

THE HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

Writ Petition No.4440 of 2018

ORDER :

Heard the learned counsel for the petitioner and perused the written instructions of the R.2-Municipality and the prayer in the writ petition with the supporting affidavit and material on record.

2.The prayer in the Writ Petition reads as follows:

“to issue an appropriate writ, order or direction more in the nature of mandamus, declaring the action of the respondents 2 and 3 in demolishing the structures raised by the petitioner on Plot Nos.22 and 23 in Sy.No.23/ AA in an extent of 711.1sq.yards situated on Rama Reddy Road, Kamareddy Town & District with due permission of the 2nd respondent, dated 01.02.2008 in proceedings No.G1/ 136/ MCK/ 103/ 2007-08, without putting her on notice or giving any opportunity even after the representation dated 31.01.2018 and during the pendency of the suit in O.S.No.66 of 2015 on the file of Senior Civil judge, Kamareddy as being illegal, arbitrary and is in violation of established judicial precedents, and consequently direct the respondents to pay a compensation of Rs.10,00,000/- for the illegal demolition made by them to the petitioner, and pass such other order or orders.”

3. The written instructions of the 2nd respondent-Municipality reads as follows:-

“1. The petitioner has constructed the building in deviation to the sanctioned plan and encroaching an extent of 218.50Sq.Mt in 40.0’ wide layout road.

2. The encroachment on road was demolished in the year 2016 by issuing notices under Section 217(1)(2)(3) and final notice under Section 340/ 340-A/ 228(Synopsis 9) Municipalities Act-1965(Amendment Act No.6 of 2008).

3. There is no orders against the Municipality in I.A.No.335 of 2015 in O.S.No.66 of 2015 till this date.

4. The local public are made a complaint before the Collector & District Magistrate, Kamareddy in Phone in collector Programme to remove the demolished slab and debris in 40’0” wide road. This office has removed the demolished slab and debris in 40’0” wide road.”

4. It is the supporting affidavit averment of there is no encroachment however highhandedly the respondents 2 and 3 demolished the portion of the building, whereas the written instructions show contra to it in saying there was encroachment of the public road

from the complaint by the public to the Collector, in “*Phone in Collector Programme*” of the grievance from the instructions after finding encroachment it was demolished to the extent of encroachment and they are not going to demolish anything further but for the road encroachment and the deviation to the original plan obtained.

5. It is the submission of the learned counsel for the petitioner that the civil suit O.S.No.66 of 2015 is pending on the file of the Senior Civil Judge, Kamareddy, and there is an application for appointment of the Advocate-Commissioner filed for demarcation of the private property of the petitioner and the road margin so that it will be ascertained whether there is any encroachment of road or not.

6. Having regard to the above by directing to maintain the status quo until obtaining of further orders in the injunction petition before the civil Court stated pending with a direction to civil Court to dispose of the application for appointment of Commissioner by virtue of this order appointing Advocate-Commissioner to note down physical features and cause measure the property with reference to the village plan, municipal records and the documents of the petitioner to demarcate private property and the road margin with reference to it and find out any encroachment and submit the report to the Court, for that the Court shall name the Advocate-Commissioner and fix his fees within one month from the date of receipt of the order.

7. Accordingly and in the result, the Writ Petition is disposed of. Consequently, miscellaneous petitions, if any, pending in this writ petition shall stand closed.

Dr. B.SIVA SANKARA RAO J,

Date:06.03.2018
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