

THE HONOURABLE SRI JUSTICE M.GANGA RAO

WRIT PETITION NO.18902 OF 2007

ORDER:

This writ petition is filed to declare the action of the respondents in dismantling major portion of the shop(mulgi) with RCC roof bearing Municipal No.2-5-70 admeasuring 284.04 sq.fts., equal to 31.33 square yards situated near to old bus-stand, Koratla Town, Karimnagar district as arbitrary, illegal, null and void and violative of Articles 14, 19, 21 and 300-A of the Constitution of India and in violative of the principles of natural justice and consequently direct the respondents to initiate land acquisition proceedings and pay compensation for the demolished portion of the shop(mulgi) with RCC roof bearing Municipal No.2-5-70 admeasuring 284.04 sq.fts equal to 31.33 sq. yards situated near to old bus-stand Koratla Town, Karimnagar District as valued by the licensed Engineer of the respondent No.4-Municipality.

The case of the petitioner is that he is the owner and possessor of the shop (Mulgi) with RCC roof bearing Municipal No.2-5-70 admeasuring 284.04 sq. fts., equal to 31.33 sq. yards situated near to old Bus stand, Koratla

Town, Karimnagar District. He purchased the said shop (Mulgi) through registered sale deed document No.682 of 1994 dated 2.6.1994 from previous owner. He is also regularly paying the property tax to the respondent No.4 authority till date. When the respondents threatened to dismantle the shop, in the year 1997, he filed writ petition No.35178 of 1997 before this Court. This Court on 29.12.1997, at the stage of admission, disposed of the said writ petition directing the respondent authorities not to demolish the petitioner's premises without following the due procedure under law. In spite of the said orders of this Court, dated 29.12.1997, without issuing any notices or intimation, the respondents all of a sudden on 9.8.2007 came to his shop and earmarked major portion of the area of the shop with red colour and stated that they are going to dismantle a major portion about 15 feet length of the said shop. Then the petitioner got issued legal notice, dated 10.8.2007 to the respondents narrating all the facts and the respondents received the notice on 13.8.2007/14.8.2007. Even after receipt of the legal notice, the respondents highhandedly demolished major portion of the shop (mulgi) on 15.8.2007, without initiating the land acquisition proceedings and without paying any compensation to

him and thereby violated the petitioner's rights under Articles 14, 19, 21 and 300-A of the Constitution of India. Thereupon, the petitioner filed the present writ petition seeking compensation for the demolished portion of the shop (mulgi) with RCC roof bearing Municipal No. 2-5-70.

The respondent No.5-Executive Engineer, Roads and Buildings, Perkit, Nizamabad filed counter-affidavit stating that the petitioner had constructed the shop by encroaching to an extent of 160 sqfts., equivalent to 14.864 sq. meters and one side was demolished after service of notice, but not an extent of 284.2 sqft., equivalent to 31.33 sq. yds. The respondent No.5 further stated that as per the orders of this Court dated 29.12.1997, a letter was addressed to the respondent No.3 *vide* letter No.DB/T3/NHP/ENC/2007-2008, dated 4.6.2007 seeking eviction of the encroachments of right of way of National High Way as per the directions of this Court. In pursuance of the said requisition, the respondent No.3 issued a show cause notice to all the persons concerned. After that only, the respondent No.3 proceeded for removal of the encroachments as per law. Hence, there is no illegality in removing the encroachments of the National High Way-16 nor the

same is in violation of the orders of this Court, dated 29.12.1997.

The petitioner filed his reply to the said counter stating that the respondent No.5 demolished the major portion of the petitioner's shop and denied issuance of any notice before demolition of the shop. But the respondents, having received the legal notice, dated 10.8.2007 have not given any reply and the respondents illegally demolished his shop and the petitioner has not encroached any road portion and the shop is existing since the year 1984 and the respondents have not issued any notice after 29.12.1997.

Respondent No.3 filed counter-affidavit stating that the Executive Engineer, R&B, NH Division, Perkit, while enclosing the area map and list of encroachers, sent a letter to the Office of the respondent No.3, requesting to take action for eviction of encroachment in Koratla Town in right way of National Highway No.16 at KM 74/0 to 75/0 of Nizamabad to Jagdalpur road. Further, the Municipal Commissioner, Koratla has also sent a letter with a request to remove the large portion of the shop of the petitioner bearing No.2-5-70, in the interest of the public and sought for co-operation for demolition. As

per the requisition of the Executive Engineer and directions of this Court, notice under Section 7 of the Land Encroachment Act, 1905 was issued to the petitioner *vide* File No.B/314/07, dated 21.6.2007. The petitioner refused to take the notice and the notice was affixed on the building bearing No. 2-5-70 which is the business premises of the petitioner under the cover of panchanama. Subsequently on 9.7.2007, notice was issued under Section 6 of the Land Encroachment Act and when the petitioner refused to receive the notice, the same was affixed on the building premises under the cover of panchanama and the petitioner was given 15 days' time to remove the encroachment on the road National Highway-16. The petitioner has not responded to the notice issued for removal of the encroachment. After due marking of the encroachments on the road of National Highway-16 the petitioner was given 15 days time to remove the encroachment on the road of National Highway-16. Thereafter, after following due process only, the Office of respondent No.3 took steps to evict the petitioner from the encroached area. The petitioner has been evicted from the Government land, as the petitioner's shop was situated within the boundary of the road i.e., National Highway-16. The area of the road

portion under occupation of the petitioner is public property. For removal of the encroached portion of the property (shop), the question of paying compensation by initiating Land Acquisition proceedings does not arise.

The petitioner filed a reply denying the allegations of counter of the respondent No.3 and denied the existence of National High Way at the site in question and denied the issuance of notice under Sections 7 and 6 of the A.P. Land Encroachment Act and asserted that the shop was constructed in the year 1984 and the petitioner was in occupation of the shop since 1994. After purchasing the shop, he is running the shop regularly by paying property tax to the respondent No.4. For the first time in the counter, the respondents are saying that the petitioner's shop is constructed by encroaching the road and the respondents illegally demolished the portion of the shop without initiating Land Acquisition proceedings and without paying compensation.

The learned counsel for the petitioner Sri K.Venumadhav would contend that the petitioner is owner of the shop bearing Municipal No.2-5-70 admeasuring 284.04 sq.fts., equal to 31.33 sq. yards, which is situated near old bus-stand, Koratla town,

Karimnagar District. The petitioner is running the shop with necessary permission and paid property tax. When the respondents tried to demolish the shop high handedly, he filed W.P.No.35178 of 1997 and this Court on 29.12.1997 disposed of the writ petition directing the respondents not to demolish the petitioner's premises, without following due procedure under law. The respondents highhandedly demolished major portion of the shop of the petitioner without issuing any notice, in spite of legal notice of the petitioner, dated 10.8.2007 and without any reply, the respondents highhandedly demolished major portion of shop (mulgi) on 15.8.2007 illegally, for which he is entitled for compensation by initiating land acquisition proceedings.

The learned counsel for the respondents 3 and 4 submits that the petitioner constructed shop by encroaching 160 sq. feet of right way of National Highway-16 for which notice was issued. When the petitioner refused to receive the notice, the notice was affixed to the shop premises under due panchanama.

Learned counsel for the petitioner stoutly denied issuance of the notice.

In the facts and circumstances of the case and in considered view of this Court, it is clear that the major portion of the petitioner's shop, admeasuring 160 sq. yards was removed after issuing notice under Section 6 of the Land Encroachment Act, 1905 and after giving due opportunity. The petitioner has constructed the shop by encroaching 160 sq. yards on the Right of way of National High Way-16 and he has not preferred any appeal or revision before the authorities against the notice under Section 6 of the Land Encroachment Act. Hence, the petitioner is not entitled for any compensation under the provisions of Land Acquisition Act.

Hence, the writ petition is dismissed. However, liberty is given to the petitioner to approach the Civil Court by filing properly constituted Civil Suit for payment of compensation for the damages caused to the petitioner.

Consequently, miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

JUSTICE M.GANGA RAO

Date: 15.02.2018

slk

