

IN THE HIGH COURT OF TELANGANA AT HYDERABAD**W.P. No. 22540 of 2020****Between:**

M/s Aditya's Eden Park Owners Welfare Association
... Petitioner

And

The State of Telangana
Rep.by its Principal Secretary and others
... Respondents

JUDGMENT PRONOUNCED ON: 21.12.2023**THE HON'BLE MRS JUSTICE SUREPALLI NANDA**

1. Whether Reporters of Local newspapers : Yes
may be allowed to see the Judgment?
2. Whether the copies of judgment may be
marked to Law Reporters/Journals? : Yes
3. Whether Their Lordships wish to
see the fair copy of the Judgment? : Yes

SUREPALLI NANDA, J

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

W.P. No. 22540 of 2020

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M/s Aditya's Eden Part Owners Welfare Association
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> Head Note:

!Counsel for the Petitioner: Mr V.Appa Rao

^ counsel for Respondents 1 to 4: G.P for Revenue

^ counsel for respondents 2 and 5: G.P. for R&B

^counsel for respondent No.3: ;G.P. for Land Acquisition

^counsel for respondent No.6: G.P. for Home

? Cases Referred:

HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P. No. 22540 of 2020****ORDER:**

Heard the learned counsel for the Petitioner Mr. V. Appa Rao, the learned Government Pleader for Revenue appearing on behalf of respondents 1 and 4, learned Government Pleader for Roads & Buildings, appearing on behalf of respondents 2 and 5, learned Government Pleader for Land Acquisition appearing on behalf of respondent No.3 and Government Pleader for Home appearing on behalf of respondent No.6.

2. Petitioner approached the Court seeking prayer as under :

“to issue an appropriate writ order or direction, more particularly one in the nature of Writ of Mandamus by declaring the actions of 3rd and 4th respondents as illegal, arbitrary, against laid down principles and Rules besides contrary to principles of natural justice, in resorting to the demolition of compound wall and basement as well as entry into the cellar of “Aditya Eden Park” apartment on the south side of apartment complex

thereby denying ingress to residents of the apartment complex besides effect or to cause weak of the foundation of apartment complex as the same is without authority or by adopt of due process of law, arbitrary illegal and contrary to principles of natural justice.”

3. Case of the Petitioner as per the averments made in the affidavit filed in support of the present Writ Petition is as under :-

- a) The Writ Petitioner Association Members had purchased residential plots from 7th Respondent and it had constructed about 80 residential flats in the complex by name “Aditya Eden Park” in Sy.Nos.302 to 310, 320 to 322, 324 to 361, 363 to 365, 384, 387 to 391 and 399 situated at Nallagandla Village, Serilingampally Mandal, Ranga Reddy District.
- b) The 7th Respondent had sold the flats to the members of the Writ Petitioner Association and handed over the flats in April, 2015, thereby all the flat owners had formed an Association for the maintenance of the subject apartment complex.
- c) While so, at the instance of the 4th Respondent and with the assistance of the 6th Respondent and upon the directions of the 5th Respondent some unknown person in the name of

work contractor with men and machinery visited the subject premises on 05.12.2020 at 2.30 p.m., and started to demolish compound wall of “Aditya Eden Park” (south entrance side) on road. The Petitioners were shocked to see the letter dated 05.12.2020 addressed to the 6th Respondent by the 4th Respondent for Police protection to handover the subject land to the 5th Respondent herein.

d) It is through the said letter that the Petitioner's Association came to know that the 3rd Respondent in the capacity of Land Acquisition Officer had passed an Award dated 21.10.2020, for acquisition of land in Sy.Nos.380, 382, 386, 387, 389 to 391 to an extent of 1080.80 sq. yards situated at Nallagandal Village, Serilingampally Mandal, Ranga Reddy District, thereby effecting the apartment complex “Aditya's Eden Park”. It is further the case of the Petitioner that the 3rd Respondent did not issue any notice on the actual possessors and owners of the subject property and straight away resorted to demolition and the same is contrary to the principles of natural justice, since the land of the members of the Petitioners Association is being effected under Land Acquisition being initiated by the 3rd Respondent without

following due process of law. Aggrieved by the same the Petitioner approached the Court by filing the present writ petition.

PERUSED THE RECORD :

4. The letter dated 05.12.2020 addressed to the 6th Respondent by the 4th Respondent, reads as under:

“I invite your attention to the reference cited, wherein the RDO, Rajendranagar Division has Informed that, the PAO, Hyderabad has passed the compensation bills and amount has been credited to the Individual Bank Account of Beneficiaries, some of the beneficiaries have opted for TDR In lieu of compensation and some of the individuals have already gifted their land to GHMC. Further it is requested to take over possession of land to an extent of 1080.8 Sq.yds., (256.8+613+211) in Sy. Nos.380, 381, 382, 387, 389 & 390 of Nallagandla village and handing over the same to the Requisition Department i.e., EE (R&B) Radial Roads Division, Hyderabad under cover of Panchanama and report compliance.

In this regard, It Is requested to provide police protection for handover the land in favour R & B Department for establishment of RR 7 from Nallagandia to Tellapur on 05.12.2020 at 2:00 PM.”

5. Counter affidavit filed by the 3rd Respondent paras 6 and 9 read as under :

“6. I state that, the Petitioner Building is not covered in the above award. The 7th Respondent has encroached into the Road (Government land) and constructed Compound Wall. As such the Petitioner and 7th Respondent are not entitled for any compensation as it is Government Land. This Respondent has considered the structure value as per the report submitted by the 5th Respondent vide Lr.No.EE/RRD/DB/D1/LA/R.R.30 Dt.01.07.2019 (received on 10.07.2019). Accordingly Supplementary Award was passed vide Proc. No.I/LA/715/2016 Dt.10.07.2019 the same was informed to the 7th Respondent. The 7th Respondent has not come forward to receive the compensation amount. Hence the matter was referred to the LARR Authority U/Sec.64 of the L.A. Act 2013 and the compensation amount of Rs. 1,06,456/-for the structure value of the Compound Wall was deposited before the LARR Authority U/Sec. 76 & 77 of the L.A. Act 2013. Which was included with the other awardees compensation amount i.e., Rs.5,80,48,890/- vide Cheque bearing No.53225 dated 23.10.2020, wherein the LARR Authority has returned the file with some office objections vide SR No.651/2020, dated 03.11.2020. This respondent is taking steps to comply the objections and same will be resubmitted to the LARR Authority.”

9. I state that, as per the report of the Advocate Commission the building of the Petitioner is not affected. The Petitioner has encroached into 0.09 Meters of the Road area (Government Land) and constructed compound wall same was demolished by the staff of the 5th Respondent. The Petitioner Complex is having two blocks and in between the blocks there is a GHMC Park admeasuring 2440 Sq. yards and main entrance to the park and to the residential complex is one and the same. Main entrance of the Petitioners Complex is having a Arch of 30 feet width and length of the pathway is 24 meters leading to the park and to the complex. Arch is constructed by encroaching into the road and road of the GHMC Park is being used by the residents of the petitioners association for entry and exist into the Complex. Thus, there is no impediment to the residents to have access to the residential complex. The allegations and averments made by the petitioner is false and not correct hence denied.”

6. The learned counsel for the Petitioner mainly put-forth the following submissions :

i. The subject schedule land is under the possession of the members of the writ petitioner Association since April 2016 and at no point of time the 7th Respondent/ Developer or 3rd Respondent/LAO in any manner issued notice on the members

of the writ petitioner Association and hence thereby the 3rd Respondent/LAO violated all the provisions of the Land Acquisition Act, 2013.

ii. The action of the 3rd and 4th Respondents in resorting to demolition of compound wall and basement as well as entry into the cellar “Aditya Eden Park” apartment on south side of the apartment complex thereby denying ingress to the residents of apartment complex besides weakening the foundation of the apartment complex without due process of law is unwarranted and uncalled for and therefore the learned counsel for the Petitioner pleads that the writ petition may be allowed as prayed for.

7. The learned Government Pleader appearing on behalf of Respondent No.3 placing reliance on the Advocate Commissioner’s report dated 24.12.2020 and also the counter affidavit filed by the 3rd Respondent put-forth his submissions as under :

- a. As per the report of the Advocate Commissioner dated 24.12.2020 the building of the Petitioner is not affected.
- b. The petitioner had encroached into 0.09 Mtrs., of the road area (Government land) and constructed compound

wall and the same was demolished by the staff of the 5th Respondent.

- c. The main entrance of the Petitioner's complex is having a Arch of 30 feet width and the length of the pathway is 24 mtrs., leading to the park and complex and the Arch is constructed by encroaching into the road and the road of the GHMC park is being used by the residents of the Petitioners Association for entry and exit into the complex, thus there is no impediment to the residents to have access to the residential complex.

8. Basing on the aforesaid submissions the learned counsel appearing on behalf of the 3rd Respondent sought for dismissal of the writ petition.

DISCUSSION AND CONCLUSION

9. On perusal of the record it is evident that this Court vide its orders dated 10.12.2020 had appointed an Advocate Commissioner and the Advocate Commissioner had inspected the subject land on 14.12.2020 and submitted the report dated 24.12.2020 to the Court.

10. A bare perusal of the said report dated 24.12.2020 clearly indicates an observation that as per the measurements it is found that basement of the

Petitioner residential complex is not getting effected as being claimed and so also the columns of the building, structures and basement of the building are not affected due to the expansion of the road. It is further observed by the Advocate Commissioner in the report dt. 24.12.2020, that the Petitioner had encroached 0.9 mtrs., of the road area and had constructed the compound wall which was demolished by the authorities and that the Arch had been constructed by encroaching into the road and the structures of the building of the Petitioner Association are not getting affected because of the road widening on the southern side of the Petitioner Association property. It is also borne on record that objections dated 17.01.2021 had been filed by the learned counsel for the Petitioner to the Advocate Commissioner's report dated 24.12.2020. This Court opines that the disputed questions of fact cannot be gone into under Article 226 of the Constitution of India.

11. Taking into consideration the aforesaid facts and circumstances of the case and duly taking into

consideration the contents of the letter dated 03.12.2020 addressed to the 6th respondent by the 4th respondent, the writ petition is disposed of directing Respondents No.3 and 4 to adopt due process of law and follow principles of natural justice. The Petitioner is at liberty to avail the remedies as are available under law. If the Petitioner avails any such remedy the same shall be dealt with strictly without being influenced by the observations made in the report of the Advocate Commissioner dated 24.12.2020. However, there shall be no order as to costs.

Miscellaneous petitions, if any, pending stall stand closed.

SUREPALLI NANDA, J

Dated: 21.12.2023
Note L.R.Copy to be marked
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