

HON'BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

WRIT PETITION No.33528 of 2010

ORDER:

This writ petition is filed seeking a direction to the respondents not to demolish the compound wall and gate of the premises No.2-4-602, Ramnagar, Hanamkonda, Warangal, by setting aside the notice dated 20.12.2010 served on the petitioner on 23.10.2010.

2. The case of the petitioner is that, she is the absolute owner of the subject premises, having purchased the plot in Sy.No.240/ B of Lashkar Sngaram Village, Hanamkonda Mandal to an extent of 500 sq. yards with metes and bounds by way of registered sale deed dated 02.07.1982; after purchase of the plot, she constructed compound wall and subsequently, constructed a house therein in the year 1992, facing northern side, leaving the open place on the northern side and western side by erecting the gate towards south-west side; her house is the last house in the lane, which is a dead end lane; on the western side of her house, there are houses of Smt. A.Swaroopo and Smt. R.Anitha (Respondents 3 and 4), for which houses, the road is on the next lane; the authorities of 2nd respondent prepared Development Plan No.14/ 99 showing the existing 20 ft. wide road as dead end at the gate of the petitioner's house; the 1st respondent issued a notice dated 03.11.2010 informing the petitioner that on complaint of Swaroopa and Anitha that she has encroached 20 ft. wide Municipal road and constructed compound wall, directed to submit the documents for verification; to the said notice, the petitioner submitted explanation along with the pahani copy, as the original sale deed was mortgaged to the bank; the staff of the 1st respondent, without verifying and measuring the plot, came to demolish the compound wall and the gate; the petitioner got

surveyed her plot through licensed surveyor of 2nd respondent-KUDA, wherein it was found that only 447.64 sq. yards on ground instead of 500 sq. yards; there was a typographical mistake in the schedule of the registered sale deed, a road was shown on the western side of the plot, the vendor has rectified the mistake of the boundary of the petitioner on the western side by way of rectification deed dated 20.12.2010; another notice dated 20.12.2010 was served on the petitioner to remove the compound wall and gate; the petitioner submitted explanation dated 28.12.2010 along with the copies of *pahani*, registered sale deed and rectification deed; as there is a threat of demolition of gate and compound wall, the petitioner filed the subject writ petition .

3. When the writ petition came up for admission on 30.12.2010, this Court directed to maintain *status-quo* existing as on that day, provided the construction in premises No.2-4-602, Ramnagar, Hanamkonda, Warangal, is not on public road.

4. Counter-affidavit has been filed by the 1st respondent-Municipal Corporation, *inter-alia* stating that, the respondents 3 and 4, have filed individual applications dated 21.10.2010 stating that towards eastern side of their houses, there is an existing 20 ft. dead end road and the said road is earmarked in approved DP No.14/ 99; that the petitioner has illegally constructed a compound wall and erected a gate by occupying the said 20 ft. road and requested the Corporation to take action against the illegal construction; after receipt of the said complaints, the Town Planning officials have inspected the said road and found that there is a road on eastern side of the houses of respondents 3 and 4 as per Approved DP No.14/ 99; the 1st respondent issued notice dated 03.11.2010 to the petitioner to produce the registered documents and municipal building permission within seven days; as per the petitioner's

sale deed dated 02.07.1982, there is 20 ft. wide road shown on western side boundary of the petitioner's plot; the petitioner after receiving the notice, to get wrongful gain, has brought into existence of the rectification deed vide document dated 20.12.2010 by changing western side boundary of her plot; the petitioner has not obtained any permission for construction of the gate or the compound wall from the Corporation; the petitioner has not taken any steps to rectify the boundaries since the date of registration of the sale deed dated 02.07.1982, till the Corporation issued notice dated 03.11.2010 and 20.12.2010; the subject property is situated in well developed area and mere survey by the KUDA licensed surveyor will not change the boundaries, as the road was laid long back as per DP No.14/ 1999; the petitioner is trying to grab the public road and has rectified the sale deed, which does not in any way confer right for encroachment and constructing the compound wall.

5. The 2nd respondent filed counter-affidavit *inter-alia* stating that, as per the DP No.14/ 1999, the said lane is dead end lane and the land is also private patta land; after the said plot, there are number of houses came up and it is not feasible to acquire the said land for extending the lane.

6. The respondent Nos.3 and 4 were themselves impleaded in the Writ Petition.

7. Heard the learned counsel for the petitioner, learned standing counsel for 1st and 2nd respondents and Sri K. Buchi Babu, learned counsel for respondent Nos.3 and 4. Perused the record.

8. Learned counsel for the petitioner submits as the boundaries are not correctly mentioned, the petitioner got the sale deed rectified

and merely because rectification deed executed, it cannot be said that the petitioner is not the owner of the land. He further submits that at the time of construction of the residential building in the year 1992, she has left 20 ft. for road and that the complaints were made with a *mala-fide* intention, twenty years after the construction of the house.

9. Learned standing counsel for the 1st respondent submits that the petitioner has constructed gate and compound wall without any permission whatsoever and as the said constructions are unauthorized, they are liable to be demolished. She further submits that the rectification deed was executed on 20.12.2010 i.e., after notice was issued to the petitioner on 03.11.2010 and that the petitioner has encroached 20 ft. road.

10. Perusal of the impugned notice dated 20.12.2010 shows that in response to the notice dated 03.11.2010, the petitioner submitted copy of *pahani* for the year 1982-83 in support of ownership, hiding the registered document and the said copy of the sale deed was produced by the complainants (R.3 and R.4), according to which, there is 20 ft. wide road. It is specifically stated in the impugned notice that the petitioner has encroached 20 ft. road and constructed compound wall. However, the petitioner submitted explanation dated 28.12.2010 to the impugned notice dated 20.12.2010 stating that the DP No.14/ 1999 was prepared after construction of the compound wall and the building and the said road is dead end road and requested the authorities to survey the said property along with 20 ft. wide road. Learned counsel for the petitioner submits that as the explanation submitted by the petitioner is still pending with the 1st respondent, the 1st respondent may be directed to pass appropriate orders thereon, for which the learned standing counsel for the 1st respondent expressed no objection.

11. In view of the above, without going into the merits of the case, I deem it appropriate to direct the 1st respondent to consider and dispose of the explanation dated 28.12.2010 submitted by the petitioner and pass appropriate orders thereon, in accordance with law, within a period of three weeks from the date of receipt of a copy of this order.

12. The Writ Petition is, accordingly, disposed of. No order as to costs. Pending miscellaneous petitions, if any, in this writ petition, shall stand closed.

Date: 08.11.2018
BSS

KONGARA VIJAYA LAKSHMI, J

