

HON'BLE SRI JUSTICE S.V.BHATT

W.P.Nos.29992 of 2012 AND 38556 OF 2014

COMMON ORDER:

Heard Mr.Prabhakar Rao for petitioners in W.P. No.29992 of 2012, Mr .Subramanyam for petitioners in W.P. No.38556 of 2014, the Assistant Government Pleader for Municipal Administration and the learned standing counsel.

The prayers in these two writ petitions on one hand complain the action of respondents in issuing revised pattas to petitioners and on the other, against inaction. To appreciate the divergent prayers, the Court considers it appropriate to excerpt the prayers which read as follows:

W.P. No.29992 of 2012:

“...Writ of Mandamus declaring the action of the respondents No.1 and 2 in issuing the revised house site pattas / allotment order by proceedings Rc.B.1862/2010, dt.2.6.2012 reducing the house sites of the petitioners without issuing any notice and consequent action of the respondents 1 to 4 in demolishing a portion of the houses of the petitioners causing damage as the same is illegal, contrary to the Judgment of the Civil Court in O.S. No. 991/2001 and layout in L.P. No. 58/84 and violation of principles of natural justice, as also Articles 14, 21 and 300-A of the Constitution of India and consequently direct the respondents not to lay the road or extend into the reduced portion of house sites of the petitioners and award damages against the respondents...”

W.P. No.38556 of 2014:

“...Writ of Mandamus, declaring the inaction of the official respondents in preventing the unofficial respondents from

encroaching into the public road of 10 feet situated in RS No.440/1-B of Vijayawada Urban Mandal and City (now known as Giripuram), Krishna District and in forming the 10 feet road there by removing the encroachments, as being illegal, arbitrary and violative of the Article 14 of the Constitution of India...”

Allegations in W.P. No.29992 of 2012:

The petitioners claim to be in possession of small extent of house sites in R.S. No.440/B which is a Government Poramboke land. The 4th respondent prepared a layout and allotted Plot Nos.108, 107 and 106 to petitioners and one G.K.Kasturi. The 3rd petitioner claims to be the successor-in-interest of the said G.K.Kasturi. On the eastern side of these three plots, it is alleged, 10' wide road is in existence connecting to 60' wide road passing through the north side of the layout. The complaint is that respondent Nos.5 to 7 (writ petitioners in W.P.No.38556 of 2014) managed to obtain house site patta numbers for Plot Nos.110,113 and 111. The house-site pattas granted to respondents 5 to 7 cover more extent than what is available for house plots. On account of such excess assignment, the road alignment is affected and respondents 5 to 7 have made illegal encroachments with the active support of the other respondents. The petitioners refer to a series of cases filed before the civil Court, this Court etc. I am not referring to these allegations having regard to the limited submission of learned counsel appearing for the petitioners for fixation and identification of the road on eastern side connecting to northern side road and protecting the 10' land marked road.

Allegations in W.P.No.38556 of 2014:

The petitioners question inaction of 2nd respondent Municipal Corporation in preventing encroachment into the very same 10' width public road by respondents 6 to 8 (petitioners in W.P.No.29992 of 2012) as illegal, arbitrary and unconstitutional. The case of petitioners is that respondents have allotted house-site pattas bearing No.110, 113 to petitioners herein. The petitioners allege that they have constructed houses within the area allotted to them and on the other hand, the encroachment of road by respondents. Petitioners refer to previous litigation between the parties and make out their own grievance in spite of the orders passed by this Court. As I have not referred to similar allegations made by the petitioners in W.P. No.29992 of 2012, I am not proposing to deal all allegations made by the petitioners.

From the case pleaded by respective parties, it is evident that the writ petitioners are making counter allegations of encroachment against one another. The commonality of facts are that the petitioners in both the writ petitions are beneficiaries of house-site pattas granted by respondents. The house-site pattas are granted in VUDA Layout Plan No.58/84 covered by Survey No..440/1-B. The layout is prepared, sanctioned and operated by Urban Development Authority. Therefore, to identify the extents of house plots granted to petitioners, the boundaries thereof and the width of road are matters of verification and determination by Vijayawada Municipal Corporation, Vijayawada, City Planner, Vijayawada Municipal Corporation and Tahsildar, Vijayawada

Urban Mandal. The parties are burdening the cases on respondents as well.

Having regard to the peculiar allegations of both the parties, the Court suggested for fixation of boundaries of house plots of the petitioners in these two writ petitions with reference to Layout Plan No.58/84 and subject to outcome of such survey and the respondents can be directed to remove the encroachments made by any petitioner to writ petitions. Learned counsel appearing for the parties have consented for the above course. Hence, the writ petitions are disposed of by this order:

The petitioners herein within four weeks from today are given liberty to represent by enclosing a copy of this order to Commissioner, City Planner, Vijayawada Municipal Corporation, Vijayawada and also Tahsildar, Vijayawada Urban Mandal, Vijayawada for survey of the subject matter of these two writ petitions, the road running in north-south direction between the house plots of petitioners. The authorities are directed to identify the house-sites of the petitioners and also the sanctioned and existing width etc, with reference to Layout Plan No.58/84. The authorities are directed to issue notice of survey to petitioners in both the writ petitions by RPAD. In spite of service of notice, if any party does not cooperate, it is made clear that the authorities need not postpone the survey but proceed to undertake and complete as per the schedule specified in the notice served on the parties.

Survey Report fixing of boundaries of house plots and width of road is directed to be communicated to both parties with a further

direction to remove the encroachment portion by the encroacher. The petitioners, if do not remove the encroachment as directed by the respondents, the City Planner, Vijayawada Municipal Corporation is directed to get the encroachment removed and restore the road as per the Layout Plan No.58/84. The above exercise is directed to be completed within two months from the date of receipt of a copy of this order. The petitioners herein along with their representation are directed to deposit a sum of Rs.5,000/- each with Commissioner, Vijayawada Municipal Corporation towards survey, fixation of boundaries etc.

The writ petitions are disposed of accordingly. No order as to costs.

Miscellaneous petitions, if any pending, stand closed.



S.V.BHATT,J

Date:20.03.2017
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