

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.29353 OF 2011

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ORDER:

This petition is filed for a writ of *Mandamus*, declaring the action of the respondents in trying to acquire the petitioners' property bearing No.6-3-803/1/2, 6-3-803/1/3, 6-3-803/1/4, Ground Floor and 6-3-801 to 6-3-803 portion of First floor, situated at Ameerpet, Hyderabad by way of demanding forcible consent under Section 146 of GHMC Act and without initiating land acquisition proceedings, as illegal and arbitrary and to direct the respondents not to demolish or acquire the petitioners' property without due course of law and to initiate land acquisition proceedings.

The case of the petitioners is that the petitioners are the absolute owners and possessors of premises bearing Nos.6-3-803/1/2, 6-3-803/1/3, 6-3-803/1/4 and 6-3-801 to 6-3-803, situated at Ameerpet, Hyderabad, respectively, having purchased the same under registered sale deeds dated 8-6-2011, 31-5-2006, 19-1-2009 and 5-7-2005 respectively. They are doing business in the name and style of 'Anand Bazaar Extension Exclusive Suiting and Shirting' in the above said premises by investing their hard earned money and established goodwill and reputation in the market. They have also got the trade licenses, electricity connections and other documents to establish their possession. Similarly they are also regularly paying the municipal taxes. While the matter stood thus, the officials of the respondents came to their property and without any prior notice started taking measurements of the same in the month of August, 2011 and informed the petitioners that they want to acquire the property for the purpose of road widening and further informed that they will initiate land acquisition proceedings

for acquiring the property. Thereafter, the respondents issued an antedated letter dated 09.08.2011 which was served on the petitioners on 09.09.2011, stating that under Section 146 of the GHMC Act the Land Acquisition Officer has informed the GHMC that as per TSLR record the petitioners' property comes under ULC and therefore asked the petitioners to submit documents within 3 days, so that the GHMC will pay necessary ex-gratia/compensation as per rules. It is further submitted that as per settled law when the concerned person does not voluntarily give his free consent under Section 146 of the GHMC Act, the Commissioner has no other alternative except to invoke the proceedings under the provisions of Land Acquisition Act. But the respondents in order to avoid the initiation of the said proceedings have malafidely issued the above letter by falsely terming the property as covered under ULC and at the same time, forced the petitioners to give consent for handing over of the property by taking compensation. It is also stated that if the above said property is covered by ULC, it will be for the revenue authorities to take action as per law. Aggrieved by the action of the respondents in issuing the ante dated notice dated 09.08.2011 and seeking the consent forcibly under the threat of ULC land, present writ petition is filed.

The respondents filed counter affidavit stating that the title or ownership of the premises bearing Nos.6-3-803/1/2, 6-3-803/1/3, 6-3-803/1/4 and 6-3-801 to 6-3-803, situated at Ameerpet, Hyderabad, is under dispute as it was classified an ULC land as per TSLR records; that the site is abutting to Greenlands to Ameerpet Junction which is proposed to be widened to 100'-0' under MRTS Corridor-III; that when under MMTS Corridor-III, road

widening is proposed, proposals have been sent to the Land Acquisition Officer, GHMC for initiating necessary land acquisition proposals for the sites including the sites of petitioners and he has informed that the petitioners' site comes under ULC. Therefore, to examine the matter further the ownership documents were called for vide notice dated 09.08.2011 to verify the correctness of the statement of Land Acquisition Officer, GHMC vis-à-vis the ownership documents of the petitioners. It is also stated that the issue of notice is not final and only to ascertain the title of the land. It is further stated that compensation is to be paid to the correct landlord and if they are more than one, it should be distributed as per rules. The respondent Corporation officials have marked the extent of road widening portion on site to know the exactness of effect of road widening but not with any wrongful intention or other motivation. It is stated that the Land Acquisition proposals will be initiated by the Land Acquisition Officer, GHMC and in case it is proved that it is not ULC land and the title and ownership is undisputed, will take necessary action to finalize the payment of Land Value and Structure Value after following due process of law. Therefore, prayed to dispose of the writ petition with a direction to the petitioners to cooperate with the GHMC in public interest.

Heard both sides.

Learned counsel for the petitioners submits that though the petitioners are owners and possessors of the subject property in the writ petition, the respondents without following due procedure are trying to obtain consent forcibly without initiating any proceedings under the provisions of Land Acquisition Act.

On the other hand Sri P.Kesava Rao, learned standing counsel for respondents submits that the petitioners were only asked to produce documents as the property comes under ULC, within three days for paying necessary ex-gratia/compensation as per rules.

The letter dated 09.08.2011 addressed by the respondents reads as follows.

“with reference to the subject cited, it is to inform you that the property bearing Pr.No.6-3-803/1/2/3, situated at Greenlands Jn. to Ameerpet Jn. to an extent of area 57.77 sq.ys. is being affected under road widening. This office has filed land acquisition under Section 146 of the HMC and the Land Acquisition Officer, GHMC has informed vide reference cited that as per TSLR records it is found that the property premises No.6-3-803/1/2/3 comes under ULC. As you are in the possession of the property if you have any documents pertains to your property, submit the same within (3) days to this office for payment of necessary Ex-gratia/compensation as per rules and further you are requested to give consent handing over the road widening portion in the public interest so as to enable the GHMC to widen the road.”

The above said letter states that the subject property comes under ULC and the petitioners were asked to submit documents. Since the Urban Land (Ceiling and Regulation) Act, 1976 (for short ‘ULC Act’) has been repealed, question of invocation of the ULC Act does not arise and that as the petitioners stated that they have purchased the subject property by way of registered sale deeds, it is open for the petitioners to produce the said sale deeds. The letter also says that the extent of 57.77 sq.ys. is being affected under road widening. But, the respondents cannot force the petitioners to give consent under Section 146 of the HMC Act, unless the petitioners are willing to part with the land in terms of

the said section. Further, petitioner can also submit reply to the said letter dated 09.08.2011 if he is willing to part with the land giving their consent. If the petitioners states any objection in the reply and does not agree for giving consent for handing over of the subject property which is going to be affected in the road widening, the respondent authorities may initiate necessary action by following due procedure in demolishing the petitioners' property.

In view of the above, the respondents are directed not to demolish the petitioners' property without following due procedure as envisaged under law if petitioner is not willing to give consent as envisaged under Section 148 of the HMC Act.

With the above direction, the writ petition is disposed of. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the writ petition, shall stand closed.

A.RAJASHEKER REDDY, J

11.06.2015
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