

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

Writ Petition No. 8019 of 2012

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ORDER :
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This writ petition is filed assailing the inaction on the part of the respondent-authorities in implementing and maintaining 90 feet wide road with Electrical High Tension Line (HTL) running all along it covered by Lay-out plan No.4/87 viz., Master Plan for Mahabubnagar town; existing in front of the row houses including that of the petitioner's house bearing No.8-3-48/B/1/A and passing through the Teachers' Colony, Mettugadda, Mahabubnagar.

2. It is the case of the petitioner that she is the sole and absolute owner of house bearing No.8-3-48/B/1/A situated at Teachers' Colony, Mettuguda, Mahabubnagar, having constructed the same with the building permission dated 20.06.2002 issued by the Commissioner, Mahabubnagar Municipality and that she is in peaceful possession and enjoyment of the said property. The house of the petitioner is one of the row houses in the locality and 90 feet road exists opposite to the row of houses with an electrical Hi Transmission Line running all along it. That in the Master Plan of Mahabubnagar approved by the Director of Town and Country Planning, Andhra Pradesh, through Layout Plan No.33/62, the width of the disputed road was shown as 100 feet. However, through subsequent Layout Plan No.4/87, the said road is reduced to 90 feet because of illegal encroachments.

3. While so, the 6th respondent claiming himself to be the purchaser of a piece of land forming part of the 90 feet wide proposed Master Plan road, trespassed the same on 11.02.2012 and commenced construction by digging/excavating the land just abutting the compound wall of the house of petitioner and caused damage to the compound wall and also demolished the ramp meant for ingress and egress of the house. The petitioner and owners of the other

houses objected to his illegal construction activities but he has not stopped the illegal construction. It is only after the intervention of the local police, at the instance of the petitioner, the 6th respondent stopped such illegal construction. The petitioner along with her neighbours filed complaint before the Commissioner, Municipality, Mahabubnagar on 21.02.2012 complaining about the illegal construction made by the 6th respondent followed by joint written representation dated 27.02.2012. But no action is being taken on the said representation. Aggrieved by the same, the present writ petition is filed.

4. Counter affidavit is filed by the 4th respondent denying the averments made in the affidavit filed in support of this writ petition stating that there exists 90 feet wide road in the layout plan i.e., LP No.4/87 due to the existing high tension electric lines passing over the layout side, was approved by the 3rd respondent, being a competent authority for technical approvals and that it is not a road as per master plan. The petitioner and neighbours have encroached the road to an extent of 13 feet by constructing compound walls and at present the existing road is 77 feet 8 inches. There is no 50 feet wide road in front of the house of the petitioner as per the Layout Plan No.33/62, which was approved by the 3rd respondent in the year 1962. In fact, it is layout plan technically approved by the 3rd respondent vide LP No.33/62 showing the road width as 100 ft and subsequently it was revised in the year 1987 in LP No.4/87, wherein the road width is shown as 90 feet due to the high tension lines over the area. It is the responsibility of the municipality to maintain 90 feet width as per LP No.4/87 and safeguard the same from the encroachments and illegal constructions. There is no construction made by the 6th respondent and if the 6th respondent makes any construction illegally, it is liable for removal from the road portion. No permissions were granted to

the petitioner or to the 6th respondent for construction in front of petitioner's house by this respondent and sought for dismissal of the writ petition.

5. Counter affidavit is filed by the 6th respondent denying the averments of the writ petitioner in the writ affidavit stating that he is the absolute owner and possessor of Plot Nos.10 and 11 to the extent of 311 sq.yards and plot Nos.12 & 13 to the extent of 311 sq.yds in Sy.NO.102/3, situated at Engineering Colony, Mettugadda, Mahabubnagar, Mahabubnagar District, having been purchased vide registered sale deed No.1789/85, dated 21.05.1985 and 263/2000, dated 31.01.2000 respectively and that all four plots covered by East: 50 feet road, West: plot belongs to Mohamood; North: 20 feet road and South: 60 feet road. It is stated that there is proper layout in conformity with the Municipalities Act. The 4th respondent permitted construction of houses including the writ petitioner based upon un-approved layout plan where 20 feet road was in existence in front of the petitioners plot. The so called 90 feet proposed road in the revised layout No.4/87 is available to the stretch of 500 length only as himself and his immediate neighbour towards western side could not raise any construction on their plots. The 90 feet road after 500 feet length is reduced to 30 feet towards western side and totally blocked after three furlongs. It is stated that every road of the revised layout plan No.4/87 has been occupied and constructions have been made. It is the responsibility of the Municipality to safeguard the road width earmarked in LP No.4/87 from encroachments and illegal constructions thereon and that the compound wall constructed by the petitioner by encroaching 20 feet road has to be demolished. This respondent has not trespassed any land on 11.02.2012 and commenced illegal construction and that the counter of the 4th respondent also made it clear that there is no construction made by

this respondent on the road portion. The 4th respondent in his letter dated 05.12.2007 informed to the petitioner that the road located on southern side of H.No.8-2-40/B is not a Master plan road and that it is an extension of one of the layout road proposed in the Teachers Colony. By encroaching 20 feet road, the petitioner constructed compound wall on the plots of this respondent and using the same for her ingress and egress. The petitioner has filed the present writ petition for extraneous considerations and sought for dismissal of the writ petition.

6. Reply affidavit is filed by the petitioner to the counter affidavits filed by the respondents 4 and 6 denying the averments therein reiterating the averments of the affidavit filed in support of the writ petition stating that the existing Master Plan Road with HTL is coming from Padmavathi Colony, which is at a distance of 2-3 kms., from Mahabubnagar and continues even after the Government Hospital, Mahabubnagar towards IBP Complex, Shah-Sahab Gutta, which is at a distance of about 5 kms., from Mahabubnagar and the said road with HTL does not end up abruptly at the Government Hospital, Mahabubnagar, but proceeds further to other regions. It is stated that the road in question is a Master Plan Road and the Municipality is bound to maintain it by preventing the same from being encroached as well as from unauthorized constructions over there. The 6th respondent had purchased the road side land existing in front of her house and trying to encroach upon it and make unauthorized construction. Since the 6th respondent had purchased the road side in front of her house, he could not obtain permission from the Municipality. It is stated that the petitioner has not encroached upon the Master Plan road in front of her house.

7. Heard both sides.

8. It is the case of the petitioner that the Revised Lay-out Plan No.4/87 for the Teacher's Colony at Mettugadda is sanctioned and

approved by the Master Plan of Mahabubnagar Town Showing existence of 90 feet road in front of the petitioner's house and it vests with the Municipality. Learned counsel for the petitioner submits that it is the duty of the respondent Municipality to implement the Master Plan for Mahabubnagar Town as approved by the Director of town and Country Planning, Andhra Pradesh, Hyderabad.

9. It is the case of the respondent Municipality that as per Letter Roc.No.G1/9990/RTI/2007, dated 05.12.2007, the 90 feet road is not in existence and that the Municipality is trying to implement it by removing the structures/obstructions as and when cropped up.

Paragraphs 3 and 4 of the said letter reads as under:

"3. It is not an existing road. It is an extension of a road proposed in the layout for Teachers Colony. (L.P.No.4/87) and the Municipality tries to implement such roads by taking over the land effected in the road as and when the land owners approach the Municipality for permissions.

4 & 5. All the materials/documents submitted by you are taken into consideration and noticed that the road in question is neither a Master Plan Road nor a Municipal Road. As such the Municipality could not take any action on the sale deed executed by P.Shankaraiah & others."

In the counter affidavit of the 4th respondent, it is stated that the petitioner herself encroached 13 feet of the road margin of the proposed 90 feet road width whereas the 6th respondent stated that the petitioner encroached 20 feet of the road margin of the said road and constructed compound wall. It is also the case of the respondent Municipality that it has not granted any permission for construction in front of the petitioner's house either to the petitioner or to the 6th respondent. It is also the case of the 4th respondent Municipality that at present there is no construction made by the 6th respondent and that any construction, if made, by the 6th respondent or petitioner on the road portion, the same will be removed by this respondent Municipality. Even the respondent Municipality also disputes the assertion made by the petitioner that the 6th respondent encroached

upon the road margin and making illegal constructions. The petitioner and 6th respondent are making allegations against each other. These are all disputed questions of fact, which cannot be decided in the writ petition by exercising the extraordinary jurisdiction under Article 226 of the Constitution of India and that the petitioner has to approach appropriate forum seeking relief.

Accordingly, writ petition is dismissed. There shall be no order as to costs. As a sequel thereto, miscellaneous applications, if any pending in this Writ Petition, shall stand dismissed.

A.RAJASHEKER REDDY, J

13.07.2015.
KVS

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

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