

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

Writ Petition No.10978 of 2010

ORDER:

The relief sought for in this writ petition is for a mandamus to declare the action of the respondents in laying a road on the burial ground in New Town Survey No.45, Block No.21, Revenue Ward No.16 of Machavaram, Vijayawada as arbitrary and illegal and for a consequential direction to the respondents to maintain and protect the burial ground of an extent of Acs.2.00 for the Dalits and Dalits Christians of Machavaram, Vijayawada Municipal Corporation.

The petitioner claims to be a social worker espousing the cause of the Christian Community. It is his case that the Vijayawada Municipal Corporation, which is under an obligation to maintain and protect burial grounds, was laying a road on the burial ground causing inconvenience to members of a particular community. The petitioner's grievance is regarding construction of a road under the Bus Rapid Transport System (BRTS) project which he claims is only in the interests of rich people.

In the counter-affidavit, filed on behalf of the 2nd respondent-Corporation, it is stated that the BRTS road was being constructed under the JNNURM scheme with funds allotted by the Government of India for improvement of mass transportation in urban cities; a major portion of the BRTS road was completed, in the place of removed railway track mainly used for Vijayawada-Machilipatnam; the contention of the petitioner that the BRTS road was being laid on the burial ground was false; there were encroachments along the Ryves Canal bund abutting the burial ground; about 422 families residing there were rehabilitated in the Vambay colony in pucca constructions made by the Corporation; during the course of laying the BRTS road, a

small extent of Ac.0.07 cents out of a total extent of Ac.1.46 cents of the burial ground, at extremely northern side thereof where there were no cemeteries, was required because there was no possibility to take on the other side of the road as it was a canal; and the small extent was being taken for formation of the BRTS road, as it is an essential need of the growing city. It is further stated that, in order to develop the BRTS corridor, as a six-lane road, it is necessary to acquire an extent of 15 feet width of the burial ground to accommodate the six-lane and geometric curve; the road geometrics necessitate adding horizontal curves to avoid centripetal action of vehicles; and there was no other alternative in that area except to take the small piece of land for the purpose of the said big project.

It is evident from the counter-affidavit that a small portion of the burial ground is being taken for formation of the BRTS road to implement the BRTS project for mass rapid transportation. The action of the 2nd respondent-Municipal Corporation in doing so cannot be illegal, as it is not even the petitioner's case that they have violated any statutory provision thereby.

Ms.G.Jhansi, learned Standing Counsel for the 2nd respondent-Municipal Corporation, would submit that the road has already been laid, and is being put to use. I see no reason, at this point of time (seven years having elapsed since the writ petition was filed), to now direct the 2nd respondent-Municipal Corporation to remove the road.

The Writ Petition fails and is, accordingly, dismissed. Miscellaneous Petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

10th November, 2017
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Date: 10.11.2017

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