

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.29616 OF 2011

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ORDER:

This petition is filed for a writ of *Mandamus* declaring the action of the 1st respondent in not providing alternative house site of 2/3rd share as valued at Rs.12,84,000/- by the 1st respondent, within Greater Visakhapatnam Municipal Corporation Limits at Maduravada, Boyapalem, Bakkannapalem, Kommadi Yendada or any other place within the outskirts of city for the land taken by it of an extent of 240 Sq.Ys. in T.S.No.1457/P, Kanakala Dibba, Daba Gardens, Visakhapatnam leaving 1/3rd share of the 3rd respondent, either by the 1st respondent on its own or through the 2nd respondent within the time fixed by this Court.

The case of the petitioners is that originally an extent of 5,830 Sq.Ys of site at Kanakala Dibba, Daba Gardens, Visakhapatnam was owned by common owners Bodha Appalaswamy, Kanakala Krishnamma and Kanakala Appanna owning 1/3rd share each. After their death the petitioners and 3rd respondent succeeded to their respective 1/3rd share. While they are enjoying as such, the 1st respondent proposed to take over that property for the purpose of slum improvement in the year 1997. Then all the family members of the petitioners and the 3rd respondent have filed WP.No.17124 of 1997 before this Court. Pending writ petition, a compromise was arrived at between the petitioners and the Municipal Corporation. As per the compromise, a Memorandum of Understanding (MOU) dated 23.11.2002 was entered into by both the parties. As per that MOU the petitioners agreed to give 1,500 sq.ys. to the Municipal Corporation and also agreed to part with another extent of 240

Sq.Ys. as per a separate understanding on providing floating FSI or alternative site equal to 240 Sq.Ys. Subsequently, 1500 Sq.Ys. was given to the Corporation by executing a deed of relinquishment dated 22.12.2003. Accordingly, the Municipal Corporation later developed that site of 1500 sq.ys. But, the 1st respondent has not provided the alternative site for 240 Sq.ys. Thereafter, the 3rd respondent started influencing the 1st respondent to provide entire 240 sq.ys. alternative site to him alone though he and his family together are entitled for 1/3rd share only. Then a representation dated 27.07.2006 was submitted to the 1st respondent requesting not to execute any sale deed or conveyance in favour of 3rd respondent alone for the entire alternative site for 240 sq.ys. For that the 1st respondent addressed a letter dated 31.08.2006 to the then MRO, Visakhapatnam Rural to propose alternative government land worth Rs.19,26,200/- apportioning 1/3rd share to R3 and 2/3rd share to the petitioners within Greater Visakhapatnam Municipal Corporation limits. Later the petitioners got issued a notice through local advocate to the 1st respondent on the similar lines on 26.09.2007. For that the 1st respondent addressed to the City Planner, GVMC, Visakhapatnam requesting to take necessary action to provide alternate land belonging to GVMC for 240 sq. ys. for distributing to three families i.e., the 3rd respondent family 1/3rd, K.Ramakrishna family and Boda Appayamma family 1/3rd each, dated 26.02.2008. While the 1st respondent was making preparations to provide alternative site, the 3rd respondent filed WP.No.22027 of 2007 on 11.10.2007 before this Court and the same was dismissed on 12.11.2007. The petitioners are ready to take 2/3rd share worth about Rs.12,84,000 as decided by the 1st

respondent in its letter dated 31.08.2006. Since the 1st respondent is not providing alternate site as agreed to them, present writ petition is filed.

The 1st respondent filed counter stating that the respondent Corporation issued proceedings in RC.No.15562/80/H3, dated 23.06.1997 to acquire an extent of 5800 Sq.Ys. of land by way of notification under Section 3(1) of A.P.Slum Improvement Act, 1956 in TS.No.1451/3, situated at Kanakaladibba, Daba gardens, Waltaire Ward, Visakhapatnam for construction of dwelling House units to the slum dwellers and that the said proceedings were challenged by the 3rd respondent and 20 others in WP.No.17124/1997. Pending the said writ petition, the petitioners therein entered into a Memorandum of Understanding dated 23.07.2002 with the respondent Corporation agreeing that they would handover the land an extent of 1500 sq.ys. out of total extent of 5800 sq.ys. on withdrawing the notification and in terms of the said memorandum of understanding, the said writ petition was closed. Pursuant to the order passed by this Court in WP.No.17124/1997 dated 02.12.2002, this respondent Corporation has withdrawn the notification dated 23.06.1997. Thereafter, the respondent Corporation had constructed the residential house units to the slum dwellers who are residing in the said area and the same were allotted to them. Subsequently, some of the slum dwellers who left over have requested the Corporation for construction of residential units and as such, the respondent Corporation requested the petitioners in WP.No.17124/97 to handover 240 Sq.Ys. additionally for construction of house. It is stated that petitioners have agreed to handover the said additional 240 sq.ys. to this respondent Corporation by way of undertaking letter dated 23.11.2002 and the

said undertaking letter has been signed by the 3rd respondent herein and Kanakala Rama Krishna who is the 5th respondent herein and B.Appa Rao who is the husband of the 1st petitioner and that though the petitioners who claimed to be the owners of the said site under three heads of family have agreed to handover the said additional 240 sq. ys. but the same has not been handed over to the Corporation as disputes arose between them; and that OS.No.16/2005 is filed against the petitioners, 3rd respondent and also the corporation for grant of permanent injunction, claiming that the plaint schedule land of 4300 sq.ys. which excluded the site of 1500 sq.ys. which had already been handedover to his respondent Corporation by the three families. As such the additional extent of 240 sq.ys. was not handedover by the petitioners herein and the 3rd respondent to this respondent Corporation in view of the above said dispute over an extent of 4300 sq.ys and as such the undertaking dated 23.11.2002 given by the 3rd respondent, 5th petitioner and the husband of the 1st petitioner has not been acted upon further as the said additional land measuring 240 sq.ys has not been handed over to the respondent corporation till today and as such question of providing alternative house site as alleged by the petitioners in their affidavit does not arise as it is only invented for the purpose of filing the writ petition. It is also stated that the 3rd respondent and petitioners 2 to 11 along with husband of 1st petitioner have filed WP.No.2207/2007 before this Court and sought a direction to implement the Memorandum of Understanding dated 23.11.2002 and this Court dismissed the writ petition giving liberty to the petitioners to avail appropriate remedy for enforcement of the Memorandum of Understanding dated 23.11.2002 in its order dated 12.11.2007. Finally, the respondents sought for dismissal of the writ petition.

The petitioners filed reply affidavit denying the contention of the respondent Corporation that possession of additional site to an extent of 240 Sq.Ys. was not handed over to the 1st respondent. It is also stated that filing of suit in OS.No.16/2005 by Smt.Sunkara Suramma is nothing to do with the handing over of the possession of 240 Sq.Ys of site to the 1st respondent and that the 3rd respondent has filed WP.No.22027/2007, by forging their signatures including a dead person, for different relief for 1500 Sq. Ys of site but not 240 Sq.Ys. It is further stated that before filing counter the Commissioner of 1st respondent Corporation has inspected the site in question after calling them to that place and stated to the petitioners that the Municipal Corporation does not want 240 sq.ys. of site now and he will return the same to them. The Commissioner has also stated that he will get constructed a retaining wall in between 1500 sq.ys in possession of the slum dwellers and 240 sq.ys of site and he will re-deliver the site to them.

In this case, the admitted facts are that the respondent Corporation issued notification under Section 3(1) of A.P.Slum Improvement Act 1956 in to acquire land to an extent of 5800 Sq.Ys., situated at Kanakaladibba, Daba Gardens, Waltaire Ward, Visakhapatnam by way of notification under Section vide RC.No.15562/80/H3, dated 23.06.1997, for construction of dwelling houses for slum dwellers, which belongs to the petitioners and 3rd respondent; that the said notification was challenged by the petitioners and 3rd respondent in WP.No.17124 of 1997 and later the matter was compromised and MOU dated 23.07.2002 was executed between the Corporation and petitioners in WP.No.17124 of 1997; and that subsequently, petitioners executed relinquishment deed

dated 22.12.2003, vide document No.1547/2003 in respect of 1740 Sq.Ys. in T.S.No.1457/P, Kanakala Dibba, Daba Gardens, Visakhapatnam in favour of 2nd respondent and it is also signed by the Commissioner-1st respondent; and that thereafter, the land to an extent of 1500 Sq.Ys. belonging to the subject matter of the relinquishment deed is taken over by the Municipal Corporation and houses have been constructed and allotted to the allottees.

Now the disputed fact is with regard to 240 Sq.Ys. The case of the Corporation is that since the petitioners and 3rd respondent have not handedover 240 Sq.Ys of land, houses could not be constructed and no alternative site was provided to the petitioners and 3rd respondent. Now it has to be seen that as per the MOU if the Corporation wanted land of more than 1500 Sq.Ys., the same will be handedover by the owners and by virtue of relinquishment deed dated 22.12.2003, it is stated that possession was handedover to them.

It is to be seen that the 1st respondent addressed a letter dated 31.08.2006 wherein it is stated that since some of the land owners filed objection petition not to register alternate land in favour of one of the land owners, and that they have also requested to provided alternate site worth Rs.6,42,000/- which is equivalent to 1/3 of Rs.19,26,900/- to each of two land owners at any other place within the Municipal Corporation limits, the 1st respondent requested the Mandal Revenue Officer to propose alternate Government and valued at Rs.12,84,000/- preferably within Greater Visakhapatnam Municipal Corporation limits at Madhurawada, Boyapalem, Bakkannapalem Kommadi, Yendada etc., so as to enable the office to allot alternate site to the petitioners.

The 1st respondent also addressed a letter dated 26.02.2008 to the City Planner wherein the 1st respondent requested the City Planner to take necessary action to provide alternate land in lieu of 240 Sq.Ys of land of Kanakaladibba, so as to enable Housing Department for completion of balance 40 houses.

Both the letters indicate that alternative site should be allotted to the petitioners and 3rd respondent. Now the only objection of the respondent Corporation is that they could not construct the house since suit in OS.No.16/2005 was pending. Now a copy of the Judgment and decree produced before this Court shows that the suit is dismissed on 17.07.2014 and the same has become final and the Corporation has not produced any document to show that any injunction was in operation against 240 Sq.Ys. Even in the proceedings dated 31.08.2006 the respondent Corporation stated that they could not make construction in the balance land of 240 Sq.Ys. due to pendency of suit. Now since the suit is dismissed, it will not come in the way of Corporation to make constructions in 240 Sq.ys. The counter filed by the respondent is also against their own proceedings dated 31.08.2006 and 26.02.2008. Nowhere, in the said proceedings it is stated that possession was not given to the Corporation.

Learned counsel for the respondents contended that the writ petition is to be dismissed on the ground of suppression of fact that suit was filed by the husband of 4th petitioner in OS.No.16 of 2005. To that learned counsel for the petitioners stated that as per the orders dated 18.10.2005 in IA.No.862/2005, the 2nd plaintiff who is the husband of 4th petitioner herein, has withdrawn the said suit

stating that the suit is filed without his knowledge. As such, question of suppression of fact does not arise. Further, though the respondents relied on the Judgment in ***Ramjas Foundation and others v. Union of India and others* 2011(2) SCJ 391** the same has no application to the present case since the husband of the 4th petitioner has withdrawn the suit in OS.No.16 of 2005.

It is stated by the learned counsel for the petitioner that since the suit is dismissed and no injunction is operating, the petitioners are entitled for alternate land in terms of letter dated 31.08.2006 and 26.02.2008. But, the Learned counsel for respondent Corporation vehemently contended that the petitioner is not entitled for the alternate land because the land to an extent of 240 Sq.Ys. was never handedover to them. But that argument appears to be contrary to the proceedings dated 31.08.2006 and 26.02.2008.

In view of the same, the Corporation cannot contend that the petitioners are not entitled to provide alternative site. As such, the writ petition is disposed of directing the respondent Corporation to take necessary action for allotment of alternate site or compensation in terms of letter dated 31.08.2006 and 26.02.2008 addressed by the 1st respondent to the Mandal Revenue Officer, in favour of the petitioners.

Accordingly, the writ petition is disposed of. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the writ petition, shall stand closed.

A.RAJASHEKER REDDY, J

04.09.2015
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