

(2014) 03 AP CK 0129
In the Andhra Pradesh High Court
Case No : Writ Petition No. 610 of 2008

N. Murali Krishna

APPELLANT

Vs

South Central Railway and Another

RESPONDENT

Date of Decision : 10-03-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Evidence Act, 1872 — Section 17 18 19 20

Citation : AIR 2014 AP 100 : (2014) 4 ALD 72 : (2014) 4 ALT 53

Hon'ble Judges : Kalyan Jyoti Sengupta, C.J.; P.V. Sanjay Kumar, J

Bench : Division Bench

Advocate : D. Hanumanth Rao, for the Appellant; Gouri Shankar Sanghi for South Central Railway for Respondent No. 1 and Smt. A. Deepti, Counsel for Greater Hyderabad Municipal Corporation, for the Respondent

Final Decision : Dismissed

Judgement

Kalyan Jyoti Sengupta, C.J.—This public interest litigation has been filed by the petitioner for the following relief.

...to issue an appropriate writ, order or direction, preferably a Writ in the nature of a Mandamus declaring the action of the 1st respondent as illegal, highhanded, arbitrary and gross mis-use of power in encroaching unto the road and by directing the 2nd respondent to maintain 80" road by exercising its power vested within it under Chapter 11 of the Hyderabad Municipal Corporation Act, 1955, and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

The case of the petitioner is as follows. The entire land in question belonged to Nizam who on request of British Cantonment has leased the same. On formation of the State of Andhra Pradesh, the Railways took the said land of 104 acres on lease on an annual rent of Rs. 5. The first respondent, South Central Railway knowing fully well about the same, initially put the barricades and has now constructed the wall on part of the road and is making constructions restricting

the thoroughfare. The traffic has increased and to create hardship to the commuters and the users of 80" road, the first respondent has encroached upon from its compound wall, and boundaries have put up with mud and fenced initially and then constructed wall removing the fencing and is now making constructions on the other stretch. The first respondent without any manner of right, taking undue advantage of its quarters and most of its offices located within the area, proclaiming and projecting its rights over the public road.

2. In sum and substance, right, title and interest in the said stretch of land comprise of public road is questioned.

3. The first respondent has filed a counter affidavit and in paragraph 8 of the affidavit, it is stated that the said road is basically an internal road for the use of the railways to give access to the railway offices and railway quarters.

4. No affidavit in reply is filed controverting the aforesaid statement.

5. Under such circumstances, the contention of the Railways has to be accepted. However, learned counsel for the petitioner says that respondent No. 2 - Greater Hyderabad Municipal Corporation (GHMC) has filed an affidavit stating that they intend to take action. It would appear from their affidavit that there is an admission on their part that the property belong to GHMC.

6. In paragraph 4 of the counter affidavit filed by GHMC it is stated that the road leading from St. Johns Road opposite to Keyes Girls High School upto Ramakrishna Hotel via., Railway General Manager's Bungalow is a public road and it was a thoroughfare road from last ten (10) decades as per details of plan showing the railway land purchased by Chief Engineer from Government Military Department. A portion of the road is covered by private buildings other than Railways and as such the Railway Authority cannot block the public road or any part of it. It is also stated that GHMC has inherent statutory powers to acquire the land for development of existing road or newly proposed road and also remove any obstruction from the street/road under the Hyderabad Municipal Corporation Act.

7. Learned counsel for the petitioner has relied on the aforesaid statement of the GHMC and submits that necessary relief should be granted as prayed for.

8. Thus it appears from the pleading that there are highly disputed questions of fact and it is not possible for this Court to decide the claim and the rival claim of ownership taking note of the same. Moreover, we find from the averment in the counter affidavit of GHMC that the land can be acquired. If it is a public road and it belonged to the GHMC, then question of acquisition of land does not and cannot arise.

9. We are of the view that legally enforceable admission has to be made by adversary against whom relief is claimed not by a person who asserts claim. We refer to the provisions of Section 17 of the Indian Evidence Act.

17. Admission defined:- An admission is a statement oral or documentary or contained in electronic form, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, hereinafter mentioned.

Sections 18, 19 and 20 of the Indian Evidence Act deal with the situations where admissions are to be applied. The conditions mentioned therein are to be satisfied to take note of the same.

10. From a careful reading of those Sections, it will appear that the admission in this case would have been a relevant piece of evidence, had the Railways made such an admission. Accordingly, the aforesaid admission cannot be looked into by the Court. Therefore, we find that there is no material to decide the matter conclusively by the Writ Court.

11. We give liberty to the parties, if so warranted under law, to approach appropriate forum, namely, Civil Court. For this purpose, no notice u/s 80 of the Code of Civil Procedure, 1908 or any other statutory notice need be served upon the Railways, and the same is dispensed with, as the Railways are aware of the cause of action and the nature of relief claimed in the subject matter. We feel that very purpose and object of serving notice is sub-served.

12. The writ petition is accordingly dismissed. There will be no order as to costs. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.