

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Writ Appeal No.304 of 2016

Judgment: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the learned Single Judge in Review W.P.M.P. No. 12044 of 2016 in W.P. No. 17769 of 2006 dated 18.3.2016.

The 1st respondent herein filed W.P. No. 17769 of 2006 seeking a mandamus to declare the action of the appellant herein in demolishing the two storied front portion of her house property bearing Door No. 15/303 in Ward No. 15, Subedarpet Road, Nellore, of an extent of 468 sq. ft, without initiating proceedings under the Land Acquisition Act, 1894, and in dispossessing her therefrom, as arbitrary and illegal. By a common order dated 10.2.2014, W.P.No.17769 of 2006 was allowed, and the respondent-authorities were directed to initiate action afresh under the provisions of the Andhra Pradesh Municipalities Act, 1965, pay compensation to the extent her property was affected, and to complete the exercise within a period of six months. The amount paid to the 1st respondent herein was directed to be deducted from the compensation amount determined under the Andhra Pradesh Municipalities Act, 1965. In addition, the Municipality was directed to pay Rs.10,000/- towards damages for violating their constitutional rights.

Facts, to the limited extent necessary, are that the appellant, now a Municipal Corporation, had sought the consent of land owners to part with a portion of their land for the purposes of road

widening; and, while several land owners are said to have given their consent, the 1st respondent-writ petitioner did not. The appellant-Corporation demolished a portion of her building on which the road was to be laid, and unilaterally paid some amount as compensation, which the 1st respondent-writ petitioner received. She invoked the jurisdiction of this Court, under Article 226 of the Constitution of India complaining of violation of her constitutional right under Article 300-A, and for violation of Sections 146 and 147 of the Greater Hyderabad Municipal Corporation Act, 1955 (for short 'the GHMC Act'), the provisions of which are applicable to the appellant-Corporation.

During the pendency of the writ petition, the 1st respondent-writ petitioner had sold away her entire property including that portion of the land on which the Municipal Corporation had laid a road. The appellant herein filed Review WPMP No. 12044 of 2016 before the learned Single Judge bringing it to his notice that the 1st respondent-writ petitioner was no longer the owner of the land; and she was, therefore, not entitled to claim compensation for the land acquired and for the structure which was demolished.

In the order under appeal dated 18.3.2016, the learned Single Judge observed that, even assuming that the 1st respondent-writ petitioner had sold away 31½ ankanams of land to a third party prior to the disposal of the Writ Petition, the question to be decided was the entitlement of the parties as on the date of acquisition/demolition of the property for the purpose of road widening; admittedly, the 1st respondent-writ petitioner was the owner of the property at the time of acquisition/demolition of

the property by the appellant-review petitioner; and while the fact of subsequent sale may have a bearing with regards receipt of compensation, it would not have any on the determination of the issue raised in the Writ Petition. The Review Petition was, accordingly, dismissed.

Learned Advocate General for the State of Andhra Pradesh contended before us that, since the 1st respondent-writ petitioner had parted with entire extent of land and the un-demolished portion of the structure during the pendency of the Writ Petition, and as it is only the owner of the land and building, who is entitled to seek compensation on his land and building being acquired, no mandamus could have been issued at the behest of the 1st respondent-writ petitioner who, by the time, the Writ Petition came to be disposed of, was no longer the owner of the land; and the learned Single Judge had erred in dismissing the Review Petition whereby the appellant-Corporation had sought to bring to the notice of the Court, the fact that the 1st respondent-writ petitioner was not the owner of the land and building, on the date on which the Writ Petition was allowed and relief was granted.

While fairly stating that the 1st respondent-writ petitioner had parted with the entire extent of land and the remaining structure, by the date on which the Writ Petition was allowed; and the 1st respondent-writ petitioner may, therefore, not be entitled in law to seek compensation for the subject land which, along with the un-demolished portion of the building, was sold by them to a third party, Sri P. Sridhar Reddy, learned counsel for the 1st

respondent-writ petitioner, would however contend that, at least to the extent of the demolished portion of the structure, the appellant-Corporation is liable to pay compensation to the 1st respondent-writ petitioner.

With regards acquiescence of the respondent-writ petitioner in having received compensation for the demolished portion of the building and the land on which the road was laid, Learned Advocate-General would submit that since the respondent-writ petitioner had encashed the cheque, by which compensation was paid, she cannot now be heard to complain of deprivation of her land and buildings. In this context, it is relevant to note that Section 146 of the GHMC Act provides for acquisition of immovable property by agreement on such terms, at such rates, or at such prices not exceeding such maximum as is approved by the Standing Committee. It is not in dispute that no agreement was entered into between the Commissioner and the 1st respondent-writ petitioner, for acquisition of the land or even the structure raised thereupon. In the absence of an agreement being entered into, the subject property cannot be held to have been acquired under Section 146 of the GHMC Act.

The only other course open to the Commissioner, to acquire the subject property, was to initiate proceedings under the Land Acquisition Act in terms of Section 147 of the GHMC Act which exercise was, admittedly, not undertaken. Unilateral determination of compensation, for the structure, and that part of the land on which a road was laid, would neither amount to an agreement under Section 146 nor as determination of

compensation, on acquisition under the Land Acquisition Act, 1894, in terms of Section 147 of the GHMC Act. In the absence of any agreement, the 1st respondent-writ petitioner cannot be deprived of her property except on land acquisition proceedings being initiated, and the mere fact that she had received a sum of Rs.3,64,000/-, by way of a cheque which she had encashed, would not deprive her constitutional right under Article 300-A of the Constitution of India.

As the jurisdiction of this Court, for issue of a writ of mandamus for acquisition of land, can only be invoked by the aggrieved land owner; and as the 1st respondent-writ petitioner had sold away her land, and the remaining structure, during the pendency of the Writ Petition itself, we see no reason to uphold the order of the learned Single Judge to the extent he directed that the subject land also be acquired. While such a claim can possibly be made by the owner of the land (the third party who purchased it from the 1st respondent-writ petitioner), the 1st respondent-writ petitioner cannot seek compensation for the land of which she is no longer the owner of.

However, to the limited extent a part of the building, in which the 1st respondent-writ petitioner was residing, was demolished, the appellant-Corporation would be required to initiate proceedings under the Land Acquisition Act, for acquisition of the demolished structure. The compensation for the demolished structure shall be determined and paid to the 1st respondent-writ petitioner, after deducting the amount already paid to her earlier. The entire exercise, culminating in

compensation being paid as aforesaid, shall be completed within a period of four months from the date of receipt of a copy of this order.

The order under appeal is modified to the extent indicated above, and the Writ Appeal is disposed of accordingly. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(Dr. SHAMEEM AKTHER, J)

17th November, 2017

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Date: 17.11.2017

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