

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION NO.15337 OF 2006

ORDER:

This Writ Petition is filed to issue writ of mandamus declaring the action of the respondents in laying the road in the petitioner's land to an extent of Ac.0.25 gts in Survey No.56 of Bommakal Village, Karimnagar District, without acquiring the lands, without issuing any notice and without paying any compensation to the petitioner, as arbitrary and illegal and violative of Articles 14, 19, 21 and 300-A of the Constitution of India and a consequential direction to the respondents to pay compensation to the petitioner's lands used for laying the road by initiating land acquisition proceedings.

The case of the petitioner is that she is an absolute owner of the property admeasuring Ac.0.25 gts in Survey No.56 situated at Bommakal village, Karimangar Mandal, Karimnagar District. She purchased the said land from the original owners and possessors through registered sale deed document No.1218 of 1979 dated 06.04.1979. Ever-since purchase, she was in possession and enjoyment of the land. Further, the petitioner stated that the respondent-authorities, without acquiring the petitioner's land, without notice and without giving any compensation, laid the road in her entire land in spite of protest by the petitioner. Assailing the said action of the respondents, this Writ Petition is filed stating that the action of the respondents is violative of Articles 14, 19, 21 and 300-A of the Constitution of India.

The petitioner and her husband approached the respondents number of times, even on 15.06.2006 and requested them to pay the compensation amount for the land used for laying the road.

The first respondent-Gram Panchayat, Bommakal Village, filed a counter stating that acquisition of the petitioner's land in an extent of Ac.0.25 gts in Survey No.56 of Bommakal Village, Karimnagar Mandal, is not known to them and it is also not known whether the land belongs to the petitioner is encroached by Zilla Praja Parishad, Karimnagar for laying road or not. The proper authority to answer in this regard is the Zilla Praja Parishad, Karimnagar, who is not a party to the present Writ Petition. It is further stated that the alleged laying of the road is in the year 2004. The petitioner has not agitated her rights at the time of laying the road but started agitation in the year 2006. There is a lapse on the part of the petitioner in claiming the compensation.

As per the orders of this Court in WP.MP.No.38925 of 2015 dated 06.12.2014, the Zilla Praja Parishad, Karimnagar represented by its Chief Executive Officer, Karimnagar, was impleaded as fifth respondent to the Writ Petition.

The fifth respondent filed counter denying the averments made in the writ affidavit stating that the Zilla Praja Parishad, Karimnagar laid the alleged road on the existing metal road. The road does not belong to the Gram Panchayat and hence, initiation of land acquisition proceedings on payment of compensation to the petitioner for laying the road does not arise. In fact, the road was originally laid 30 years back and now the road was repaired with block top. The road is convenient to go to the village of Bommakal as well as to the other villages. The road was laid by the Zilla

Parishad for public purpose with the funds granted by the Central Government. The Bommakal village is situated along the road side of Rajiv Rahadari State Highway. There was an old kacha road which connects the Bommakal Village and the Rajiv Rahadari Highway under the control of Panchayat Raj Department since long back. A part of the said road passes through Survey No.56. The said road is under control of Mandal Praja Parishad Karimnagar and Gram Panchayat, Bommakal. Its maintenance and development responsibilities lie with the Mandal Praja Parishad, Karimnagar and Gram Panchayat, Bommakal. It is further stated that as per the survey report furnished by the Tahsildar, Karimnagar, the total extent of Survey No.56 is Ac.0.34 gts, out of which an extent of Ac.0.04 ½ gts comes under road leading to Nature Cure Hospital. The Zilla Praja Parishad, Karimnagar releases the funds to various developmental works based on the requisitions furnished by the Gram Panchayat, Mandal Praja Parishad, Executive Engineer, PR Division, Karimnagar. The Panchayat authorities concerned will submit the land acquisition proposals only to the new roads where the land is not available for laying road and the alleged road is not a new road. At various times, when it was developed, the petitioner would have made her representation to the authorities concerned such as Gram Panchayat or Mandal Praja Parishad. At present, the Zilla Praja Parishad, Karimnagar has not sanctioned any road work on the alleged land. As such, the Zilla Praja Parishad, Karimnagar, is not responsible for payment of compensation to the petitioner for the alleged laying of road work since the road work was not sanctioned and executed by the Zilla Praja Parishad, Karimnagar.

Heard the learned counsel for the petitioner and the learned Assistant Government Pleaders for Revenue and Panchayat Raj & Rural Development and learned Standing counsel for the fifth respondent.

Learned counsel for the petitioner would contend that the respondents high-handedly, without notice and without any acquisition and payment of compensation laid the road in the petitioner's lands admeasuring Ac.0.25 gts in Survey No.56 of Bommakal Village, Karimnagar District. In spite of her request on several occasions and also on 15.06.2006, the respondents have not taken any action for payment of compensation for the lands used by the respondents for laying the road and the action of the respondents is violative of Articles 14, 19, 21 and 300-A of the Constitution of India. The respondents have no right or authority to lay the road on the petitioner's land without due process of law and her right conferred under Article 300-A of the Constitution of India is violated without following any due process of law high-handedly and sought for compensation for her land being used for laying the road.

Learned Government Pleader for Panchayat Raj & Rural Development contends that the Zilla Praja Parishad, Karimnagar is not aware of the fact of Gram Panchayat and Mandal Praja Parishad laying road in the petitioner's land and they have not sanctioned any road works and hence, they are not liable to pay compensation to the petitioner.

Learned Standing Counsel for the fifth respondent contends that Bommakal Village is situated along the Rajiv Rahadari State highway, which is the outskirts of Karimnagar Mandal and district

headquarters. There was an old kaccha road which connects the Bommakal Village and Rajiv Rahadari highway under the control of Panchayat Raj Department since long time. Its maintenance and development responsibilities lie with the Mandal Praja Parishad, Karimnagar and Gram Panchayat, Bommakal. As per the survey report furnished by the Tahsildar, Karimnagar, the total extent in Survey No.56 is Ac.0.34 guntas out of which an extent of A.0.04 ½ gts comes under road leading to Nature Cure Hospital. The Zilla Praja Parishad, Karimnagar releases the funds to various developmental works based on the requisitions furnished by the Gram Panchayat, Mandal Praja Parishad, Executive Engineer PR Division, Karimnagar. The Panchayat authorities will submit the land acquisition proposals. The alleged road is not a new road and at various times, when it was developed, the petitioner would have made her representation to the authorities concerned such as Gram Panchayat or Mandal Praja Parishad and at present the Zilla Praja Parishad, Karimnagar has not sanctioned any road work on the alleged land. Hence, they are not liable to pay compensation.

Learned counsel for the petitioner would further contend that in the interest of the State, the property can be taken away subject to limitations prescribed by law. The officers are not justified in their action of laying the road in the petitioner's land. The respondent-authorities have to enter the private land of the petitioner only after issuance of notification under Section 4(1) of the Land Acquisition Act ("the Act" for brevity). Section 4(1) of the Act empowers the officers to enter upon the land which is notified in terms of Section 4(1) of the Act. In support of his contentions, learned counsel relied on the judgments reported in **Bantharam**

Bichappa v. District Collector, Ranga Reddy District¹, K.Sai Reddy v. Deputy Executive Engineer, Irrigation and Command Area Development, Nampally, Hyderabad², State of Uttar Pradesh v. Manohar³ and Tukaram Joshi & Ors Thr Power of Attorney Holder v. M I D C & Ors.⁴ and submits that petitioner's private land is used highhandedly for laying of road without any notice and in violation of Articles 14, 19, 21 and 300-A of the Constitution of India, which made the petitioner eligible to seek appropriate remedy under Article 226 of the Constitution of India for payment of compensation for using her land for laying the road.

The road is already laid and there is no scope for this Court to direct the respondents to re-deliver the possession of lands to the petitioners. Therefore, the respondents are liable to pay compensation to the petitioner for using her lands for laying road. When the State's action is in violative of Article 300-A of the Constitution of India, if the citizen is deprived of right to property without any due process of law, he is entitled for compensation. Under the facts and circumstances of the case, it is found that the respondents highhandedly, without any notice and without payment of compensation, laid the road over the petitioner's land of an extent of Ac.0.04 ½ gts situated in Survey No.56 of Bommakal Village, Karimnagar District. As per the survey report submitted by the Tahsildar, Karimnagar, the total extent of land in Survey No.56 is Ac.0.34 gts, out of which an extent of Ac.0.04 ½ gts comes under road leading to Nature Cure Hospital. In the absence of any evidence, the contention of the fifth respondent that

¹ 2000(4) ALD 206

² 1995 AIR (AP) 208

³ (2005)2 SCC 126

⁴ (2013)1 SCC 353

there was old kacha road existed which connects the Bommakal Village and Rajiv Rahadari Highway under the control of the Panchayat Raj Department since long time could not be accepted. Hence, the respondents are liable to pay compensation to the petitioner for using her land an extent of Ac.0.04 ½ gts in Survey No.56 of Bommakal Village for laying the road.

Accordingly, the Writ Petition is allowed and the respondents are directed to pay compensation to the petitioner by initiating land acquisition proceedings within a period of four (4) months from the date of receipt of a copy of this order. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

7th February 2018
RRB



(M.GANGA RAO, J)