

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

WRIT PETITION No.28616 of 2017

ORDER:

Heard learned counsel for the petitioner and Sri V. Narasimha Goud, learned Standing Counsel for the 2nd respondent and perused the prayer in the writ petition with supporting affidavit and counter affidavit of the 2nd respondent with plan showing the property where the proposed construction covered by the permission for approval in orange colour and the undertaking affidavit of the writ petitioner.

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

“.....to issue a Writ or order more particularly in the nature of writ of Mandamus, declaring the action of the respondents No.2 in issuing proceedings No.000666/MED/C1/U6/HMDA/28032017 dated 16.08.2017 directing the petitioner to lay a BT road from the main road to the subject site in spite the letter issued by the Panchayat Secretary of Somaram Village, Lr.No.08/GP/SOMARAM/2017 dated 28.07.2017 as illegal, arbitrary and without jurisdiction and set aside the same and further direct 2nd respondent to grant permission to the petitioner pursuant to her application No. 000666/MED/C1/U6/HMDA/28032017 date 28.03.2017 and pass such other order or orders as may deem fit and proper in the circumstances of the case.”

3. It is the supporting affidavit averment vis-à-vis the oral submissions of the learned counsel for the petitioner that she is owner and possessor of an extent of Ac.1.26 gts. in Sy.No.13/AAA of Somaram Village of Medchal Mandal, Malkajgiri District. The

Revenue Divisional Officer, Ranga Reddy, issued proceedings in L/1845/2014, dated 23.12.2014, granting conversion of the land from agriculture to non-agriculture. Consequently, the petitioner applied with application No.000666/MED/C1/U6/HMDA/28032017 on 28.03.2017 to the HMDA represented by its Commissioner for granting building permission for the industrial construction, having enclosed the documents with the application prescribed and an inspection was conducted by the 2nd respondent authorities on 06.04.2017 and later notice, dated 21.07.2017, issued pointing out certain shortfall documents and the same was complied with by submitting the appropriate plan and also letter issued by the Gram Panchayat Secretary, dated 28.07.2017, which the Panchayat Secretary had specifically stated that as per ground position there is a 40 feet wide road which is passing from R & B main road to Somaram Village, villagers are using the said road and the subject site Sy.No.13/AAA is abutting to the 40 feet approach road from the main road and a letter titled as a representation was issued by the Sarpanch of the Gram Panchayat on 10.07.2017 in this regard and in spite of said compliance with all the requirements, HMDA issued the impugned notice, dated 16.08.2017, asking the petitioner to form a BT road, though the approach road is existing, and Panchayat Secretary affirmed the same and prepared a plan, which was submitted to the 2nd respondent with no reason in insisting for BT road topping on the road side though it is a public road and it is the responsibility of the 2nd respondent to convert the same into BT road if at all, for there are

three industries abutting the said road in between the site of the petitioner and main road and they are using the said road, thereby in asking to lay a BT road is irrational and rule only contemplates site should abut 40 feet road, that is complied with, as per the requirements of G.O.Ms.No.168 (MAUD), dated 07.04.2012 and sought for the relief thereby.

4. The counter-affidavit of the 2nd respondent, Director-1-K.Purushotham Reddy, is with the contentions that as one of the mandatory conditions as per G.O.Ms.No.168 supra is that the approach road from the nearest main road to the site under reference should be 40 feet wide for vehicles and other traffic movement for commercial building/workshop and as per the site inspection the road was less than 40 feet road in existence of 28 feet on ground and thereby the office letter, dated 21.04.2017, informed the petitioner to provide thorough fare road of 12 m in compliance with the said G.O. and the petitioner submitted L.R.No.08/GP/Somaram/17, dated 28.07.2017, from the Panchayat Secretary with sketch, which reads 'Namratha Agarwal has applied for permission in industrial shed in Sy.No.13/aaa of Somaram Village, Medchal Mandal-Medchal District and vide reference cited and where the individual has requested to this office to issue Actual Ground Position pertains to 40 feet wide road which is passing from R & B main road to Somaram Village and the villagers also using the said road and the said site Sy.No.13/AAA is abutting to the 40' ft approach road from the main road. Hence,

approach road to site is 40' ft from R & B main road.' The counter-affidavit further submission is that the sketch signed by Panchayat Secretary showing the approach road as if 40 feet wide, whereas on scrutiny from doubt arises as to the width of the approach road once again inspected and observed on the ground that the approach road from the main road to the site under reference is 28 feet to a distance of about 116 mts to the site under reference and this 20 feet distance is bound by compound wall on both sides pertaining to others property and in view of the same, 40 feet BT approach road on ground from main road to site is not there consequent to G.O.Ms.No.168 (MAUD), dated 07.04.2017, supra, as it is the requirement on ground for proper movement of vehicular traffic and the petitioner did not form approach road despite several letters thereby her file was rejected on 19.09.2017 for want of the 40 feet approach road on ground and what the Secretary of the Panchayat stated of 40 feet road available is not correct, for the above reasons the writ petition is liable to be dismissed.

5. The undertaking affidavit filed by the petitioner, dated 07.03.2018, is particularly from para 4 with the submission that in view of the Panchayat says there is existing 40 feet road in front of the site of the petitioner in Sy.no.13/aaa out of Ac.1.26 gts. of Somaram Village, the writ petitioner is willing and undertaking to set apart the land following short if any of 40 width road on western side of the site

from the said land in her occupation to comply said requirement of 40 feet for grant of building permission.

6. The learned Standing Counsel contra to it submits that this affidavit will not serve the requirement of G.O.168 and the writ petitioner did not even challenge the said G.O.168 virus and thereby bound to comply therewith.

7. Undisputedly, the Panchayat certificate referred supra by way of declaration by the Sarpanch, dated 10.07.2017 speaks of existence of 40 feet road to the west of the abutting to the site of the petitioner in Sy.No.13/aaa of Somvaram Village. Once it is 40 feet road if at all presently there is any encroachment, it is the requirement of the Gram Panchayat to clear the encroachment and also the steps if at all to be taken by the 2nd respondent for actual widening of the road if necessary by cause demarcation. Once there is a 40 feet road certified by sarpanch merely because on existence with any encroachment it is found by the time of the inspection of 28 feet, the petitioner when prepared to show 40 feet opposite to her site, she cannot be asked to clear the encroachments, but for the duty of the authorities also.

8. Having regard to the above, the rejection is unsustainable, by recording the undertaking affidavit, the writ petition is allowed directing the respondent No.2 to consider and approve the plan subject to the Gram Panchayat clearing the encroachments and showing the 40 feet road pursuant to the declaration.

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

Dr. B. SIVA SANKARA RAO, J

9th March 2018

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