

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.23491 OF 2011

ORDER:

Petitioner states that he is the owner and possessor of house bearing No.2-10-240 at Jyothi Nagar Street, Karimnagar. It is his case that as per master plan 11/70, a 30 feet wide road is passing towards east side of petitioner's house but the respondents 3 and 4 encroached the said road by raising a shed and when the 2nd respondent is taking action for removing the encroachments, the respondents 3 and 4 are filing cases since 1983 on one pretext or the other against the 2nd respondent. They filed O.S.No.401 of 1998 on the file of the Principal Junior civil Judge against the 2nd respondent, petitioner and four others and when the suit was dismissed and it was carried to High Court by filing S.A.No.976 of 2004, it was also dismissed on 23.01.2006. After dismissal of O.S.No.401 of 1998, the petitioner filed W.P.No.15122 of 2004 challenging the action of the 2nd respondent in not forming road by removing the encroachments made by the respondents 3 and 4 and a statement was made on behalf of the 2nd respondent stating that they have removed the encroachment and formed road and in view of the said statement, the said Writ Petition was dismissed by recording the said statement made by the counsel for the 2nd respondent. After dismissal of the Writ Petition as aforesaid, respondents 3 and 4 again encroached upon the road and caused damage to the drainage system not only on CC road

but also beside the petitioner's house causing inconvenience to the petitioner. In fact a criminal complaint was lodged by the 2nd respondent officials and police registered FIR No.295 of 2004 against the 3rd respondent and another. After dismissal of the Second Appeal filed by the respondents 3 and 4, the 2nd respondent issued a notice to the 3rd respondent on 28.02.2006 for removal of the encroachment and 3rd respondent filed W.P.No.4340 of 2006 and the petitioner got impleaded in the said Writ Petition. The said Writ Petition was dismissed for default on 01.06.2010. In view of the dismissal of the suit and the Writ Petition, when there is no impediment for taking action, the petitioner submitted several representations to 2nd respondent, and when no response came from the 2nd respondent, he got issued notice by counsel on 24.06.2011 and when it also did not elicit any response, the present Writ Petition was filed.

2. The 2nd respondent filed a counter affidavit stating that in view of the injunction granted by the V Additional District Judge, Karimnagar in I.A.No.483 of 2011 in O.S.No.124 of 2011 filed by the 3rd respondent, they are not in a position to take any action and the said suit is pending as on today. It was also stated that petitioner and 3rd respondent filed number of cases against each other.

3. Though a separate counter affidavit is filed by the 3rd respondent narrating all events and cases filed against each

other, it is not necessary for this Court to deal with the said averments in view of the nature of disposal of the present Writ Petition.

4. Now the present Writ Petition is filed for consideration of the representations of the petitioner for laying a road on the ground that a 30 feet wide road is passing towards east of his house in the mater plan 11/70. On the other hand, the learned counsel for 3rd respondent submits that the existence of 30 feet road itself is in dispute and the alleged encroachment by him is also disputed.

5. The above facts also show that O.S.No.124 of 2011 filed by the 3rd respondent is pending on the file of the V Additional District Judge and there is a temporary injunction granted in I.A.No.483 of 2011 and in view of the said injunction, the 2nd respondent is not in a position to take any further action

6. In the facts and circumstances, it is open to the petitioner to take appropriate steps in the pending suit and the 2nd respondent shall take necessary action in accordance with law on the representations of the petitioner, subject to the result of the proceedings in O.S.No.124 of 2011 pending on the file of the V Additional District Judge, Karimnagar.

7. The Writ Petition is accordingly disposed of. There shall be no order as to costs.

8. Miscellaneous Petitions, if any, pending in this Writ
Petition shall stand closed.

A.RAMALINGESWARA RAO, J

15th November, 2016.
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