

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.11791 OF 2019

Date:27.06.2019

Between:

Padigela Kedarnath s/o. P.Rajeshwar,
Aged 63 years, occu: Business,
r/o. H.No.5-7-10/37/F-4, Viveknagar,
Near Thirumala Theatre, Nirmal,
Nirmal District.

.....Petitioner

And

The State of Telangana, rep.by its
Prl.Secretary, Municipal Administration
and Urban Development Department,
Secretariat Buildings, Hyderabad and
others.

.....Respondents



The Court made the following:

HONOURABLE SRI JUSTICE P.NAVEEN RAO**WRIT PETITION NO.11791 OF 2019****ORAL ORDER:**

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 V Ravinder Rao, learned senior counsel appearing on behalf of Sri A.Jagan, learned counsel for respondents 3 and 4.

2. This Writ Petition is instituted aggrieved by the order in Proc. Roc.No.G1/91/2018 dated 10.6.2019 of Commissioner, Nirmal Municipality, where under the Commissioner declared that there exists a 33 feet wide public road connecting National Highway No.7 to Survey No.1336 (old) and affirmed his earlier decision dated 14.8.2018.

3. This is third round of litigation. While petitioners claim land to an extent of 308.33 sq yards in Old Survey Nos.1337, 1338 and 1109 of Nirmal town as private property purchased by them from the vendor on payment of sale consideration and title validly passed on to them and that they are entitled to construct building, unofficial respondents claimed that the said piece of land is not a private land but is a road, it was an illegal sale, and no construction can be made. Though, on 21.3.2018 building permission was granted to petitioners permitting construction on

disputed site, accepting the objections the building permission was kept in abeyance triggering litigation and consequential orders.

4. The facts to the extent relevant are as under. The petitioners claim to have purchased 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, through registered sale deed bearing Doc.No.20 of 2016, dated 02.01.2016 and in possession. On the application filed by them to the second respondent seeking grant of building permission, building permission was granted vide proceedings No.3028/W31/2018/ 0964, dated 21.03.2018. On 31.03.2018, the fourth respondent herein filed objection petition before the second respondent seeking to cancel the building permission granted in favour of the petitioners, dated 21.03.2018. Pursuant to the said objection petition, the second respondent herein, straightaway passed 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. The respondents 3 and 4 herein, filed Writ Petition No.12261 of 2018 contending that subject land provides an exclusive pathway to them and the petitioners are making constructions on the public road. On 12.04.2018, this Court heard both the Writ Petitions and granted *interim* suspension of the order, dated 04.04.2018, keeping in abeyance the building permission granted to the petitioners in W.P.No.12223 of 2018 and issued notice to the respondents in W.P.No.12261 of 2018. 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. The Division Bench of this Court heard the Writ Appeal No.783 of 2018 and Writ Petition No.12223 of 2018 and disposed of the same by common judgment, dated 20.06.2018, setting aside the proceedings of the Commissioner, dated 04.04.2018 and issued further directions.

5. Basing on the directions of the Division Bench of this Court in the common judgment dated 20.6.2018, the Commissioner of the second respondent issued notice vide proceedings No.G1/91/2018 dated 18.7.2018 to the petitioners observing that subject land is a public road and called upon the petitioners to respond. On 30.7.2018 petitioners filed their reply. On 14.8.2018 orders were passed by the Commissioner of second respondent municipality holding that petitioners encroached public road. Aggrieved thereby, petitioners filed W.P.No.30296 of 2018. Having found that the order is not made after affording due opportunity and upon consideration of objections, this Court in the order rendered on 28.11.2018 allowed the writ petition, remanded the matter to Commissioner directing him to consider the contents of the explanation dated 30.7.2018 and to pass orders in accordance with law. On remand the impugned order is made by the Commissioner.

6. Before considering the contentions urged against the order impugned, it is appropriate to note that the Division Bench of this Court in common judgment in W.A.No.783 of 2018 and W.P.No.12223 of 2018 observed that though the Commissioner, Nirmal Municipality might not be justified in adjudicating disputed

question of title, he has the power to ensure that no constructions are raised on a public street. The Division Bench issued directions 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.”

7. Extensive submissions are made on various aspects of the *inter se* dispute. However, having regard to the orders proposed to be passed in this writ petition, with consent, detailed submissions are not recorded. Suffice to note, it is the forcible submission of learned senior counsel Sri D.Prakash Reddy that the explanations submitted by petitioners on 30.7.2018 and 19.3.2019 were not considered; that reply filed by the respondents 3 and 4

dated 19.3.2019 was not supplied; passed orders bereft of reasons, completely arbitrary and without application of mind. Impugned order is contrary to the directions issued by the Division Bench, extracted above, and the directions issued by the learned single Judge in W.P.No.30296 of 2018. It is further contended that the second respondent was required to first satisfy that subject land is a public street and thereafter conduct enquiry, whereas, no such exercise was undertaken by him.

8. Having regard to the directions issued by the Division Bench and learned single Judge, on a reading of the order impugned, it is apparent that the Commissioner has not afforded fair opportunity and relevant aspects are not considered by him. The order on the face of it is not sustainable on these parameters. While denying the allegations and contentions of the learned senior counsel for petitioners on the merits of the case, learned senior counsel Sri V.Ravinder Rao, appearing for respondents 3 and 4 do not dispute that order impugned is not passed in due consideration of the objections and is not a speaking order. Thus, the impugned order is liable to set aside and matter has to be remitted for consideration afresh.

9. While learned senior counsel for petitioners cannot object to setting aside the impugned order and remanding the matter for fresh consideration, but submits that petitioners have no confidence on the fairness of the incumbent Commissioner in dealing with the matter and having regard to earlier orders passed by him, the incumbent Commissioner is arrayed as respondent No.5 by name. He points out that in paragraph-26 of the affidavit

filed in support of the writ petition, petitioners allege that 5th respondent who is Commissioner of second respondent is acting in collusion with respondents 3 and 4 to defeat the rights of petitioners, therefore enquiry has to be conducted and appropriate decision has to be made with reference to subject issue by any other authority, other than the Commissioner. Learned senior counsel appearing for respondents 3 and 4 do not dispute that whenever apprehension of bias is expressed, the authority concerned should not hold hearing and take decision, more so when it affects right of a person.

10. Thus, the question for consideration is who should undertake the exercise. As per the scheme of the Act, the Commissioner is the executive head of the Municipality. On his decisions, remedy of appeal is provided to Municipal Council. Thereupon, remedy of revision is available to Government. While petitioners express bias against incumbent Commissioner, in a given case, though Appellate Authority can be asked to consider the issue and take a decision, the tenure of existing council comes to end within next two to three weeks. Therefore, by the time, the process is set in motion to hold fresh hearing the council would most likely to be out of office. Learned senior counsel do not intend to forego remedy of revision. In the hierarchy in Municipal Administration, over and above, Commissioner of Municipality is the Regional Director, who exercises superior administrative powers. However, he is not vested with power to decide the subject matter of this Writ Petition. Further, Commissioner of every Municipality has jurisdiction to exercise administrative powers within that Municipality and, therefore, no other Commissioner

can attend to this issue. This leaves, only Officer who can deal with the peculiar situation i.e., the District Collector. The District Collector is overall in-charge of all administrative aspects in the district. However, scheme of the Act do not envisage any role to him. In the peculiar facts of this case, both senior counsel, on instructions from counsel on record, and standing counsel state that the District Collector be directed to hold enquiry and consider the issue of status of subject land.

11. Having regard to the respective submissions and without entering into the merits of the controversy and leaving it open the issues to be agitated before the competent authority in appropriate proceedings, in the peculiar facts of this case, I deem it necessary to direct the District Collector, Nirmal, to deal with the issue. The order impugned is set aside. The Commissioner/second respondent municipality is directed to transmit the entire record to the District Collector, Nirmal district. On receipt of the record, the District Collector shall issue notices to the parties by fixing a date for personal hearing, on which date respective parties shall appear. If the parties appear and request to supply material documents necessary for consideration of issue, the District Collector shall furnish the same within one week. Respective parties shall file their written submissions and exchange mutually. On receipt of the written submissions, the District Collector shall fix a date for hearing, consider the written submissions as well as oral submissions that may be made during the course of hearing and take a decision assigning due reasons within two weeks thereafter. The District Collector is requested to note that in spite of directions issued by the Division Bench and learned single Judge of this

Court, proper decisions are not made and matter is hanging on for long time and lead to three rounds of avoidable litigation before this Court. Therefore, he shall have fair and objective consideration to the issue. He shall fix schedule of exercise and take final decision within eight weeks from the date of receipt of this order. It is made clear that before the decision is made, if there is change in the incumbency of the Commissioner or any other Officer is appointed as Special Officer, the District Collector shall transmit the record to the incumbent Commissioner or the Special Officer, as the case may be, and the Commissioner or Special Officer shall proceed from the stage at which matter stands on the date of handing over the record.

12. Writ Petition is accordingly allowed. Pending miscellaneous petitions shall stand closed.

JUSTICE P.NAVEEN RAO

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