

THE HON' BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.3523 of 2019

ORDER:

The petitioner challenges the notice dated 24.01.2019 issued by respondent No.3-Deputy Commissioner, Greater Hyderabad Municipal Corporation (GHMC), under Section 146 of the Hyderabad Municipal Corporation Act, 1955 (for short, 'the Act'), directing him to handover advance possession of a portion of Flat No.501, admeasuring 1100sft, 5th floor, Arbaaz Plaza, in Property No.9-4-47/19/C, Plot No.B1 in Survey No.108/9 of Hakeempet, Tolichowki, Hyderabad, for road widening.

2. Heard learned counsel for the petitioner, learned Government Pleader for respondent No.1 and the learned Standing Counsel for respondents 2 and 3.

3. Petitioner asserts that the 3rd respondent issued the impugned notice intimating him that a portion of his property would be affected due to road widening from Tolichowki Junction to Jubilee Hills Road No.82 (via., Salar Bridge & Paramount Hills), and therefore requested him to exercise option for receiving compensation from GHMC in lieu of the affected portion of his property.

4. Learned Standing Counsel Sri N. Ashok Kumar submits that though the petitioner states to be the resident of Flat 501, 5th floor of the subject premises, his entitlement to receive compensation either under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, 'Act 30 of 2013') or under G.O.Ms.No.330 dated 28.12.2017, would finally depend on whether the

construction made by him is as per the sanctioned plan and within the permissible limits. He further submits that if the portion of the construction that would be affected due to road widening is not as per the sanctioned plan or within permissible limits, the petitioner would not be entitled to receive any compensation as per law.

5. *Per contra* the learned counsel for the petitioner submits that the issue of unauthorised construction or his having or not having right or title over the property, are matters of inquiry in terms of the provisions of Act 30 of 2013, particularly Sections 11, 19 and 21 of the Act 30 of 2013.

6. Having regard to the respective submissions, the question that requires to be considered is whether a party whose property is likely to be affected in road widening work, and who is not coming forward to accept the compensation, can be compelled to part with the property or not. However, such cases are squarely governed by Section 147 of the Act. Offer of compensation so as not to deprive a citizen of his property rights protected under Article 300A of the Constitution, on for the property being taken over for public purpose, under negotiated terms, under Section 146 of the Act would ensure speedy execution of projects, particularly in cases of road widening, which would ultimately be in the larger public interest.

7. If the constructions are found to be not in accordance with the sanctioned plan, and beyond permissible limits, in the process of seeking consent of the property owner under Section 146 of the Act, the parties also may work out reasonable solution wherein the party claiming compensation may decide to protect the property instead of losing it by parting with a part of the compensation. However, all these are issues which require examination on the basis of facts of each case, and no

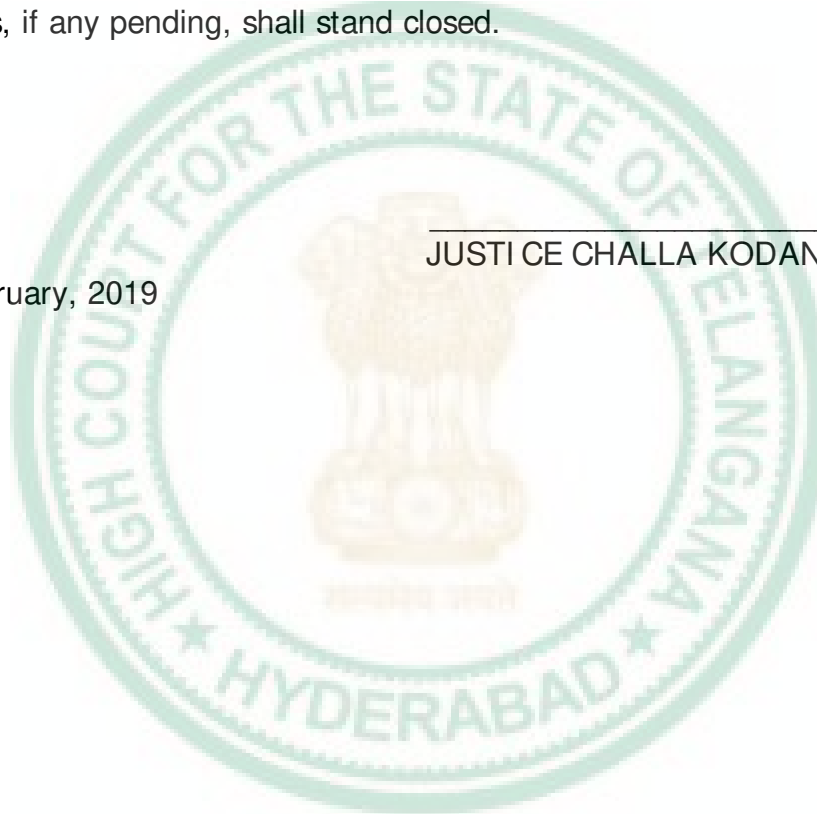
straitjacket formula can be applied in all the cases. If the petitioner is not willing to negotiate with the respondent-Corporation for a settlement, the respondent shall necessarily follow due procedure prescribed under Section 147 of the Act which mandates issuance of notice in terms of the provisions of Act 30 of 2013.

8. Accordingly, the writ petition is disposed of, directing the respondents to follow the procedure prescribed under Section 147 of the Act for taking possession of the property. No costs. Miscellaneous petitions, if any pending, shall stand closed.

21st February, 2019

KSM

JUSTICE CHALLA KODANDA RAM



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