



**\* HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY**

**+ Writ Petition No.8838 of 2021**

% Dated 26-04-2021.

# Siva Ram Prasad. V.

..... Petitioner

Versus

\$ 1. Secretary to Govt. of Andhra Pradesh, MA & UD Department,  
A.P. Secretariat, Velagapudi & Anr.

..Respondents

! Counsel for the petitioner : Sri Gnani Vivek Karra

^ Counsel for respondent No.1: Learned Govt. Pleader for MA&UD

^ Counsel for respondent No.2: Sri S.Lakshminarayana Reddy,  
Learned Standing Counsel  
for GVMC

<GIST:

> HEAD NOTE:

? Cases referred:

<sup>1</sup> 2015 (4) ALD 380 = 2015 (2) ALT 812



**IN THE HIGH COURT OF THE STATE OF ANDHRA PRADESH**

**Writ Petition No.8838 of 2021**

Siva Ram Prasad. V.

..... Petitioner

Versus

1. Secretary to Govt. of Andhra Pradesh, MA & UD Department,  
A.P. Secretariat, Velagapudi & Anr.

..Respondents

JUDGMENT PRONOUNCED ON: 26-04-2021

**HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY**

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| 1. Whether Reporters of Local newspapers<br>may be allowed to see the Judgments? | ---   |
| 2. Whether the copies of judgment may be<br>marked to Law Reporters/Journals     | -Yes- |
| 3. Whether His Lordship wish to see the fair<br>copy of the Judgment?            | -Yes- |

**JUSTICE CHEEKATI MANAVENDRANATH ROY**



**THE HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY**  
**WRIT PETITION No.8838 of 2021**

**ORDER:-**

This Writ Petition for mandamus is filed seeking declaration that the petitioner is entitled to Transferable Development Rights (TDRs) equivalent to the area of the road developed and thereby to direct the respondents to issue TDRs to the petitioner and pay adequate compensation to him and to direct the 1<sup>st</sup> respondent to implement the recommendations made by the 2<sup>nd</sup> respondent in his letter dated 03.12.2018 for issuing of TDRs to the petitioner.

2. Heard learned counsel for the petitioner and learned Assistant Government Pleader for Municipal Administration and Urban Development for 1<sup>st</sup> respondent and Sri S. Lakshminarayana Reddy, learned Standing Counsel for GVMC, for 2<sup>nd</sup> respondent – Municipal Corporation.

3. The petitioner claims to be the absolute owner of the land in an extent of 618 Sq. yards covered by S.Nos.295/1C and 294/1A situated in Kanithi Village, within the limits of Greater Visakhapatnam Municipal Corporation. It is the grievance of the petitioner that the said land was illegally occupied by 2<sup>nd</sup> respondent for the purpose of laying roads and CC drains from Gangavaram port to MVR Degree College at Swatantra Nagar Colony in Ward No.52 of Gajuwaka Zone of GVMC. It is stated that 2<sup>nd</sup> respondent did not follow the due process of law in acquiring the land for the purpose of laying the road. Therefore, he has



submitted a representation to the 2<sup>nd</sup> respondent expressing his grievance in this regard. The 2<sup>nd</sup> respondent, after considering the case of the petitioner, has informed the 1<sup>st</sup> respondent by his letter dated 03.12.2018 that it is a fit case for passing necessary orders for issuing necessary TDR certificates to the petitioner as per G.O.Ms.No.168 MA dated 07.04.2012. However, no such TDR has been issued in favour of the petitioner and no compensation has been paid to the petitioner for the land that was illegally acquired by the respondents. Therefore, the petitioner is before this Court by way of this Writ Petition claiming the aforesaid reliefs.

4. However, the petitioner has only impleaded Secretary to Government of Andhra Pradesh, Municipal Administration and Urban Development Department as the 1<sup>st</sup> respondent and the Commissioner of GVMC as the 2<sup>nd</sup> respondent. The petitioner did not implead the State as a party respondent in this Writ Petition. Therefore, S. Lakshminarayana Reddy, learned Standing Counsel for the Municipal Corporation has raised objection contending that this Writ Petition is not maintainable against respondents 1 and 2 without impleading the State as a party to the suit. This Court finds merit in the aforesaid objection taken by the learned Standing Counsel regarding the maintainability of the Writ Petition. Therefore, this Court is of the considered view that without going into the merits of the case, that this Writ Petition can be disposed of on the ground of its maintainability.



5. The main grievance of the writ petitioner is that his land was taken away for public use of laying road and canal without following the due process of law and without paying any compensation to him. “Doctrine of Eminent Domain” is relevant in this context to consider. This term “Doctrine of Eminent Domain” refers to the power of the Government to take private lands of individuals for public use. Therefore, even though the State Government got the power under the aforesaid Doctrine of Eminent Domain to acquire private lands of individuals for public purpose, the State has to acquire the said property by following the due process of law. This is evident from Article 300A of the Constitution of India which mandates that “no person shall be deprived of his property save by authority of law”. As the right to own and hold property is a constitutional right and a legal right and also a human right of a citizen of the country, the aforesaid safeguard that no person shall be deprived of his property except by following the due process of law, has been provided in Chapter IV of the Constitution of India under the rubric “Right to Property” by incorporating Article 300A in the Constitution of India. Therefore, while acquiring a property of a person even for public use, the State has to acquire the said property under relevant laws in vogue by following the due process of law and by paying adequate compensation to the owner of the property for depriving him of his property for public use. Therefore, as the grievance of the petitioner that his property was taken away for public use without following the due process of law and without paying



compensation to him, it is obvious that his grievance is against the State. In the present case as State Government alone can acquire private property of a person for public purpose through its instrumentalities, undoubtedly the grievance of the writ petition is against the State. Therefore, the State is a necessary party to the Writ Petition.

6. Article 300 of the Constitution of India is relevant in this context to consider. It reads thus:-

**“300. Suits and proceedings. - (1) The Government of India may sue or be sued by the name of the Union of India and the Government of a State may sue or be sued by the name of the State and may, subject to any provisions which may be made by Act of Parliament or of the Legislature of such State enacted by virtue of powers conferred by this Constitution, sue or be sued in relation to their respective affairs in the like cases as the Dominion of India and the corresponding Provinces or the corresponding Indian States might have sued or been sued if this Constitution had not been enacted.**

**(2) If at the commencement of this Constitution - (a) any legal proceedings are pending to which the Dominion of India is a party, the Union of India shall be deemed to be substituted for the Dominion in those proceedings; and (b) any legal proceedings are pending to which a Province or an Indian State is a party, the corresponding State shall be deemed to be substituted for the Province or the Indian State in those proceedings.”**

7. A plain reading of the aforesaid Article shows that it deals with suits and proceedings to be instituted by and against the Union of India and the State and its instrumentalities. It mandates that in case of Government of India, it may sue or be sued by the name of Union of India and in case of Government of a State, it may sue or be sued in the name of State Government.

8. Further by virtue of Rule 24 of the Writ Proceeding Rules, 1977 framed by this Court for institution of the writ proceedings,



Section 79 of the CPC is followed notwithstanding the explanation under Section 141 CPC.

9. Section 79 CPC reads as follows:-

**“79. Suits by or against Government**

***In a suit by or against the Government, the authority to be named as plaintiff or defendant, as the case may be, shall be –***

***(a) in the case of a suit by or against the Central Government, the Union of India; and***

***(b) in the case of a suit by or against a State Government, the State.”***

10. Therefore, a combined reading of Article 300 of the Constitution of India and Section 79 of the CPC, makes it manifest that when a party files the Writ Petition against the State or its instrumentalities relating to his grievance, the State is the necessary party to be added as a respondent to the Writ Petition.

11. The aforesaid legal position has been also dealt with by the Division Bench of this Court in the case of **S. Shyamala Reddy Vs. Hindustan Petroleum Corporation Ltd**<sup>1</sup>. The Division Bench, while considering Article 300 of the Constitution of India and also Section 79 of the CPC, held that State is a necessary party to the Writ Petition.

12. Therefore, in view of the mandatory requirement of Article 300 of the Constitution of India and in view of the law laid down in the aforesaid Division Bench of this Court, this Writ Petition is not maintainable against respondents 1 and 2 herein in the absence of State as a party to the Writ Petition. Therefore, the objection taken

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<sup>1</sup> 2015 (4) ALD 380 = 2015 (2) ALT 812



by the learned Standing Counsel for the 2<sup>nd</sup> respondent is sustainable. So, the Writ Petition is dismissed as not maintainable for the above reasons. However, the petitioner is at liberty to file fresh Writ Petition by impleading the necessary parties to the writ in compliance with Article 300 of the Constitution of India. There shall be no order as to costs.

Miscellaneous petitions, if any pending, in the Writ Petition, shall stand closed.

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**JUSTICE CHEEKATI MANAVENDRANATH ROY**

Date: 26.04.2021

**Note:** LR copy to be marked.

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**THE HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY**

**WRIT PETITION No.8838 of 2021**

**Date: 26-04-2021**

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