

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No. 10323 of 2012

ORDER:

Petitioners are the owners and possessors of commercial shops bearing Nos.33-1-1& 33-1-2 and 33-1-3 respectively situated at Kakinada main road, East Godavari District. Respondent No.2-Municipal Corporation wanted to widen the road as per Master Plan, 1975 and several writ petitions were filed before this Court challenging the action of respondent No.2. The writ petitions were allowed directing respondent No.2 to follow due process of law as contemplated under Sections 146 and 147 of the Greater Hyderabad Municipal Corporation Act, 1955 (for short 'the Act'). Thereafter, when respondent No.2 wanted to widen the road, without following the said procedure, the petitioners objected to the same. Respondent No.2 informed the petitioners that appropriate Transferable Development Rights (TDRs) would be issued, which can be utilised for the purpose of future construction. Challenging the action of the respondents in widening the road by taking a portion of the buildings of the petitioners without following due process of law, the present writ petition was filed on the ground that the TDRs proposed to be issued as per G.O.Ms.No.168, dated 07.04.2012, cannot supplement Sections 146 and 147 of the Act as applicable to Kakinada Municipal Corporation.

A counter-affidavit is filed by respondent No.2 stating that the main road named as Subash Road of Kakinada is of a width of 60

feet only. As per the sanctioned Master Plan, the said main road should be 80 feet. In view of the same, it was proposed to widen the said road for the benefit of the public. But, in view of the objections raised by the property owners, the action was being postponed from time to time. 60% of the owners, whose properties are situated on either side of the main road, Kakinada, had already gifted their front portion in favour of respondent No.2, 30% of the owners have informed their consent to cooperate with the road widening work and only 10% of the owners including the petitioners raised their objections.

G.O.Ms.No.168, dated 07.04.2012, was issued in exercise of statutory powers conferred under the provisions of the Act. Rule 16 of the Andhra Pradesh Building Rules, 2012 provides for concession to the land losers in road widening cases. In view of the said Rules only, TDRs were issued in respect of the lands transferred to the local body/Urban Development Authority, as the case may be, by way of registered gift deed. The owners of the buildings, who were affected by road widening, can avail the benefit of TDRs and the issuance of such TDRs are valid in law. When the road widening was proposed, a public meeting was convened on 20.03.2012 followed by another meeting on 10.05.2012 and only few people objected to the widening of the road. The Andhra Pradesh Building Rules are formulated under G.O.Ms.No.168, dated 07.04.2012, and it cannot be said that the issuance of TDRs are invalid.

The only point that arises for consideration in the present writ petition is with regard to the method to be adopted while taking a portion of the building for road widening.

Learned counsel for the petitioners, by placing reliance on the judgment of the Division Bench of this Court in W.P.No.16096 of 2012 and batch, dated 28.06.2012, submits that the Division Bench also upheld the invocation of the provisions of Sections 146 and 147 of the Act and the same cannot be bypassed by issuing TDRs. He relied on the following observations:

“We are of the opinion that the Rules 16 and 17 of the Rules, 2012 do not provide for compulsory surrender of land/site or premises of the building affected under the road widening process, but the said Rules provide an option to the owners of the buildings, land/site or building to avail the concession. If the owners are not inclined to avail the concession so provided and in the absence of their willingness to surrender the land, the only course open for the authorities, is to acquire the buildings, lands/sites wherever they are required for the purpose of widening of the roads, by invoking the provisions contained under Sections 146 and 147 of the Act. Therefore, it cannot be said that Rules 16 and 17 of the Rules, 2012 are illegal or contrary to Sections 146 and 147 of the Greater Hyderabad Municipal Corporation Act, 1955.”

In the instant case, respondent No.2 is not willing to follow the provisions of Sections 146 and 147 of the Act, but wants to issue TDRs in lieu of compensation. Even if the Rules permit such a course of action, such Rules cannot be contrary to the provisions of Sections 146 and 147 of the Act.

In the circumstances, if the petitioners are not willing to surrender any portion of their building for the purpose of road widening, respondent No.2 had to take recourse to Sections 146 and 147 of the Act, as applicable to respondent No.2 and acquire their land.

The writ petition is accordingly allowed to the extent indicated above.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed. There shall be no order as to costs.

Dt:25.10.2016

kdl



A.RAMALINGESWARA RAO,J