

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
(Special Original Jurisdiction)**

THURSDAY, THE SIXTH DAY OF NOVEMBER
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SRI JUSTICE LAXMI NARAYANA ALISHETTY

WRIT PETITION NO: 12081 OF 2014

Between:

MOHD MIR LAIQ ALI, S/o Mir Iqbal Ali, Muslim aged about 53 years, Occupation Business, Resident of H.NO.9-4-61/A/72/ 1, Meraj colony, Towlichowki, Hyderabad.

.....WRIT PETITIONER

AND

1. The State of Telangana, Department of Municipal Administration And Urban Development. Represented by its Principal Secretary, Secretariat, Hyderabad.-22.
2. The Greater Hyderabad Municipal Corporation, Hyderabad. Represented by its Commissioner. Abids Road, Hill Fort, Adarsh Nagar, Hyderabad.500063.
3. The Deputy Commissioner, Greater Hyderabad Municipal Corporation, Town planning section, circle XI,SERILINGAMPALLY. Ranga Reddy District. HYDERABAD.-19.

.....RESPONDENTS

Petition Under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue writ or order or direction more particularly one in the nature of WRIT OF MANDAMUS declaring the action of the respondents in proposing to acquire the land of the petitioner, vide proceedings No. RW/TPS/Cir-XI/GHMC/2012 dated 01-06-2013 of the 3rd respondent herein, to an extent of 126.25 square meters in plot No.135, situated at Masid Banda in S.No. 192 of Kondapur Village, Serilingampalli Mandal, Ranga Reddy District without following the procedure prescribed under the Land Acquisition Act, 1894 (read with A.P. Amendment Act, 2008) as illegal, arbitrary and in violation of Article 300 A of the Constitution of India and also against Principles of Natural Justice and

consequently direct the respondents to pay the petitioner compensation for the land acquired, as per market value by initiating proceedings under Land Acquisition (A.P. Amendment) Act, 2008.

(CT and prayer are amended as per Court Order dated 25-1-2016 in WPMP.No.31667 of 2015 (vide amended copy)

I.A.NO:1 OF 2014 (WPMP.NO:15173 OF 2014)

Petition Under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the respondents not to acquire the land of the petitioner in pursuance of proceedings No. RW/TPS/Cir-XI/GHMC/2012 dated 01-06-2013 of the 3rd respondent herein, to an extent of 126.25 which is part of plot No.135, situated at Masid Banda S.No. 192 of Kondapur Village, Serilingampalli Mandal, Ranga Reddy District; pending disposal of the above writ petition before this Hon'ble court; in the interest of justice.

Counsel for the Petitioner : SRI. SURENDRA DESAI

Counsel for the Respondent No.1 : GP FOR MUNICIPAL ADMN AND URBAN DEVELOPMENT

Counsel for the Respondent Nos.2 & 3 : SRI G.MADHUSUDHAN REDDY, SC FOR GHMC

The Court made the following ORDER

HON'BLE SRI JUSTICE LAXMI NARAYANA ALISHETTYWP.No.12081 of 2014**ORDER:**

This Writ Petition is filed to issue a Writ of *Mandamus* declaring the action of the respondents in proposing to acquire the land of the petitioner to an extent of 126.25 square meters in Plot No.135, situated at Masid Banda in Sy.No.192 of Kondapur Village, Serilingampalli Mandal, Ranga Reddy District, *vide* proceedings No.RW/TPS/Cir-XI/GHMC/2012, dated 01.06.2013, of respondent No.3, without following the procedure prescribed under the Land Acquisition Act, 1894 (for brevity 'the L.A.Act') read with A.P. Amendment Act, 2008, as illegal and arbitrary and consequently, to direct the respondents-Corporation to pay compensation to the petitioner for the land acquired by initiating proceedings under the L.A. Act.

2. Heard Sri Suderndra Desai learned Counsel for the petitioner and Sri G. Madhusudhan Reddy learned Standing Counsel for GHMC.

3. The case of the petitioner, briefly stated, as narrated in the affidavit filed in support of the Writ Petition, is that he is the owner

and occupier of residential Plot admeasuring 550 square yards bearing Nos.128 and 135, situated in Sy.No.192 (Masid Banda) of Kondapur Village, Serilingampalli Mandal, Ranga Reddy District, having purchased the same from one Kodicherla Mallesha under registered sale deed, dated 25.07.1991. While so, respondent No.3 issued a letter dated 01.06.2013, to the petitioner stating that in the proposed road widening from HCU Bus stop to Botanical gardens via Masjeed Banda, the plot of the petitioner to an extent of 112.8 square meters would be affected, for which, he would be given concessions as prescribed in GO.Ms.No.279, Municipal Administration, dated 01.04.2008. That the petitioner, having found that the concessions given as per the said GO are not beneficial to him, got issued a legal notice dated 05.07.2013 calling upon the respondents to follow the procedure contemplated under the L.A. Act for the purpose of acquiring his land said to be affected in road widening. But, as there was no response from the respondents, the petitioner again got issued another notice dated 13.01.2014, however, there was no response from the respondents. It is further averred that on 22.02.2014, the petitioner found some digging mark and cementing work in his land and therefore, he

filed the present Writ Petition challenging the action of the respondents in encroaching his land without following due process of law.

4. Learned counsel for the petitioner submitted that the petitioner is the owner of the subject property and a part of his land is said to be affected in road widening. He further submitted that petitioner cannot be forced or compelled to accept for acquisition of his property under the guise of a Government Order, without paying compensation to him as per the prevailing market value by duly following the procedure contemplated under the L.A. Act.

5. In support of his contentions, learned counsel for petitioner relied upon the judgment of the erstwhile High Court of Andhra Pradesh in *M/s Ushodaya Publications, Eenadu Complex, Hyderabad Vs. Commissioner, MCH and another*¹.

6. In the said judgment, the question that fell for consideration is whether the consent given by the landlady for acquisition of the property without giving notice or opportunity to the lessee is binding on the lessee and the said point was answered in negative.

¹ 2001 (2) ALT 662 (FB)

7. The facts of the said case and the facts of the present case are entirely distinct and hence, the ratio laid down in the said judgment is not applicable to the instant case.

8. Learned counsel for petitioner also relied upon the judgment dated 20.01.2015 passed by the erstwhile High Court of Andhra Pradesh in W.P.No.37983 of 2014 {*Usha Rani Vs. State of Andhra Pradesh, rep, by its Principal Secretary and three others*} wherein, a learned single Judge allowed Writ Petition directing the respondent therein-Visakhapatnam Urban Development Authority to initiate proceedings as per the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, for acquisition of the entire land owned by the petitioner therein for road widening and pay compensation to her, while observing as here under:-

"Section 146 of the GHMC Act contemplates acquisition of immovable property by agreement between the Commissioner and the owner of the land in the event the said land is required by the Corporation; and when he is unable to do so, Section 147 of the GHMC Act provides for acquisition of the land under the provisions of the Land Acquisition Act, 1894 as amended from time to time. The provision in Rule 16(a) of the Rules, which states that unless the area affected in road widening as per the

statutory plan/master plan road or Circulation network is surrendered free of cost, no development permission shall be given, in my opinion, is ultra vires provisions of the GHMC Act. Rule 16(a) of the Rules is not in accordance with the GHMC Act, and is contrary to Section 146/Section 147 thereof. It is settled law that in case of conflict between delegated legislation and its parent substantive Act, the latter would prevail (See Novva Ads vs. Deptt. of Municipal Admn. And Water Supply [4]). Therefore, the provision requiring land owner to surrender land free of cost merely because a portion of the land owned by him is shown as road affected in a statutory plan/master plan or circulation network or as required to be widened as per road development plan is ultra vires provision of the GHMC Act. Such compulsory deprivation of property without paying any compensation violates Articles 14 and 300-A of the Constitution of India. The respondents' conduct amounts to coercing the petitioner to part with her property without acquisition. In my opinion, it would be unjust to make the petitioner to suffer in this manner."

9. On the other hand, learned Standing Counsel for the respondents-Corporation contended that the Government would pay concessions to the petitioner as per GO.Ms.No.279, Municipal Administration Department, dated 01.04.2008, to the extent of his land affected in road widening and therefore, the petitioner would not be put to any loss financially. He further submitted that the

respondents have in fact addressed a letter dated 01.06.2013 to the petitioner to the said effect and therefore, the action of the respondents proposing to acquire the petitioner's land for road widening cannot be said to be illegal and arbitrary and hence, the Writ Petition is liable to be dismissed.

10. Apropos the submissions made by learned counsel for both the parties, the point that arises for consideration is whether the modes of acquisition provided under the provisions of the Greater Hyderabad Municipal Corporation Act, 1955, are at the choice of either of the parties or only of the acquiring authority?

11. Section 146 of GHMC Act provides for acquisition of immovable property required for public purpose by agreement. The word 'agreement' denotes the express agreement between the Corporation, represented by the Commissioner, and the land owner/s thereof, with regard to acceptance of offer of TDR/FSI by the land owner/s concerned.

12. Section 147 of the GHMC Act envisages the procedure to be followed when immovable property cannot be acquired by agreement. The said Section postulates that whenever the Commissioner, representing the Corporation, is unable to acquire

the immovable property by agreement with the land owner/s concerned, the same shall be acquired by following the provisions of the Land Acquisition Act, 1894.

13. For interpretation of Sections 146 and 147 of the GHMC Act, the language employed in the said provisions needs to be considered for knowing the legislative intent. The language employed in the aforesaid provisions is plain and unambiguous, in which case, the scope of legislation or the intention of the legislature cannot be enlarged or changed (See the judgment of the Hon'ble Supreme Court in *Bhavnagar University Vs. Palitana Sugar Mill (Petitioner) Ltd*²).

14. In the case on hand, the respondent-Corporation proposed to acquired the land belonging to the petitioner by giving him the concessions as provided for in GO.Ms.No.279, MA, dated 01.04.2008, however, the petitioner declined to accept the offer of respondents-Corporation with regard to such concessions and called upon the respondents-Corporation to follow the procedure contemplated under Land Acquisition Act, 1894, for acquiring the land belonging to him. Thus, there is no consensus between the respondent-Corporation and the petitioner-land owner for invoking

² (2003) 2 SCC 111

Section 146 of GHMC Act. In other words, there is no express agreement between the petitioner and the respondent-Corporation, whereunder the petitioner accepted the offer made by the respondent-Corporation to extend the concessions as provided in GO.Ms.No.279, dated 01.04.2008. Thus, the two essential requirements, i.e., offer and acceptance, to constitute an agreement are not satisfied in the instant case, which empowers the respondent-Corporation to invoke Section 146 of the GHMC Act.

15. When a similar issue fell for consideration before a larger Bench of High Court of Bombay in *Shree Vinayak Builders and Developers, Nagpur Vs. State of Maharashtra and others*³, it was held that the acquisition under Section 126(1)(a) of the Maharashtra Regional and Town Planning Act, 1966, has to be by consensus between both the parties and not only at the option of the Acquiring authority.

16. Section 146 of the GHMC Act is akin to Section 126(1) (a) of the Maharashtra Regional and Town Planning Act, 1966 and therefore, the ratio laid down in the aforesaid judgment squarely applies to the case on hand.

³ (2022) 5 AIR Bom R 803

17. In the light of the foregoing reasons, discussion and the law laid down by the Hon'ble Supreme Court in *Bhavnagar University's* case (cited supra) and the judgment of larger Bench of High Court of Bombay in *Shree Vinayak Builders and Developers, Nagpur's* case (cited supra), this Court is of the considered opinion that for invoking Section 146 of the GHMC Act, a consensus between the respondents-Corporation and petitioner-land owner is mandatory and it is not at the option of the acquiring authority alone. Therefore, the petitioner cannot be foisted upon to accept the concessions provided for in GOMs.No.279, dated 01.04.2008 and the respondent-Corporation has to necessarily follow the due procedure contemplated under the Land Acquisition Act, 1894, for acquiring the subject land belonging to the petitioner.

18. Subject to the above, this Writ Petition is allowed.

19. Miscellaneous petitions pending, if any, shall stand closed.

No costs.

Sd/-P.PONNA KRISHNA
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To

1. The Principal Secretary, Department of Municipal Administration And Urban Development. Secretariat, Hyderabad.-22.
2. The Commissioner, Greater Hyderabad Municipal Corporation, Hyderabad. Abids Road, Hill Fort, Adarsh Nagar, Hyderabad.500063.
3. The Deputy Commissioner, Greater Hyderabad Municipal Corporation, Town planning section, circle XI, SERILINGAMPALLY. Ranga Reddy District. HYDERABAD.-19.

4. Two CCs to GP FOR MUNICIPAL ADMN AND URBAN DEVELOPMENT, High Court for the State of Telangana at Hyderabad. [OUT]
5. One CC to SRI SURENDRA DESAI, Advocate [OPUC]
6. One CC to SRI G. MADHUSUDHAN REDDY, SC FOR GHMC, Advocate [OPUC]
7. Two CD Copies

SA
PMK

AS

HIGH COURT

DATED:06/11/2025



ORDER

WP.No.12081 of 2014

ALLOWING THE W.P
WITHOUT COSTS.

(10) MT
19/11/25