

THE HON'BLE SRI JUSTICE S.V. BHATT

WRIT PETITION No.15959 OF 2009

AND

WRIT PETITION No.15960 OF 2009

COMMON ORDER:

The petitioners in these two writ petitions pray for Mandamus declaring the action of respondents straightaway in damaging the fencing and digging the petitioners' land to an extent of Ac.1-00 cents situated in Sy.No.74/1 of Kottur (B) Village, Zaheerabad Mandal, Medak District for widening the road without initiating the land acquisition proceedings and without paying compensation as arbitrary, illegal and unconstitutional.

The petitioners claimed right and title to the subject-matter of writ petitions on registered sale deeds executed in their favour. According to them, Revenue Department has accepted transfer of title in favour of the petitioners, issued pattadar passbooks as well, names are reflected in revenue records as well. The petitioners rely upon Ex.P-2 photographs to show that respondents, either in the name of plying the road or widening the road, encroached into lands of the petitioners, which is without recourse to law, as arbitrary and illegal.

Respondent No.3 filed a counter-affidavit and substantially denies the stand of the petitioners as well as grievance canvassed in the writ petition. According to 3rd respondent, since long a 40 feet road exists from National Highway No.9 to Kottur Sugarcane factory via Burdipad village, Zaheerabad Mandal, Medak District with a length of 7.49 kilometers. The said road is damaged due to plying of bullock carts and other vehicles with sugarcane loads to the factory. It is stated that Government of India sanctioned funds for upgrading the existing roads under PMGSY Scheme. The State Government issued G.O.Rt.No.1317,

Panchayat Raj & Rural Development (Progs.II) Department, dated 29.08.2008 granting administrative sanction for upgradation of gravel roads in the District. The 3rd respondent refers to consequential steps taken in this behalf and it is stated that B.T. surface road is laid from NH-9 to Kottur Sugarcane factory at an estimated cost of Rs.224.83 lakhs. The 3rd respondent relies upon documents annexed to counter affidavit to show the sanction, other steps taken in this behalf. Finally, it is stated that the work now executed is only B.T. surface road, constructed culverts and road dams on the existing road, but not laying a new road. The 3rd respondent, to draw an inference in this behalf, lays much emphasis on the existence of culverts and road dams.

I have perused the pleadings of parties, and examined the documents on which both parties rely upon in support of their respective versions. Briefly stated, the petitioners pray for Mandamus on the assumption that the road now sought to be laid by the respondents by encroaching into lands of the petitioners and such step without recourse to law is arbitrary, illegal and unconstitutional.

On the other hand, in reply of the petitioners, it is stated that the road is in existence since long and the work now undertaken by the respondents is to lay a B.T. surface road and strengthen the culverts and road dams, etc. The consideration of exhibits relied upon by the petitioners, *prima facie*, show that the road is, in fact, in existence. What is the extent of land owned and held by the petitioners; whether the petitioners are interfering with 40 feet road, or, the respondents in the name of widening the road encroach into the land of the petitioners cannot and could not be considered and decided under Article 226 of the Constitution of India for the exercise is well suited in a trial.

For the aforesaid reasons, this Court is of the considered view that the matter requires recording of evidence in a trial joined by the parties; and as the writ prayer cannot be considered under Article 226 of the Constitution of India, both the Writ Petitions are dismissed. The petitioners are given liberty, if so advised, to file a suit for comprehensive relief, establish their title and work out remedies in accordance with law. No order as to costs.

Miscellaneous petitions, pending if any in these Writ Petitions, shall stand closed.

Dt. 25.01.2017
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S.V. BHATT, J.

