

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.36297 of 2017

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, is filed by the petitioners seeking the following relief/ s:

“....it is hereby prayed that this Hon'ble Court may be pleased to issue a Writ, or order or direction more particularly Writ of Mandamus, declaring the notices of the 5th respondent in R.O.C.no.4630/2015/G1, dt.02-08-2017 and the 2nd notice dt.24-08-2017 issued to the petitioners as illegal, arbitrary and without jurisdiction and consequently set aside the said notices in the interest of justice and pass such other order or orders may deem fit and proper in the circumstances of the case.”

(Reproduced verbatim)

2. I have heard the submissions of *Sri Raja Reddy Koneti*, learned counsel appearing for the petitioners; learned Government Pleader for Roads & Buildings appearing for the respondents 1 to 3; learned Government Pleader for Revenue appearing for the 4th respondent; and, of *Sri M.D.Saleem*, learned Standing Counsel appearing for the 5th respondent Municipality. I have perused the material record.

3. The submissions and grievance of the writ petitioners, in brief, are as follows: - ‘The petitioners are the absolute owners and possessors of the buildings bearing D.No.8-65, 3-81, 3-123, 3-73, 3-67, 3-127, 3-63, 3-94, 3-62, 3-84, 3-38 and 3-55 respectively. The said buildings are constructed after getting approval from the 5th respondent municipality; the said buildings are being used for both commercial and residential purposes for the last several decades. There is no dispute with regard to the petitioners’ title, possession and enjoyment over the properties in their respective occupations. The petitioners are carrying on their respective businesses in their respective shops by paying taxes. While

so, on 19.07.2017, under the guise of widening the existing 30 feet road to 70 feet road, the authorities of the respondents came to the subject properties and started taking measurements of the properties belonging to the petitioners in order to demolish the properties. The said action is taken even without giving notice to the petitioners or following the due process of law. All the petitioners constructed their buildings within their respective extents of sites but not on the margin of the public road; there is no encroachment of the Government land. Thereafter, all the petitioners received similar notices, which are impugned. In the said notices, while stating that the municipal Council passed a resolution to widen the main roads, the petitioners were asked to submit their title deeds. It is not the case of the respondents that the petitioners encroached upon the road. The notices state that the petitioners have to produce their title deeds. The authority who issued the impugned notices is not empowered under the provisions of the Municipal Laws to issue such notices; if it is the case of the 5th respondent Municipality that any road or drain is encroached, it should follow the procedure established by law, but it cannot issue the notices, which are impugned in this writ petition. The notices are wholly illegal, arbitrary and without any authority of law. Hence, the same are unsustainable. The act of giving such notices is without jurisdiction. If the respondents are allowed to proceed further and demolish the subject properties of the petitioners, they will suffer irreparable loss and injury. Hence, the writ petition is filed.'

4. However, both the learned Government Pleader and the learned Standing Counsel would submit that since reply was not given within the time specified in the first notice, the second notice was issued in accordance with the procedure established by law giving a time of ten

days to the petitioners to submit the copies of their title deeds and link documents and that if the petitioners have got any grievance, they are at liberty to submit explanation(s) to the notices impugned and that the authority concerned will consider and dispose of their explanations in accordance with the procedure established by law. They would also submit that if the petitioners do not wish to submit the copies of the documents sought for, they could as well state the same in the explanations or replies, which they are required to give, but, they cannot approach this Court by way of this writ petition without giving explanations/ replies.

5. Learned counsel for the petitioners, while stating that since the municipality has no jurisdiction or power to direct the petitioners to produce their title deeds in respect of their respective properties and that as the municipality is not entitled to examine the title and ownership of the properties of the petitioners, all the notices which are issued to the petitioners are liable to be set aside and that the petitioners cannot be compelled to offer explanations to such notices where the demand related to produce title deeds and link documents is untenable under law.

6. Learned Standing Counsel would further submit that the municipality from its record may be able to know the details of the existing road like its course and alignment besides its width and of the existing road margins etcetera but the municipality does not know the extents of properties of the petitioners and as to whether they made constructions in the eligible extents owned respectively by them without making any encroachments into the road margin and that unless the copies of the title documents and link documents of the petitioners are made available to the municipality and unless it is first determined as to

whether there are any encroachments over the road margin, it is not possible to take a decision regarding the necessity of acquisition of required extents of properties of the petitioners and hence, the notices requiring the petitioners to submit the copies of their title documents and link documents are valid.

7. I have given earnest consideration to the facts and submissions. The petitioners claim that they are owners of the extents of properties over which they made their respective constructions. They *inter alia* state that they did not encroach any public property or road margin or road. The municipality now intends to widen the public road at the properties of the petitioners and it passed a resolution for widening the road from 30 feet to 70 feet. Therefore, by the impugned notices, the petitioners were called upon to produce copies of their title deeds as well as link documents to enable the municipality to know the encroachments of the road margins, if any, made by the petitioners while making their constructions. However, the municipality in the notices did not disclose the documents related to the road, if any, available with it and did not give copies of the same to the petitioners or offer them an opportunity to inspect the documents relating to the existing road, in case it is not possible to supply the copies of the documents because of their volume/ nature. In the considered view of this Court, the municipality is entitled to incidentally examine the title deeds and link documents of the petitioners as well as their building permits, if any, to enable the municipality to *inter alia* determine as to whether the claims of the petitioners that they made constructions in their respective extents of properties and that they did not make encroachments into the road margins are true or not. Therefore, the contention of the petitioners that the municipality has no right at all to

ask for copies of title deeds and link documents related to the properties of the petitioners even for the limited purpose of examining as to whether any encroachments were made into the road margin while making constructions by the petitioners in the properties which they are respectively claiming needs no countenance.

8. On the above analysis of the facts and submissions, this Court is of the considered view that the writ petition can be disposed of with appropriate directions.

9. In the result, the Writ Petition is disposed of setting aside the impugned notices and reserving liberty to the 5th respondent municipality to issue fresh notices to the petitioners calling upon them to produce copies of their title deeds and link documents, however, while mentioning in such notices the details of the existing road as per the municipality's record and by enclosing copies of public record related to the road in existence or in the alternative affording an opportunity to the petitioners to inspect such record, if they so desire, by mentioning the time and schedule for such inspection, in case such record is voluminous and if it is not possible to supply the copies of the same along with the notices. Till such exercise is completed, the respondents are directed not to take any coercive action against the subject properties of the petitioners.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

M. SEETHARAMA MURTI, J

03.01. 2018

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