(1996) 01 AP CK 0001

Andhra Pradesh High Court

Case No: Writ Petition No. 8611 of 1995

BOC India Limited		APPELLANT
	Vs	
Municipal Corporation of Hyderabad		RESPONDENT

Date of Decision: Jan. 16, 1996

Acts Referred:

- Constitution of India, 1950 - Article 226, 300A
- Hyderabad Municipal Corporation Act, 1955 - Section 146, 147, 437

Citation: (1996) 2 ALD 38 : (1996) 1 ALT 185 : (1996) 2 AnWR 371

Hon'ble Judges: B. Subhashan Reddy, J

Bench: Single Bench

Advocate: P. Ramachandra Reddy, for the Appellant; K.N. Jwala, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

B. Subhashan Reddy, J.
This Writ Petition seeks a Mandamus declaring the letter dated 20-4-1995 issued by the respondent calling upon the petitioner to surrender land for road widening free of cost in lieu of grant of permission for construction as unlawful and illegal.

2. The petitioner is a Company dealing in Petroleum products. A branch of the petitioner was set-up at Premises No. 8-4-300/1 on National Highway No. 9 leading to Bombay at Sanathnagar, Hyderabad. On two earlier occasions, whenever road was widened, under two spells, the petitioner was paid compensation under the provisions of the Land Acquisition Act, 1894. On third occasion also, a portion of the land on the front abutting the National Highway mentioned above was earmarked for road widening. The right of the local authority, in the instant case-the respondent, to make such a demand if it is really needed for widening of the road, cannot be disputed .But, the respondent cannot escape the liability to pay the compensation so as to discharge the obligation of a constitutional guarantee

embodied under Article 300A of the Constitution of India. It is a different thing if the party enters into some sort of agreement where he gets some benefit or exemption from the provisions of the Building Regulations or Zoning Regulations. In the instant case, even though the respondent-Corporation pleads that the above land earmarked for road widening was given away by the petitioner under a mutual agreement, records do not show any such agreement. In fact, the record produced reads "that the party should handover the affected portion of land under road widening....."

This cannot be termed as a mutual agreement. It is some sort of mandate that the party should handover the said portion earmarked for road widening. If the respondent-Municipal Corporation of Hyderabad obligates a person to handover a portion of the land for such purpose as mentioned above or for any other purpose as a pre-condition for grant of permission for construction, it is entirely a different thing. Then of course, the matter may have to be gone into on the touch stone of the fundamental rights guaranteed under Part-Ill of the Constitution of India. But, that is a question apart in this writ proceedings, as there is no such statutory provision. In fact, the statutory provision is contained under Chapter-V of Hyderabad Municipal Corporations Act, 1955 (hereinafter referred to as ''the Act''), which comprises four Sections, viz., 145, 146, 147 and 148. Section 145 empowers the Corporation to acquire and hold moveable and immovable property or any interest therein. Section 146 of the Act empowers the Corporation to acquire any immovable property by agreement on such terms at such rates or prices or at rates or prices not exceeding such maximum as shall be approved by the Standing Committee. The very term agreement connotes consensus ad idem and that is lacking in the instant case. From the records, I could not find any such agreement inter se the petitioner and respondent, which can be traceable to Section 146 of the Act. Even if it is an agreement u/s 146 of the Act, the price should be agreed and the said agreed price should be paid. But, in the instant case, the respondent is pleading that it is entitled to take the portion earmarked for road widening free of cost for which there is no statutory provision. It is pertinent to mention that whenever a property is taken over by the Municipal Corporation it shall be only under Chapter-V and not otherwise. Since there is no agreement u/s 146 of the Act or acquisition by invoking the provision u/s 147 of the Act the action of the respondent-Corporation in refusing to pay the compensation for the above land earmarked for road widening and on the other hand calling upon the petitioner by the impugned letter dated 20-4-1994 (sic. 1995) to handover the portion earmarked for road widening without payment of compensation is clearly unconstitutional being in fraction of the constitutional guarantee under Article 300A of the Constitution of India and cannot sustain. The respondent is restrained from taking over the said portion of the land without payment of compensation. But, if there is such an urgency which cannot wait, the respondent-Corporation is at liberty to issue proceedings under Land Acquisition Act, 1894 and if necessary by invoking the urgency clause take over the possession

and then pay compensation in consonance with the provisions of the Land Acquisition Act, 1894. But, I make it clear that on the said portion which is earmarked for road widening and whose measurements are mentioned in the impugned letter dated 20-4-1995 the petitioner shall not be entitled to mark any constructions. But, this restraint cannot be in perpetuity and if the respondent chooses to acquire it has to necessarily initiate the proceedings and I fix the time for such action by 6 months from the date of receipt of a copy of this order. In so far as the constructions, which have been made recently, the petitioner seeks a protection u/s 437 of the Act. Section 437 of the Act comes into play when within 30 days after the receipt of the application seeking permission no disapproval is intimated. In the instant case, application for construction was made by the petitioner on 27-1-1995 and the permit fee was also collected. The period of 30 days expired on 26-2-1995. There was no intimation by the respondent of its disapproval of the building sanction plan made by the petitioner mentioned above. Even intimation dated 7-3-1995 issued by the respondent to the petitioner is not an intimation of disapproval, but only intimating the petitioner that the plans submitted by the petitioner were under scrutiny. As such, the case perfectly comes within the ambit of Section 437 of the Act and the petitioner was entitled to make constructions right from27-2-1995. It is pertinent to mention that even as on this day there is no intimation of disapproval of the plans submitted by the petitioner. Mr. K.N. Jwala, the learned Standing Counsel for the respondent-Corporation submits that for the reason that the Writ Petition is pending, no intimation of disapproval was sent. I do not countenance this argument for the reason that even the Writ Petition was filed only on 26-4-1995 and that was admitted on 27-4-1995 and Section 437 of the Act does not grant more than 30 days time for intimation of disapproval and that having not been done, the petitioner was perfectly justified to go ahead with the constructions and the constructions made by the petitioner can be continued and cannot be interfered with by the respondent more so when all the permit fee including that of drainage cess etc. to the tune of more than Rs. 14,000/- have already been paid and accepted by the respondent. But merely because there is a deemed sanction as contemplated u/s 437 of the Act, the petitioner cannot have a licence to make constructions as it pleases. Whatever plans it has submitted which come within the ambit of Section 437 of the Act should conform to the building and Zoning Regulations and this order shall not preclude the respondent from taking action for demolishing such structures which violate the Building or Zoning Regulations. It is entirely a different thing if the respondent wants to condone and compound if any such violations of Building or Zoning Regulations are found. That is a matter entirely within the discretionary jurisdiction of the respondent and no laxity can now be shown by this Court, if there are any violations of Building Regulations or Zoning Regulations even if it is a deemed sanction u/s 437 of the Act.

3. Mr. K.N. Jwala, the learned Standing Counsel for Municipal Corporation of Hyderabad, submits that even though there were injunction orders granted on

27-4-1995 restraining either parties, i.e., the petitioner from making constructions and the respondent from effecting demolition, though the respondent adhered to the said order by not demolishing, the petitioner went ahead with the constructions in utter disregard of the said orders of injunction. The said aspect falls within the domain of contempt jurisdiction and the proper Court is the Court of my learned Brother D. Reddappa Reddy, J., who passed the said orders on 27-4-1995 and who is the authority to deal with the said Contempt Case and this order shall not preclude the respondent from initiating the contempt action, if it so chooses. While the demolition can be effected or the matter can be compounded, if the structures do not conform to Building or Zoning Regulations, subject to observance of the statutory provisions of issuance of notice and of principles of natural justice, no demolition can be effected by the respondent only on the unilateral assumption of contempt, unless this Court holds so in contempt proceedings, if they are initiated by the respondent.

4. I make it dear that the proposition laid down in this case that no portion of the land or structures can be demanded or taken-over for road-widening by any local authority without mutual agreement in writing, or, in the absence of the same, without initiating the proceedings under the Land Acquisition Act, 1894, is not applicable to cases where roads and open spaces towards parks are directed to be left over in accordance with the lay-out rules applicable to such local authorities whenever a land is sought to be divided into plots and in that event, a person is bound to leave such roads and open spaces without demanding any compensation.

5. Accordingly, the Writ Petition is disposed of. No order as to costs.