

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.45861 of 2016

ORDER:

This Writ Petition is filed under Article 226 of the Constitution of India, for the following relief:

“To pass an order, direction or writ more particularly one in the nature of writ of mandamus declaring the high-handed and illegal action of the Respondent Nos.2 to 5 in not taking action against the unofficial Respondents for construction of NALA by diverting the same into the Premises of Petitioner Bearing No.1-72/3/15/1 (Part) on Part of Plot No.1, admeasuring 88 Sq.Yds or 75.08 Sq.Mts, situated at Gachibowli Village, Serilingampally Mandal, under GHMC, Ranga Reddy District without considering the original alignment of NALA as per Revenue Records by interfering with the peaceful possession and enjoyment of the Petitioner over the above said property without issuing any Notice or without following the due process of law as it being illegal, arbitrary, unconstitutional and in violation of principles of natural justice and consequently direct the Respondents not to construct any NALA by diverting the same into the above said premises of Petitioner by interfering with the peaceful possession and enjoyment of Petitioner over the above said property by damaging the same thereby to dispossess from it”.

2. According to the petitioner, he is the absolute owner and possessor of premises bearing No.1-72/3/15/1 (part) on Part of Plot No.1, admeasuring 88 sq.yards situated at Gachibowli village, Serilingampally Mandal under Greater Hyderabad Municipal Corporation, Ranga Reddy district. It is further stated in the writ affidavit that the petitioner acquired the subject property by way of gift under a registered gift settlement deed dated 1.10.2015 vide document No.12567/15 from his father P.Ramulu. It is further averred that the petitioner obtained electricity connection and also made an application to the Sewerage Board for water connection. It is further stated that there is a Nala passing in the neighbouring lands of the petitioner from Barlakunta

Gachibowli village to Biodiversity land in different survey numbers of Gachibowli village and finally the said Nala joins into the Biodiversity lake.

3. The sum and substance of the case of the petitioner is that to protect the illegal constructions, the official respondents diverted the said Nala into the private property of the petitioner. It is further submitted by the learned counsel for the petitioner that the Respondents are not adhering to due process of law and the same is in total violation of fundamental rights guaranteed by the petitioner under Articles 14, 21 and 300-A of the Constitution of India.

4. A counter affidavit deposited by the 4<sup>th</sup> Respondent-Executive Engineer, North Tanks Division, Irrigation Department is filed, denying the averments made in the writ affidavit and in the direction of justifying the impugned action. The said counter states that it is false to contend that the Respondents are illegally marking the petitioner's property by changing the original alignment of Nala. Counter further states that as per the required discharge of the Nala calculated by the Irrigation Department, the width of the Nala is varying from 5 meters to 7 meters before the Nala joining into Pedda Cheruvu, Khajaguda and the required width of the Nala at petitioner's land is calculated at 5 meters. It is also specifically stated that 2.5 meters was marked in petitioner's land and another 2.5 meters marked on neighbours plot from the centre of the existing Nala during enumeration survey on encroachment of Nalas conducted by Revenue, Town Planning and Irrigation Department. It is evident from the said counter affidavit that an extent of 2.5 meters belonging to the petitioner is required for the purpose of widening Nala. It is the contention of the learned counsel for the petitioner that the Respondents are extending the Nala covering the land of the petitioner, without recourse to law.

5. Right to property is a constitutional right as enshrined under Article 300-A of the Constitution of India, which in clear and unequivocal terms, mandates that no citizen of this country shall be deprived of his or her property except in accordance with the procedure established by law. If the respondents require the land of the petitioner herein for the purpose of Nala, they are bound to follow the relevant legislation for acquiring the same. It is also the submission of the learned counsel for the petitioner that without issuing any notice, the Respondents herein are extending the Nala.

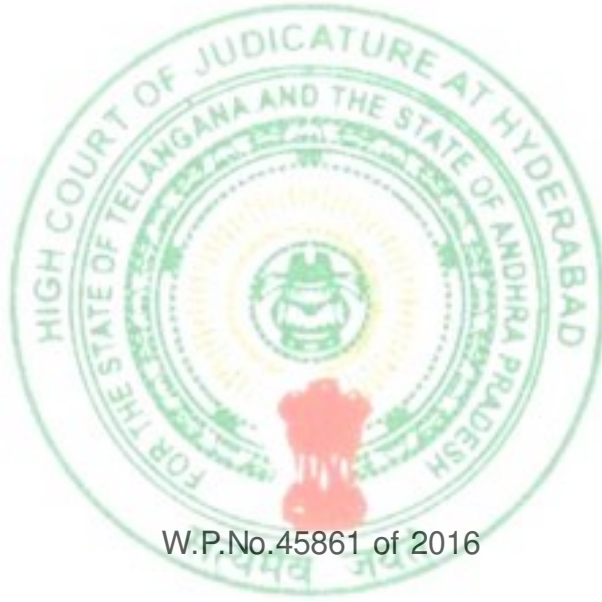
6. Having heard the learned counsel for the petitioner and the learned Government Pleader appearing for Respondents, I am of the considered opinion that the ends of justice would be served if the Respondents are directed to proceed in accordance with law, after issuing notice and opportunity to the petitioner. It is also open to the Respondents to issue a notice, asking the petitioner to submit objections, if any.

7. For the aforesaid reasons, the Writ Petition is disposed of, keeping it open to the Respondents to issue a notice to the petitioner herein for the proposed acquisition, within a period of two weeks, from the date of receipt of this order and if any such notice is issued, the petitioner is entitled to submit his explanation within a period of two weeks thereafter and thereafter, it is open for the Respondents to consider and proceed with the matter in accordance with law. Till the said exercise attains finality, the Respondents shall not interfere with the petitioner's property. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: 21.2.2017  
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