

THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

W.P.No.25743 of 2015

ORDER:

The petitioner, who is a senior citizen, has approached this Court seeking compensation in the form of alternative site or money or Transferable Development Rights(TDRs) for an extent of 600 sq. yards belonging to him, which has been taken over by the 2nd respondent for formation of a road of 60 feet in the year 1987.

2. There is no dispute that the petitioner had purchased plot Nos.10 and 11 admeasuring 600 sq. yards in survey No.18/1 of Venkojipaleminm, Ward No.25 within the jurisdiction of the 2nd respondent-Corporation under a registered sale deed bearing document No.11273/1983 dt.29.09.1983.

3. Without issuing any notice to the petitioner and without paying any compensation to the petitioner, the 2nd respondent took possession of the above 600 sq. yards of land for the formation of the road of 60 feet from Venkojipalem road connecting to House Building Society colony.

4. Petitioner made a representation dt.30.09.1987 to the 2nd respondent requesting the 2nd respondent to provide an alternative site at M.M.T.C. Colony as compensation for the land of 600 sq. yards which he has been deprived of.

5. A resolution No.621 dt.21.01.1987 was passed by the 2nd respondent-Corporation agreeing to provide an alternative site to the petitioner in lieu of his land which was acquired.

6. Petitioner then made a representation dt.07.01.1988 requesting for allotment of the alternative site to him as promised.

7. Under proceedings ROC No.16072/87/86, dt.03.08.1988, the 2nd respondent allotted a site admeasuring 600 sq. yards at M.M.T.C. Colony as per the sketch enclosed thereto, but no steps were taken to register the said land to the petitioner.

8. Having waited for sometime, petitioner gave a representation dt.18.01.1990 to the 2nd respondent to register the said land of 600 sq. yards at MMTC Colony, Visakapatnam in his favour.

9. Petitioner contends that he was assured orally that action would be taken, but nothing was done in spite of the petitioner's representations dt.09.01.1996, 06.03.1996, 02.07.1996, 27.01.1997, 20.06.1998, 23.06.1998, 27.10.2004, 24.11.2004, 02.12.2004, 21.02.2005, 08.03.2005, 21.03.2005, 08.05.2005, 19.10.2005, 10.11.2005, 14.11.2005 and 23.11.2005.

10. Curiously, an endorsement in ROC No.16072/87-G6/ACP-II dt.24.01.2006 was issued to the petitioner alleging that he must establish his site in survey No.18/1 with reference to his title deeds for taking further action.

11. How such a proceeding could have been issued after the issuance of Resolution No.621 dt.21.01.1987 and proceeding dt.03.08.1988, referred to supra, is not explained by the 2nd respondent.

12. Petitioner contends that in view of the said endorsement dt.24.01.2006, petitioner took a Town Surveyor by name Rajeswar and got located his site which had been acquired, so that there may not be any confusion for processing his request for registration of the site allotted to him. He thereafter addressed a letter dt.06.03.2006 to the 2nd respondent about these facts and again pleaded that necessary action be taken for allotment of 600 sq. yards allotted to him in M.M.T.C. Colony and for its registration.

13. Thereafter a letter Rc.No.16072/87/ACP-II dt.19.08.2006 was addressed by the 2nd respondent to the petitioner offering to allot 216 sq. yards of land in T.P.No.15/65 in survey No.125 of Waltair Ward in lieu of property of 600 sq. yards of the petitioner which had been taken for road widening by the 2nd respondent. It is stated therein that this smaller extent was proposed on the basis of certain guidelines issued by the Director of Town and Country Planning, Hyderabad in Lr.Rc.No.21079/87/D1 dt.3.10.1987 and the land value furnished by the Registration Department and petitioner was directed to give his consent.

14. It is shocking that this offer had come almost 20 years after the petitioner was deprived of his land of 600 sq. yards for the purpose of road widening by the 2nd respondent and it shows the callous way in which the 2nd respondent treated the petitioner.

15. It is not in dispute that a letter was addressed by the 2nd respondent on 06.03.2010 to the 1st respondent seeking permission of the 1st respondent for allotment of alternative site to the petitioner of extent of 216 sq. yards in T.P.No.15/65 of Waltair Ward. However, the 1st respondent did not take any steps thereon in spite of the reminders dt.24.07.2010 and dt.30.12.2010 addressed by the 2nd respondent to the 1st respondent.

16. Petitioner, who was traumatised by this recalcitrant attitude of the respondents, addressed a letter dt.26.09.2012 to the 1st respondent to at least give him 216 sq. yards as promised by the 2nd respondent without further delay, since already 25 years have elapsed since he lost 600 sq. yards for the road widening.

17. The 2nd respondent also addressed a letter dt.08.02.2013 to the 1st respondent in this regard seeking necessary orders for allotment of 216 sq. yards of land promised to the petitioner in lieu of the land lost by him in the road widening.

18. The 2nd respondent gave clarification to the 1st respondent by letter dt.28.02.2013 that this 216 sq. yards which was sought to be allotted to the petitioner was not part of any lay out or reserved open

space and would not attract G.O.Ms.No.72 Municipal Administration dt.20.02.2002.

19. Thereafter a memo No.5189/J1/2010 dt.13.03.2013 was issued by the 1st respondent suggesting that instead of allotting alternative land, the 2nd respondent may examine to give concession under A.P. Building Rules 2012 in terms of set back relaxations, additional floor and issue of Transferable Development Rights (for short 'TDRs') to him offered to like persons, who have surrendered their land free of cost for road widening.

20. Petitioner, who had no choice and who was fed up with this unreasonable attitude of the respondents, was forced to agree to receive TDRs, but he sought for the same in the ratio 1:2 in terms of G.O.Ms.No.168 dt.07.04.2012 which provides for double TDRs.

21. The 2nd respondent wrote to the 1st respondent on 04.05.2013 that double TDRs will be given only for sites which have been taken over by the 2nd respondent *after* the issuance said G.O., and since the petitioner's site was taken over prior to the issuance of said G.O., the 2nd respondent may be given appropriate advise in the matter.

22. The matter rests at that stage and the petitioner was therefore constrained to file the present Writ Petition.

23. In the counter affidavit filed by the 2nd respondent, he reiterates that if the petitioner is willing to receive TDRs in lieu of the land

which he has lost for road widening, he would be given only single TDRs and not double TDRs as sought by him. The other contentions and facts stated by petitioner are not denied.

24. It is not in dispute that the petitioner has refused to receive the single TDRs offered by the 2nd respondent.

25. Thus the petitioner could not get the double TDRs sought by him in lieu of the land of 600 sq.yds taken from him by the respondents in 1987.

26. In the facts and circumstances, the question to be considered is “what relief should the petitioner be granted”.

27. It is unfortunate that a citizen of this Country who has been deprived of valuable land admeasuring 600 sq. yards in the heart of Visakhapatnam Municipal Corporation in 1987 has to wait for almost 30 years for redress from the respondents. This is indeed a very sad state of affairs.

28. Article 300-A of the Constitution of India states that no person shall be deprived of his property save by authority of law.

29. A Municipal Corporation like the 2nd respondent, if it seeks to acquire property of a citizen for a purpose such as road widening, has to follow the procedure prescribed in Sections 146 and 147 of the Greater Hyderabad Municipal Corporation Act, 1955 (for short ‘GHMC Act’). While Section 146 permits the 2nd respondent to

acquire private property by an agreement, Section 147 allows the 2nd respondent to acquire it by invoking the provisions of the Land Acquisition Act, 1894.

30. Admittedly, the 2nd respondent has not adopted either the procedure in Section 146 or the procedure in Section 147. Thus the 2nd respondent, while depriving the petitioner of his valuable land of 600 sq. yards, has blatantly violated Article 300A of the Constitution of India and the above provisions of the GHMC Act.

31. That apart, having passed a Resolution No.621 dt.21.01.1987 promising to give alternative site of 600 sq. yards to the petitioner in M.M.T.C. Colony and thereafter issuing proceeding dt.03.08.1988 allotting the said site to the petitioner, the 2nd respondent has violated the said promise also. Twenty years later, the 2nd respondent passed another Resolution No.233/2009 dt.25.06.2009 offering to allot 216 sq.yards in TP No.15/765 of Chinnawaltair to the petitioner in lieu of the land lost by him for the road widening in 1987, but nothing came up from the said proposal in view of the refusal of the 1st respondent to accord permission. When the proposal to allot TDRs was informed by the 1st respondent and 2nd respondent, the petitioner had sought double TDRs by his letter dt.08.04.2013 but neither the 1st respondent nor the 2nd respondent is willing to allot such TDRs and they insist that the petitioner should accept to a single TDR.

32. Whatever be the reason why the respondents 1 and 2 have not adequately compensated the petitioner till date for the 600 sq. yards of his land taken in 1987 for road widening, that a citizen has been forced to wait for almost 30 years in the circumstances for adequate compensation, is a very disturbing feature and shows the callous and indifferent attitude of the respondents to the claims of petitioner for adequate compensation. The Court expresses its strong disapproval for the inaction of the respondents 1 and 2 in compensating the petitioner adequately after depriving him of his land of 600 sq. yards in 1987.

33. It is settled law that the State cannot deprive a person of his property without following the due process of law. In **Meghmala v. G. Narasimha Reddy**¹, and the Supreme Court reiterated:

“Even the State authorities cannot dispossess a person by an executive order. The authorities cannot become the law unto themselves. It would be in violation of the rule of law. The Government can resume possession only in a manner known to or recognised by law and not otherwise.”

34. As of now, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 exists for acquisition of land and for determination and payment of compensation. I am of the view that the petitioner can be granted relief by this Court under the said statute for the 600 sq.yds of land of

¹ (2010) 8 SCC 383

the petitioner taken over in 1987 by 2nd respondent for road widening and for determination of compensation to him for deprivation thereof.

35. In this view of the matter, the Writ Petition is allowed; the respondents 1 to 4 are directed to forthwith initiate proceedings under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 for acquiring the 600 sq.yds of land of the petitioner taken from him in 1987 by issuing appropriate notification under Section 11, Declaration under Section 19, conduct enquiry under Section 23 and pass an award under Sections 27, 28 and 29, and pay all benefits under the said Act to the petitioner within a period of four (04) months from the date of receipt of a copy of this order. The 2nd respondent shall also pay costs of Rs.50,000/- to the petitioner.

36. The 1st respondent is directed to initiate disciplinary proceedings against it's own officials as well as the officials of the 2nd respondent for the manner in which they dealt with the petitioner's claim for compensation for the land during the period of almost 30 years.

37. Consequently, miscellaneous petitions pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

Date : 14.10.2016

Gra/*