

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.36462 of 2017

ORDER:

This Writ petition, under Article 226 of the Constitution of India, is filed seeking verbatim the following relief:

'to issue a writ, order or direction more particularly one in the nature of writ of mandamus by declaring the high handed action of the respondent No.2 in trying to demolish the building and shops belonging to the petitioner's situated at R/o.D.No.24-82-8 in an extent of 681 Sq.yards in Sy.No.186/ 1P, Gajuwaka, Sanat nagar, China Gantyada, Visakhapatnam is illegal, arbitrary violative of principles of natural justice and contrary to Article 300-A of the Constitution of India and consequently direct the respondent no.2 not to demolish the petitioner's building situated at R/o.D.No.24-82-8, Gajuwaka in an extent o 681 Sq.yards in Sy.No.186/ 1P, Sanat Nagar, China Gantyada, Visakhapatnam and pass such other...'

I have heard the submissions of the learned counsel for the petitioner and of the learned standing counsel for GVMC representing the 2nd respondent. I have perused the material record.

The case of the petitioner, in brief, is this: - 'The petitioner purchased 800 Square yards and another 400 Square Yards of the subject property under two separate registered sale deeds. The petitioner was thus the owner of 1200 Square Yards at the inception. In a portion of the said extent of property, she constructed a house leaving the remaining extent as vacant site. The VUDA acquired 208 Square yards for the purpose of road widening *vide* Award No.10/ 90, dated 17.07.1990. Out of the remaining extent, the petitioner alienated an extent of 311 Square Yards to one Nageswara Rao. In the remaining extent, she later constructed shops in front of her house, however, within the boundaries of her property and is paying taxes on the property. While so, the 2nd respondent issued the impugned notice, dated 18.10.2017, alleging that part of the 130' feet wide VUDA road on the Western side margin was encroached upon and requiring the petitioner to show cause as to why the

unauthorised encroachment made on 130' wide VUDA road on the Western side margin shall not be removed within seven days from the date of receipt of the said notice and action shall not be taken on failure to issue a reply notice. The petitioner issued a reply, dated 26.10.2017. The petitioner is constrained to rush to this Court apprehending threat of immediate demolition of the shops constructed in front of her house.'

Learned standing counsel would submit as follows: - 'The shops that were constructed are in the nature of sheds and such constructions were made without obtaining any prior permission from GVMC. The same are unauthorised constructions. Not only the petitioner but some others also encroached upon the subject VUDA road. After the matter was examined by the Lokayukta, notices were issued to various encroachers including the petitioner herein. The petitioner having submitted an explanation/reply did not wait for sufficient reasonable time and approached this Court. In view of the fact that constructions are illegal and were made encroaching upon a public road, action initiated is just and fair.'

Having regard to the facts and submissions, this Court is of the considered view that the writ petition can be disposed of, at the admission stage, with appropriate directions.

In the result, the Writ Petition is disposed of directing the 2nd respondent to pass appropriate reasoned order, within 15 days from the date of receipt of a copy of this order, on the notice issued after taking into consideration the explanation, dated 26.10.2017, of the petitioner herein, however, after giving an opportunity of personal hearing to the petitioner by giving a written notice under proper acknowledgement and thereafter communicate a copy thereof within a week to the petitioner. It is made clear that on failure of the petitioner to avail the opportunity of personal hearing, the 2nd respondent shall be at liberty to pass appropriate orders as directed

supra. Till such time the afore-stated exercise is completed, the 2nd respondent shall not take any coercive steps or coercive action against the subject property of the petitioner.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

31.10.2017
VJI

M. Seetharama Murthi, J

