

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 41749 of 2018

ORDER:

1) The present Writ Petition came to be filed seeking issuance of writ of mandamus declaring the action of the third respondent in issuing the impugned endorsement dated 06.08.2018 directing the petitioner to remove the illegal encroachments alleged to have been made by the unofficial respondents on the public road on both sides at Dasari Gedda road, Gavarapalem village, Anakapalli Mandal, Visakhapatnam District, as illegal and arbitrary.

2) The facts in issue are as under:-

The petitioner claims to be the absolute owner and possessor of house bearing premises No.20-7-44 situated at the above mentioned premises. He claims to have constructed a house after obtaining necessary permission from the concerned Municipality and has been residing therein. According to him, a 30 feet road exists in front of his house leading Dasari Gedda towards Cambridge school. The second respondent has laid the road to some extent and thereafter stopped from laying the same. As a result of which the locality people have been representing before the 2nd respondent to complete the laying of the cement road to avoid dust pollution and for the convenience of the locality people. But the same is being dodged on one pretext or the other. While things

stood thus, the respondents 6 to 11 herein are alleged to have constructed a wall in the middle of the road on both sides thereby putting the petitioner and others to a lot of inconvenience. Knowing that the wall was constructed illegally, belongs to the second respondent, the official respondents keep quiet. The petitioner made a representation to the second respondent/Corporation for removal of the same. It is said that the third respondent issued an endorsement dated 02.04.2018 alleging that the land through which a road is laid is a private land and there exists a dispute between the two private individuals. It is further stated that the corporation cannot interfere in a private dispute. Questioning the inaction of the respondent/authorities, the petitioner filed W.P.No.16198 of 2018. In the said writ petition, the Assistant City Planner submitted his explanation stating that if the petitioner handover the site to the Corporation by way of gift deed after removing the encroachments, the respondent/corporation would take necessary steps for laying the road. In view of the averments made in the counter, the petitioner and other locality people executed a registered gift deed in favour of the second respondent/corporation, but in action of the respondents in removing the encroachments, lead to filing of the present writ petition.

3) The learned counsel for the petitioner would contend that though they have fulfilled the requirements of the Assistant City

Planner in executing the gift deed, till date no action is forthcoming from the side of the respondent/corporation. From the above, it is clear that the property in dispute is a private property, which is being used for convenience as a pathway. There appears to be a dispute between two rival claims over the property. That being so, on 19.11.2018 the Zonal Commissioner, Anakapalli Zone, Greater Visakhapatnam Municipal Corporation, gave a letter stating that since the encroachments on the said road are not removed by the writ petitioner, the gift deed is not being taken into consideration. In view of the above, the letter dated 19.11.2018 also makes it clear that Corporation is not willing to enter into any controversy, with regard to subject property and laying of the road in view of some private dispute between both the parties over the property. At this stage, the learned counsel for the petitioner submits that the petitioner may be given an opportunity to avail the remedy available under criminal law if any.

4) Having regard to the factual situation, this Court is of the view that the request of the petitioner for giving a direction to the Corporation to lay a road, cannot be accepted. However, if the law permits, the petitioner is always at liberty to avail the remedies by initiating proceedings/prosecution, if any, against the unofficial respondents in accordance with law.

5) With the above observation, the Writ Petition is disposed of. There shall be no order as to costs. As a sequel to it, miscellaneous petitions pending if any, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

Dt:27.11.2018

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