

THE HON'BLE SRI JUSTICE A.V. SESA SAI

WRIT PETITION No.7802 OF 2008

ORDER:

This writ petition, filed under Article 226 of the Constitution of India, challenges the action of the respondents in seeking to lay a road in the lands situated in Survey No.8, covering P.No.141 of Kanuparthi Village, Podalakur Mandal, Nellore District.

2. Heard Sri P.Phalguna Rao, learned counsel for the petitioners and learned Government Pleader for Panchayat Raj for the respondents, apart from perusing the material available before the Court.

3. According to the petitioners, initially one Sri Pulaputhuru Peda Penchalaiah, S/o. Venkatasubaiah @ Chinnaiah, purchased an extent of Acres 11.23 cents situated in Survey No.141 (S.No.8) of Kanuparthi Village, Podalakur Mandal, Nellore District and he was in possession of the property till his lifetime without any obstruction. The said Peda Penchalaiah passed away, leaving behind his three sons namely Krishnaiah, Penchalaiah and Narasaiah and in the partition, they got equal shares and the first son Krishnaiah used to raise dry crops and in the year 2007, he died leaving behind his wife Smt.Kanthamma/petitioner No.1 herein and two sons namely Chinnaiah and Penchalaswamy and they are

residing in kanuparthi Village. It is further stated that the second son of the said Peda Panchalaiah also used to raise dry crops and he died seven years back, leaving behind his wife Smt.Lakshamma @ Adilakshamma/petitioner No.2 herein and the third son of said Peda Panchalaiah i.e., Narsaiah, petitioner No.3 herein, is residing at Kanuparthi Village, Podalakur Mandal and he is in possession and enjoyment of his share till date. It is further stated in the affidavit filed in support of the writ petition that the first son of Peda Panchalaiah i.e., husband of the petitioner No.1 was allotted his share on the western side and the last son i.e., petitioner No.3 was allotted his share on eastern side and the second son of Peda Panchalaiah i.e., husband of the petitioner No.2 was allotted share in the middle. It is stated in the writ affidavit that the authorities sanctioned a road from Somasila Road to Althurthi Village via Kanuparthi Village under PMGSY grant of Phase-V and Package No.AP VI, 1406 and the width of the said road is 30 feet apart from two metres on either side of the road as margins. It is further stated in the writ affidavit that the said proposed road is going to be laid on south edge from west to east and it occupies approximately about 80 cents of land belonging to the petitioners herein. The authorities entrusted the said work to the 5th respondent herein for an estimate of Rs.1,46,64,000/-. Categorically pleading that they are the absolute owners, title holders and possessors of the above

mentioned lands and alleging that the action of the respondents in laying the road through the private land of the petitioners is violative of Articles 14, 16 and 300-A of the Constitution of India, the present writ petition came to be instituted.

4. While ordering notice on 10.04.2008, this Court directed that the respondents herein shall not lay any road in the petitioners lands situated in S.No.8, covering P.No.141 in Kanuparthi Village, Podalakur Mandal, Nellore District.

5. Responding to the notice issued by this Court, a counter affidavit, deposed by the Executive Engineer, Panchayat Department – 2nd respondent, is filed *inter alia* stating that there is an existing gravel road of 25 feet width, which passes from Podalakuru Somasila road to Aldurthi via Kanaparthi, which has a total length of 6.2 Kms. It is further stated that initially the road was having width of 25 feet, later it shrunk to 10 feet due to extensive rains and the work of laying road is entrusted to a contractor on tender basis vide agreement dated 14.12.2007 and the contractor started the said work in other places except the subject survey numbers in view of the interim direction granted by this Court. It is further stated in the counter affidavit that the road marked by the petitioner is an existing road with gravel under PMGSY Phase VI, it is sought to be improved by laying back top over the same. It is also the averment in the counter affidavit that

neither at the time of sanction of road nor at the time of execution, none of the petitioners raised any objection with regard to their title nor any representation is filed before any competent authority. It is further submitted that the road in question is an existing road since 20 years and the present attempt is only the improvement of the standard of the existing road, as such, the question of acquisition of property does not arise.

6. It is contended by the learned counsel for the petitioner that the impugned action on the part of the respondent authorities in laying road through the private land of the petitioners is a patent violation of the fundamental rights guaranteed to the petitioners herein under Chapter III of the Constitution of India and the right to property, as stipulated under Article 300-A of the Constitution of India. It is further submitted by the learned counsel that though it is a categorical statement of the petitioners in their writ affidavit that the subject property is their private property, there is absolutely no specific denial of the same in the counter affidavit filed by the 2nd respondent. According to the learned counsel, the impugned action also tantamounts a criminal offence under Section 447 of the I.P.C. It is submitted that the Adangal extract enclosed with the writ petition clearly and clinchingly discloses the right of the petitioners over the subject property.

7. On the contrary, it is vehemently contended by the learned Government Pleader that the impugned action cannot be faulted as the authorities are only upgrading the existing road. It is further submitted that there is no illegality in the impugned action, as such, the present writ petition is liable to be dismissed. It is further submitted by the learned Government Pleader that the question of issuing notification under Land Acquisition Act does not arise as the road in the instant case is an existing road and the respondents are only upgrading the existing road.

8. Article 300-A of the Constitution of India mandates, in candid and unequivocal terms, that no citizen of this Country shall be deprived of his/her property except in accordance with the procedure established by law. In the instant case, it is the categoric pleading of the petitioners herein in the writ affidavit that they are the absolute owners, title holders and possessors of the subject land and no other person has right or title to the subject property.

9. In order to show their *prima facie* right over the subject property, the petitioners herein have enclosed Adangal extracts of the subject property, which clearly show the right of the petitioners over the subject property. Though it is a categoric pleading of the petitioners that they are the absolute owners and possessors of the property, the counter affidavit filed by the 2nd respondent herein does not specifically

dispute the right of the petitioners over the subject property. On the otherhand, counter affidavit states that there is an existing road and the same is sought to be upgraded.

10. In the considered opinion of this Court, the said averments in the counter affidavit are not specific in nature and in the absence of any specific denial of the averments in the writ affidavit, the pleading in the writ affidavit are required to be taken as true. The objection taken in the counter affidavit that the petitioners herein did not raise any objection at the time of sanctioning of the road cannot be sustained and is liable to be rejected. Since the respondents are not specifically denying the pleadings in the writ affidavit and the case of the petitioners that the subject property is a private property and they are the absolute owners of the private property, it is absolutely not open for the respondents herein to lay a road through the said lands of the petitioners herein without recourse to the provisions of the relevant legislation. Simply because there is an existing path in a rural area the same cannot be construed always as a public property and taking advantage of the same, the respondents herein cannot undertake any activity in the name of up-gradation of the same without recourse to the provisions of law pertaining to acquisition of property.

11. For the aforesaid reasons, writ petition is allowed, directing the respondents herein not to resort to the

impugned action of laying road through the private land of the petitioners herein situated in Survey No.8, covering P.No.141 of Kanuparthi Village, Podalakur Mandal, Nellore District, without recourse to law. It is further made clear that it is open for the respondents herein to acquire the property, if they are so advised, for proceeding further with any activity as per law.

12. Miscellaneous petitions pending consideration, if any, in the Writ Petition shall stand closed in consequence. No order as to costs.

06.12.2016
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A.V.SESHA SAI, J