

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

WRIT PETITION No.3187 of 2018

ORDER:

Heard learned counsel for the petitioners, learned Government Pleader for Municipal Administration for respondent No.1 and also Sri Sampath Prabhakar Reddy, learned Standing Counsel for respondent Nos.2 to 4 and perused the prayer in the writ petition with the supporting affidavit and other material on record.

2. The prayer in the writ petition reads as follows:

“.....to issue a Writ, Order or direction, more particularly one in the nature of Writ of Mandamus declaring the actions of the Respondent Nos.2 to 4 in asking the petitioners to give consent and hand over the petitioners' property (i) bearing Municipal No.5-123/1, western portion, admeasuring 56.5 sq. yards (ii) bearing Municipal No.5-123/1, eastern portion, admeasuring 56.5 sq. yards and (iii) bearing Municipal No.5-123/1, admeasuring 237 sq. yards, all are situated at Raidurg Pan Maktha, Serilingampally Mandal, Ranga Reddy District, totally admeasuring 350 sq. yards, to the respondent Nos.2 to 4 and to accept the cheques for the compensation for the structural value as illegal arbitrary and in violation of principles of natural justice and also in violation of Articles 14, 21 and 300-A of the Constitution of India and consequently direct the Respondent Nos.2 to 4 to not to dispossess the petitioners' from the subject property without following due process of law, in the interest of Justice and may pass such other order or orders.....”

3. Sections 145 to 147 of Greater Hyderabad Municipal Corporation Act, 1955 (for short 'the Act') reads as follows:

“145. Power of Corporation as to acquisition of property

:- (1) The Corporation shall, for the purposes of this Act have power to acquire and hold movable and immovable property or any interest therein whether within or without the limits of the city

(2) Any immovable property which may be transferred to the corporation by the Government shall be held by it, subject to such conditions as may be imposed by the Government and shall be applied to such purposes as the Government may impose or specify when the transfer is made.

(3) It shall be competent for the Government to resume any land transferred to the Corporation by the Government with or without a condition for resumption whether before or after the commencement of the Andhra Pradesh Municipal Laws (Amendment) Act, 1991 for utilisation by the State Government or the Central Government or any authority under their control.

146. Acquisition of immovable property by agreement :-

(1) Whenever it is provided by this Act that the Commissioner may acquire, or whenever it is necessary or expedient for any purpose of this Act that the Commissioner shall acquire, any immovable property, such property may be acquired by the Commissioner on behalf of the Corporation by agreement on such terms at such rates or prices not exceeding such maxima as shall be approved by the Standing Committee, either generally for any class of cases or specifically in a particular case.

(2) And whenever, under any provision of this Act, the Commissioner is authorized to agree to pay the whole or any portion of the expenses of acquiring any immovable property, he shall do so on such terms and at rates or prices not

exceeding such maxima as shall be approved by the Standing Committee as aforesaid.

(3) Subject to the provisions of this Act, it shall be lawful for the Commissioner on behalf of Corporation to agree with the owner of any land or of any interest in land needed by the Corporation for the purposes of any Scheme under Chapter XIII or with the owner of any right which may have been created by legislative enactment over any street forming part of the land so needed, for the purchase of such land or of any interest in such land or for compensating the owner of any such right in respect of any deprivation thereof or interference therewith.

(4) No contract for the acquisition of any immovable property or of any interest therein or any right thereto or the payment of any compensation under sub-sections (1), (2) or (3) shall be valid, if the price or compensation to be paid for such property or interest or right exceeds rupees five thousand unless and until such contract has been approved by the Corporation.

(5) Every contract or other instrument relating to the acquisition of immovable property or any interest therein or any right thereto shall be executed by the Commissioner, shall have the common seal of the Corporation affixed thereto in the presence of [two officers nominated by the Commissioner] and shall also have the signature of the said [two officers]..

(6) No contract for the acquisition of immovable property or any interest therein or any right thereto not executed as provided in sub-section (4) shall be binding on the Corporation.

(7) The foregoing provisions of this section which apply to an original contract relating to the acquisition of immovable property, or any interest therein, or any right thereto, shall be deemed to apply also to any variation or discharge of such contract.

147. Procedure when immovable property cannot be acquired by agreement :-

(1) Whenever the Commissioner is unable to acquire any immovable property under the last preceding section by agreement, the Government, may, in their discretion, upon the application of the Commissioner, may with the approval of the Standing Committee and subject to the other provisions of this Act, order proceedings to be taken for acquiring the same on behalf of the Corporation [in accordance with the provisions of the Land Acquisition Act, 1894 as amended from time to time as if such property were land needed for a public purpose within the meaning of the provisions of the said Act.]

(2) The amount of compensation awarded and all other charges incurred in acquisition of any such property shall, subject to all other provisions of this Act, be forthwith paid by the Commissioner and thereupon the said property shall vest in the Corporation.”

4. It is the submission of the learned counsel for the petitioners that despite they are not willing to take the so called amount they are compelling the petitioners. The learned Standing Counsel for respondents submits that if they are not willing for Sections 145 & 146 of the Act, they proceed under Section 147 of the Act.

5. By recording the same, the Writ Petition is disposed of.

Miscellaneous petitions pending, if any, shall stand closed. No costs.

Dr. B. SIVA SANKARA RAO, J

2nd February 2018

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