

HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.40542 OF 2014

ORDER:

Heard learned Senior Counsel, Sri D.V.Sitarama Murthy and Sri Vedula Venkata Ramana for the petitioners, learned Advocate General for Telangana for the first respondent and Sri P.Venu Gopal, learned Advocate General for Andhra Pradesh for the third respondent.

2. This is a simple case with regard to the landing of a Foot Over Bridge (FOB) for which a decision under the extraordinary jurisdiction of this Court is invoked.

3. The undisputed facts of the case are that the Government of Andhra Pradesh handed over an extent of Acs.424.13 guntas of land in Survey No.83/1 of Raidurg Panmaktha Village, Serilingampally Mandal, Ranga Reddy District to the erstwhile Andhra Pradesh Industrial Infrastructure Corporation Limited which is succeeded by the Telangana State Industrial Infrastructure Corporation Limited, vide G.O.Ms.No.161, dated 13.02.2006. The Corporation is arrayed as the first respondent. It made a layout and sold various plots by way of public auction and the first petitioner purchased Plot No.4, admeasuring Acs.5-00 guntas in Hyderabad Knowledge City and it got a road width of 45 meters and frontage of 92.52 meters towards North. The purchase was made pursuant to the offer letter of the first petitioner on 21.09.2007 and it was accepted by issuance of letter of allotment dated 21.06.2008 by the first respondent. The sale deed was registered on 01.11.2012 pursuant to a registered agreement of sale dated 24.06.2008.

4. It is the case of the petitioners that the property was purchased for developing the land for location of knowledge based industries, IT and

ITES offices, commercial space, recreation, retail and hospitality industry, keeping in view the SEZ norms/ICT policy of the Government. The property was purchased at a high sale consideration since it had 92.52 meters width of road facing towards North and over one million square feet of built up area could be built thereon for the occupants/visitors and users of over 10000 persons, vehicles and for utilities. As per G.O.Ms.No.168, Municipal Administration & Urban Development (M) Department, dated 07.04.2012, in respect of high rise buildings/blocks, clearance from the Airport Authority and a no-objection certificate from Andhra Pradesh State Disaster Response & Fire Services Department is required. Apart from the same, a minimum of 2 meters wide green planting strip in the periphery of all sides within the setbacks are required to be developed and maintained. The National Building Code and provisions for amenities, facilities, other regulations, etc., have to be compiled with. The first petitioner applied for building permission with the Greater Hyderabad Municipal Corporation (GHMC) on 26.08.2014 enclosing a copy of the land use information obtained from Hyderabad Metropolitan Development Authority (HMDA) vide its letter dated 11.08.2014 and feasibility certificate dated 21.08.2014 from Hyderabad Metropolitan Water Supply & Sewerage Board.

5. While so, the second respondent started construction of FOB abutting the north-western road frontage of the schedule property connecting the other side of the 45 meters wide road without any notice to the petitioners and when the petitioner enquired with the first respondent, it was told that a ramp would be built towards left side of the FOB i.e., before the plot situated towards the western side of the schedule of property. When the third respondent was making foundations in the front portion of the schedule of property virtually blocking the exit gate of the proposed building of the petitioner and laying

foundations for putting up a bus stop in front of the schedule property depriving the beneficial use of the schedule property, the present Writ Petition was filed challenging the action of the respondents in undertaking the construction of FOB and proposed ramp and bus stop touching the Northern side on the road frontage of plot No.4, admeasuring Acs.5-00 guntas, situated at Hyderabad Knowledge City in survey No.83/1 of Raidurg Panmaktha Village, Serilingampally Mandal, Ranga Reddy District.

6. This Court, on 30.12.2014, noticing the absence of Standing Counsel for respondents in spite of service of papers, while posting the matter to 16.02.2015 gave liberty to the petitioners to submit a representation to the respondents and directed the first respondent to consider the same, take appropriate decision and communicate the same to the petitioners. During completion of the said process, the first respondent was directed not to proceed with the further construction of the FOB. The learned Senior Counsel for the petitioners undertook to pay the cost escalation, if any, for stoppage of work, in the event of petitioners becoming unsuccessful. Later on, the third respondent was permitted to get impleaded on 18.03.2015 in WPMP.No.8289 of 2015. The impleaded party and the first respondent were directed not to proceed with the construction for four weeks, which order was extended lastly till eight weeks on 28.04.2015.

7. The first respondent filed a counter-affidavit seeking vacation of the order of stay admitting handing over of the land by the erstwhile Government of Andhra Pradesh to the then A.P.I.I.C which is now the first respondent and purchase of plot No.4 by the first petitioner. The first respondent states that vide G.O.Ms.No.346, dated 17.06.1998, it was delegated with the powers of the local municipal authority in the areas developed by it including the industrial area of Hi-Tech City and

software unit layouts in the Serilingampally municipality. In order to improve the pedestrian safety, it identified certain locations in the Hi-Tech City and Nanakramguda IT and ITES zones for the construction of FOBs and air-conditioned bus stops. One of the proposed FOBs and bus stops is identified in the location adjoining the petitioners' property. It decided to construct FOB under Public Private Partnership model. The request for qualification was issued on 10.02.2011 and the request for proposal was issued on 02.07.2011 for awarding the contract. The letter of intent was issued to the third respondent on 26.09.2011. Though the letter of intent was issued on 26.09.2011, the third respondent could start the work of FOB only in October, 2013. The project was delayed due to the delay occurred in removal of electricity lines, temporary office of the adjacent plot No.3 allottee and the rocky nature of the site. The FOB is almost ready, there is about 11 feet gap between the petitioner's property and the FOB and the FOB is intended for the benefit of the general public. Though the original successful bidder was My Home Constructions Private Limited, the said land was transferred to the first petitioner at the request of the successful bidder and the sale deed was executed in favour of the first petitioner. Ultimately, it is stated that the petitioners have no right to oppose the erection of public utilities outside their property. The FOB or bus stop has been constructed on public property and it does not require issuance of any notice to the petitioners. Though the foundation for FOB was laid in October, 2013, the petitioners never approached the first respondent objecting to the laying of the foundation in front of their property and in fact no exit gate was provided by the petitioner where the FOB and bus stop are being constructed. In view of availability of 92.52 meters frontage, the petitioner is not denied the beneficial use of their property. The FOB has become necessary in view of heavy pedestrian traffic in the vicinity of Hyderabad Knowledge City and adjacent Inorbit Mall. An amount of Rs.3

crores was already spent on the construction of the FOB and it occupies only 25 meters outside the petitioners' property leaving the petitioners 67.52 meters where they could conveniently place both the gates.

8. The third respondent filed a separate counter-affidavit stating that in response to the tender notification issued in the "Economic Times" dated 10.02.2011 for "Development of Modern Foot Over Bridge/Skywalks and Bus Shelters at Inorbit Mall, Hi-tech City, Hyderabad on PPP mode", the third respondent submitted its bid and became successful bidder. After receipt of the required statutory clearances and permissions, the FOB was completed (except minor works such as painting, tiles etc.) by spending more than Rs.2.5 crores for its construction. The contract was entered on 09.05.2012 and after completion of the FOB, the present Writ Petition was filed on 20.03.2015 and accordingly, they sought vacation of the interim order and dismissal of the Writ Petition.

9. The learned Senior Counsel Sri D.V.Sitarama Murthy, appearing for the petitioners, submitted that in view of the several permissions that are required for construction of the building in plot No.4 and in view of the compliance with National Building Construction Code, the constructions that are being taken up by the third respondent at the instance of the first respondent, affects the works of the first petitioner. The said argument of the learned Senior Counsel is supplemented by another Senior Counsel, Sri Vedula Venkata Ramana by submitting that plot No.4 belonging to the first petitioner was located initially in Serilingampally municipality which later on got merged with GHMC and hence, the reliance of the first respondent on G.O.Ms.No.346 dated 17.06.1998 which was issued when Serilingampally was a municipality has no basis and conferring certain powers of the said municipality to the

first respondent do not enure to the benefit of the second respondent after merger of Serilingampally municipality with the second respondent. This supplemental argument of the learned Senior Counsel has no basis in pleadings, but in view of the nature of the argument, this Court allowed the same and heard.

10. The learned Advocate General appearing for the first respondent submitted that the FOB is being constructed on the land left for the road and the land of the petitioners is no way affected, as there is no interference with plot No.4 purchased by the first petitioner.

11. In view of the rival submissions made by the learned Counsel on either side, it has to be seen whether the grievance of the first petitioner with regard to the location of FOB in front of its plot can be entertained in a Writ Petition by this Court or not. It is well known that the Government is the custodian of public interest. When the first respondent Corporation wants to take up some developmental activity in the land belonging to it, a private person cannot object to such activity which is for the benefit of the public at large on the imaginary ground of affecting his remote private right. In the instant case, admittedly the first petitioner is the owner of a plot of land admeasuring Acs.5-00 guntas having frontage of 92.52 meters on Northern side. There is a 11 meter gap from the boundary of the first petitioner to the location of the landing of the FOB. Apart from it, the FOB occupies only 25 meters frontage leaving the petitioners 67.52 meters frontage which can conveniently be utilised for the ingress and egress of the office goers/residents in the buildings proposed to be constructed. In fact, no building is constructed and no gate is erected by the time of construction of FOB. It appears from the pleadings that the first petitioner submitted a building plan on 26.08.2014 and it is not yet approved by the second respondent. If there are any changes that are required with regard to the location of the

gates, the petitioners can as well adjust the same. The construction of FOB on a road not belonging to the petitioners by the respondents cannot be found fault with. The learned Senior Counsel could not point out the impact of FOB on the inner constructions that have to be made pursuant to the building plan submitted to the second respondent. If at all any affect had to be noticed, the FOB may affect the front view of the proposed building, but it will not interfere with its activity inside its boundaries. Hence, I am of the opinion that the present Writ Petition is not maintainable as the main dispute relates to the construction of the FOB by the third respondent though at the instance of respondents 1 and 2.

12. Admittedly, the request for qualification for development of FOB was issued by the first respondent on 10.02.2011 under PPP basis. The third respondent completed the FOB to a major extent and when the work was started in October, 2013, the petitioner did not raise any objection and the present Writ Petition was filed only on 29.12.2014. In the absence of any public interest in filing the Writ Petition, except private interests of the petitioner, this Writ Petition is liable to be dismissed on this ground also.

13. The other argument advanced by the learned Senior Counsel Sri Vedula Venkata Ramana, without any basis in pleadings, is with regard to the exercise of the power by the first respondent under the delegated power conferred on it under G.O.Ms.No.346 dated 17.06.1998. It is submitted by the learned Senior Counsel that when the said GO was issued, the area of Serilingampally was a municipality and the Government could have delegated some powers of the said Serilingampally municipality to the second respondent at that time, but after merger of the said Serilingampally municipality with GHMC, there

should be a separate order by the Government conferring the powers of the second respondent on the first respondent. In the absence of such power, the first respondent cannot undertake the activity of construction of FOB through the third respondent.

14. The entire property of an extent of Acs.424.13 guntas in survey No.83/1 of Raidurg Panmaktha Village, Serilingampally Mandal, Ranga Reddy District was transferred to the first respondent by the Government vide G.O.Ms.No.161, dated 13.02.2006. The said land was divided into plots and sold to various buyers in public auction. Plot No.4 admeasuring

Acs.5-00 guntas was purchased by the petitioner. The roads have to be developed by the first respondent for the benefit of the allottees. There is no bar for entry of public on the roads. In view thereof, necessary amenities have to be provided to the public who are using the roads. The construction of FOB is only in pursuance of the said objections. The petitioner is not claiming any right on the land on which the FOB is constructed. Now it is the contention of the learned Senior Counsel for the petitioner that after constitution of GHMC, it is the second respondent which is competent to issue the letter of intent for construction of FOB, but not the first respondent as G.O.Ms.No.346 dated 17.06.1998 cannot be applied to the benefit of the first respondent after merger of Serilingampally municipality with GHMC. Though the learned Advocate General submitted that by virtue of the provisions in Section 13 of the Andhra Pradesh Municipal Corporations Act, 1994 and in exercise of powers conferred in Section 679-F of the GHMC Act, the first respondent is entitled to exercise the powers, this issue need not be considered in the present Writ Petition at the instance of the petitioners as it does not affect the right of the petitioners' property in relation to the relief sought in the Writ Petition as opined supra. Whether

the first respondent continued to have the powers of Municipal Corporation pursuant to G.O.Ms.No.346 dated 17.06.1998 which was issued when Serilingampally was a municipality and what is the effect of merger of that municipality in GHMC is to be decided in an appropriate case on an appropriate occasion. This Court feels that the said issue does not arise for consideration in the present Writ Petition and it is accordingly left open.

15. In the facts and circumstances of the present case, this Court feels that the Writ Petition is not maintainable for the relief sought against the respondents and it is accordingly dismissed. The public are deprived of the use of FOB by the filing the present Writ Petition in 2014 and the learned Senior Counsel for the petitioners undertook before this Court on 30.12.2014 to pay the cost escalation, if any, for stoppage of the work. It is not known to this Court the cost escalation, if any, pursuant to the filing of the Writ Petition and it is left to the parties to work out such cost escalation, if any, as a result of dismissal of the present Writ Petition. Miscellaneous Petitions pending, if any in this Writ Petition, shall stand closed.

A.RAMALINGESWARA RAO, J

Date: 24.06.2015
TJMR