

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

WRIT PETITION No.3749 OF 2017

ORDER:

This writ petition is filed, under Article 226 of the Constitution of India, for the following relief:

“to issue an appropriate Writ, Order or Direction more particularly one in the nature of Writ of Mandamus, a. To declare the impugned 3A notification No. S.O 3240 (E) dt.19-10-2016 issued by the respondents and published the same in the Gazette of India with Gazette No.2506, as illegal, arbitrary, unlawful and unjust, and the same is issued, actuated by mala fides and also violative of the National Highways Act, 1956 and Rules, 1957, in so far as the petitioners lands in Sy.No.5 to an extent of Ac.7-92 Cents and Sy.No.7 to an extent of Ac.1-08 Cents, totally admeasuring to Ac.9-00 in Venkatapati Rajupeta Village, Gajuwaka Mandal, Vishakapatnam District are concerned, b. To also declare the respondents impugned 3A notification No. S.O 3240 (E) dt.19-10-2016 issued by the respondents and published the same in the Gazette of India with Gazette No.2506, to be not in sync with the notified masterplan 200 feet width road by the Greater Visakhapatnam Municipal Corporation as malafide, illegal and arbitrary acting without application of mind and to be an unjust act, to burden the state exchequer, c. To also declare the road plan as notified and displayed pursuant to the impugned 3A notification No. S.O 3240 (E) dt.19-10-2016 issued

by the respondents and published the same in the Gazette of India with Gazette No.2506, to be an elevated corridor without any service road to be an arbitrary action without application of mind and to be an unjust act, to burden the state exchequer.”

2. Heard Sri Unnam Muralidhar Rao, learned counsel for the petitioners, learned Government Pleader for Land Acquisition for the 5th respondent and Sri S.S.Varma, learned standing counsel for the respondents 2 to 4.

3. Petitioners herein claim to be the absolute owners of the landed property situated in Survey Nos.5 and 7 of Venkatapatirajupeta Village, Gajuwaka Mandal, Visakhapatnam District. The Special Deputy Collector, Land Acquisition, Visakhapatnam – 5th respondent herein, issued a notification under Section 3(A) of the National Highways Act, 1956 on 19.10.2016, proposing to acquire certain extents of lands including the lands as mentioned supra. In the said notification, the above said lands are shown as Government lands.

4. It is submitted by the learned counsel for the petitioner that the said lands are the private properties of the petitioners herein and the same would be evident from the proceedings of the Tahsildar, Gajuwaka, vide Rc.No.601/2000 SA, dated 12.04.2009. It is also the submission of the learned counsel that the Revenue Authorities also issued pattadar passbooks in favour of the petitioners herein. It is

further submitted by the learned counsel for the petitioners that there is no necessity to acquire the private properties of the petitioners, since the Government lands are available. It is also submitted by the learned counsel that on 01.01.2017, petitioners herein submitted objections before the 5th respondent. It is further submitted by the learned counsel that in the said objections, the petitioners herein categorically brought to the notice of the respondent authorities as regards to their title over the property and lack of any necessity in acquiring the lands, as Government lands are available.

5. On the contrary, it is submitted by the learned Government Pleader and learned standing counsel for the National Highways that since the petitioners herein filed their objections before the competent authority, it is not open for the petitioners herein to approach this Court under Article 226 of the Constitution of India, by way of the present writ petition.

6. Section 3(C) of the National Highways Act, 1956, reads as under:

“3C. Hearing of objections.—(1) *Any person interested in the land may, within twenty-one days from the date of publication of the notification under sub-section (1) of section 3A, object to the use of the land for the purpose or purposes mentioned in that sub-section.*

(2) *Every objection under sub-section (1) shall be made to the competent authority in writing and*

shall set out the grounds thereof and the competent authority shall give the objector an opportunity of being heard, either in person or by a legal practitioner, and may, after hearing all such objections and after making such further enquiry, if any, as the competent authority thinks necessary, by order, either allow or disallow the objections.

Explanation.—For the purposes of this sub-section, "legal practitioner" has the same meaning as in clause (i) of sub-section (1) of section 2 of the Advocates Act, 1961 (25 of 1961).

(3) Any order made by the competent authority under sub-section (2) shall be final."

7. In the instant case, there is absolutely no controversy with regard to the fact that the petitioners herein filed objections in accordance with the above said provision of law on 01.01.2017 and the same are pending consideration before the 5th respondent and no action has been taken on the said objections so far.

8. Having heard the learned counsel for the petitioner, learned standing counsel for the National Highways and learned Government Pleader for Land Acquisition, this Court is of the considered opinion that the ends of justice would be served, if the 5th respondent – Special Deputy Collector, is directed to consider the objections submitted by the petitioners on 01.01.2017, by giving opportunity of hearing to the petitioners herein and to pass appropriate orders.

9. For the aforesaid reasons, this writ petition is disposed of, directing the 5th respondent herein to consider the objections of the petitioners dated 01.01.2017 for acquisition of the subject lands and take action accordingly as per the provisions of Section 3(C) of the National Highways Act, after giving notice and opportunity of hearing. It is also open to the petitioners herein to raise all the objections before the 5th respondent – competent authority, including the objections already raised.

10. Miscellaneous petitions pending consideration, if any, in this case shall stand closed in consequence. No order as to costs.

20.02.2017
SS

A.V.SESHA SAI, J

