

THE HON'BLE SRI JUSTICE P.KESHA VA RAO

WRIT PETITION NO.21368 of 2005

ORDER:

Heard the learned counsel for the petitioner as well as the respondents.

The present writ petition is filed seeking the following relief:

'For the reasons stated in the accompanying affidavit the petitioner prays that this Hon'ble Court may be pleased to issue a writ, order or direction, more particularly one in the nature of writ of Mandamus declaring the action of the respondent in issuing the impugned proceedings dated 21.09.2005 issued by the first respondent as arbitrary, illegal and without jurisdiction and consequently direct the respondents not to remove the said approach road and the culvert and to pass such other order or orders as this Honourable Court may deem fit and proper in the circumstances of the case.'

The facts of the case are that the petitioner had inherited the property admeasuring to an extent of Acs.26.00 in survey Nos.1/7A part and 1/8A part of Tadi Village, Parvada Mandal, Visakhapatnam District, from his father. For the purpose of developing the said land, he has submitted a proposal to the Visakhapatnam Urban Development Authority, the 2nd respondent herein. The 2nd respondent after examining the proposal was pleased to grant the layout approval *vide* proceedings dated 01.03.2005. However, as there is no approach road from the colony, a request was made to the 3rd respondent i.e. the District Collector, Visakhapatnam, to permit him to utilise the available land admeasuring Ac.0.08 cents in survey No.1/6A. The 3rd respondent, after calling for a report from the concerned Revenue Divisional Officer and after examining all the aspects, was pleased to grant permission *vide* proceedings dated 30.11.2004 permitting the petitioner to form an approach road in the said assigned land admeasuring Ac.0.08 cents in survey No.1/6A of Tadi

Village, subject to certain conditions mentioned therein. Accordingly, the petitioner formed the road in the said land after obtaining permission from the 3rd respondent.

However, the petitioner received a show cause notice dated 11.08.2005 issued by the 1st respondent, wherein it was stated that during the field survey, it was observed that a pipe culvert was constructed parallel to the road at a distance of around 28 meters from the centre of the road median and formed an earthen road connecting to National Highway as approach to the real estate area developed by the petitioner for the access to private property from the National Highway, and as such, approval of the National Highway Authority is mandatory and he was directed to show cause as to why action should not be taken within 15 days from the date of receipt of the said notice. In response to the said notice, the petitioner submitted his explanation dated 30.08.2005 to the effect that he has not made any violations and also gave an undertaking that even if the existing National Highway No.5 is widened, he will not claim any compensation and requested that the proceedings initiated against him may be dropped. However, the 1st respondent, after considering the explanation, issued proceedings dated 21.08.2005 directing the petitioner to remove the already formed approach road and the pipe culvert within seven days from the date of receipt of the notice, failing which, the same will be removed by the 1st respondent at the cost of the petitioner. Questioning the said proceedings, the present writ petition is filed.

The 1st respondent filed a counter affidavit to the effect that out of the land allotted to the National Highway i.e. Ac.1.39 cents, in an extent of Ac.0.08 cents of land, a pipe culvert and an approach road is laid,

which clearly shows that the petitioner had illegally encroached into the said land. It is further stated that the petitioner has not obtained any permission for construction of the said culvert from the NH authority and therefore, the impugned notice was issued directing him to remove the same.

During the course of hearing, this Court on 23.11.2005 directed the 3rd respondent to submit a report as to whether Ac.0.08 cents of land forms part and parcel of the land already acquired by the National Highway Authority of India, within three weeks from the date of receipt of a copy of the said order. In pursuance of the said direction, the 3rd respondent submitted a report dated 30.01.2008, which reads as under:

'I submit that, permission was accorded to Sri S.Narasimhachari, resident of Visakhapatnam vide Collector's procgs.Rc.No.4809/2003 E2, dt:30.11.2004 only to construct culvert in the Government land covered by Sy.No.1/6A in an extent of Ac.0.08 Cts in Tadi Village of Paravada Mandal to use the land as passage to his private lands. There are no acquisition proceedings initiated by the land acquisition officer for NH-5 since it is government land. According to the reports of the Tahsildar, Paravada dt:06.04.2004 the total extent of the and in Sy.No.1/6-A is Ac.2.06 cts. Out of which, an extent of Ac.1.39 cts was allotted to the NH-5 authorities and the culvert permission was given in an extent of Ac.0.08 cts in the available balance land of Ac.0.67 cts.'

From a perusal of the said report, it is clear that an extent of Ac.0.08 cents of land utilised by the petitioner for the formation of the road and construction of the pipe culvert is forming part of the balance land of Ac.0.67 cents after allotting Ac.1.39 cents to the 1st respondent in the total extent of Acs.2.06 cents. That being the position, there cannot be any grievance for the 1st respondent to say that the land where the culvert is constructed is forming part of the land which is allotted to the National Highway Authority of India. The report submitted by the 3rd

respondent does not indicate the location of the road laid and culvert constructed by the petitioner with reference to any sketch plan.

The counsel appearing for the petitioner would contend that the report submitted by the 3rd respondent dated 30.01.2008 is not clear as to how the rights and interest of the 1st respondent are prejudiced in any manner, by virtue of construction of the culvert.

Therefore, after hearing both the parties, this Court feels it appropriate to direct respondents 1 and 3 to conduct a joint survey in the presence of the petitioner, and after giving him an opportunity of hearing, and after verifying the field position, the 1st respondent is directed to pass appropriate orders thereon.

With the above said observation, the writ petition is disposed of. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

Date:04.12.2017

GJ

P.KESHAVA RAO,J

