

THE HONOURABLE SRI JUSTICE RAJA ELANGO

WRIT PETITION No.20123 OF 2017

ORDER:

This writ petition is filed under Article 226 of the Constitution of India seeking the following relief:-

“to issue a Writ or Direction more particularly a Writ of Mandamus declaring the action of respondents in interfering with the petitioner's construction in premises bearing municipal No.40-1-100, N.T.S.No.140 and 141 in ward No.32, Salar Bagh, Kanna Nagar, Benz Circle, Vijayawada as per BA No.03114/2007 is illegal, arbitrary, unreasonable, without jurisdiction, in violation of principles of natural justice and petitioner's fundamental rights guaranteed by Article 14 and 300A of the Indian Constitution and direct the respondents not to interfere in the petitioner's construction in the premises bearing number 40-1-100, N.T.S No.140 and 141 in ward No.32, Salar Bagh, Kanna Nagar, Benz Circle, Vijayawada and to allow the petitioner to complete the construction.”

2. It is stated in the affidavit filed in support of the writ petition that the petitioner is the owner of land admeasuring 972.50 sq.mtrs of urban property bearing Municipal No.40-1-100, Salar Bagh, Kanna Nagar, Near Benz Circle, Vijayawada. In the front portion of the land i.e., approximately 300 sq.yards, the petitioner initially constructed a commercial building with a front area of 27 feet open area and the same was let out. In the year 1999, the petitioner has raised ground and two upper floors in the back portion of the land also and the same was let out. The constructions were made after due permission from the respondent. In the year 2007, respondent Corporation proposed for road widening from Benz Circle to NTR Circle from the existing

80 feet road to 120 feet wide road due to increase in traffic. It was proposed to acquire 20 feet of the front side of the petitioner's land out of the existing 27 feet. The total land proposed to be acquired from the petitioner was 145.73 sq.mts. The respondent, instead of invoking the land acquisition proceedings and paying compensation to the property to be acquired, held a meeting with all the land owners whose properties would be affected by the proposed road widening and requested them to leave the land required for road widening without insisting for compensation. The respondent granted permission *vide* B.A.No.03114/2007, dated 05.02.2008, to raise second and third floors of back side building and extension to the existing cellar, ground, first, second and third floors commercial building. In all, the petitioner was permitted to construct 1693.13 sq.mts. The petitioner raised second and third floors on the existing back side of the building by putting the slabs and side walls. However, the petitioner could not demolish the existing old building on the front side for raising the new building in that place by way of extension of the cellar, ground, first, second and third floors. As the tenant in the old building refused to vacate the building, the petitioner could not demolish the existing building to start new construction in its place. After settling the matter in Lok Adalat in the year 2012, the tenant vacated the premises in December, 2014 and delivered the premises. Due to financial and other problems, the petitioner could not immediately start construction in the front portion. The petitioner demolished the front portion of the building in September, 2016 and started construction by way of expansion of the existing cellar, ground, first, second and third floors in terms of

the permission, dated 05.02.2008. The petitioner completed the cellar and is in the process of putting the pillars for upper floors. However, the officers from the respondent Corporation are interfering with the construction and orally directing him to stop the construction. The petitioner pointed out to them that they have given 145.73 sq.mts. of very valuable land for free of cost for expansion of road with a clear understanding that he would be permitted to raise the construction in the front portion of the land after demolition of the existing building and addition of second and third floors on the back side of the building. The condition of the petitioner was accepted and he was granted permission on 05.02.2008. The petitioner could complete the construction of second and third floors on the back side of the building in the year 2009 but could not raise the construction in the front portion due to the litigation with the tenant which was ended only in the year 2014. On 29.05.2017, the petitioner submitted a representation to the respondent pointing out that he could not construct the building earlier due to litigation with the tenant and requested for three months time to complete the construction. Even though the representation was received by the respondent Corporation, the officers of the respondent Corporation are coming to the site everyday and directing the petitioner to stop the work without any written orders. Hence, he filed the present writ petition.

3. Heard and perused the material available on record.
4. Learned counsel for the petitioner submitted that when the petitioner proceeded with the construction on the basis of valid permission granted earlier by the respondent Corporation on

05.02.2008, the respondent Corporation started interfering with the petitioner's construction in the aforesaid premises.

5. Learned Standing Counsel appearing for the respondent Corporation submitted that it is true that a valid building permission was granted in favour of the petitioner, but the said permission was granted in the year 2008 and necessarily, petitioner has to revalidate the same if he intends to make construction in the said premises after lapse of three years and that if an application is filed by the petitioner for revalidating the earlier permission on payment of appropriate fee, the same would be considered in accordance with law.

6. Considering the facts and circumstances of the case and the grievance of the petitioner and also as the petitioner has donated 145.73 sq.mts of land to the respondent Corporation, without going into the merits of the case, the petitioner is hereby directed to file an application before the respondent Corporation for revalidating the earlier building permission granted to him on 05.02.2008 and on such application being filed, the respondent Corporation shall consider the same and pass appropriate orders in accordance with law.

7. Accordingly, the Writ Petition is disposed of. There shall be no order as to costs.

8. Miscellaneous Petitions pending, if any, in this Writ Petition shall stand closed.

JUSTICE RAJA ELANGO

Date : 21.06.2017
AMD

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