

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

WRIT PETITION No.20838 of 2012

ORDER:

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This Writ Petition, under Article 226 of the Constitution of India, is filed by the petitioners seeking the following relief/s:-

“....to issue a writ, order or direction more particularly one in the nature of WRIT OF MANDAMUS declaring the action of respondents in proposing to lay a road on the land measuring an extent of Ac.1.25 cents out of the land having an extent of Ac.1.50 cents out of Ac.4.88 cents in Sy.No.48 at Balighattam Village in Narsipatnam Mandal, Visakhapatnam District, belonging to the petitioners and presently falling within the limits of Narisipatnam Municipality, as being illegal, unjust, arbitrary, high hand and void being violative of Article 300 A of the Constitution of India apart from it being in derogation of the mandatory procedure prescribe under the law as the proposed road was sought to be laid without initiating any acquisition proceedings under the Land Acquisition Act, 1894 so also without following due process of law, that too in contravention of the provisions of A.P.Municipalities Act and pass such other order or orders as are deemed fit and proper in the circumstances of the case.”

[Reproduced verbatim]

2. I have heard the submissions of the learned counsel for the writ petitioners and the learned Standing Counsel for Narisipatnam Municipality appearing for the 1st respondent. I have perused the writ petition, counter affidavit and the reply affidavit.

3. The case of the writ petitioners, as set out in the writ petition and as per the submissions made at the hearing, in brief, is this:-

The writ petitioners are the absolute owners of a property of an extent of Ac.1.25 cents out of Ac.1.50 cents out of Ac.4.88 cents in Survey no.48 of Balighattam Village, Narsipatnam Mandal, Visakhapatnam District. Originally, the said landed property belonged to one Setti Appanna; and from him, the fathers of the petitioners, who are the sons of Peda Venkata Raju, had jointly purchased the said property under registered sale deed dated 06.04.1962. While they were enjoying the entire property, the eldest brother by name Nookaiah had sold Ac.0.12 cents of land; and, the son of one Veerabhadram and another had sold Ac.0.13 cents of land. Thus, in

all Ac.0.25 cents of land was sold; and, the remaining Ac.1.25 cents is in possession and enjoyment of the petitioners. Over the said extent of land, they are having right, title and interest. While so, the Municipality had proposed to lay a road through the said land of the petitioners without initiating acquisition proceedings under the Land Acquisition Act, 1894. Therefore, feeling aggrieved, the petitioners had filed this writ petition.

4. The case of the 1st respondent and the material submissions on its behalf are that the predecessor in interest of the writ petitioners, in a registered sale deed executed on 04.05.2006 had clearly mentioned that on the Western side 12 feet width of site was left for public convenience and public use and that, therefore, the Municipality has a right to lay the proposed road without initiating land acquisition proceedings and that the schedule of the sale deed dated 04.05.2006 clearly mentions about the 12 feet site left for the convenience and use of the public at large and that the vendor under the sale deed had accordingly surrendered the said site to the then Gram Panchayat in the year 2006 for use for the benefit of the public.

5. However, placing reliance on the contents of the reply affidavit, the learned counsel for the writ petitioners would further submit that there was neither surrender of 12 feet site as being contended by the 1st respondent nor any document, to which the petitioners are parties, where under the 12 feet road was left for public use and convenience and that the writ petitioners are not parties to the alleged sale deed dated 04.05.2006 and, hence, the recitals therein do not bind the writ petitioners, and that the writ petitioners had already constructed a protection wall and, that, therefore, there is no possibility to now lay a road from the subject site of the petitioners and that when the petitioners who are the owners have not executed any document, no road can be laid through their property without acquiring the property.

6. At the hearing, the learned counsel for the writ petitioners would submit that if the writ petition is disposed of directing the 1st respondent-Municipality to proceed to lay a road over the subject property, if necessary, only after acquiring the property by following the due procedure established by law, the grievance of the petitioners would be redressed and the ends of justice would be met.

7. While endorsing the said view, the learned counsel for the 1st respondent would submit that at present, there is no proposal to lay a road over the subject site/property and, hence, the 1st respondent may be given liberty to establish its right over 12 feet width of passage in question, as and when necessary, and that only on failure to do so, it may be directed to follow the procedure established by law, if necessary, for initiating acquisition proceedings either under the Land Acquisition Act or under Section 174 of the A. P. Municipalities Act.

8. Recording the submissions, the writ petition is disposed of directing the 1st respondent-Municipality not to lay a road in the disputed 12 feet site out of the Ac.1.25 cents of property in Survey No.48 of Balighattam Village being claimed by the petitioners, without first establishing its right over the said 12 feet site/road. However, it is made clear that the 1st respondent would be at liberty to lay a road without acquiring the 12 feet site of property, in case it's right over the said 12 feet site/road is established in accordance with the procedure established by law. It is also made clear that before laying the road over the said site, as and when necessary, the Municipality shall either establish its right over the 12 feet site/road as claimed or follow the procedure established either under the Land Acquisition Act or Section 174 of the A.P.Municipalities Act, in case it's right in respect of the said site is not established.

As a sequel, the Miscellaneous Petitions pending, if any, shall

stand closed. There shall be no order as to costs.

M.SEETHARAMA MURTI, J

Date: 20.01.2016

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THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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