

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

Writ Petition No. 12013 of 2011

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ORDER :

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This writ petition is filed seeking writ of mandamus to declare the proceedings No.C8/175/10, dated 15.06.2010 issued by the first respondent granting permission for construction of marriage hall in R.S.No.257/4 of Kanuru Village, Penamaluru Mandal, Krishna District, as illegal and arbitrary.

2. The petitioner Hospital was established in the year 1992 in an extent of Ac.3.00 in Sy.No.229/2, 3 and 4 of Kanuru Village, Penamaluru Mandal, Krishna District having purchased the same under registered sale deed dated 02.03.1989 and 04.07.1988. The petitioner hospital runs round the clock treating the patients of various ailments. The petitioner Hospital also owned Ac.1.57 cents of vacant land on the northern side of the existing hospital and that permission was also granted for construction of Cancer Hospital in the said land. That the first respondent granted approval for construction of a marriage function hall named 'Mana Kalyana Vedika' in R.S.No.257/4 by proceedings No.C8/125/10/BP No.39/10, dated 15.06.2010, which is abutting within a distance of 100 meters from the petitioner Hospital. That as per the provisions of Noise Pollution (Regulation and Control) Rules, 2000 (for brevity 'the Rules of 2000') the area upto a distance of 100 meters around the Hospitals is silent zone and that if any permission is granted, there would be intense noise pollution affecting the functioning of the hospital. Therefore, it would not be in the interest of patients to have a marriage hall beside the hospital. Aggrieved by the same, the petitioner made representation on 04.01.2011 to the first respondent, who informed the petitioner that permission was granted vide proceedings in Rc.No.A4-14/11, dated 13.01.2011 in proceedings C8-175/2010 and BP No.39/2010, dated

15.06.2010 in the name of Mana Kalyana Vedika in R.S.No.257/4 of Kanuru Village. Though petitioner made another representation on 22.01.2011, no action is being taken by the first respondent. On 03.02.2011, another representation was made by the Estate Manager of the petitioner Hospital to the first respondent to furnish a copy of the sanctioned plan regarding adjacent premises on which permission for construction of marriage hall is granted, which was not furnished till March, 2011. Thereafter, the petitioner filed writ petition vide WP (SR) No.49665/2011 on 08.04.2011, but the same was dismissed as withdrawn with a liberty to file fresh writ petition, as the permission was granted in favour of the 3rd respondent, the writ petition was filed showing the father of the 3rd respondent as party therein. Aggrieved by the action of the first respondent in granting permission for construction of marriage hall, the present writ petition is filed.

3. Counter affidavit is filed by the first respondent denying the averments made in the affidavit filed in support of the writ petition stating that the 3rd respondent is the absolute owner in an extent of Ac.0.54 cents of land in R.S.No.257/4 of Kanur Gram Panchayat, Penamaluru Mandal, Krishna District. Kanur Gram Panchayat falls under the jurisdiction of first respondent Authority, which has now been called as Andhra Pradesh Capital Regional Development Authority. The first respondent is empowered to grant permissions for approving the layouts or for grant of permissions for construction of residential houses, apartments, buildings, etc., by following the existing rules issued by the Government from time to time. The 3rd respondent made application to first respondent on 03.02.2010 seeking permission for construction of a marriage function hall. After following the due procedure, the first respondent granted technical approval by order vide B.P.No.39/10, dated 15.06.2010 for construction of marriage function hall by stipulating certain conditions, which are to be followed

by the 3rd respondent. The writ petitioner is aware of the same. There is no restriction in zoning regulations or Government order for sanction of plan for function hall within a radius of 100 meters from hospital. The construction of a function hall is permissible in residential use as per the approved zonal development plans. Since the function hall site is within the residential use zone, permission has been granted for construction of marriage function hall, after obtaining No Objection Certificate issued by the A.P. State Disaster Response and Fire Service Department. The petitioner has not filed any representation dated 04.01.2011. The petitioner made representation dated 22.01.2011, which was received on 24.01.2011 by the first respondent. The said representation was made after seven months of the sanctioned plan. That since there was no substance in the representation of the petitioner, it was not considered and construction was also completed. The alleged representation dated 03.02.2011 made by the Estate Manager of the petitioner is not there in the record. That the Urban Development Area is exempted from the applicability of the rules laid down in G.O.Ms.No.67, dated 26.02.2002, which are called as A.P.Gram Panchayat Land Development (Lay-out and Building) Rules. The 3rd respondent has equipment to alleviate the sound pollution to keep under the permissible volume. The apprehension of sound pollution by the petitioner is baseless and on such presumption, permission granted in favour of the 3rd respondent cannot be cancelled. It is stated that the petitioner has to approach the Civil Court for violation of any easementary rights, if any, or for any other rights and same cannot be decided in this writ petition by exercising power under Article 226 of the Constitution of India and sought for dismissal of the writ petition.

4. The 2nd respondent also filed counter affidavit reiterating the averments in the counter of the first respondent.

5. The 3rd respondent filed counter denying the averments made in the affidavit filed in support of the writ petition.

6. The petitioner filed reply affidavit to the counters filed by the 1st and 3rd respondents denying the averments therein and reiterated the averments in the affidavit filed in support of the writ petition.

7. Heard Sri M.V.Pratap Kumar, learned counsel appearing for Sri M.V.S.Suresh Kumar, learned counsel for the petitioner,

Smt. K.Mani Deepika, learned Standing Counsel for the 1st respondent and Sri Ravi Cheemalapati, learned Standing Counsel for the 2nd respondent, Sri B.Chinnapa Reddy, learned counsel for the 3rd respondent.

8. Learned counsel for the petitioner Mr.M.V.Pratap Kumar submits that as per Rule 3 of Noise Pollution (Regulation and Control) Rules, 2000, the area within 100 meters from the Hospital should be declared as silence zone, as such, no permission for construction of marriage function hall can be granted. Though the petitioner made representations to the first respondent, without canceling the same, permission has been granted for construction of marriage hall. He would further contend that the competent authority should have taken this aspect into account while granting permission, but the same has not been considered. In support of his contention, he relied on the judgments reported in **Farhd K.Wadia v. Union of India (UOI) and others**^[1], **Kalinga Mining Corporation v. Union of India and others**^[2], **Kanigalla Venkata Subba Rao and others v. Vice-Chairman, VGTM Urban Development Authority, Vijayawada, Krishna District and others**^[3], **Farhad Gew Irani and others v. Government of A.P and others**^[4] and **Balwant Singh v. Commissioner of Police and others**^[5]

9. Smt. K.Mani Deepika, learned Standing Counsel for the first respondent vehemently contended that the first respondent has not

received any representation earlier to the representation made on 03.02.2011. She would further contend that there is no restriction in zoning regulations or any government order for sanctioning permission for construction of marriage function hall within 100 meters from the hospital. She would further contend that the first respondent is empowered to grant permission for construction of marriage function hall and that the construction of a function hall is permissible in residential use as per the approved zonal development plans. She would further contend that the marriage function hall is a fully air conditioned function hall, as such, the question of intense noise pollution effecting the functioning of the hospital does not arise at all.

She further submits that the first respondent has sanctioned permission for construction of marriage hall after scrutinizing the NOC issued by the A.P. State Disaster Response and Fire Service Department, as such, no interference is warranted in this writ petition. She further states that the petitioner has not challenged G.O.Ms.No.67, dated 26.02.2002 by the PR & RD, by which the Urban Development Area is exempted from the applicability of the said rules, as such, no relief can be granted to the petitioner. She relied on the judgment reported in **Kalinga Mining Corporation v. Union of India and others (supra)**.

10. Learned counsel for the 3rd respondent Sri B.Chinnapa Reddy vehemently contends that permission has been granted in favour of the 3rd respondent after collecting necessary fees and after following the due procedure. He would further contend that the Rules of 2000 does not prohibit the first respondent from granting permission for construction of marriage function hall when once the NOC has been granted by the Andhra Pradesh State Disaster Response and Fire Service Department. The Rules of 2000 does not prohibit granting of building permission near the Hospitals. He would further contend that in view of the disputes between the petitioner and the 3rd respondent,

the petitioner does not want any other person to make any construction near the hospital. He would further contend that the entire construction of the function hall is over and it is in operation and it is not causing any noise pollution.

11. Rule 3 of the Noise Pollution (Regulation and Control) Rules, 2000 which reads as follows:

“3. Ambient air quality standards in respect of noise for different areas/zones.

- (1) The ambient air quality standards in respect of noise for different areas/zones shall be such as specified in the Schedule annexed to these rules.
- (2) The State Government may categorize the areas into industrial, commercial, residential or silence areas/zones for the purpose of implementation of noise standards for different areas.
- (3) The State Government shall take measures for abatement of noise including noise emanating from vehicular movements and ensure that the existing noise levels do not exceed the ambient air quality standards specified under these rules.
- (4) All development authorities, local bodies and other concerned authorities while planning developmental activity or carrying out functions relating to town and country planning shall take into consideration all aspects of noise pollution as a parameter of quality of life to avoid noise menace and to achieve the objective of maintaining the ambient air quality standards in respect of noise.
- (5) An area comprising not less than 100 metres around hospitals, educational institutions and courts may be declared as silence area/zone for the purpose of these rules.”

Except the above provision under the Rules of 2000, the learned counsel for the petitioner has not taken me to any other Rules or Regulations to show that the construction of marriage function hall near the petitioner Hospital is prohibited. The above said provision provides for declaring the area within 100 meters of the hospital as silent zone. Rule 3 (5) of the above said rules stipulates that the area within 100 meters around the hospital is to be treated as silence zone and it also provides for what is the amount of noise/sound pollution in decibels should not exceed. No where in the said Rules of 2000 provides for prohibition for granting of permission for construction of

marriage hall within 100 meters around the Hospital.

12. Learned counsel for the petitioner contends that the first respondent has no power to grant permission for construction of marriage hall. The G.O.Ms.No.675, Municipal Administration & Urban Development (I2) Department, dated 29.12.2006 provides that the community halls comes under the category of residential zone, as such, marriage function halls can be constructed in a residential zone area. However, the said G.O has not been challenged by the petitioner. Moreover, by virtue of G.O.Ms.No.67, dated 26.02.2002, which is called as A.P.Gram Panchayat Land Development (Lay-out and Building) Rules, issued by the Panchayat Raj and Rural Development, the Urban Development Authority area is exempted from the applicability of the Rules of 2000. Therefore, the contention of the learned counsel for the petitioner that the first respondent has no power to grant permission for construction of marriage hall has no legs to stand. Moreover, the petitioner has challenged the said permission, after construction of the building is completed.

13. It is pertinent to note that the 3rd respondent filed W.P.No.11274 of 2012 challenging the permission granted in favour of the petitioner herein and the same was dismissed on the ground that the construction of the petitioner Hospital has been completed. Moreover, the decisions relied on by the learned counsel for the petitioner are not relevant to the facts and circumstances of the case. The petitioner was not able to establish that the permission granted by the first respondent in favour of the 3rd respondent in violation of any Rules or Regulations. In view of the above facts and circumstances of the case, I do not see any merit in the writ petition and same is liable to be dismissed.

Accordingly, this writ petition is dismissed. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending in this writ petition, shall stand dismissed.

01.09.2015.
KVS

A.RAJASHEKER REDDY, J

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

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- [\[1\]](#) (2009) 2 SCC 442
- [\[2\]](#) (2013) 5 Supreme Court Cases 252
- [\[3\]](#) 2006 (5) ALD 442
- [\[4\]](#) 2007 (2) ALD 375 (DB)
- [\[5\]](#) (2015) 4 Supreme Court Cases 801