

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

WRIT PETITION No.4364 of 2008

ORDER:

This Writ Petition under Article 226 of the Constitution of India is filed seeking the following relief:-

“.....to issue a Writ Order or direction, more in the nature of Writ of Mandamus declaring the inaction on the part of the respondent Nos.1 to 5 in not taking appropriate action in misuse to the 60' wide road situated in part of Sy.No.12 and part of Sy.No.24 of Pet Basheerabad Village, Quthbullapur Mandal, Ranga Reddy District shown as Northern side road in the final layout was approved by the HUDA vide proceedings No.permit No.15820/91 Letter No.15820/MP2/H/91 dated 19.09.1998 and the same final layout copy was released by the then Commissioner Quthbullapur Municipality vide Proc.No.G/969/92, dated 03.02.1999 as illegal, untenable and inaction about the statute rights and duties under the provisions of the Hyderabad Municipal Corporation Act and others and consequently direct them to act on the complaints made by the petitioners on 20/22-11-2007 and take appropriate action to protect and preserve the said road, in the interest of justice and pass such other and further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.”

2. I have heard the submissions of the learned counsel for the writ petitioners and the learned Standing Counsel for GHMC. I have perused the affidavit filed in support of the Writ Petition and the counter-affidavits filed on behalf of the respondents 1 and 2 and the counter-affidavit of the 4th respondent. The learned counsel for the parties made submissions in line with the pleadings of the respective parties. I have perused the material record.

3. The grievance of the writ petitioners is in regard to the inaction of the official respondents 1 to 5 in not taking appropriate action in regard to misuse of 60 feet wide road situated on the Northern side of the layout in Sy.No.12/p and Sy.No.24/p of Pet Basheerabad, Quthbullapur Mandal, Ranga Reddy District in spite

of the representations dated 20/22.11.2007 and to consequently direct them to act on the said complaints of the petitioners and take appropriate action to protect and preserve the said road on the Northern side of the final layout approved by the HUDA.

4. The case of the writ petitioners as set out in the affidavit filed in support of the petition and as per the submissions made before this Court at the time of hearing, in brief, is this:

An extent of 55,595 sq.yards, forming part of Sy.Nos.12 and 24 part in Pet Basheerabad, Quthbullapur Mandal of Ranga Reddy District originally belonged to one G. Srinivasa Reddy and others. They had laid out that property after a layout was approved by HUDA vide proceedings in Permit No.15820/91 Letter No.15820/MP2/H/91 dated 19.09.1998. The final layout copy was released by the then Commissioner, Quthbullapur Municipality vide proceedings No.G/969/92 dated 03.02.1999. In terms of the layout approved, 84 plots were created. On the Northern side of the said layout, a 60 feet wide road running from East to West was proposed in the layout approved by the HUDA. That proposed 60 feet wide road is to join the service road abutting the National Highway no.7. To the further North of the 60 feet road Pet Basheerabad Police Station and residential quarters are existing in Sy.No.25. The petitioners purchased plots in the said layout which are facing the 60 feet wide road on the North which is aforementioned. The writ petitioners found that 60 feet road has been dug up here and there. Their enquiries revealed that the said digging activity was not done by the State or the Municipal authorities or for any Public Works and that the said digging up activity was undertaken by the respondent 6 to 10 mischievously and surreptitiously. The petitioners also came to learn that the said respondents are proposing to convert the 60 feet wide road into

graveyard by creating graves. Therefore, the petitioners had objected for the said activity of the said respondents and had made representations to the respondents 1 to 4 (official respondents) bringing to their notice all the above facts. The petitioners had made identical representations dated 22.11.2007 and the same were duly acknowledged by the respondents. However, none of the official respondents have taken any action. The police of the Pet Basheerabad police station, which is opposite to the layout, were also informed of the same. Emboldened by the inaction on the part of the respondents 1 to 5, the respondents 6 to 9 are intending to create graveyards in the 60 feet wide road. The road of the colony, which is opening into the 60 feet wide road on the North was barricaded by putting stones across the road. Hastily, a temporary room was constructed in part of the road during the month prior to the filing of this Writ Petition. The Respondents 6 to 10 are indulging in mischief and questioning the authority of the petitioners stating that the property does belong to the petitioners and that the petitioners cannot question the activities of the said respondents as the official respondents have not taken any action. There was no grave or graveyard all along the 60 feet wide road except one at the fag end of the 60 feet wide road where the said road is touching the service road abutting the National Highway. The respondents 6 to 10 are carrying on their illegal and surreptitious activities on the 60 feet wide road on account of supine indifference of the respondents 1 to 5. The respondents 1 to 4 are bound to maintain the road which is a public property and cannot allow anyone to misuse or abuse the said property or convert it for being put to use for any other purpose as the road is intended for ingress and egress of the public.

5. None appeared for the respondents 6 to 10. The case of the respondents 1 and 2, as stated in the counter-affidavit filed by the then Deputy Commissioner, GHMC, in brief, is as follows:

The subject layout has been approved by HUDA in Sy. nos.12/p and 24/p of Pet Basheerabad wherein a 60 feet wide road was duly proposed on the Northern side of the layout taking approximately half of the site required for the road from the layout site and the remaining half portion from the neighbour's land. On the Northern side of the layout there is a Government land in Sy.No.25. There is no mention in the layout about the graveyard existing in the alignment of the proposed 60 feet wide road and the road portion was shown outside the layout boundary. When there existed a graveyard, it is not known as to why the villagers have not opposed before the HUDA for the proposed 60 feet wide road at the time of the approval of the road in question. After the approval of the layout with 60 feet wide proposed road through Sy.No.25, the villagers belonging to Harijana Community are now objecting for the proposed 60 feet wide road stating that there is an existing graveyard in Sy.No.25 and that the HUDA had approved the layout with the proposed 60 feet wide road through the said survey no.25. It is also not known whether a graveyard was in existence before the approval of the layout by the HUDA. Now the plot owners, abutting to the said 60 feet wide road, are insisting upon the GHMC to implement the layout as approved by the HUDA with the 60 feet wide proposed road on the North of the layout. The villagers state that there is an existing graveyard in Sy.No.25 and a portion of the 60 feet wide road as proposed is passing through it. They are also stating that they are still burying the dead bodies in the graveyard i.e. in the 60 feet wide road portion

passing through Sy. no.25. In the circumstances, the GHMC by a letter dated 22.11.2007 had requested the Deputy Collector and the Mandal Revenue Officer, Quthbullapur to submit a detailed report in the matter. To the said letter, the HUDA had enclosed the representation made by the villagers. Since no action was taken in the matter, a reminder letter dated 04.02.2008 was also sent to the Deputy Collector and the Mandal Revenue Officer requesting to submit a report after duly conducting a physical survey and fixing the boundaries of the graveyard and the proposed 60 feet wide road. As no report was received in the office of the GHMC, no action could be taken. In the circumstances the contention of the petitioners that no action is taken by the respondent-Corporation is not correct.

6. The then Deputy Collector and the Tahsildar, Quthbullapur Mandal had stated in his counter-affidavit as follows:-

The land in Sy.No.12 admeasuring Ac.10.02 guntas and the land in Sy.No.24 admeasuring Ac.12.36 guntas of Pet Basheerabad Village is classified as patta land in the names of different individuals. The layout was stated to have been prepared in respect of the land of an extent of Ac.11.18 guntas in Sy.Nos.12 and 24 and such a layout was procured from the GHMC. As per the layout the 60 feet wide road was proposed in Sy.No.24 on the Northern side of the layout which is falling in the Government land bearing Sy.No.25/2 of Pet Basheerabad Village as per demarcation made by the Mandal Surveyor of the office. The layout is known as 'Ganga Enclave'. On the representation by the Andhra Pradesh Ambedkar Yuvajana Sangham of Pet Basheerabad Village Ac.0.33 guntas of Government land in Sy.No.25/2 situated in Pet Basheerabad Village was earmarked for graveyard and a copy was furnished to the Deputy Commissioner, GHMC, Quthbullapur

Circle vide office letter No.A/2325/2008 dated 17.05.2006. Pursuant to the request of the Deputy Commissioner, Circle No.15, GHMC, Quthbullapur vide letter No.G/147/TPS/Cir-15/GHMC/2014 dated 19.11.2014, the Mandal Surveyor has once again demarcated the Government land bearing Sy.No.25 of Pet Basheerabad Village, Quthbullapur Mandal and prepared the location sketch of the graveyard that is falling in Sy.No.25/2, which is a Government land. The proposed 60 feet road in the layout in Sy.Nos.12 and 24 of Pet Basheerabad Village is overlapping the land in Sy.No.25/2, which is a Government land. The said road is not physically in existence either in Sy.No.24 patta land or in Sy.No.25/2 Government land.

7. From the pleadings and the submissions made before this Court, the following facts emerge:-

The owners of the land of an extent of Ac.11.18 guntas in Sy.No.12/p and Sy.No.24/p situated at Pet Basheerabad Village had obtained an approval of a layout. The layout was approved in respect of the said land in an extent of 55,595 square yards in the said survey numbers by the HUDA by its proceedings dated 19.09.1998. The final layout copy was released by the then Commissioner, Quthbullapur Municipality vide proceedings dated 03.02.1999. In the said layout there are 84 plots. On the Northern side of the said layout there is a 60 feet wide proposed road running from East to West and that proposed road at its fag end on the West joins the service road abutting the National Highway no.7. To the further North of the said road 60 feet wide proposed road, there is Pet Basheerabad police station and some residential quarters in Sy.No.25. That 60 feet wide proposed road in the said layout was formed taking

approximately half of the site required for the road from the layout site and the remaining half portion from the neighbour's land on the North, i.e., the land in the survey number 25. The land in Sy.No.25, which is a Government land, is situated to the North of the layout site. Thus 60 feet wide proposed road in the layout is proposed to be formed by taking half of the required site for the road from the layout site and the remaining half of the required site from the land in Sy.No.25, which is a Government land. The approval of the layout with 60 feet wide proposed road as shown in the layout is not in dispute. Now in the alignment of the said 60 feet wide proposed road, which is on the North of the layout and which is running from East to West, there is a portion of the graveyard in Sy.No.25. The said portion of the said graveyard, which is partly in the alignment of the proposed 60 feet wide road, is situated at one extreme end of the proposed 60 feet wide road, that is, on the extreme Western side where that proposed road meets the service road connecting the National Highway. Now that the layout is approved with 60 feet wide road as proposed in the layout and the graveyard is partly falling in the alignment of the road on the extreme Western side, the dispute had arisen. Had an appropriate verification been made at the time of the approval of the layout, this controversy would not have arisen. The counter-affidavit filed on behalf of the respondents 1 and 2 would also show that it is also not known as to whether the graveyard was in existence before the approval of the layout by the HUDA. The layout was approved vide proceedings dated 19.09.1998 by the HUDA and the final layout copy was released by the Municipality vide proceedings dated 03.02.1999. Since a part of the graveyard is only falling in the alignment of 60 feet wide proposed road that too at the extreme Western end of the proposed road, where the

proposed road is connecting to the service road, the learned counsel for the petitioners would submit that the official respondents 1 to 4 may be directed to have a survey conducted for demarcation of the 60 feet wide road of the layout and also the graveyard in Sy.No.25 and direct them not to permit the respondents 6 to 10 or any others from using that part of the graveyard, which may be falling in the alignment of the proposed road, as a graveyard, but only use the remaining portion of the graveyard, which is not falling within the alignment of the road as such. The learned counsel for the petitioners would also submit that since a colony has now come up in the 84 plots layout, the official respondents may also be directed to take steps to shift the graveyard from the existing portion in Sy.No.25 to any distant place by allotting an alternate Government land to the respondents 6 to 10/Andhra Pradesh Ambedkar Yuvajana Sangam, Pet Basheerabad Village, if necessary and if warranted as it is the duty and the responsibility of the official respondents to see that no disposal of the dead takes place at a place nearer to residential locality.

8. The learned Standing Counsel for the 4th respondent would submit that a survey was already done by the Mandal Surveyor, Quthbullapur Mandal and that he had demarcated the Government land in Sy.No.25 of Pet Basheerabad Village of Quthbullapur Mandal and that he had also prepared a location sketch of the graveyard which is in Sy.No.25/2, which is a Government land. He had also drawn the attention of this Court to the contents of paragraph no.5 of the counter-affidavit filed on behalf of the 4th respondent wherein it is stated as follows:

“5. It is submitted that in pursuance with the

requisition of the Deputy Commissioner, Circle No.15, GHMC, Quthbullapur vide letter No.G/147/TPS/Cir-15/GHMC/2014 dated: 19-11-2014, the Mandal Surveyor of this office once again demarcated the Government land bearing Sy.No.25 of Pet-Basheerabad village, Quthbullapur Mandal and prepared the location sketch of the grave yard, which is falling in Sy.no.25/2 which is a Government land. It is also submitted that the proposed 60 feet road as proposed in the lay-out in Sy. Nos.12 & 24 of Pet-Basheerabad village is overlapping in the Sy.No.25/2 Government land, which is not physically existing either in Sy.No.24 Patta land or Sy.No.25/2 Government land.”

However, a plain perusal of the counter-affidavit filed by the Deputy Collector and the Tahasildar, Quthbullapur Mandal on behalf of the fourth respondent would show that the 60 feet wide proposed road in the layout is not demarcated in the survey that was said to have conducted by the Mandal Surveyor. It is trite to mention that without demarcating the 60 feet road, which is on the North of the layout, on ground, it would not be possible to precisely state as to what extent of the graveyard portion is falling within the alignment of the 60 feet wide road. The extent of the graveyard according to the submissions made before this Court is Ac.0.33 guntas and that the same is earmarked. Therefore, unless the 60 feet wide proposed road is demarcated on ground, any survey in the present context of the matter is of no avail. The Mandal Surveyor did not admittedly demarcate the 60 feet wide proposed road on the Northern side of the layout. Therefore if a survey is directed to be conducted and the 60 feet wide proposed road as shown in the layout approved by the HUDA as well as the graveyard in Sy.No.25/2, which is in Government land are identified and demarcated on land, it would be clear as to how much portion of the graveyard out of the said total extent of it is falling in the alignment of the 60 feet wide proposed road of the

layout. As rightly contended, if only a small portion of the graveyard is falling within the alignment of the 60 feet wide proposed road of the layout, then the official respondents can direct the respondents 6 to 10 and the members of the Andhra Pradesh Ambedkar Yuva Sangam, Pet Basheerabad Village not to use that portion of the graveyard, which is falling within the alignment of 60 feet wide proposed road but only to make use of the remaining portion of the graveyard for the purpose intended. However, if a major portion of the graveyard is falling within the alignment of 60 feet wide proposed road, in view of the fact that the said 60 feet wide proposed road is approved by the HUDA while approving the layout in question, the respondents have to necessarily identify some other Government land and allot the same to the respondents 6 to 10/the Andhra Pradesh Ambedkar Yuva Sangam, Pet Basheerabad Village for their use as graveyard. Till the controversy is resolved by the concerned official respondents by having the necessary survey conducted, no digging operations for the purpose of graves shall be permitted in the 60 feet wide proposed road area opposite to the owners of the plots in the subject layout. Hence, having regard to the facts and circumstances, this Court is satisfied that there is merit in the Writ Petition and in the submissions of the learned counsel for the writ petitioners and, therefore, necessary directions can be accordingly given while disposing of the Writ Petition.

9. Viewed thus, the Writ Petition is allowed, subject to the observations and directions made infra.

The respondents 1 to 4 shall cause a survey conducted by the Mandal Surveyor concerned for demarcation of the 60 feet wide proposed road of the layout as well as the graveyard on

ground, to fix the portion of the graveyard that may be falling in the alignment of the said road. On such survey, if any portion of the graveyard is falling within the alignment of the said road of the approved layout, the said respondents shall not allow that portion of the graveyard, which is falling in the alignment of 60 feet wide proposed demarcated road, as a graveyard as the layout with the said proposed road on the North is already approved way back in September, 1998 and a copy of the same was released by the Commissioner, Quthbullapur Municipality vide proceedings dated 03.02.1999 and as the HUDA in its defence had expressed that it is also not known as to whether the graveyard is in existence before the approval of the layout by the HUDA. It is made clear that the said respondents 1 to 4 shall permit the concerned to use the remaining portion of the graveyard, which is not falling in the alignment of 60 feet wide proposed demarcated road. The respondents 1 to 4 shall also consider the practicability of the shifting of the subject graveyard from the existing place (in Sy.No.25/2) to any distant suitable place by allotting an alternate Government land to the respondents 6 to 10/the Andhra Pradesh Ambedkar Yuvajana Sangam, Pet Basheerabad Village for their use as graveyard, if on such survey, it comes to light that a substantial portion of the graveyard is falling within the alignment of 60 feet wide proposed road. Keeping in view the larger public interest, the respondents 1 to 4 may consider the feasibility of the shifting of the graveyard from the present locality, as it is the duty and the responsibility of the Municipality to regulate the disposal of the dead.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, in this writ petition

shall stand closed.

25th January, 2016
TSY

M.SEETHARAMA MURTI, J