

THE HONOURABLE SRI JUSTICE S.V.BHATT

WRIT PETITION No.25649 OF 2012

ORDER :

Heard Mr.T.S.Anand for petitioner, the Assistant Government Pleader for Panchayat Raj for respondents 1 and 2 and Mr.Cheemalapati Ravi for respondents 3 and 4.

The petitioner prays for Mandamus declaring Condition No.16 in D.Dis.No.16/2011 dated 02.07.2012, while renewing the old plan submitted by him for construction of two store rooms in an extent of Ac.0.03 cents in Survey No.271/28 of Devarapalli Village and Mandal, Visakhapatnam District, as illegal, without jurisdiction and unconstitutional. The petitioner further complains that the Condition imposed through the proceedings dated 02.07.2012 amounts to violating Article 300-A of the Constitution of India.

The petitioner, both by way of inheritance and acquisition through partition deed dated 02.11.1985, claims exclusive right and title to the subject matter of writ petition. The petitioner filed O.S.No.112 of 1998 in the Court of Principal Junior Civil Judge, Chodavaram, against third parties, for declaration of his right and title etc., to subject matter of the writ petition and on 07.10.1998 the suit was decreed. It is not in dispute that the decree is subsisting as on date. The petitioner applied for renewal of the permission already granted by respondents 3 and 4 for construction of store rooms and the respondents renewed the permission but imposed the Condition under challenge, which reads thus:

“The renewal of old plan is granted to make construction without causing any disturbance to the road which is

being regularly used by the residents of S.C. Colony and as per the settlement approved by the Gram Panchayat.”

The petitioner filed Writ Petition No.21166 of 2011 praying for a Mandamus declaring the action of respondents in trying to interfere with his possession or disturbing the proprietary right as illegal and arbitrary. In W.P.M.P.No.25771 of 2011 this Court granted interim stay as prayed for.

Now the case of petitioner is that, as regards third parties are concerned, the right and title of petitioner is declared by a competent Civil Court and, as regards threatened action of respondents in either laying a road or disturbing the possession/right of petitioner of subject matter of writ petition, the same has been protected by this Court in W.P.No.21166 of 2011. When these orders stare at respondents 3 and 4, the imposition of Condition impugned in the writ petition reserving right of passage to residents in the neighbouring colony is arbitrary, illegal and unconstitutional. It is further submitted that as the ownership of petitioner is admitted, respondents if intend to lay a road or provide accommodation to the residents in the neighbourhood, they have to follow the procedure stipulated by law and thereafter affect the proprietary right of petitioner, but not through Condition No.16.

Respondents 3 and 4 filed counter affidavit and substantially admit the allegations made in the writ affidavit. Respondents 3 and 4 try to explain the circumstances under which the Condition impugned in the writ petition is incorporated through proceedings dated 02.07.2012.

Be that as it may, this Court is required to examine firstly whether the facts are in dispute or not and, if so, whether the Condition imposed is illegal and tenable. The reply in paragraph 8 of the counter affidavit avoids further discussion on these two aspects as well, which reads thus:

“I submit that it is the duty of the Gram Panchayat to provide the roads and other amenities to the villagers. Admittedly the land belongs to the petitioner but the facts remains that the same is being used by the colony people from the immemorial time. The Gram Panchayat also negotiating with the petitioner to leave the passage for the Colony people. The Gram Panchayat has got power to acquire the land for the public purpose under Section 59 of A.P. Panchayat Raj Act, 1994. Already the action was initiated in this regard. The permission which was granted to the petitioner for construction of store rooms would be cancelled by following due process.”

By accepting the stand taken in paragraph 8 of the counter affidavit, this Court has no option except to set aside the Condition impugned in the writ petition. In other aspects, the permission granted by respondents 3 and 4 in favour of petitioner subsists and the petitioner is given liberty to proceed with the construction of store rooms without the obligation fastened by Condition No.16 impugned in the writ petition.

The Writ Petition is ordered as indicated above. As a sequel, the miscellaneous applications pending, if any, shall stand closed. There shall be no order as to costs.

S.V.BHATT, J

27th January, 2017.
JSU