

**HON'BLE SRI JUSTICE A.RAJASHEKER REDDY**

**WRIT PETITION No.38161 OF 2012**

**ORDER**

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The case of the petitioner is that the petitioner and his brothers are the absolute owners of the land admeasuring 10.02 Acres situated in Sy.No.186, Kurnool city and they have raised both residential as well as non-residential structures. Next to the said land, there is a private channel known as Jomu Kaluva which flows into the river Handri and is in existence since several decades meant for rain water drainage but not for any other purpose. While so, the 1<sup>st</sup> respondent is trying to erect a public drainage on the northern side of Sy.No.186 belonging to the petitioner and his brothers for excrementitious matter and polluted water and works are getting done to connect the same to the Jomu Kalva. The petitioner further states that as the Jomu Kaluva is a private channel, the respondents cannot connect the drainage to the same and in respect of the same, the petitioner got issued a legal notice to the respondent on 07.12.2012 requesting to stop the construction of connecting the public drainage to the Jomu Kaluva. But still the construction works are going on and are likely to be completed shortly. Aggrieved by the action of the respondent in proceeding with the construction for connecting the public drainage with the private rain water channel passing through the land in Sy.No.186 belonging to the petitioner and his brothers, the present writ petition is filed.

Counter is filed by the respondent stating that there is already a drainage flowing on the northern side of the premises in question and no heavy machinery was used by the authorities of the Corporation for construction of drain to connect the main drain flowing through the premises in dispute. It is also stated that though the petitioner was issued notice dated 27.12.2012 to produce documentary evidence to prove the big drainage is called 'Jomu Kaluva' belongs to him; he refused to receive the same and failed to produce any evidence.

Further it is stated that the authorities of Town Planning Section and Engineering Section of the Corporation after thorough survey constructed a turning point in the public road passing through Sy.No.186 and connected it to the drain said to be Tumu Kalva which is flowing and connecting to Handri river directly. While the said construction was under progress, the petitioner never objected for it and after giving connection to the drain he is claiming that it is a private site. It is also stated since the main drain including all other drains and roads in that locality are being maintained by the respondent Corporation since decades, the respondent Corporation under Sections 292 to 295 of GHMC Act, and in the interest of public to provide more amenities, it has connected the drain to the main drain and sought for dismissal of the writ petition.

Heard Sri Vedula Srinivas, learned counsel for the petitioner and Sri S.D.Goud, learned Standing counsel for respondent-Corporation.

Reply affidavit is filed reiterating the averments in the writ affidavit and disputing the receipt of notice dated 27.12.2012.

In the instant case, the endorsement dated 27.12.2012 shows that after filing of the writ petition, the concerned Municipal Engineer directed for stoppage of work. As the petitioner is claiming that the respondents are connecting the public drainage to a private channel called "Jomu Kaluva", it is for him to prove that he is the owner to private channel which is passing through his land. Further, since the petitioner disputes the receipt of the notice dated 27.12.2012 issued by the respondent, the respondent Corporation shall communicate the said notice or issue a fresh notice to the petitioner. Thereafter, it is open for the petitioner to make a representation along with necessary documents to prove that said private channel belongs to him. On such representation being made, the respondent-Corporation may take appropriate action in accordance with law. However, if the petitioner refuses to receive the notice, it is open for the respondent to take

appropriate action according to law. There shall be no order as to costs.

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

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**A.RAJASHEKER**

**REDDY,J**

Date: 01.09.2015

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