

HONOURABLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.12609 of 2017

ORDER:

The petitioner is aggrieved by the notice dated 22.12.2017 issued by respondent No.2 – Municipality, more particularly, despite his reply dated 24.03.2017, respondent – authorities are harassing and interfering with his small portion of the property.

Sri Md. Saleem, learned Standing Counsel for respondent No.2 – Municipality, on instructions, asserts that the petitioner, having gifted land admeasuring 18.55 sq. mts in favour of respondent No.2 – Municipality and executed transfer gift deed on 14.11.2014, constructed compound wall, bathrooms and staircase in the said property; and, as at present, drainage works are being carried out and the entire work on both sides of the petitioner's property had already been completed and only the portion of petitioner's property, drainage works are left over.

Having considered the respective submissions, the fact that petitioner had gifted a portion of the property to the Municipality, as stated by him in the writ affidavit, is not in dispute. The only dispute is whether the petitioner had encroached into the property which he had gifted to respondent No.2 – Municipality and had constructed

compound wall, bathrooms and staircase, occupying over an extent of 5ft X 12 ft .5 ft on to the road.

In the reply submitted by the petitioner, he categorically stated as follows:

“Therefore, we hereby inform you to conduct enquiry and fix the road with the assistance of Surveyor and to verify all the concerned records and also verify the documents of the properties situated on the western side of the said road so as to arrive just conclusion in this regard and till then kindly stop to construct the drainage on the western side of the property of our client. On failure, please take notice that our client will take appropriate legal action against you and thereby you will be held liable for all costs and consequences advising there on kindly avoid unnecessary litigation and also to see that our client shall not lose his property.”

A reading of the above reply indicates that the petitioner himself does not have any objection for construction of drain but his objection is that demarcation be done after site inspection and carrying out actual measurement, and there appears to be no response from the respondent – authorities to the reply of the petitioner. Inasmuch as the petitioner himself is ready to cooperate with construction of drain, respondent No.2 – Municipality may depute the site engineer and conduct physical inspection of the site after issuing notice to the petitioner and, to the extent required, necessary marking be made in his presence to enable canal work to be completed. Till the site inspection is made, no demolition shall be carried out by the respondent – authorities.

Subject to the above observations, the Writ Petition stands disposed of.

Miscellaneous petitions pending, if any, shall also stand disposed of. However, in the circumstances, without costs.

CHALLA KODANDA RAM,J

Date:10.04.2017

Note:Issue CC forthwith
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