

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.30296 OF 2018

ORDER:

1. This Writ Petition, under Article 226 of the Constitution of India, is filed by the petitioners seeking issuance of a writ of *Mandamus* declaring the order, dated 14.08.2018, passed in Proc.Roc. No.G1/91/2018, by the 2nd respondent, as arbitrary, illegal, unconstitutional and in violation of the principles of natural justice and to set-aside the same and consequently direct the respondents not to interfere with the petitioners' rights, in any manner, in respect of the land to an extent of 308.33 Sq. yards in old Survey Nos.1337, 1338, 1109, situated opposite to the T.S.R.T.C. Bus Depot, Boiwada, Nirmal, Nirmal District.

2. Heard Sri D.Prakash Reddy, learned senior counsel appearing on behalf of Sri C.Naresh Reddy, learned counsel for the petitioners, learned Government Pleader for Municipal Administration and Urban Development for the 1st respondent, learned Standing Counsel for the 2nd respondent – Nirmal Municipality, and Sri Vedula Venkataramana, learned senior counsel appearing on behalf of Sri A.Jagan, learned counsel for the un-official respondents.

3. The averments in the affidavit, filed in support of the writ petition, would show that the petitioners herein claim to be the absolute owners and possessors of the land to an extent of 308.33 Sq. Yards in old Survey Nos.1337, 1338 and 1109, situated opposite to T.S.R.T.C. Bus Depot, Boiwada, Nirmal, Nirmal District, having purchased the same through registered sale deed bearing Doc.No.20 of 2016, dated 02.01.2016. They made an application to the 2nd respondent, seeking grant of building permission. After satisfying with the procedure contemplated under the Telangana Municipalities Act, 1965 (for short, 'the Act'), the 2nd

respondent granted building permission *vide* proceedings No.3028/W31/2018/0964, dated 21.03.2018, in favour of the petitioners. On 31.03.2018, the 4th respondent herein filed an objection petition before the 2nd respondent seeking to cancel the building permission granted in favour of the petitioners, dated 21.03.2018. Pursuant to the said objection petition, the 2nd respondent herein, without issuing any notice and without seeking any explanation from the petitioners, straightaway passed the order, dated 04.04.2018, keeping in abeyance the building permission granted in respect of the petitioners' property. Aggrieved by the order, dated 04.04.2018, the petitioners herein preferred Writ Petition No.12223 of 2018; whereas, the respondents 3 and 4 herein, who have made representation before the respective authorities stating that the subject land provides an exclusive pathway to them and the petitioners are making constructions on the public road, also filed Writ Petition No.12261 of 2018. Though this Court heard both the Writ Petitions on 12.04.2018, granted *interim* suspension of the order, dated 04.04.2018, keeping in abeyance the building permission granted to the petitioners on 21.03.2018, in W.P. No.12223 of 2018 and only issued notice to the respondents in W.P. No.12261 of 2018. Further, aggrieved by the *interim* order in I.A. No.1 of 2018 in W.P. No.12223 of 2018, dated 12.04.2018, the 4th respondent herein preferred Writ Appeal No.783 of 2018; wherein, a Division Bench of this Court heard both the Writ Appeal No.783 of 2018 and Writ Petition No.12223 of 2018 and disposed of the same by way of common judgment, dated 20.06.2018, setting aside the proceedings of the Commissioner, dated 04.04.2018, holding that the Commissioner, Nirmal Municipality, shall, in case is satisfied that the subject plot is a public street, put the petitioners herein on notice within one week from the date of receipt of a copy of the said order, furnishing details on the basis of which he believes that it is a public street. On receipt of such a notice, the

petitioners herein shall submit their objections thereto, raising all such contentions as are available to them in law, within two weeks thereafter. The Commissioner shall also hear the 4th respondent in that regard. Within two weeks from the date on which the petitioners herein submitted their objections, in reply to the notice issued by him, the Commissioner, Nirmal Municipality, shall pass orders thereupon and communicate his decision to the 4th respondent and the petitioners herein. Till then, the petitioners herein were directed not to make any further construction. If it was held that the subject land is a public street, the Commissioner shall take action for removal of encroachments, or the construction made thereupon only after putting petitioners on notice of such encroachments, and after giving them an opportunity of being heard. The notice, calling upon the petitioners to remove the encroachments on the public road, and action pursuant thereto, shall commence two weeks after the date on which the earlier order is communicated to them. If, on the other hand, the subject site is held not to be a public street, then any grievance, which the 4th respondent may have, regarding violation of their easementary rights over the subject land, can only be agitated by them before a competent Civil Court, and not before the Commissioner, Nirmal Municipality. If the Commissioner holds that the subject land is not a public street, it would thereafter be open to petitioners herein to make further construction, in terms of the permission granted earlier on 21.03.2018, subject, of course, to any order which the Civil Court may pass on its jurisdiction being invoked by the 4th respondent herein.

4. Basing on directions of the Division Bench of this Court in the common judgment, dated 20.06.2018, 2nd respondent herein issued a notice, dated 18.07.2018, *vide* proceedings No.G1/91/2018, to the petitioners herein holding that they conducted a field inspection on

10.07.2018 and found that the petitioners herein have occupied 22 feet road and the reasons for coming to the conclusion that the subject land is a road which is in use of public in general are: 1) Document presented by 1st petitioner, dated 05.07.2014, 2) The opinion of Municipal Standing Counsel of Nirmal Municipality, dated 18.07.2014, 3) Inspection made by the 2nd respondent on 10.07.2018, and 4) Representation made by councillor P.Ganesh, Ward No.31, dated 20.03.2018.

5. In response to the notice, dated 18.07.2018, issued by the 2nd respondent, the petitioners have submitted their reply dated 30.07.2018 disputing the reason raised by the 2nd respondent for coming to the conclusion that the subject land is a road which is in use of public in general with a request to grant an opportunity of hearing. But, the 2nd respondent without giving an opportunity of hearing the petitioners passed the impugned order, dated 14.08.2018, raising several new grounds and also relying on the Map issued by the Assistant Director of Survey and land Record, Adilabad District, in concluding that the petitioners have encroached upon the road. Challenging the same, the present Writ Petition came to be filed by the petitioners.

6. The 2nd respondent filed counter-affidavit denying the material allegations of the petition *inter-alia* contending that he passed the impugned order only after taking into account the objections raised by both the parties *vide* their replies dated 31.07.2018 and 01.08.2018 respectively and also relying on other documentary evidence including the declarations made in O.S. No.22 of 2005 and also the letter, dated 05.07.2014, addressed by the petitioners to the 2nd respondent stating that there exists a 33 feet road and no encroachment by the un-official respondents be allowed therein. Further, it is contended that though the 2nd respondent granted building permission to the petitioners as per the

provisions of the Telangana Municipalities Act, 1965 (for short, 'the Act') and relying on G.O.Ms. No.168, 07.04.2012, the same is subject to the condition that grant of building permission does not confer ownership and title over the said site. Further, it is contended that the un-official respondents herein also stated that the subject land is an exclusive way *i.e.*, having 33 feet road and they also filed W.P. No.12261 of 2018 alleging that the petitioners herein are making construction on public road and finally sought for dismissal of the Writ Petition.

7. The petitioners herein filed rejoinder to the counter-affidavit filed by the 2nd respondent stating that the 2nd respondent cannot declare the subject land as a 33 feet road basing on the opinion of learned Municipal Standing Counsel, the complaint made by the Ward Councillor, and their earlier representation, dated 05.07.2014. But there should be some record or document for declaring the site as a public road and further the petitioners purchased the subject land after being clarified by the owners that the subject land was not left out exclusively as a road and it was their exclusive property and also the subject land was not notified as a public road in the District Gazette or in the master plan of the Nirmal Municipality. It is further submitted that the 2nd respondent, after being satisfied with the *prima-facie* title and possession over the subject land of the petitioners, and after following the due procedure contained in the Act, granted building permission on 21.03.2018 and contrary to the spot inspection report of the 2nd respondent, dated 27.02.2018, the impugned order came to be passed. It is further submitted that the 2nd respondent took inconsistent pleas *i.e.*, to the effect as to whether the subject land is a kandak land or that the original owners at the time of bifurcation of the land declared exists 33 feet road. It is further submitted that the 2nd respondent, without considering the contents of reply dated 30.07.2018,

submitted by them, mechanically passed the impugned order and finally prayed to allow the Writ Petition by setting-aside the impugned order.

8. Sri D. Prakash Reddy, learned senior counsel, appearing on behalf of Sri C.Naresh Reddy, learned counsel for the petitioners, submits that though the Division Bench of this Court, in the earlier round of litigation, directed the 2nd respondent to consider the objections of the petitioners and pass appropriate orders, but the impugned order does not anywhere indicate that the 2nd respondent had considered the objections of the petitioners, dated 30.07.2018, submitted by them in reply to the show-cause notice dated 18.07.2018 and as such, non-consideration of the objections raised by the petitioners, before passing the impugned order, amounts to violation of principles of natural justice. He would submit that the impugned order referred to certain documents which are not supplied to the petitioners. He would further submit that reference to O.S. No.22 of 2005 which is reflected in the opinion given by the Advocate has nothing to do with the case on hand. Since the impugned order does not reflect the objections raised by the petitioners, more particularly, with regard to the suit, the earlier report given by the learned Municipal Standing Counsel, dated 18.07.2014, pleads that the order impugned may be set-aside and the matter may be remanded back to the concerned authority, for fresh disposal, after considering the objections of the petitioners dated 30.07.2018.

9. On the other hand, Sri Vedula Venkataramana, learned senior counsel, appearing on behalf of Sri A.Jagan, learned counsel for the respondents 3 and 4, would contend that the petitioners have constructed a building by encroaching on to the 33 feet road, which is causing inconvenience to other flat owners and, according to him, the suit filed by the petitioners which is referred to in the impugned order viz., O.S. No.22

of 2005 was dismissed; which amply establishes that the petitioners have no right over the said land. He further referred to the common judgment, dated 20.06.2018, passed by the Division Bench of this Court to show that the Commissioner is the final authority and his findings, which are based on the material available on record, requires no interference.

10. The learned counsel would further contend that since the issue involves number of disputed questions of fact, the same cannot be gone into in a Writ Petition, filed under Article 226 of the Constitution of India. In view of the common judgment of the Division Bench of this Court, dated 20.06.2018, learned counsel would contend that, the Commissioner is the appropriate authority to decide the issue, no writ can be entertained against the impugned order. It is further urged that, earlier, the petitioners herein gave a letter, dated 05.07.2014, to the authorities concerned seeking action against the respondent No.4 for encroaching on to the 33 feet road, which is subject matter of dispute in the present Writ Petition. According to him, on one hand the petitioners are adjudicating that the subject property is the road, on which respondent No.4 has encroached, and now a contra stand is taken stating that the said road is a patta land belonging to the petitioners. Learned counsel further pleads that the letter, dated 05.07.2014, which the petitioners have suppressed at the time of filing the Writ Petition, came to be placed in record in the Writ Appeal filed by the respondent No.4 herein. Hence, learned counsel appearing for the respondents 3 and 4 pleads that the petitioners have not come to the Court with clean hands.

11. From the arguments advanced, the point that arises for consideration is whether the Commissioner was justified in passing the impugned order?

12. As seen from the record, in the earlier round of litigation, Writ Petition No.12223 of 2018 came to be filed by the petitioners seeking the following relief:

“In the circumstances stated above, it is humbly prayed that this Hon’ble Court may be pleased to issue a Writ, Order or Direction one more particularly in the nature of Writ of *Mandamus* declaring the orders of the 2nd Respondent in proceedings ROC.No.G1/91/2018 Dated 04-04-2018 keeping in abeyance the Building permission granted in respect of the Petitioners property *vide* Proc.No.3028/W31/2018/0964 dated 21.03.2018 to an extent of 308.33 Sq.Yds in old Sy.Nos.1337, 1338, 1109, situated at opposite to TS RTC Bus Depot, Boiwada Nirmal, Nirmal District as arbitrary, illegal, unconstitutional and beyond the powers conferred under the Telangana State Municipality Act, 1965, and set-aside the same and pass such further order or orders as this Hon’ble Court may deems fit and proper in the circumstances of the case.”

13. A learned Single Judge of this Court in I.A. No.1 of 2018 in W.P. No.1223 of 2018, on 12.04.2018, passed an *interim* order which reads as follows:

“*Prima-facie*, the invocation of Section 344 of the Telangana Municipalities Act, 1965 by 2nd respondent keeping in abeyance the building permission granted to the petitioners on 21.03.2018 is unsustainable, since the 2nd respondent is not empowered to decide any dispute of title, even if there is any civil dispute between petitioners and 3rd respondent since no such power is conferred on him under the provisions of the said Act.

Therefore, there shall be interim suspension as prayed for.”

14. Challenging the order, dated 12.04.2018, passed in I.A. No.1 of 2018 in W.P. No.12223 of 2018, 4th respondent herein preferred Writ Appeal No.783 of 2018, wherein the Division Bench of this Court disposed of both the Writ Appeal and Writ Petition by way of a common judgment, dated 20.06.2018; wherein it was held as under:

“The Commissioner, Nirmal Municipality shall, in case he is satisfied that the subject plot is a public street, put respondents 3 to 5 on notice within one week from the date of receipt of a copy of this order, furnishing details on the basis of which he believes that it is a public

street. On receipt of such a notice, respondents 3 to 5 herein shall submit their objections thereto, raising all such contentions as are available to them in law, within two weeks thereafter. The Commissioner shall also hear the appellant in this regard. Within two weeks from the date on which respondents 3 to 5 submit their objections in reply to the notice issued by him, the Commissioner, Nirmal Municipality shall pass orders thereupon and communicate his decision both to the appellant and to respondents 3 to 5. Till then the respondent-writ petitioners shall not make any further construction. If it is held that the subject land is a public street, the Commissioner shall take action for removal of encroachments, or the construction made, thereupon only after putting respondents 3 to 5 on notice of such encroachments, and after giving them an opportunity of being heard. The notice, calling upon the respondent-writ petitioner to remove the encroachments on the public road, and action pursuant thereto, shall commence two weeks after the date on which the earlier order is communicated to them.

If, on the other hand, the subject site is held by the Commissioner, not to be a public street, then any grievance which the appellant may have, regarding violation of their easementary rights over the subject land, can only be agitated by them before a competent Civil Court, and not before the Commissioner, Nirmal Municipality. If the Commissioner holds that the subject land is not a public street, it would thereafter be open to respondents 3 to 5 to make further construction, in terms of the permission granted earlier on 21.03.2018, subject, of course, to any order which the Civil Court may pass on its jurisdiction being invoked by the appellant herein.

The order under appeal, and the proceedings of the Commissioner dated 4.4.2018, are set aside. The Writ Petition and the Writ Appeal are, accordingly, disposed of. The miscellaneous petitions pending, if any, shall also stand disposed of. No costs.”

15. From a reading of the aforesaid common judgment of the Division Bench of this Court, dated 20.06.2018, it is clear that the Division Bench of this Court was of the view that the Commissioner is the only authority, who can decide the issue as to whether the subject property is a road or a patta land. Pursuant to the common judgment of the Division Bench of this Court, the matter was taken up by the Commissioner; who issued the notice, dated 18.07.2018, asking the petitioners to explain their stand on the issue. A detailed explanation running into couple of pages came to be

submitted by the petitioners within the time prescribed. Thereafter, the impugned order came to be passed holding that the subject land is a public road.

16. Though, various grounds are raised, the main plank of the argument, of Sri D.Prakash Reddy, learned senior counsel appearing on behalf of the petitioners, is that the Commissioner while passing the impugned order did not take into consideration the contents of the explanation, dated 30.07.2018, submitted by the petitioners.

17. That being the argument, it may not be necessary for this Court to go into other aspects of the issues as to whether the Commissioner was justified in holding that the subject property is a road and not a patta land.

18. The order impugned in the present Writ Petition refers to the following four circumstances, in coming to a conclusion:

1) Legal opinion of Municipal Standing Counsel Sri B.Shubhakaran, Advocate, dated 18-7-2014 based on the declarations made in O.S. No.22 of 2005, that disputed land is a public road.

(2) The Map issued by the Assistant Director of Survey and Land Record, Adilabad District (Erstwhile) through Tahsildar, Nirmal Mandal that there exists a road leading from NH-7 road to Sy.No.1336 (old) which is situated at the southern side of Sy.No.1109 and 1110.

(3) Representation made by Sri. P. Ganesh, Ward Member, 31st Ward, Municipal Council, Nirmal that Sri.Padigela Kedarinath and other members have intending to grab a road, applied for Municipal Permission at the said place by suppressing documentary evidence, which is much

inconvenience to the public. It is also shows the disputed land is public street.

(4) The complaint made by Sri Padigela Kedarinath, dated 05.07.2014, that there exists a 33' wide road, no encroachment shall be allowed.

19. Insofar as the 1st circumstance is concerned, the same relates to the letter given by the Municipal Standing Counsel in the Suit filed by the petitioners herein. The argument of learned counsel appearing on behalf of the respondents 3 and 4 that the Suit, which is filed by the petitioners in respect of the very same property was dismissed and, hence, the finding of the Senior Civil Judge at Nirmal in O.S. No.22 of 2005 holding that the petitioners have no right over the property cannot be found fault with, in my view, appears to be incorrect.

20. A perusal of the judgment, dated 10.04.2013, passed in O.S. No.22 of 2005, would show that the Suit filed by the petitioners herein was decreed and not dismissed, as urged by the respondents. Further, the findings in the said Suit would show that the matter therein relates to the land in survey Nos.2403 and 2404, situated opposite to TS RTC Bus Depot, Nirmal, adjacent to the subject land in dispute. As seen from the impugned order, except referring to filing of the Suit in O.S. No.22 of 2005, neither it indicates the contents of the Suit nor the findings given by the trial Court on the said aspect.

21. The 2nd circumstance relied upon by the Commissioner relates to the Map issued by the Assistant Director of Survey and Land Record, Adilabad District. Sri D. Prakash Reddy, learned senior counsel, would submit that the said map was not furnished to the petitioners and as such he cannot comment on the same. Though a specific plea is taken in the

Writ Petition about the same but the same is not denied in the counter-affidavit filed by the 2nd respondent. Even during the course of argument, learned counsel, appearing on behalf of the respondents 3 and 4, did not deny, non furnishing of the said document to the petitioners.

22. Even the learned Standing Counsel, appearing on behalf of the 2nd respondent – Municipality, did not even say as to whether a copy of map was furnished to the petitioners. Therefore, *prima-facie*, it appears that the authority relied upon the document, on which the petitioners have no knowledge and as such there was no scope for the petitioners to comment on the said document.

23. Insofar as the letter, dated 05.07.2014, addressed to the concerned authorities by the petitioners, is concerned, it is pleaded that though learned senior counsel appearing on behalf of the petitioners admits that such a letter was given by them complaining about the alleged trespass, he explained the circumstances about the said letter and its contents under which the letter was given. The impugned order does not anywhere refer to the said issue. It is submitted by the petitioners in their representation that it is not necessary that the authority should accept their explanation but, at least, he should create an impression in their mind that he has considered the same before passing the impugned order.

24. Insofar as the maintainability of the Writ Petition, as contended by the learned counsel appearing on behalf of the respondents 3 and 4, is concerned, it is to be noted that though the Division Bench of this Court in the earlier round of litigation directed the Commissioner to decide the issue but it does not mean that the order of the Commissioner cannot be challenged, if it is found to be incorrect or illegal or improper. It also does not mean that the findings given by the Commissioner have to be

accepted. Things would have been different had the dispute been between the two private parties, with no Government interference over the same. But, here is a case, where, in the earlier round of litigation, this Court entertained the Writ Petition and remanded the matter back to the Commissioner for adjudicating the same on the issue as to whether it is a patta land or the public street. Therefore, having regard to the above, it cannot be said that no Writ Petition is maintainable against the order passed by the Commissioner. Hence, the argument of learned senior counsel, appearing on behalf of the respondents 3 and 4, that no Writ Petition would lie, cannot be accepted.

25. Accordingly, the Writ Petition is allowed and the matter is remanded back to the 2nd respondent, to consider the contents of the explanation, dated 30.07.2018, submitted by the petitioners, and then pass an order, afresh, in accordance with law at the earliest. No order as to costs.

26. Miscellaneous petitions, if any, pending in this Writ Petition, including vacate stay petition *i.e.*, I.A. No.3 of 2018, shall stand closed in consequence.

C. PRAVEEN KUMAR, J

Date: 28.11.2018.
Dsh

HON'BLE SRI JUSTICE C. PRAVEEN KUAMR

402



15122018

WRIT PETITION No. 30296 OF 2018

Date. 28.11.2018

DSH