

THE HON'BLE MR JUSTICE L. NARASIMHA REDDY

Writ Petition No.23611 of 2006

ORDER:

One Smt.Anuradha Bai, the aunt of the petitioner, was the owner of premises, bearing No.23-6-940, situated at Shah-Ali-Banda, Hyderabad, admeasuring 165 yards. Out of that, an extent of 33 square yards was acquired by the Municipal Corporation for the purpose of widening of the road. The 3rd respondent, who is in possession of the property, gave consent. Therefore, no proceedings were initiated under the Land Acquisition Act, 1894 (for short 'the Act').

The petitioner states that the property was bequeathed in his favour by the original owner and the 3rd respondent is making claim to the property as well as compensation, without any basis. This Writ Petition is filed with a prayer to direct respondents 1 and 2 to pay the compensation for the acquired land to him. Reference is made to various proceedings that have ensued between the petitioner and the 3rd respondent in civil Courts.

On behalf of respondents 1 and 2, a counter-affidavit is filed, stating, *inter alia*, that the extent of 33 square yards of land was taken over on the consent of the 3rd respondent, and compensation was not paid, on account of the dispute between the petitioner and the 3rd respondent.

The 3rd respondent filed a separate counter-affidavit, narrating the manner in which he is said to have acquired title to the property.

Heard learned counsel for the petitioner, learned Standing Counsel for respondents 1 and 2 and learned counsel for the 3rd respondent.

Normally, the Corporation would be required to invoke the proceedings under the Act, whenever it needs any private property. Where, however, the owner and possessor of the property gives consent, such an eventuality does not arise. In the instant case, the

3rd respondent gave the consent for acquisition of 33 square yards of land bearing Municipal No.23-6-940. By the time the compensation was paid, the petitioner put forward his claim.

Had the proceedings been under the Act, there would have been the facility to require the Land Acquisition Officer to refer the matter under Section 30 of the Act, to the Civil Court. Since the land was taken over with the consent of the 3rd respondent, such a possibility does not exist. The only alternative is to require the parties to seek adjudication about their title to the property.

The record discloses that the 3rd respondent got the sale deed executed in his favour, for the property, on the strength of a decree in O.S.No.109 of 1998 by the Court of X Junior Civil Judge, City Civil Court, Hyderabad. On coming to know the sale deed executed in favour of the 3rd respondent, the petitioner filed O.S.No.960 of 2006 in the Court of VIII Junior Civil Judge, City Civil Court, Hyderabad, with a prayer to cancel the decree in O.S.No.109 of 1998 and the consequential sale deed. The

3rd respondent is a party to that suit. The title to the property would naturally be decided in that suit. It is only the party in whose favour a decree is granted that can claim the compensation for the 33 square yards of land.

Hence, the Writ Petition is disposed of, directing that,

- a) the right of the petitioner, or the 3rd respondent, as the case may be, to receive the compensation for the 33 square yards of land, bearing Municipal No.23-6-940, shall depend upon the out come of O.S.No.960 of 2006 on the file of the VIII Junior Civil Judge, City Civil Court, Hyderabad; and
- b) the 1st respondent shall deposit the compensation determined for the said land in a nationalized bank for a period of three years and extend it from time to time

till the dispute between the petitioner and the
3rd respondent is decided.

There shall be no order as costs.

L. NARASIMHA REDDY, J.

Dt.31.05.2010.

GJ