

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA & THE STATE OF ANDHRA PRADESH

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WRIT PETITION No.36646 of 2014

BETWEEN

Velivela Ramachandra Rao.

... PETITIONER

AND

State of Andhra Pradesh, Rep. by its Principal Secretary - Revenue (Assn.), Secretariat,
Hyderabad and others.

...RESPONDENTS

DATE OF JUDGMENT PRONOUNCED: 14.10.2015

THE HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR

1. Whether Reporters of Local newspapers may be No
allowed to see the Judgments?
2. Whether the copies of judgment may be marked No
to Law Reporters/Journals?
3. Whether Their Ladyship/Lordship wish to see the No
fair copy of the Judgment?

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ORDER:

Petitioner herein questions the order passed by the second respondent dated 03.09.2014 whereby the District Collector conducted an enquiry relating to the land allotted to the fourth respondent and came to the conclusion that the fourth respondent association has not violated the conditions of allotment as well as Board Standing Order 24(6).

2. The facts, in brief, show that the petitioner worked in the Revenue Department and retired from the post of Mandal Revenue Officer on 31.12.2006. Petitioner states that due his service, he was a member of the fourth respondent association and that under G.O.Ms.No.437 Revenue (Assn.II) Department dated 05.07.2000 the Government authorized the second respondent to alienate an extent of Ac.1.00 cents of land in RS.No.371/A3 of Machilipatnam Town in favour of the fourth respondent association on payment of nominal value of Rs.25/- per sq. yard for constructions of Revenue Kalyanamandapam cum Association Building. Petitioner states that the amounts fixed was paid by the fourth respondent and at that time, the petitioner was an active member of the said association and claims to have contributed to make good the deficit in the total amount.

3. Petitioner, however, made a complaint alleging several violations against the fourth respondent, which were enquired into by the Additional Joint Collector and all the violations pointed out by the petitioner were found to be true, hence, he recommended resumption of the land under his report dated 02.04.2013. Based on the said report, the second respondent issued orders for resumption of land under his proceedings dated 16.04.2013.

Those orders were questioned by the fourth respondent in WP.No.14179 of 2012 and on finding that the fourth respondent was not put to notice before passing of the said order, this Court set aside the said proceedings by order dated 22.07.2013 by directing the second respondent to follow the procedure by affording an opportunity to the fourth respondent and then pass appropriate orders. The present impugned order has, thereupon, been passed by the second respondent and as stated above, held therein that there is not violation of any of the conditions by the fourth respondent.

4. Petitioner, who was the complainant in the first instance, has, therefore, filed the present writ petition questioning the said order and has raised various grounds to support his contention that the second respondent has not followed and examined the provisions of BSO 24(6) and in ignoring the lease deed executed by the fourth respondent in favour of the fifth respondent, a private party, has erroneously passed the impugned order.

5. This Court while issuing notice before admission on 02.12.2014 directed that constructions in the said land by the fourth respondent shall be stopped forthwith. Thereupon, two vacate petitions were filed by the second respondent viz. WVMP.Nos.97 and 2272 of 2015; WVMP.No.3908 of 2014 is filed by the fourth respondent and WVMP.No.17546 of 2015 is also filed by the fifth respondent.

When the vacate petitions were listed before this Court, I have heard all the learned counsel in the writ petition itself and with their consent, the writ petition is being disposed of by this order.

6. The counter affidavit filed by the second respondent supporting the impugned order states that the petitioner initially made complaint before the A.P. Lokayuktha. Based on which an enquiry was conducted by the then Joint Collector and based on the enquiry report, the earlier order of resumption was passed by the then Collector on 16.04.2013. However, that order having being set aside by this Court in WP.No.14179 of 2014 in terms of the directions therein the second respondent has issued notices to all the parties, gave them opportunity of hearing and has, thereafter, passed the present impugned order. The second respondent states that the fourth respondent has already obtained technical approval for revenue kalyanamandapam from the Commissioner and Director of Town

Planning as well as power connection, water connection and provisional no objection from the Fire Department. The second respondent also submits that as per the condition of allotment and BSO 24, the fourth respondent has to utilize the land for the same purpose for which it was alienated and on the detailed enquiry,

the second respondent came to the conclusion that the fourth respondent is utilizing the land for the said purpose only and no for other purpose and as such, no contravention by the fourth respondent is found.

7. The counter affidavit filed by the fourth respondent objects to the *locus standi* of the petitioner on the ground that after he ceased to be an employee of the revenue department in 2006, he is not a member of the fourth respondent association and has no concern whatsoever with the affairs of the fourth respondent, as the membership of the association is only open to working revenue employees. It is denied that the fourth respondent is commercially exploiting the said land and it is stated that the fourth respondent has to raise finance and assets as permissible under Article 16 and clause 11(b) and is empowered to lease the property, movable or immovable, for accomplishment of objects and purpose of the association.

It is stated that with that purpose in mind a registered lease deed was executed in favour of the fifth respondent without either wholly or partly parting with any right, title or interest of the association and only with a view to mobilize the finances required, the said arrangement made with the fifth respondent is, therefore, on Build, Operate and Transfer basis and major portion of the kalyanamandapam is already constructed. All the requisite sanctions, having been obtained by the fourth respondent, show that they only the fourth respondent, which is undertaking the construction activity through the fourth respondent. All the allegations made by the petitioner are, therefore, denied and it is stated that the fourth respondent is empowered and has raised finances through self-generated sources and the Collector rightly found that there is no violation of any condition of allotment.

8. The fifth respondent also filed a separate counter affidavit and states that as per the condition (f) of the agreement dated 30.11.2011 between him and the fourth respondent and the relevant fees has been paid by the fifth respondent on behalf of the fourth respondent and has so far spent Rs.22,61,356/- for obtaining permissions from various departments and has spent additional amount of Rs.42,02,667/- for construction of kalayanamandapam

so far and has already given advances to various vendors for completion of the work. Thus, total amount spent by the fifth respondent is to the tune of Rs.75,00,000/-. The construction activity, which was in progress from 22.12.2011 came to halt pursuant to the interim order passed by this Court dated 02.12.2014. The fifth respondent also pleads that delay in constructions would result in serious loss apart from the construction material on site being affected.

9. I have heard learned counsel for the petitioner,
learned Government Pleader for Revenue appearing for respondents
1 to 3; Mr. C.V. Mohan Reddy, learned senior counsel appearing for the fourth respondent
and Mr. P. Surendra, learned counsel,
appearing for the fifth respondent.

10. All the learned counsel have reiterated their respective submissions in terms of their pleadings, which are recorded above.

11. Learned counsel for the petitioner emphatically asserts that the petitioner has locus and is entitled to point out the violations of the fourth respondent in utilizing the allotted land. Learned counsel also submits that though contrary conclusions are reached in the impugned order, the report of the Joint Collector earlier submitted fully vindicates the stand of the petitioner.

12. Per contra, learned Government Pleader as well as
Mr. C.V. Mohan Reddy, learned senior counsel, contend that the satisfaction regarding compliance with the conditions of allotment has been duly examined by the second respondent after notice to all the parties and after examining the entire record. The said conclusions are clearly based upon the record and merely because the lease was entered into by the fourth respondent in favour of the fifth respondent, it cannot be said that the fourth respondent was utilizing the land with a purpose of commercially exploiting the same.

13. Learned senior counsel states that the funds for construction had to come from internal resources and there was no other way for the fourth respondent to raise the finances.

Hence, the build, operate and transfer agreement was entered into with the fifth respondent and substantial construction of kalyanamandapam is already made, as is disclosed by the photographs appended to the counter affidavit.

14. I have considered all the submissions accordingly. I am of the view that the petitioner being a complainant before the Hon'ble Lokayuktha, in the first instance, is logically entitled to prosecute the proceedings further including the present writ petition, though technically he is not a member of the fourth respondent association. In any case, the question of *locus standi* is relaxed by the Courts while entertaining public law remedy and apart from that, the writ petition is being contested on merits by all the parties, hence, I am not inclined to non-suit the petitioner on the ground of *locus standi*.

15. So far as the merits of the writ petition are concerned, the impugned order of the District Collector shows that he has taken up enquiry as per the directions of this Court in WP.No.14179 of 2014, referred to above and has given opportunity to all the parties and has conducted personal hearing on 28.07.2014. After due enquiry, the second respondent was satisfied that the lease granted to the fifth respondent by the fourth respondent was only for the purpose of getting the revenue kalayanamandapam constructed. The Collector also found that all the requisite permissions are obtained by the fourth respondent in its name and since the kalyanamandapam, in fact, is constructed substantially shows there is no contravention of BSO 24(6) or the terms of allotment by the fourth respondent. Petitioner, therefore, is not justified in claiming that the second respondent has not kept in mind the said BSO 24(6), as the impugned order specifically refers to the same and the second respondent further finds that the fourth respondent is utilizing the land only for the purpose of construction of revenue kalayanamandapam cum association building and for no other purpose. The said factual conclusions of the second respondent are neither vitiated by any factual error nor are open to further scrutiny on any ground and adjudication by this Court under Article 226 of the Constitution of India.

16. Moreover, while passing the said impugned order, the second respondent has placed

three specific conditions, which clearly leave no scope for violation of the conditions of allotment or BSO 24(6) by the fourth respondent. The said conditions imposed in the impugned order are not questioned by the fourth respondent and in any case, the fourth respondent is bound to comply with the said conditions except that the construction, which was required to be completed by December 2015, cannot be complied with in view of the interim stay of construction granted by this Court in this writ petition on 02.12.2014. In my view, therefore, the impugned order does not suffer from any infirmity or illegality and warrants no interference by this Court. Consequently, the impugned order is upheld.

The writ petition is dismissed with a direction to the second respondent to give notice to the fourth respondent and fix a fresh date for completion of the construction of the kalyanamandapam, accordingly, keeping in view all the attending circumstances. Consequently, the interim order dated 02.12.2014 shall stand vacated. As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

VILAS V. AFZULPURKAR, J

October 14, 2015

DSK