

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Writ Petition No.13742 of 2008

ORDER:

The writ petition under Article 226 of the Constitution of India is filed seeking the following relief/s:

'To issue Writ, Order or Direction more particularly one in the nature of Writ of Mandamus declaring the impugned order of the 2nd respondent vide Memo.No.1142/2008-B1 (Pts) dated 18-04-2008 as one without jurisdiction, arbitrary, illegal and violative of principles of natural justice while directing the respondents 1 to 4 herein to stop the 5th respondent from proceeding with the construction of compound wall encroaching upon the public road situated in Sy.No.88 of Yamnampet Village, Ghatkesar Mandal, Ranga Reddy District and pass such other or further orders as are necessary.'

[Reproduced verbatim]

2. I have heard the submissions of the learned counsel for the writ petitioners, the learned counsel for the 5th respondent/unofficial respondent and the learned Standing Counsel appearing for the 4th respondent/Gram Panchayat. I have perused the material record.

3. The case of the writ petitioners, in brief, is this:

The 1st petitioner is the owner of the plots bearing nos.54, 55, 56 and 57 of Global Enclave in Sy.No.84, 84 part, 85 and 86 part and the petitioners 2 and 3 are owners of the plots bearing no.149, 150, 151, 152 and 153 of Tirumala Enclave in Sy.no.86 & 87 situate at Yamnampet village and Gram Panchayat of Ghatkesar Mandal. Tirumala Enclave, Global enclave and some other colonies which are behind and abutting the Gandhinagar colony have got approved layouts from the Yamnampet Gram Panchayat. The layout for the Ghandhinagar colony situate in Sy.no.88 was approved vide GPC layout no.1/68 dated 10.04.1968. On the Western side of the Gandhinagar Colony, 100 feet wide road has been in existence and behind that road, there is the land in Survey no.89 and also other lands. The said

100 feet road is being used, for the past more than four decades by the residents of Yamnampet village and other villagers of Rampalli and Nagaram. The said road is also being put to use by the residents of various colonies to reach schools, temples, hospitals etcetera. While so, the 5th respondent had made an attempt to erect a compound wall encroaching the said public road as well as certain plots situate in Gandhinagar Colony and thereby tried to prevent ingress and egress to the residents of the said colonies and the public in general *inter alia* alleging that his land is situate in survey no.89 and that the said land belongs to M/s. Venkatadri Township. Such attempt to make an illegal construction of the compound wall was made without conducting any survey and the fixing of the boundaries. Having come to know of the same, the petitioners and some others had made a representation dated 31.03.2008 to the District Collector and the District Panchayat Officer i.e., the respondents 1 and 2 to stop the 5th respondent from proceeding with the construction of the compound wall by encroaching the public road. In response to the said representation, the 2nd respondent *vide* memo dated 31.03.2008 had passed an order directing the 4th respondent to stop the construction work of the compound wall and erection of kadis on the public road in survey no. 89, which was proposed by the 5th respondent. He had further directed the Divisional Panchayat Officer/the 3rd respondent to conduct an enquiry into the matter with reference to the records and submit a detailed report. To the surprise of the petitioners, the 2nd respondent *vide* memo no.1142/2008-B1 (Pts) dated 18.04.2008 had directed the 4th respondent/Panchayat Secretary, Yamnampet Gram Panchayat to allow the 5th respondent to commence the construction work. Having come to know of the said fact on enquiries, the petitioners are constrained to file the writ petition. The 5th respondent cannot be allowed to construct a compound wall encroaching upon an existing road, which is being put to use since more than four decades by the petitioners and others in the locality. The proceeding of the 2nd respondent directing the 4th respondent to permit the 5th respondent to make construction of a compound wall is highly arbitrary

and violative of the basic principles of natural justice.

4. The 4th respondent filed a counter affidavit stating that initially the District Panchayat Officer (DPO) by his memo dated 31.03.2008 had directed the Gram Panchayat to stop the construction work of the 5th respondent but, subsequently on receipt of the report of the 3rd respondent, the DPO had issued the proceedings dated 18.04.2008, wherein it was directed that the Gram Panchayat should allow the construction of the compound wall of the 5th respondent and that the said report dated 11.04.2008 by the 3rd respondent was submitted after a due enquiry and that the petitioners had suppressed the said fact in their writ petition and that the 5th respondent's plan for construction of compound wall was approved in strict accordance with rules and that the 5th respondent had already constructed the wall strictly in accordance with plan and that the writ petition is devoid of merit and is liable to be dismissed.

5. The 5th respondent had filed a counter affidavit denying the material allegations in the writ petition and *inter alia* avering as follows:

‘The 3rd respondent had submitted a report dated 11.04.2008 after conducting enquiry and making a physical verification at the site. In the report it is pointed out that except one house in Gandhinagar Colony Phase I and one plot with compound wall erected around the plot, there are no other dwelling houses in Tirumala Enclave and Global Enclave and that for the said constructed house there is a 25 feet road connecting to the R & B road and that there is no obstacle for the people going to the Government School in Gandhinagar Colony or to the temple and that there is no relation between the road of the Government school and the temple and that a cement road was constructed by the Gram Pnahcyat connecting the R & B road and that the developers of Tirumala Enclave and Global Enclave have not taken layout permissions in accordance with the law and that only the Sarpanch of the Gram Panchayat had granted permission in the year 1981 and that the developers had not developed the sites and did not lay the roads and provide other amenities but, they have sold away the plots and that the purchasers of

the plots are facing inconvenience due to lack of roads and that the said fact has been brought to the notice of the authorities and that the layouts of Gandhinagar Phase I, Tirumala Enclave and Global Enclave have to be cancelled due to lack of appropriate permissions and amenities and that the plot owners of the said layouts have no right to make a claim for a road through the land in survey no.89 and that the land owners in survey no.89 do not require any permission to erect fencing around their own property by erection of kadis but, in case they intend to construct a boundary wall around their property they have to seek permission under the provisions of the Panchayat Raj Act, 1994 and that after obtaining permission only they are entitled to construct a boundary wall. After the submission of the said report with the above and other findings, the 5th respondent had applied for permission to construct a boundary wall around his property and the same was approved by the Gram Panchayat *vide* permission No.01/2008 dated 23.04.2008 on collection of necessary fee from the 5th respondent and that the 5th respondent had constructed the compound wall subsequent thereto and that by construction of compound wall, the 100 feet road is not at all affected and that a flyover is being constructed on that road.' Having so contended, the 5th respondent had prayed for the dismissal of the writ petition.

6. At the time of hearing, all the learned counsel advanced arguments in line with the respective pleadings, which are referred to *supra*, in detail.

7. The learned counsel for the writ petitioners forcefully contended that before submitting the report, no enquiry was made and no notice was given to the writ petitioners to participate in the enquiry and that the 3rd respondent is not a competent authority to conduct an enquiry and that the 3rd respondent had in-fact declared the title of the 5th respondent to the property though he is not competent to do so and that, therefore, the writ petition deserves to be allowed. On the other hand, the learned counsel for the 5th respondent while pointing out the contents of the report dated 11.04.2008 of the 3rd respondent

would submit that the petitioners have suppressed the existence of such a detailed report; and, that the 3rd respondent had made a detailed enquiry before submitting the said report; and, that after the detailed enquiry it was noted by him that the 5th respondent is entitled to construct the compound wall all around his property; and that nevertheless, the 5th respondent had obtained the necessary permission from the Gram Panchayat; and that on obtaining permission only, the 5th respondent had constructed the compound wall; and that the petitioners have no right to claim any passage from the property of the 5th respondent; and that in case the petitioners intend to claim any easementary right of passage on the ground that they are using the private land of the 5th respondent for their ingress and egress, their only remedy is to approach a civil Court and that the writ petition is not maintainable. He had further submitted that as per the report submitted by a responsible public officer, the layouts of Gandhinagar Phase I, Tirumala Enclave and Global Enclave have to be cancelled due to lack of appropriate permissions and non provision of the amenities and that the plot owners of the said layouts/Enclaves have no right to make a claim for a road through the land in survey no.89.

8. I have bestowed my attention to the facts and I have given earnest consideration to the submissions.

9. The writ petitioners in this writ petition impugned the memo dated 18.04.2008 wherein there is a reference to the report of the 3rd respondent dated 11.04.2008. A bare perusal of the said memo dated 18.04.2008 would show that on the basis of the report submitted by the 3rd respondent, the earlier orders directing the 4th respondent to stop, until further orders, the construction of the compound wall by the 5th respondent were withdrawn and that the 4th respondent was further directed to allow the owners of M/s.Venkatadri Township i.e., the 5th respondent to construct the compound wall in their own land bearing survey no.89 as per the Rules. Thereafter, after obtaining the necessary permission and on approval of the plan, the 5th

respondent had constructed the compound wall. The petitioners did not admittedly make an attempt to obtain a copy of the report dated 11.04.2008 of the 3rd respondent by having recourse to the remedies available under law and had brought the writ petition only challenging the memo dated 18.04.2008 without assailing the report of the 3rd respondent dated 11.04.2008. A reading of the report would make it manifest that except one dwelling house in Gandhinagar and a plot surrounded by compound wall, there are no other houses or constructions in Tirumala Enclave and Global Enclave and that even that house is having an independent road of 25 feet width connecting the R & B road and that there are also accesses to the Government School in Gandhinagar and the temple and that the same have nothing to do with the present disputed claim and that there is also a cement road constructed by the Gram Panchayat connecting the R & B road and that for not obtaining proper approvals and for non provision of amenities, the layouts viz., Gandhinagar layout Phase-I, Tirumala Enclave layout and Global Enclave layout are liable to be cancelled and that the writ petitioners and others are not entitled to claim a right of way from the private land of the 5th respondent in survey no.89. As rightly urged by the learned counsel for the 5th respondent, a fact finding enquiry was undertaken by the 3rd respondent as ordered by his superior authority/the 2nd respondent to incidentally examine the matter and find out whether or not there is any road as being claimed by the petitioners and whether or not the construction that was proposed to be made by the 5th respondent, if allowed, would amount to allowing the 5th respondent to encroach into the road, if any, in any manner and that on verification of the facts as are existing on the ground and with reference to the records, it was found that there was no public road or way as being claimed by the petitioners and that the proposed construction of the 5th respondent, if allowed to be made would not affect the existing 100 feet road and also does not result in encroachment of any road as being claimed by the petitioners and that therefore, the 5th respondent can be allowed to proceed with the proposed construction after obtaining the required permission and

approval for the proposed construction. Be that as it may, no additional pleading was filed by the petitioners with the permission of the Court, even after the copy of the report of the 3rd respondent is filed into Court and its contents are adverted to in the pleadings of the 5th respondent. The writ petition filed without assailing the said report of the 3rd respondent and directly assailing the memo dated 18.04.2008 of the 2nd respondent, is misconceived, in the well considered view of this Court. Moreover, the counters filed on behalf of the respondents 4 and 5 and the material record on a careful perusal make it manifest that a detailed fact finding enquiry undertaken in the matter had revealed that the claim of the petitioners is not true and that the proposed construction of the 5th respondent, if allowed, does not affect any road as being claimed by the petitioners; and that the 5th respondent was allowed to construct the compound wall around his property only on obtaining the required permission and approval from the local authority. The exercise of jurisdiction under Article 226 of the Constitution of India is discretionary and a writ is not issued as of right or as a matter of course. **(Vide C.R.Reddy Law College Employees' Association, Eluru, West Godavari District v. Bar Council of India, New Delhi)**^[1]. Viewed thus, this court finds that the writ petitioners could not make out a case for exercising the discretionary jurisdiction under Article 226 of the Constitution of India.

10. Having regard to the reasons, this Court finds that the writ petition is devoid of merit and is liable to be dismissed.

11. Accordingly, the Writ Petition is dismissed. No costs.

Miscellaneous petitions, pending if any, in the writ petition shall stand closed.

M. SEETHARAMA MURTI, J

08.12.2015

Vjl

[\[1\]](#) 2004(5) ALD 180 (D.B)