

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

Writ Petition No.33826 of 2015

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Dated 01st December, 2015

Between:

Mohd.Biyabani

...Petitioner

And

The State of Telangana, rep.by its Principal Secretary, (Municipal Administration),
Secretariat, Hyderabad and others

...Respondents

Counsel for the petitioner: Sri C.A.R.Seshagiri Rao

Counsel for respondent No.1: AGP for Municipal Administration (TS)

The Court made the following:

ORDER:

This writ petition is filed questioning notice bearing Roc.No.C.No.1/G1/49776/2012, dated 05.10.2015, of respondent No.3, whereby he has called upon the petitioner to remove the constructions allegedly made by encroaching 40 feet wide road within

24 hours of receipt of the notice.

Though time for filing counter affidavit was taken on two occasions, counter affidavit has not been filed by the respondents.

I have heard Sri C.A.R.Seshagiri Rao, learned counsel for the petitioner, and perused the record.

The petitioner is the owner and possessor of building bearing H.No.11-23-1342 situated at L.B.Nagar within the limits of respondent No.2-Corporation. The petitioner averred that he has purchased an old structure belonging to one Smt.Sarwari Begum in the year 1999 in the name of his wife Smt.Shaeen and later transferred the same in his name through registered document, dated 10.06.2011. He has further pleaded that the property has been assessed to tax, that one Samba Murthy, a resident of the area on the opposite side of his building, lodged a complaint with respondent No.2 alleging that 40 feet wide road proposed as per L.Ps. 4/81 and 15/82 is encroached by some persons and that thereupon the respondents have addressed Kakatiya Urban Development Authority with a request to demarcate the proposed road and the said Authority has appeared to have addressed a letter, dated 12.11.2013, to respondent No.2 to demarcate the proposed 40 feet wide road. It is averred that thereafter the officers of the Town Planning Department have submitted report on verification of all the documents with reference to the ground position, as per which, five persons named therein have encroached a part of 40 feet wide road. That the said report has clearly stated that the petitioner has obtained building permission vide permit No.182, dated 12.01.2012, and constructed house to the eastern side of the said road, according to which, there is no road affecting area as per the sanctioned plan. The petitioner has filed a copy of the said report obtained under the Right to Information Act, 2005.

Paragraph 6 of the said report reads as under:

“Sri Mohammed Biyani S/o.Late John Mohammed, R/o.H.No.11-23-1342, Smt.Sabera Begum, W/o.MR. Baig, H.No.11-23-1344, Smt.Sabera Begum, R/o.H.No.11-23-1345, had obtained building permissions vide permit No.182, dt.12.01.2012, Permit No.167, dt.25.11.1995 in file No.G2/2291/95, permit No.7 dt.04.02.1985 respectively and constructed houses to the Eastern side of the subject road, according to which there are no road affected area as per the sanctioned plans.”

The learned counsel for the petitioner submitted that though the above-mentioned report obtained by his client clearly stated that he has not encroached the 40 feet wide road, evidently under a mistaken impression that the petitioner's case is also mentioned in the report and without proper application of mind, respondent No.3 has issued the impugned notice.

In the absence of a counter affidavit denying this submission, based on the uncontroverted report referred to above, this Court finds merit in the submission of the learned counsel for the petitioner. As the report referred to above clearly reflects that the petitioner is not in occupation of any part of the 40 feet wide road, the impugned notice runs contrary to the said report and therefore, the same is liable to be set aside.

For the above-mentioned reasons, the impugned notice is set aside. However, respondent Nos.2 and 3 are left with liberty to put the petitioner on notice, if they still feel that he is in occupation of the public road. If and when such notice is issued, the petitioner shall file his objections and thereupon, the said respondents are left free to take a decision only after holding a thorough enquiry.

Subject to this liberty given to respondent Nos.2 and 3, the writ petition is allowed.

As a sequel to disposal of the writ petition, WP.M.P.No.43594 of 2015 shall stand disposed of as infructuous.

C.V.NAGARJUNA REDDY, J

01st December, 2015

VGB