

THE HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION Nos.17225 and 17228 of 2009

COMMON ORDER:

The petitioners pray for Mandamus declaring the action of respondents in interfering with the petitioners' possession and enjoyment of property identified as Door Nos.4/235 and 4/236 situated at Nabikota, Akkayyapalle Village, Kadapa District, without recourse to law, as illegal, arbitrary and unconstitutional.

The petitioners refer to Notification issued under Section 4(1) of the Land Acquisition Act, 1894 on 25.08.2008 to canvas the point that though the petitioners are falling within the line of proposed widening of road, still the names of petitioners are not included in 4(1) Notification and afforded them any opportunity in the proceedings initiated in this behalf. Hence, the writ petitions.

On 20.08.2009, this Court granted status-quo orders and the same are subsisting as on date.

The respondents filed counter affidavits and also vacate stay petitions to vacate the interim orders granted in respective writ petitions.

Briefly stated, the case of respondents is that the petitioners have constructed houses in road poramboke and for eviction or removal of encroachment, if any, the respondents are not under

obligation to follow the procedure stipulated under the Land Encroachment Act, 1905.

It is felt appropriate to excerpt the stand of respondents taken in the counter affidavit filed in W.P.No.17225 of 2009.

“In answer to Para No.2 of the petitioner’s affidavit, it is submitted that it is a fact that the Executive Engineer, R&B Kadapa, dt.12.06.2008 has sent a requisition for acquisition of land/ structures for widening and improvement of road with a width of 60 feet from Kagithalapenta Darga to Mariyapuram Church in Kadapa Town. As per requisition sent by the Executive Engineer, R&B, Kadapa I have inspected the vacant site and structures proposed for the said road widening along with AE (R&B) Kadapa Tahsildar Kadapa and the Mandal Surveyor Kadapa and the Deputy Inspector of Survey, Kadapa on 12.08.2008. During the inspection, it is observed that 146 structures are existing in the proposed road widening.

It is submitted that the petitioner’s structure in Sy.No.3/ 1A2B is in road poramboke. The petitioner encroached the Road Poramboke and constructed residential house bearing D.No.4/ 235 Nabikota of Akkayapalli Village. Apart from the above, there are other 34 residential houses which are also under encroachment. The petitioner is on among the 35 residential encroachers. Hence, the said structures including the petitioners herein are not covered under 4(1) Notification as these are under encroachment in Road Poramboke.

In reply to the averments made in Para 3 of the affidavit, it is submitted that the executive staff of R&B Department and the Surveyor have jointly inspected the notified land for road widening and marked with paint confirming the extent required for road widening as proposed by the R&B authorities. In reply to the contention of the petitioner that he is being dispossessed without

issuing 4(1) Notification is being denied. It is further submitted that 4(1) Notification is issued for the patta land and the petitioner herein has encroached the Road Poramboke land. Hence, the petitioner's structure is not covered in the 4(1) Notification, but separate action will be taken under Hyderabad Municipal Corporation Act, 1955 before dispossessing the petitioner.

In reply to the averments made in para 4 of the affidavit, it is submitted that the petitioner's structure in Sy.No.3/1A2B are classified as Road Poramboke. It is submitted that Notification was issued to the patta lands; whereas the petitioner has encroached in Road Poramboke, so his structure is not covered under 4(1) Notification of Land Acquisition Act. It is further submitted that Chemmumiahpet and Akkayapalli Village comes under Municipal Corporation Limits so the structures existing in Road Poramboke both in Akkayapalli and Chemmumiahpet villages covered with 85 residential houses are under encroachment. The Municipal Corporation who is the competent Authority to deal with such encroachments in Urban Limits as per the provisions of Hyderabad Municipal Corporation Act, 1955, hence those list of encroachers along with petitioner will be sent to the Municipal Corporation, Kadapa to take action as per the Municipal Corporation Act.

In reply to the averments made in para '6' of the affidavit, it is being denied that officials of the 2nd respondent i.e. (R.D.O. & L.A.O. Kadapa) has visited the house of the petitioner and threatened forcible dispossession.

It is further submitted that the present stage of notified lands is at Award enquiry stage and regarding the petitioner's structure appropriate action under the Municipal Act, 1955 will be taken. Thus, it is submitted that without following due process, demolition of structures would not be done."

From the above, it is clear that the respondents intend to proceed under the Municipal Corporation Act, 1955, while removing encroachment in this behalf.

As the complaint of petitioners that their possession shall not be disturbed except in accordance with law is accepted by respondents, the writ petitions are disposed of by placing on record the stand of respondents. No order as to costs.

Miscellaneous petitions, if any, pending, shall stand closed.

Dt: 01-08-2017
Prv



S. V. BHATT, J

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