

(2010) 04 AP CK 0055

In the Andhra Pradesh High Court

Case No : Writ Petition No. 10187 of 2010

G. Venkat Reddy

APPELLANT

Vs

The Executive Officer and Others

RESPONDENT

Date of Decision : 30-04-2010

Acts Referred:

Andhra Pradesh Panchayat Raj Act, 1994 — Section 53, 90, 91, 92, 93
Andhra Pradesh Writ Proceedings Rules, 1977 — Rule 3
Constitution of India, 1950 — Article 226, 300A

Citation : (2010) 5 ALT 405

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : M.A. Mujeeb, for the Appellant; G. Elisha for Respondent No. 1, G.P. for Respondents 2 to 4 for Roads and Buildings and G.P. for Revenue, for the Respondent

Judgement

V.V.S. Rao, J.—The petitioner filed the instant writ petition seeking following prayers. For the reasons stated in the accompanying affidavit, it is prayed that this Hon''ble Court may be pleased to issue a Writ of Mandamus or any other appropriate writ or order or direction:

(i) To stay the operation of the notice No. A/9/2010, dated 20.3.2010 issued by the 1st respondent as arbitrary, illegal and the same is against the principles of natural justice and norms of the public policy.

(ii) Fix the liabilities of the 1st to 5th respondents and subsequently direct the 6th respondent to take such action as this Hon''ble Court deems fit and proper against them.

(iii) Direct the 1st respondent to pay damages of Rs. 4,00,000/- to the petitioner towards his mental agony, hardship and the cost of construction of illegally pulled down a portion of RCC House No. 1-8-20 illegally.

2. The case of the petitioner is that he is owner of house No. 1-8-20 in an area of

262.50 Sq.yards situated at Kollapur Village and Mandal in Mahabubnagar District. In connection with widening of 80 feet road from Ramalayam to R&B guest house at an estimated cost of Rs. 1.44 crores, first respondent issued notice bearing No. A/9/2010, dated 20.3.2010 to Smt. P.Atchamma, W/o.Eranna. She is vendor of petitioner. By the said notice, it was informed that house bearing No. 1-8-20 located after 40 feet from the centre of the road needs to be removed for widening purpose. The noticee was asked to remove 10 feet within 15 days otherwise the house/shop shall be removed. Petitioner also alleges that fifth respondent in gross abuse of the authority pulled down portion of the house during 21.4.2010 to 23.4.2010 in spite of objection raised by the security guard of petitioner, causing loss of Rs. 2.00 lakhs towards reconstruction. Petitioner alleges that no notice was issued to him and that due to mental agony and hardship he is also entitled for additional sum of Rs. 2.00 lakhs towards damages. It is also alleged that on 13.4.2010 second respondent allegedly requested Revenue Divisional Officer, Nagarkurnool to accord permission to the concerned officer but the same does not specifically speak about widening of existing road. The petitioner therefore seeks an order restraining fifth respondent from demolishing petitioner's house and pay damages.

3. This Court heard counsel for petitioner and Standing Counsel for Gram Panchayats. The counsel for petitioner relied on Guddi Malkapur Co-op. Housing Society Vs. LA.O, HUDA and Another, and submits that when right to property protected under Article 300A of Constitution of India is violated, aggrieved person can seek remedy either under Article 226 of Constitution or by a civil suit for deprivation of the same. He also submits that the notice issued to petitioner's vendor, who is not at all residing in the in the place, is not sufficient compliance with principles of natural justice. These contentions are refuted by the other side.

4. In exercise of powers under Article 226 of Constitution, High Court of Andhra Pradesh made Writ Proceeding Rules, 1997. As per Rule 3(a), a petition for direction, order or writ including a writ of habeas corpus, Mandamus, certiorari, quo warranto or prohibition shall be by an original petition to be entitled "Writ Petition" and every such petition shall set out inter alia the relief sought specifically. The relief to stay operation of the notice generally is incidental to the main relief. Unless and until a declaration is sought that order sought to be stayed suffers from illegality, a writ petition for stay cannot be entertained. Therefore a writ petition for only stay without declaration would not lie. But merely because the relief is wrongly sought, this Court as sentinal qui vive cannot throw out petition on that ground. Therefore, the present writ petition cannot be treated as the one seeking appropriate mandamus declaring the impugned notice dated 20.3.2010 as illegal.

5. As per Section 53 of Andhra Pradesh Panchayat Raj Act, 1994 (the Act), all public roads other than National Highways and State Highways vest in the Gram Panchayat for the purpose of maintenance. If any immovable property for the purpose of maintenance or for achieving any of the public purpose is required,

Gram Panchayat has to - through appropriate Revenue authority - acquire the land following the procedure under the Land Acquisition Act, 1894. If in connection with proposal to widen the road the Gram Panchayat requests any owner of property to give consent with a view to negotiate the owner, the same cannot be faulted. But if the owner is not inclined to part with his property, only recourse available to Gram Panchayat is to acquire the land. If the occupation is encroachment, a duty is cast on the Gram Panchayat to remove the encroachment following the procedure laid under Sections 90 to 99 of the Act. Here the impugned notice may be extracted as translated by petitioner.

6. It is to intimate you by the Gram Panchayat, Kollapur that the official of the R&B vide their reference cited above desired that your house No. 1-8-20 located after 40 feet from the centre of the road situated in Gram Panchayat, Kollapur needs to be removed. As such you were asked to remove remaining 10 feet by the R&B officials. You are therefore intimated to remove your house or shop upto 50 feet from the centre of the road within 15 days from the date of receipt of the notice, failing which your house or shop will be removed. The Gram Panchayat will not be liable for any loss thereafter. Hence you are intimated through this notice.

7. A reading of the same would show that a request was made to petitioner's vendor to remove portion of the house to the extent of 50 feet from the centre of the road. The action of first respondent in issuing such notice does not per se amount to illegality. A question often arises as to whether the person who is actually in occupation of the property either as a tenant or subsequent purchaser is also entitled to notice or the notice issued to the landlord or previous owner is sufficient. A Full Bench of this Court in Ushodaya Publications, Hyderabad Vs. Commissioner, Municipal Corporation of Hyderabad and Another, considered this aspect of the matter and categorically laid down that obtaining consent even from the tenants at the time of road widening is mandatory.

8. In Srichand Rohra Vs. Commissioner, Municipal Corporation of Hyderabad and Others, I have followed the Full Bench and also reiterated the guidelines issued by the Division Bench in earlier judgment with regard to the procedural requirements at the time of widening of the road. The relevant observations are as follows.

In similar circumstances, W.P. No. 21341 of 2000 dt.7.11.2000 and W.P. No. 22216 of 2000 dt.16.11.2000 were disposed of by me with direction to the respondent- Corporation to take necessary action as per the Land Acquisition Act or the HMC Act, if the landlords are not willing to give their consent. I also directed that if the consent is already given by the landlord/owner, the MCH shall be at liberty to proceed with further action for widening the road. In view of the Judgment of the Full Bench in Ushodaya Publications case (supra) the MCH has to obtain consent even from the tenants without which the road widening work cannot be taken up unless MCH takes action for acquisition of land as per law. Needless to mention that unless proper procedure is contemplated and initiated

the MCH, in law, is not entitled to either forcibly take possession or demolish the structures in the area.

A Division Bench of this Court in W.P. No. 21198 of 1997 and batch, by order dated 3-2-1998, issued directions to be followed by Municipal authorities, Panchayat authorities and Revenue authorities for acquiring the land for road widening and/or for public purpose. Inter alia the following directions were issued by the Division Bench.

1) Where a property is required for public purpose viz., widening of roads or for any other purpose, the authorities straightaway cannot take law into their hands and jump into the premises, dispossess or evict the occupants or demolish the property.

2) If the authorities concerned want to take action for eviction/dispossession of the occupants or demolition, they shall issue 60 days" prior notice notifying as to the nature of the property, the property to whom it belongs and the proposed action calling for explanation/objections if any from the occupants. On receipt of such objections, if there is any objection as to the ownership of the property, the authorities should determine the extent of encroachment or unauthorised occupation and also determine whether the property in question belongs to Government/any other local self Government or authority or the occupants and pass appropriate orders within three months from the date of receipt of the objections, after affording an opportunity of being heard to the occupants.

3) In case where demolition of private property has already been made, the authorities shall determine the damages on the basis of the assessment to be made by the Engineer of the Roads and Buildings Department and disburse the amount of damages quantified forthwith.

4) If the demolition is in respect of local bodies" Government property, the question of damages does not arise. In such an event, the occupant shall be entitled to remove the material used for the construction.

5) In case of demolition of private property, the authorities concerned shall determine the loss caused to the occupants on the basis of the assessment to be made by the Engineer of R & B Department and on such assessment of damages, the concerned authorities shall take appropriate steps to disburse the amount quantified forthwith.

6) If there is any claim for grant/assessment of the property, the concerned authorities shall consider the same in accordance with law taking into consideration the eligibility and the entitlement of occupants, after making enquiry and till such claim is decided, there shall be status-quo obtaining as on today regarding the structures.

9. Insofar as prayer for damages is concerned, in writ jurisdiction such relief cannot be granted. In *Nerella Dhanunjaya Vs. The Commissioner, Municipal Corporation of Warangal and Others*, the question was whether writ petition for

awarding compensation for violation of rights under the Constitution or for illegal acts of public authorities is maintainable. Relying on *Rabindra Nath Ghosal Vs. University of Calcutta and Others*, ; *Common Cause, A Registered Society Vs. Union of India and Others*, and *Sube Singh Vs. State of Haryana and Others*, this Court laid down that public law remedy of awarding damages can be availed in a claim for deprivation of life and liberty alone and when there is allegation of wrongful deprivation of property contrary to Article 300A of Constitution, such remedy is not available. The decision of Division Bench in *Gudi Malkapur Coop. Housing Society (supra)* is a case where Hyderabad Urban Development Authority (now Hyderabad Metropolitan Development Authority) sought to acquire the land admeasuring about Acs.1.00 without releasing the compensation. In that context, this Court held that when the private land is taken over by public authorities, the party can seek remedy either in Civil Court or under Article 226 of Constitution. It is not a case dealing with damages for alleged highhanded pull down/demolition of property.

10. The Standing Counsel for Gram Panchayats does not dispute the legal position. He also does not dispute that issuing of notice to occupant of the house is necessary. Therefore, writ petition is disposed of, directing the Gram Panchayat to issue appropriate notice to petitioner, obtain his consent and take necessary action. If the petitioner is not willing to part with the property for the purpose of road widening, need less to mention the land has to be acquired in accordance with law. Till then there shall be status quo insofar as petitioner's house No. 1-8-20 is concerned. This order does not preclude the respondents from proceeding with road widening without affecting the petitioner's rights.

11. The writ petition is accordingly disposed of.