

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.17095 of 2019

ORDER:

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

“For the reasons stated in the accompanying affidavit, it is hereby prayed that this Hon'ble Court may be pleased to issue a writ or order one particularly in the nature of Writ of Mandamus declaring the action of the 2nd respondent in issuing notice dated 22.07.2019 under sec. 192 of the Andhra Pradesh Municipalities Act, 1965 as illegal, arbitrary and call for the records and set-aside the same by paying compensation to petitioners for the land taken by them under Act.30/2013 and consequently direct the respondents not to lay road till acquisition proceeding are initiated and compensation is paid in respect of land taken from petitioners in premises bearing Nos. 1-4-15, 1-5-2, 1-5-142, 1-5-143, 1-4-20, 1-4-21, 2-2-62, 3-3-99, 2-2-85, 3-3-29, 2-2-59, 2-2-18, 2-2-17, 3-3-96, 2-2-9, 2-2-9/1, 2-2-66, 2-2-60, 3-2-6, 3-2-7, 3-2-12, 3-5-87/2, 1-5-95, 2-2-20, 3-3-17, 2-2-81, 2-3-83, 2-3-84, 1-5-145, 1-5-3, 1-3-92, 3-3-98, 3-3-99, 3-2-8, 3-3-27/1, 1-3-102, 1-3-102/1, 1-4-16/1, 2-2-82, 1-2-43, 1-4-3, 1-2-44/1, 1-4-19, 1-3-91, 3-3-5, 3-3-4, 3-2-1, 3-2-2, 1-5-9, 3-3-7, 1-4-28, 1-4-29, 3-3-102, 3-3-28, 1-5-16/1, 1-5-16, 1-5-16, 1-6-7, 1-4-21 and 3-3-9 on either side of the road leading from S.V. College to Eenadu office, old National Highway No.9, Suryapet, Suryapet District and pass such other order or orders as this Hon'ble Court may deems fit and proper in the circumstances of the case.”

2. Heard Sri S.Sridhar, learned counsel appearing for the petitioners, learned Government Pleader for Municipal Administration and Urban Development appearing for the 1st respondent, Sri N.Praveen Kumar, learned Standing Counsel appearing for the 2nd respondent, learned Government Pleader for Revenue appearing for the 3rd respondent and learned Government Pleader for Roads and Buildings appearing for the 4th respondent. Perused the material available on record.

3. The assertion of the petitioners is that they are the owners of the properties situated on either side of the road leading from S.V. College to Eenadu Office, Old National Highway No.9, Suryapet, Suryapet District, and are in peaceful possession and enjoyment of the same. The allegation of the respondents that the petitioners have encroached on to the public road portion is untenable. The 2nd respondent has issued notice, dated 22.07.2019, directing the petitioners to remove encroached structures within 24 hours from the date of receipt of the said notice, failing which the same will be removed under Section 192 of the Andhra Pradesh Municipalities Act, 1965. In response to the said notice, the petitioners have submitted explanation, dated 26.07.2019, enclosing all the documents. However, even before the same is considered, the properties of the petitioners were demolished. Hence, the present writ petition is filed by the petitioners.

4. On the other hand, Sri N.Praveen Kumar, learned Standing Counsel appearing for the 2nd respondent, as well as the learned Government Pleaders would submit that the 2nd respondent has considered the explanation, dated 26.07.2019, submitted by the petitioners on the same day in view of the urgency and the said decision was also communicated to the petitioners. Learned Standing Counsel further submitted that as the petitioners made illegal constructions by encroaching on to the public road, they are not entitled for any compensation.

5. Having regard to the submissions made by both the learned counsel, and even assuming for arguments sake that the petitioners contentions are true; which can in fact be ascertained only after

inviting counter affidavits, and further assuming that demolition had already taken place, this Court, at best, would only issue direction to the respondent authorities to initiate proceedings for assessment of damages under the Land Acquisition Act, 1894, or on a negotiated basis. Further, in view of the specific assertion of the respondents that the petitioners have encroached a part of National Highway No.9, which is a disputed question of fact, the entitlement or otherwise of the petitioners for compensation cannot be determined in this writ petition.

6. Having regard to the above, this Court feels that it would be more prudent on the part of the petitioners to approach a civil Court with all the necessary material for claiming compensation for the damages. If it is evident that the petitioners have not encroached on to the public road and their properties have been destroyed, the civil Court is directed to make an assessment of the damages and do justice to the petitioners.

7. With the above direction, the Writ Petition is disposed of leaving it open to the petitioners to avail appropriate remedies before the civil Court. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order.

CHALLA KODANDA RAM, J

Date: 9th September, 2019

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