

HON'BLE SRI JUSTICE P. KESHA RAO

WRIT PETITION No.20104 of 2016

ORDER:

Heard the learned counsel for the petitioner as well as the learned standing counsel appearing for the 2nd respondent Corporation.

The prayer in the writ petition is as under:

“..... Hon'ble Court may be pleased to issue an appropriate writ, order or direction more particularly one in the nature of writ of mandamus declaring the action of the 2nd respondent in taking steps to demolish the structures of the petitioner situated at D.No.4-3-72, Main Road, Koritepadu, Guntur without following the guidelines issued under G.O.Ms.No.243 MA & UD (JI) Department dated 28.06.2011 and also without following the procedure contemplated under the provisions of Greater Hyderabad Municipal Corporation Act, 1955 as illegal, arbitrary and violative of Article 21 of the Constitution of India and consequently direct the respondent to follow the procedure contemplated under the provisions of Greater Hyderabad Municipal Corporation Act, 1955.”

The facts of the case are that the petitioner is the absolute owner and possessor of house bearing D.No.4-3-72, situated at main road, Koritepadu, Guntur, with ground and first floor in an extent of 122 square yards. The said property was purchased under a registered sale deed on 21.04.1990 bearing document No.3051 of 1990 and the same has been given on rent for commercial purpose. The building was assessed to municipal tax vide assessment No.21508 and the petitioner is paying the tax regularly. The 2nd respondent Corporation issued notice dated 05.05.2016 to the petitioner stating that as per the modified master plan and the approved zonal development plan, the road from Laxmipuram Junction

to Koritepadu is proposed to be widened to 120” to avoid the traffic congestion and it will be widened on priority basis and informed that an extent of 90.78 square yards will be affected and requested to co-operate and handover possession to the 2nd respondent under Section 146 of the Greater Hyderabad Municipal Corporation Act, 1955 (for short, “the Act”). However, as the petitioner was not willing to give consent for acquisition of his property, he along with other local people submitted representation to the 2nd respondent requesting it to reduce the width of the road and also to follow the guidelines in improving the streamlining of traffic at the junction.

The grievance of the petitioner is that even though a detailed representation has been given, no orders are passed and on the other hand, the respondents are threatening to demolish his premises, whereby he was constrained to file the present writ petition.

The 2nd respondent Corporation filed a counter affidavit through its Commissioner stating that for the purpose of widening of the road, they will follow the procedure as contemplated under the provisions of the Act, the guidelines and the parameters framed therein and as such the Corporation have not violated the rights of the petitioner in any manner.

Under the provisions of the Act, the Corporation can acquire the property either by an agreement or in accordance

with the provisions of the Land Acquisition Act as amended from time to time if the property is needed for public purpose within the meaning of the provisions of the Act.

In the case on hand, the petitioner is not willing to enter into any agreement thereby to give his property for the purpose of road widening. When the provisions of Section 146 of the Act is not available to the 2nd respondent Corporation, the course left to it is to follow the procedure as contemplated under Section 147 of the Act. Section 147 of the Act says where the property is not acquired under Section 146 of the Act, the Corporation has to give a requisition to the Government whereby seeking to acquire the property for the purpose of road widening for any public purpose. Without resorting to the said procedure, more particularly, when the petitioner is not accepting, now the 2nd respondent Corporation cannot resort to a highhanded action in dispossessing the petitioner under the guise of widening of the road without issuing any notice and without resorting to the mandatory procedure as contemplated under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, “the Act, 2013”). That apart, for payment of compensation for the structures existing in the premises, it is mentioned in the notice under Section 146 of the Act that the structural compensation can be paid as fixed by the Standing Committee of the Guntur

Municipal Corporation, Guntur. However, this aspect has been considered by this Court in **Manga Madhavalatha v. Rajahmundry Municipality**¹ and framed guidelines to be followed while the private property is acquired for any public purpose by the Government or any its instrumentality. The guideline/direction (5) is as under:

“(5) In case of demolition of private property, the authorities concerned shall determine the loss caused to the occupants on the basis of the assessment to be made by the Engineer of R and B Department and on such assessment of damages, the concerned authorities shall take appropriate steps to disburse the amount quantified forthwith.”

Therefore, it is not open for the 2nd respondent Corporation to pay compensation for the structures as per the value fixed by the Standing Committee. However, the value of the structures has to be assessed by an Engineer of Roads and Buildings Department. Be that as it may, even if for acquisition of the property, in the matter of road widening, if the parties are willing, the procedure as contemplated under Section 146 of the Act can be followed. If the petitioner is not inclined to accept the offer given to him under G.O.Ms.No.119, Municipal Administration and Urban Development, dated 28.03.2017, it is needless to mention that the 2nd respondent Corporation shall follow the procedure prescribed by law in acquiring the private property for public purpose under the Act, 2013. Therefore, it is not open for the 2nd respondent Corporation, being one of the

¹ 2001 (2) ALT 482

instrumentalities of the State, to act in highhanded manner and attempt to dispossess the petitioner under the guise of road widening. Therefore, this Court is of the opinion that a direction may be issued to the 2nd respondent Corporation to follow the due process of law for acquisition of the subject property for the purpose of widening of the road from Laxmipuram junction to Koritepadu library junction.

With the above direction, the writ petition is disposed of.
No order as to costs.

Miscellaneous petitions, if any, shall also stand disposed of.

Date: 27.04.2018.
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P. KESHA RAO, J

