

APHC010050012024



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3460]

**FRIDAY, THE NINTH DAY OF MAY
TWO THOUSAND AND TWENTY FIVE**

PRESENT

THE HONOURABLE SRI JUSTICE NYAPATHY VIJAY

WRIT PETITION NO: 2946/2024

Between:

Seelam Atma Rao

...PETITIONER

AND

The State Of Andhra Pradesh and Others

...RESPONDENT(S)

Counsel for the Petitioner:

1.BHASKAR PREM KOUSHIK

Counsel for the Respondent(S):

1.K H V SIVA KUMAR

2.A S C BOSE (SC FOR MUNICIPAL CORPORATIONS AP)

3.GP MUNICIPAL ADMN AND URBAN DEV AP

The Court made the following:

HON'BLE SRI JUSTICE NYAPATHY VIJAY

WRIT PETITION No.2946 of 2024

ORDER:

1. The present Writ Petition is filed to declare the action of the Respondent No.2 in not removing the illegal land encroachments of the road by the Respondent Nos.3 to 8, as illegal and arbitrary.

2. The Writ Petitioner and the Respondent Nos.3 to 8 are the residents of 4th Lane, A.T. Agraharam, Bandla Bazar, Venkatakrishna Colony, Guntur. A meeting was conducted on 28.12.2022 by the residents of the said lane agreeing to remove the encroachments for laying a new road and had submitted a representation to the Town Planning Department to that effect. The width of the existing road is 6 feet wide from western side to eastern side. The Petitioner in true spirit had given a setback of 6 feet for extension of width of the road. However, the un-official respondents without leaving any setback had encroached into the road.

3. The Petitioner and other residents approached the 31st Ward Corporator of Guntur Municipal Corporation requesting to examine the inconvenience caused due to the narrowness of the lane. The Petitioner also made a representation to the District Legal

Services Authority, Guntur explaining the grievance regarding the road and the District Legal Services Authority passed orders in PLC.No.326 of 2023 on 10.07.2023 as there was no mutual agreement between the parties. Hence, the present Writ Petition is filed.

4. Along with the Writ Petition, the Petitioner filed Photographs, which disclose the narrowness of the road and even as per the Photographs, the width of the road is just enough to provide space to an auto to enter the lane.

5. The Respondent No.2 filed Counter Affidavit stating that the Petitioner and 31 others had filed PLC.No.326 of 2023 as stated above before the District Legal Services Authority, Guntur and the Respondent No.2 had submitted a report stating that the road in question is not included in the approved master plan of Guntur Municipal Corporation *vide* G.O.Ms.No.688, MA & UD Dept., dated 30.12.2006. It is further stated that no settlement could be arrived at by all the 20 property owners.

6. It is further stated that pursuant to the directions of the District Legal Services Authority, Guntur, 10 residents out of 14 residents on both sides have submitted acceptance letter on 03.05.2023 agreeing

to survey and demarcation of the road for raising existing road to CC road by the Corporation and also accepted for formation of 12 feet wide road and for construction of drains on both sides of the road after removing the encroachments. Pursuant thereto, a survey was conducted by the Municipal authorities, encroachments were identified and a sketch was prepared identifying the encroachments

7. After preparation of the Encroachment Sketch, 8 residents out of 14 residents in that locality have expressed their willingness to cooperate with the Municipal Corporation for formation of wide public passage and construction of drains by the Municipal Corporation. However, the Respondent Nos.3 to 8 i.e. the owners of structures 5, 9, 11, 12 and 13 had shown stiff resistance for removing encroachments and are causing hurdle for formation of road and construction of drains.

8. It is further stated in the Counter Affidavit the subject street is a private joint path shared by the property owners. The details of the survey and the property tax were also explained in a tabulated statement.

9. The Respondent Nos.3 to 8 also filed their Counter Affidavit stating that the road in question disputing the correctness primarily contending that the street is a private street and the Respondent Nos.3 to 8 cannot be declared as encroachers in the absence of any decree of Civil Court and that they claim to be within the Sale Deeds standing in their favour.

10. Heard Sri Bhaskar Prem Koushik, learned counsel for the Petitioner, Sri A.S.C. Bose, learned counsel for the Respondent No.2 Corporation and Sri K.H.V. Siva Kumar, learned counsel for the Respondent Nos.3 to 8.

11. This Court after hearing the respective counsel reasons as follows:-

The Section 392(1) of the Act restrains formation of any private street without permission of the Commissioner. In the event, the private street is laid with prior permission in that event, the Commissioner has power under Section 392(2) to issue show cause and alter the street to his satisfaction at the expense of residents of the street. The Section 392 of the Act is extracted below for ready reference.

“392. Land not to be appropriated for building and private street not to be laid out until expiration of notice not otherwise than in accordance with Commissioner's direction:- (1) No person shall, sell, let, use or permit the use of any land whether undeveloped or partly developed for building or divide any such land into building plots, or make or layout any private street-

(a) unless such person has given previous written notice of his intention as provided in Section 388 nor until the expiration of sixty days from delivery of such directions, if any, as may have been fixed and determined under sub-section (1) of Section 391;

(b) after the expiry of the period of one year specified in sub-section (2) of Section 391;

(c) unless such person gives written notice to the City Engineer of the date on which he proposes to proceed with any work he is entitled to carry out and commences such work within seven days of the date mentioned in the notice.

(2) If any act be done or permitted to be done in contravention of this section, the Commissioner may by written notice require any person doing or permitting the doing of such act-

(a) to show cause on or before such day as shall be specified in such notice by statement in writing subscribed by him in that behalf, and addressed to the Commissioner, why the layout, plot, street or building contravening this section should not be altered to the satisfaction of the Commissioner, or if that be in his opinion impractical why such street or building should not be demolished or removed or why the land should not be restored to the condition in which it was prior to the execution of the unauthorised work, or

(b) to attend personally or by an agent duly authorised by him in that behalf on such day and at such time and place as shall be specified in such notice and show cause as aforesaid.

(3) If such person shall fail to show cause to the satisfaction of the Commissioner why such street or building should not be so altered, demolished or removed or why such land should not be so restored the Commissioner may cause the works of alteration, demolition, removal or restoration to be carried out and the expenses thereof shall be paid by the said person.”

12. The Section 392 ensures that streets formed align with the connecting roads in the city and ensures organised city development. The wording “*to the satisfaction of Commissioner*” in Section 392(2) reflects the wide amplitude of power of the Commissioner to make alterations in the street in question. The consent of private street owner is of no relevance for exercise of power under this Section.

13. Therefore, the Writ Petition is disposed of with the following directions:-

(i) The Commissioner, Guntur Municipal Corporation shall call for a report regarding the width of the street in question within a period of two (2) weeks from the date of receipt of the web copy of this order;

(ii) Upon such report, the Commissioner, Guntur Municipal Corporation shall issue show cause notice to the Respondent Nos.8 to 13 as they alone are opposing the works in the street on the premise that the street is a private street within a period of two (2) weeks from the date of receipt of report referred in (i) above;

(iii) Consequent to the explanation of Respondent Nos.8 to 13, the Commissioner, Guntur Municipal Corporation shall pass orders thereon within a further period of four (4) weeks and accordingly take further action;

(iv) No costs.

As a sequel, pending applications, if any, shall stand closed.

NYAPATHY VIJAY, J

Date: 09.05.2025

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HON'BLE SRI JUSTICE NYAPATHY VIJAY

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