to Autonagar Junction and in the notice, it is mentioned that the following extents are affected by virtue of the proposed road widening:

Petitioner's Name	Total extent of area	Structure effected	Effected site
Y.Govinda Raju Babu	1000 sq.yards		321 sq.yrds
Ch.Ramachandra Rao	167.00 sq.yrds	2041 sq.ft.	103.11 sq.ft.
M.Achaiah Babu	276.05 sy.yrds	1146 sq.ft.	111.33 sq.ft.
D.Krishna Mohan	181.00 sq.yrds		135.55 sq.yrds.
G.Venkaiah		520 sq.ft.	116 sq.ft.
B.Bhagavan Das	242 sq.yrds	386 sq.ft.	125 sq.ft.

As per the plan annexed to the notices issued to the petitioners, there exists 50 feet road on the northern side of the petitioners' properties and respondent No.3 Corporation proposes to widen the road on both sides of the existing 50 feet road so as to make it as 80 feet road. The petitioners' properties are located in the sanctioned layout known as P & T Colony. The said colony is located on the southern side of Donka road from NH-5 Bypass Road leading to Autonagar, which is proposed for widening to 80 feet as per the sanctioned master plan of Vijayawada City. The master plan was approved in the year 1969, however, when the layout was sanctioned in the year 1980, the authorities have not earmarked the road widening portion in the approved layout. On noticing the discrepancy, petitioner Nos.5 and 6 have made representations requesting the authorities to change the alignment, as there exists open site on the northern side of the road. Upon surveying the area and upon realizing the fact that it is a mistake committed by the authorities, respondent No.3, vide its letter No.C3-1559/79-1, dated 20.3.1981, has approved the change of alignment and as per the said proceedings, the road has to be widened on the northern side of the Donka Road without affecting the buildings of the petitioners. After issuance of the said proceedings, the officials of

respondent No.3 have sent several requisitions requesting respondent No.2 to widen the road without affecting any structures, as the required space for widening can be made available from the open space located on the northern side of the road. On the northern side of the proposed road, the site is a open site and as per the earlier decision of respondent No.3 and other authorities, the change of alignment was approved long back and therefore, the action of respondent No.2 proposing to widen the road on both sides of the existing road by demolishing the structures of the petitioners is illegal, arbitrary and contrary to the approved alignment.

Further, respondent No.2 also seeks to take possession of the petitioners' properties without even initiating acquisition proceedings, as contemplated under the provisions of the Hyderabad Municipal Corporation Act, 1955 read with the Land Acquisition Act, 1894. Though the proceedings issued to the petitioners are described as notices, respondent No.2 virtually directed the petitioners to remove the affected portion and hand over the possession of the affected area to the Corporation. If the land on northern side is utilized for the proposed road widening, the large public exchequer would be saved. Apart from that, the respondents' action in seeking to widen the road on southern side would affect the line of road also. Hence, they filed the present writ petition.

3. Counter-affidavit is filed on behalf of respondent No.3 stating that Gurunanak Road is proposed for widening to 80'-0" as per Zonal Development Plan of Vijayawada sanctioned in G.O.Ms.No.674, Municipal Administration, dated 29.12.2006, and accordingly, notices were issued to petitioners requesting them to surrender the road affected portion. The respondent Corporation informed the petitioners that it is willing to give Transfer of Development Rights (TDR) bonds under the provisions of G.O.Ms.No.281 Municipal Administration, dated 01.04.2008, in lieu of site cost. The petitioners were also

requested to produce copy of site ownership documents and approved plan copy of the building so as to decide the reasonable compensation of structure within 7 days from the date of receipt of communication. Layouts have been approved abutting the proposed 80'-0" wide Gurunanak Road. Alignment shown in layout is different with alignment proposed in the present Master Plan which is in force. The respondent Corporation must implement the same by acquiring the road affected portion as per law.

The respondent Corporation issued notices under Sections 146 and 147 of the Hyderabad Municipal Corporation Act and also informed about the payment of compensation on production of necessary required documents. Respondent No.2 Authority, before finalizing the road pattern of present Master Plan, called for objections and suggestion from general public of Vijayawada under Section 8(4) of the A.P. Urban Areas (Development) Act, 1975 and after considering the objections received and basing on the technical scrutiny, the Authority prepared the development plan and sent the same to the Government for its approval under Section 12 of the A.P. Urban Areas (Development) Act. The petitioners might have raised their objections on required alignment of road at the time of notification. On both sides of the existing roads, there are private sites and no Government lands are available. The respondent Corporation is following due process of Law in the process of road widening and hence, prayed to dismiss the Writ Petition.

4. Heard learned counsel appearing for the petitioners, learned Government Pleader for Municipal Administration (Andhra Pradesh) appearing for respondent No.1, Smt K.Mani Deepika, learned Standing Counsel appearing for respondent No.2, and Sri T.Balaswamy, learned Standing Counsel appearing for respondent No.3.

5. This Court has passed an interim order on 04.04.2012 directing the respondents to follow the due process of law, in the event of seeking to demolish the property of the petitioners for the purpose of road widening.

6. In the counter also, it is admitted that the respondent Corporation issued notices under Sections 146 and 147 of the Hyderabad Municipal Corporation Act requesting the petitioners to surrender the properties in question for widening of Gurunanak Road and that the respondent Corporation is following the due process of law.

7. In view of the same, since it is admitted that the lands belonging to the petitioners are affected by road widening, the respondents shall follow the due process of law before affecting demolition of the properties of the petitioners or dispossessing the petitioners from the aforementioned premises, if the petitioners are not willing to accept the compensation offered by the respondent Corporation.

8. With the above direction, the Writ Petition is disposed of. There shall be no order as to costs. Miscellaneous Petitions pending, if any, in this Writ Petition shall stand closed.

JUSTICE A.RAJASHEKER REDDY

Date: 24.8.2015
AMD

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

-
-
-
-
-
-
-
-
-
-

-
-
-
-
-
-
-
-

-
-
-

WRIT PETITION No.9044 of 2012

-
-
-

DATE: 24.8.2015

AMD