

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WP No.14371 of 2019

ORDER::

This writ petition is filed seeking to issue a writ, order or direction, more particularly one in the nature of writ of mandamus to declare i) that the respondent no.7 is not entitled to obstruct or consume the existing cart track connecting Kokapet village to Golden Mile main road in Sy.No.146, 147 and 148 for the purpose of making development or construction over the layout plots in Golden Mile project and also declare that respondents 1 to 3 are obligated to protect the cart track; ii) consequentially direct the respondents 1 to 6 to take all the reasonable measures to ensure that respondent no.7 will not construct or damage the cart track in Sy.No.146, 147 and 148 Kokapet village, Rajendranagar mandal, Ranga Reddy district; and iii) further direct the respondent no.7 to forbear from making any construction or developmental activity over any part of the cart track and grant such other relief to meet the ends of justice.

02. Facts stated briefly are; the petitioners are residents of houses situated in Kokapet village, Rajendranagar mandal, Ranga Reddy district, and owners and possessors of land admeasuring to an extent of Ac.05-24 guntas situated in Sy.Nos.138 and 139 of Kokapet village, Rajendranagar, Ranga Reddy district. Petitioners state that there is a cart track (bandla bata) in Sy. Nos.146, 147 and 148 of Kokapet village connecting Kokapet village to Golden mile road which is 1 km length of

road with 33 feet width. That mention of this cart track is there in the village plan of Kokapet village and the cart track is being used by all the residents of Kokapet village to reach the Golden mile main road. That the 7th respondent had purchased certain HUDA auctioned plots in Golden mile project and they are now proceeding with development/construction over the said plots including a part of the cart track in Sy.No.146, 147 and 148 of Kokapet village in such a manner and in such a way that the cart track is unauthorizedly blocked and utilization of the said cart track become impossible to reach Kokapet village. That the cart track shown in the village map is an ancient town planning device and such cart tracks and other public utility places are to be protected by the town planning authorities and the State in the interest of the villagers/users of the cart track. That the 7th respondent is trying to consume the cart track to the serious detriment of the villagers including the petitioners and since the party respondents are rich and influential, the State authorities are not taking any action against it. That the approach to the main road through the cart track is the shortest distance, the advantage of the cart track is required to be protected and extended to all the villagers and the petitioners. That it is settled legal proposition of law that cart tracks, roads, water bodies, public utility areas such as play grounds, schools, parks etc., are to be protected by the town planning authorities and see that they are not consumed by any private persons. That the 7th respondent is making excavation in the plots purchased by them in such a manner that the cart track is totally lost and the public

at large are deprived of the use of the cart track. That in this context, the petitioners have submitted several representations to the official respondents to protect and preserve the cart track but till today no action has been taken on the said representations. That construction activity is being undertaken by the 7th respondent at a high pace and the cart track is likely to be consumed by them to the disadvantage of the villagers including the petitioners. Hence this writ petition.

03. Counter affidavit is filed by the Director Planning-II, HMDA-2nd respondent wherein *inter-alia* it is stated that the 2nd respondent has developed the layout in Government land in Sy.No.147 in the name of Site-III of Golden mile project, Kokapet and conducted open auction on 20-07-2006 and in the said auction, the 7th respondent was the highest bidder for an extent of land of Ac.8.207 cents being H1 bidder. The auction of the said land was subject matter of litigation and ultimately pursuant to the order dated 08-01-2019 passed in SLP Nos.11145 & 11146 of 2013, the possession of the said land was given to the 7th respondent he being the highest bidder and sale deed was also executed.

It is stated that on verification of the HMDA master plan, 2031 zonal map, there is no connectivity for cart track to the village road through Sy.No.146, 147 and 148 of Kokapet village. That the land of the petitioners situated in Sy. Nos.138 and 139 is connected to the Kokapet village road towards eastern boundary and nowhere in their title deeds in respect of the said land, there is a mention about the cart track road for their ingress and egress to reach the village by using the cart track. It is

denied that the distance has increased for reaching the main road whereas reaching main road through the cart track is the shortest way. That there is a Master plan road wherein a provision is made for 30-meter road, which is part and parcel of the existing road abutting to Sy.No.138 and 139 of Kokapet village. That the cart track is only up to Sy.No.148, which is a patta land and the pattadars of the said land have converted the agricultural land to non-agricultural land and developed the land by constructing residential houses and buildings long back. That the cart track starts in the middle of Sy.No.147 and the same ends in the middle of Sy.No.148 patta land towards North Eastern side of the Golden mile project and there is no connectivity to the main village. That the land in Sy.Nos.100, 109, 110, 114, 117 and 148 belongs to the Government and converted it into non-agricultural land and the 2nd respondent-HMDA developed the layout by laying 100 feet, 60 feet and 40 feet roads to provide connectivity to the village roads from the Golden mile project main road, which are already developed and being used. That the patta lands in Kokapet in almost all survey numbers have been either already developed or under development and converted into residential use in HMDA Master plan and there is no agricultural activity in the said village. That the 2nd respondent has developed three layouts under the name of Golden mile project site-I, site-II & site-III and provided many roads and developed infrastructure by laying BT roads and open spaces and other amenities in the respective layouts as per layout norms of HMDA. That the Roads and Buildings Department and

the Panchayat Raj Department have also laid internal roads in and around the site. That as per the directions of the Supreme Court, the officials have demarcated the sites for handing over to the 7th respondent and while handing over the sites to the 7th respondent, the villagers have submitted representations requesting to provide for one more road at Northern side of the site-III for connectivity which is nearer and short distance to the main village and accordingly the officials of HMDA have considered the request of the villagers. That the HMDA has relinquished its own land for laying an alternate road and the said road is being put to use. That the representation of the petitioners for restoring the cart track was considered and rejected by assigning reasons vide letter no. BV4/7768/2006, dated 18-04-2019.

04. Counter affidavit is filed by the 7th respondent wherein it is stated that when a person *dominant owner* has an easementary right and the *servient owner* disturbs, obstructs or interfere with his alleged easementary right or denies his easementary right, the remedy of the dominant owner is to approach the civil Court for the relief of declaration or injunction and this writ petition is not maintainable in law and on facts as disputed questions of fact cannot be adjudicated in a proceeding under Article 226 of the Constitution. That large extent of land including the land in Sy.No.147 of Kokapet village belonged to the Government and the Government decided to handover possession of the said land to the 2nd respondent and accordingly issued a Memo No. 28764/Asn.V(1)/2006-1, dated 04-07-2006 directing the District

Collector to handover advance physical possession of land in Sy. No. 147 of Kokapet village to the 2nd respondent and in pursuance thereof, the 2nd respondent issued invitation for bids dated 20-07-2006 inviting bids for purchase and for development of land and admeasuring Ac. 31-00 guntas in Sy. No.147 of Kokapet village on special development zone. That in the open auction conducted on 20-07-2006, the 7th respondent emerged as the highest bidder for plot No.1 admeasuring Ac. 5.505 cents and plot No.2 admeasuring Ac.2.702 cents, totaling to Ac.8.207 cents and the same was confirmed by letter of allotment bearing number B2/7768/2006, dated 29-07-2006 and ultimately as per the direction of the Hon'ble Supreme Court in SLP Nos. 11145 & 146 of 2013, dated 08-01-2019, the 2nd respondent has executed and registered the sale deed dated 28-05-2019 in favor of the 7th respondent and handed possession thereof. That the petitioners who claim to be owners of land in Sy. Nos. 138 & 139 are claiming the alleged cart track in Sy. Nos. 146, 147 and 148 of Kokapet village on the basis of village map available in the Gram Panchayat. That the land in Sy No.147, was purchased by the 7th respondent in public auction and the lands in Sy. Nos. 146 & 148 of Kokapet village are private patta lands. That except mentioned in the village map, the alleged cart track (bandla bata) is not mentioned in any of the other revenue records muchless in the Master plan prepared by the 2nd respondent. That even in the document of the year 2013, by virtue of which, the petitioners are claiming title in respect of the land in Sy. Nos. 138 & 139 of Kokapet village there is no reference regarding the

cart track mentioned in their sale deeds, but towards eastern boundary, it was shown as Kokapet village road. That the petitioners have also entrusted their lands to a developer viz., M/s. Northstar Homes vide Development Agreement-cum-General Power of Attorney dated 29-04-2019, and they also obtain necessary permission from the statutory authorities. That the 2nd respondent also granted building permission to one M/s. Rajapushpa Properties Private Limited in respect of land in Sy. No. 143/P, 148 and 149 part of Kokapet village for construction of multi-storied residential apartment complex comprising of two cellars + ground + 14 upper floors on the said land and accordingly the said developer constructed the apartment complex on the said land including the full extent of land in Sy.No.148 of Kokapet village. That the petitioners never questioned the same but are now claiming existence of cart track all through from Golden Mile project road till village passing through Sy. Nos.148, 147 and 146. That even as per the village base map available with the 2nd respondent, the then existing cart track starting in the middle of Sy.No.147 and ending in the middle of Sy. No.148 there is no connectivity to the village through the said alleged cart track. That the petitioners approached this Court with unclean hands without even there being existence of prima facie case with a view to blackmailing the 7th respondent and, therefore, writ petition is liable to be dismissed on that ground alone. That the total extent of land Sy. No.148 on which the petitioners are claiming existence of cart track was developed into residential apartment complex and the said project is abutting Golden

Mile project main road and the compound wall was erected long ago around the entire Sy. No. 148 and hence there is no connectivity at all from Sy.No.147 to the Golden Mile project road through Sy.No.148 as claimed by the petitioners and the petitioner never objected for the said project. That if there exists any cart track in Sy. No.146, 147 & 148, the petitioners could have objected the construction of multi-storied residential apartment complex in the land in Sy. No.148. That taking advantage of reference of alleged the cart track in the ancient village map, the petitioners without any right claiming that there exists cart track but, in fact, there is no such cart track physically in land in Sy. No. 146, 147 & 148 of Kokapet village and hence the claim of the petitioners is baseless and without any substance. That the allegation of the petitioners that due to the alleged closure of cart track in Sy. Nos. 146, 147 & 148, the approach road from Golden Mile project main road to the village is blocked and they are made to consume one hour to reach that village from the Golden Mile project road is absolutely false or incorrect. That the alleged cart track is not shown in any of the revenue records nor even in the Master plan prepared by the 2nd respondent. That there is no public ingress and egress through the alleged cart track as the possession of the land in Sy. No.147 was handed over long back to the 2nd respondent which in turn conducted auction and sold the land to the highest bidder. That there are no merits in the writ petition and the same is liable to be dismissed.

05. Reply affidavit is filed by the petitioners to the counter affidavits filed by the 2nd & 7th respondents stating that they are owners and possessors of Ac. 05-24 guntas in Sy. Nos.138 and 139 of Kokapet village and they have entered into an agreement for the purpose of development of their land. That the controversy in the writ petition is with regard to obstruction and illegal consumption of the cart track which is common amenity for all the villagers and, therefore, referring to their sale deeds in respect of their lands, taking a stand that there is no cart track in plan contained in their sale deeds is irrelevant and unproductive. That the cart track road is the first and antique town planning thought. That the Gram Panchayats, Municipalities and Urban Development authorities are the sophisticated town planning authorities established under the relevant statutes such as, Town Planning Act, Panchayat Raj Act, Municipalities Act and Urban area development act and none of these town planning authorities have any authority or jurisdiction to efface the original and antique cart track or the like. That development of a small piece of land into layout does not authorize the town planning authority to delete or nullify a cart track road. That the statement of respondents 2 & 7 that the subject cart track starts in Sy. No.148 and ends in Sy. No.148 only and there is no connectivity of the cart track to the main road is factually incorrect and the same is belied by the village plan, which is the authenticated document to verify the survey numbers, water bodies and cart tracks. That the village map filed by them clearly shows the continuing cart track passing through the Sy. No. 146, 147 & 148 of

Kokapet village and connects the village to the main road. That the petitioners are now raising objection on the ground of alleged consumption of the cart track road only to cause inconvenience to the 7th respondent is a figment of imagination. That there is no concept of extinguish of the cart track in a village and non-use of cart track is also not legally permissible concept. That existence of cart track is for the public good and it is a common amenity for the villagers and even though, if it is not used for some time for various reasons, that itself will not amount to a relinquishment or abandonment of a common utility facility. That the 2nd respondent has no authority of law to formulate a layout which is in conflict with the cart track or a water body in the village and, therefore, making of layout by the 2nd respondent itself does not in any manner destroy or extinguish the cart track in the village. That when once it is admitted by the respondents 2 & 7 that there is a cart track in Sy. No. 148, a presumption has to be drawn that it continued for the purpose of connecting to utility points. That it is settled law that an illegality shall never be allowed to be perpetrated, merely nobody has raised an objection, no colour of legality gets attached to the subject matter and the legality can be pointed out at any stage and estoppel does not apply to such a situation.

06. Heard Sri Vedula Venkataraman, learned senior counsel appearing for the petitioners, Sri Y. Rama Rao, learned standing counsel for the 2nd respondent and Sri E. Ajay Reddy, learned counsel for the 7th respondent.

07. The Hon'ble Supreme Court in **GHULAM QUADIR vs. SPECIAL TRIBUNAL**,¹ observed that the orthodox rule of interpretation regarding the *locus standi* of a person to reach the Courts has undergone a sea change with the development of the constitutional law in India. If a person approaching the Court can satisfy that the impugned action is likely to adversely affect his right, if impugned action impinges upon statutory right, the writ petition filed by that person cannot be rejected. In yet another decision in **MEHSANA DISTRICT CENTRAL CO-OPERATIVE BANK LIMITED vs. STATE OF GUJARAT**,² the Supreme Court observed that if a statute prescribed norms to be followed, it has to be followed only in that fashion and if any violation in statutory rules is brought to the notice of the authorities and if the authorities do not perform the statutory duty, the aggrieved citizen can always bring it to the notice of the High Court. In **TASHI DELEK GAMING SOLUTIONS LIMITED vs. STATE OF KARNATAKA**,³ the Supreme Court held that if any citizens' right in any manner to carry on his business is infringed or there is a threat to his liberty, a petition is maintainable and access to justice is a human right. Reference in this connection may be also made to the decision in **A.V. VENKATESHWARAN vs. R.S.WADHWAN'S**⁴ case in which a Constitution Bench of the Supreme Court enunciated the principle as under:-

¹ (2002) 1 SCC 33

² (2004) 2 SCC 463

³ (2006) 1 SCC 442

⁴ AIR 1961 SC 1506

".....we must, however, point out that the rule that the party who applies for the issue of a high prerogative writ should, before he approaches the Court, have exhausted other remedies open to him under the law, is not one which bars the Jurisdiction of the High Court to entertain the petition or to deal with it, but is rather a rule which Courts have laid down for the exercise of their discretion. The wide proposition is that existence of an alternative remedy is a bar to the entertainment of the petition under Article 226 of the Constitution of India unless (1) there was a complete lack of jurisdiction in the officer or official authority to take action impugned or (2) where the order prejudicial to the writ petition has been passed in violation of the principles of natural justice and could, therefore, be treated as void or non-est, in all other cases Courts should not entertain petition under Article 266 of the Constitution and prayer for granting relief cannot be accepted."

08. Turning to the facts of this case, under definitions Section 2 (34) of the Telangana Panchayat Raj Act, 2018, (for short, "the Act") the term "Public Road" is defined. Section 2 (34) of the Act reads thus:-

*"(34) "Public Road" means any street, road, square, Court, alley, passage and includes,-
 (a) the roadway over any public bridge or cause way;
 (b) the footway attached to any such road, public bridge or cause-way; and
 (c) the drains attached to any such road, public bridge or cause way, and the land, whether covered or not by any pavement, verandah or other structure, which lies on either side of the road way up to the boundaries of the adjacent property, whether that property is private property or property belonging to Government."*

09. Section 58 of the Act states that all public roads in any village shall vest in the Gram Panchayat and the Gram Panchayat shall take steps to remove encroachments on, and prevent, un-authorized use of any road unless such public road is exclude from the operation of the provisions of the Act. Section 137 of the Act stipulates that all roads, etc. which vested in or maintained by a Gram Panchayat shall be open to the use and enjoyment of all persons, irrespective of their caste, creed

and language, which is conformity with the equality principle contained in Article 14 and 15 of the Constitution of India.

10. Learned senior counsel contended that since constructions are coming up across and along the cart track, which is earmarked as cart track as per the Gram Panchayat plan, the respondent-authorities are required to protect the same for the usage as cart track by the villagers and particularly the petitioners. On the other hand, it is contended by the learned standing counsel for the 2nd respondent that the villagers of Kokapet village, represented by the 1st petitioner made representation dated 29-03-2019 pursuant thereto, the HMDA officials inspected the village and agreed to provide 12 meter road from northern direction to the main road from the land in Sy.No.147 which belonged to HMDA and accordingly replied to the petitioners vide letter dated 18-04-2019. Adopting the submissions made by the learned standing counsel, learned counsel for the 7th respondent contended that the petitioners did not move in the matter when the land in question was allotted to the 2nd respondent for development, but raising objections that there is cart track. It is contented that the claim of the petitioners cannot be considered at this stage to the detriment of the interest of the 7th respondent. It is also stated that the 7th respondent is a bona-fide purchaser of the land in question in public auction and the petitioners have no vested right to seek restoration of the cart track which lost its usage long ago.

11. There is no notification or order passed by any authority classifying it as cart track and its usage by the villagers of Kokapet village. It has come on record that cart track started in the middle of Sy.No.147 (previously Government land), and there is no continuity and more so several buildings have come up and owners of such buildings are not made parties. The representation made by the petitioners against the proposed revision of layout including roads and open spaces by the 2nd respondent was redressed, and a letter dated 18-04-2019 communicated to the petitioners stating, among other things, that the cart track is land locked due to the existence of the houses and buildings, the same is not challenged in the writ petition. It has also come on record that in HMDA master plan, 2031, (zonal map), there is no connectivity for cart track to the village road through Sy.No.146, 147 and 148 of Kokapet village as the cart track which starts in the middle of Sy.No.147 ends in the middle of Sy.No.148 patta land towards north eastern side of the Golden mile project. The 2nd respondent categorically denied that reaching main road through the cart track is the shortest way. It has come on record that as per the Master plan, provision is made for 30-meter road, which is part and parcel of the existing road abutting to Sy.No.138 and 139 of Kokapet village and the 2nd respondent-HMDA developed the layout by laying 100 feet, 60 feet and 40 feet roads to provide connectivity to the village roads from the Golden mile project main road. Two different village maps are filed by parties,

one assailing that there exists a continuous cart track and another disputing the same.

12. The learned standing counsel for 2nd respondent submitted that the Kokapet village is having access from the Golden mile project road till the village through several connecting roads which are already developed and being used and pattedars of the lands in Kokapet in almost all survey numbers have been either already developed or under development and converted into residential use in HMDA Master plan, there is virtually no agricultural activity in the said village, restoring the age old cart track which has now become impractical to use for the reasons that houses and buildings have come up and as such the cart track cannot be ordered to be restored, which is not seriously disputed.

13. From pleadings referred to above and contentions raised by parties, there exists a serious disputed question a fact which cannot be resolved in this writ petition

14. In view of the above facts and circumstances, no relief can be granted to the petitioners by exercising extra ordinary equitable jurisdiction under Article 226 of the Constitution of India. The writ petition is accordingly dismissed. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed. There shall be no order as to costs.

A.RAJASHEKER REDDY, J

Dated:06-12-2019
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THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY



WP No.14371 of 2019

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Dated: 06-12-2019

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