HON'BLE SRI JUSTICE S.V.BHATT

W.P.No.3554 OF 2016

ORDER:

Heard Mr.G.Elisha for petitioner and Mr.Cheemalapati Ravi for respondents 3 and 4 and Assistant Government Pleader (Panchayat Raj) for 2nd respondent.

The petitioner prays for Mandamus declaring digging of land in H.No.3-114 (extent 428 sq.yards) and H.No.8-2 (extent 373 sq.yards) in R.S.No.4/2 of Kalaparru Village, Pedapadu Mandal, West Godavari District for laying drainage system and road, without acquiring the land, in an highhanded way, as arbitrary, unconstitutional and contrary to the Panchayat Raj Act.

The petitioner claims right and title to subject matter of the writ petition on the strength of registered sale deeds dated 21.10.1999 as registered on 21.11.2015. According to him, the construction of drainage and laying road are affecting the plot of land purchased by the petitioner. Such power to affect proprietary right of petitioner is not available to respondents 3 and 4, except after acquiring the right in accordance with law.

On 04.02.2016, the following interim order was passed:

> "Learned counsel representing Mr.Ravi Cheemalapati, learned Standing Counsel for Panchayat Raj Institutions (Telangana State), takes notice for respondent Nos.3 and 4 and seeks time for filing counter-affidavit.
>
> Post on 22.02.2016.

> From the perusal of the sale deeds filed by the petitioner, this Court is *prima facie* satisfied that the subject land is owned by the petitioner. Therefore, pending further orders respondent No.3 is restrained from carrying on any work of constructing drainage or laying of road on the land forming part of H.No.3-114 and H.No.8-2 in R.S.No.4/2 of Kalaparru Village, Pedapadu Mandal, West Godavari District".

The stand of 3rd respondent is that the drainage system or laying road complained by the petitioner is not passing through the property claimed by the petitioner, but forms part of road margin. The petitioner was put on notice, the petitioner did not reply and the disconnection of water supply to petitioner is temporary and after the laying of drainage is completed, the water connection will be restored.

Learned counsel appearing for the parties have substantially reiterated the stand taken in the affidavit and counter-affidavit and further drawn the attention of the Court to the documents on which reliance is placed. This Court is of the view that the 3rd respondent *prima facie* is not disputing the title of petitioner to plot of land claimed by the petitioner for the present, and also the documents standing in the name of petitioner. The reply of respondents is that the works against which complaint is made in the writ petition are not passing through the land claimed by petitioner, but are passing either through road or road margin. This Court is of the view that the 3rd respondent to give quietus to the controversy and also to ensure fairness in action ought to have got the road, road margins and the plot claimed by the petitioner surveyed and delineated, thereafter depending upon the

outcome of such survey, should have proceeded in the matter of laying drainage or road. The photographs filed by the petitioner show that the work is underway and at that stage, the stay has been granted.

I am satisfied both in the interest of protecting petitioner's claim and the object of completing the drainage the writ petition is disposed of by this order.

(a) The 3rd respondent is directed to requisition the services of Mandal Surveyor for surveying the road, road margins on the one hand and the property claimed by the petitioner on the other, prepare a comprehensive plan and thereafter proceed as is warranted by the outcome of such survey. In other words, if the drainage is passing through road margin or road, respondent Nos.3 and 4 are free to proceed with the matter. Notice of survey is issued to petitioner as well.

(b) On the other hand, if the subject works are passing through the land claimed by the petitioners, the execution of work shall be in accordance with law. If the petitioner, for any reason, is aggrieved by the outcome of survey, if so advised, he can work out his rights in a properly instituted suit or proceeding.

There shall be no order as to costs.

Consequently, miscellaneous petitions, if any pending, also stand disposed of.

S.V.BHATT,J

08th December, 2016

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