

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION No.4598 of 2016

O R D E R:

Heard counsel for the petitioner and Sri R.Sudheer,
Standing Counsel appearing for 2nd respondent.

2. Petitioner had purchased an extent of Ac.1-63 cents in NTS No.17/1, Vishalandhra Road, Vijayawada under a registered Agreement of Sale-cum-GPA dt.27.03.2002, paid entire consideration to his vendors and he was put in possession of the property.

3. Petitioner's vendors had applied to the 2nd respondent for permission for construction of a building of stilt + 4 floors and they were asked to give an undertaking to handover a portion of the said land as and when road widening is taken up as per the Master Plan.

4. Accordingly, an undertaking was given and the 2nd respondent granted building permission in B.A.No.1982 of 2000 dt.24.02.2001.

5. Petitioner made construction of the building and sold away shops to the buyers by leaving some land for the road widening purpose.

6. Thereafter, an extent of 444.44 sq. yards was taken by the 2nd respondent for road widening purpose in 2009 and he

was informed that Transferable Development Rights (TDRs) will be issued to him in lieu of compensation.

7. Petitioner contends that he represented to the 2nd respondent on 12.01.2001 and also on 05.09.2001 for issuance of TDRs but the petitioner has not been given the said TDRs. The petitioner is now aged about 73 years, and having failed in all his attempts to secure the TDRs from the respondents, he has filed this Writ Petition.

8. Petitioner asserts that as per clause 17(b)(i) of the G.O.Ms.No.168, dt.07.04.2012, TDRs have to be issued equivalent to 200% on built-up area of the area surrendered for road widening purpose. He therefore seeks a direction to the 2nd respondent to issue TDRs to him for the land taken by them for the road widening purpose.

9. Counter affidavit is filed by the 2nd respondent stating that when petitioner's vendors applied for grant of building permission for construction of a building of stilt + ground + four floors prior to 2001, they had given an undertaking to surrender 444.44 sq. yards for road widening purpose free of cost i.e., without seeking any compensation in any manner whatsoever. It is stated that petitioner's vendors were originally not entitled for grant of building permission for stilt + ground + 4 floors; that under the Rules, petitioner's vendors were eligible for the said construction only if they

surrender 444.44 sq. yards of land free of cost; the petitioner's vendors surrendered the said land free of cost; and were granted permission in B.A.No.1982 of 2000 dt.24.02.2001. The 2nd respondent denied that the petitioner was informed that TDRs would be issued to the petitioner. It is also contended that the G.O.Ms.No.168, dt.07.04.2012 would not apply to the present case, since the petitioner's vendors voluntarily surrendered the land in 2000 itself.

10. In view of the counter affidavit filed by the 2nd respondent, this Court on 22.09.2016 asked the counsel for the 2nd respondent to produce the material in support of the plea of the 2nd respondent that the petitioner's vendor had voluntarily undertaken to give-up an extent of 444.44 sq. yards for road widening free of cost without claiming any compensation in any manner whatsoever.

11. Today, the Standing Counsel for the 2nd respondent has produced photo copy of Building Application Register. A perusal thereof indicates that the applicants seeking sanction plan i.e., petitioner's vendors, had given an undertaking regarding road widening site, parking space and dot plot space. However, the nature of the undertaking given by the petitioner's vendors to the 2nd respondent i.e., whether it is free of cost or not, is not established because the copy of the said undertaking given by the petitioner's vendors is not produced and is said to be lost.

12. In the absence of any material placed by the 2nd respondent in support of its plea that the petitioner's vendors have voluntarily surrendered 444.44 sq. yards for road widening by giving an undertaking that they would not claim any compensation in any manner whatsoever, the 2nd respondent cannot deny compensation, for the land voluntarily surrendered by the petitioner's vendors, in the form of TDRs or in the form of compensation.

13. Admittedly though the building permission has been originally obtained by the petitioner's vendors, actual execution of the construction was done by the petitioner. Therefore, the petitioner would step into the shoes of his vendors and would be entitled to all the rights of his vendors including the right to get the TDRs. This is also clear from clause 20 of the Agreement of Sale-cum-General Power of Attorney which empowers the petitioner to act as the authority of the vendor in relation to the property as fully and effectively in all respects as the vendors would do if personally present.

14. Therefore, the Writ Petition is allowed; the 2nd respondent is directed to issue 100% Transferable Development Rights to the petitioner towards the area of 444.44 sq. yards acquired by the 2nd respondent for road widening, in NTS No.17/1, Vishalandhra Road, Vijayawada in B.A.No.1982 of 2000 dt.24.02.2001, within a period of four

(04) weeks from the date of receipt of a copy of this order.

There shall be no order as to costs.

15. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

28th September, 2016
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