

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.16072 OF 2009

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ORDER:

This petition is filed for a writ of *Mandamus* declaring the action of the 1st respondent in permitting the 2nd respondent to set up 33 KVA Electrical Sub Station in the site earmarked for park in the approved layout in LP.No.21/03/VGTN UDA in R.S.No.208/3, 4, 6, 7, 8, 10 and 11 of Venkatadri Gardens Layout of Penamaluru Village, Penamaluru Mandal, Krishna District, issued by the 3rd respondent, as illegal and arbitrary and for a consequential direction to the respondents not to interfere with the park as earmarked in the above said approved lay out.

The case of the petitioner is that he purchased land under registered document No.858/2009 in the lay out plan approved in LP.No.21/03/VGTN UDA and applied for municipal plan for approval of construction of flats therein. It is stated that originally the aforesaid lay out was laid in an extent of Ac.5.81 cents and at the time of approval as per the rules and regulations of the 3rd respondent, an open space was left out for park, children's play ground etc. in an extent of Ac.0.58 cents in Sy.No.208/3, 4, 6, 7, 8, 10 and 11 of Penamaluru village. The site purchased by the petitioner is abutting the said open space and the entire lay out area is consisting of 68 plots and the said open space was covered by a compound wall. Pursuant to the approval of the lay out, a gift deed dated 31.03.2002 vide registered document No.1093/2003 was executed in favour of the 1st respondent at the instance of the 3rd respondent so as to maintain the said open space for the purpose for which it was intended in the lay out and

the same was earmarked for park as reflected in the said document of gift deed. While so, the 1st respondent passed a resolution permitting the 2nd respondent to set up 33 KVA Electrical Sub Station in the said open space which is meant for park and the 2nd respondent is preparing for the same and also laid foundation stone in the said land. Aggrieved by the same, present writ petition is filed.

Heard learned counsel for the petitioner and Sri O.Manohar Reddy, learned counsel for respondent No.2 and Smt.K.Mani Deepika, learned standing counsel for respondent No.3.

It is settled law that when once any land is ear marked for any purposes in the lay out plan sanctioned by the competent authority, the same vests in the local body. But, however the purposes for which it is meant in the lay out plan cannot be deviated neither by the grantee of lay out nor by local body.

A perusal of the lay out plan goes to show that the subject site is allowed for open space in LP.No.21/03/VGTN UDA sanctioned for R.S.No.208/3, 4, 6, 7, 8, 10 and 11 of Venkatadri Gardens Layout of Penamaluru Village. As such, the averment made by the 2nd respondent that the subject site is not reserved for open space is incorrect. It is settled law that when once any land is ear marked for any purposes in the lay out plan sanctioned by the competent authority, the same vests in the local body. But, however the purposes for which it is meant in the lay out plan cannot be deviated neither by the grantee of lay out nor by local body.

The petitioner also relied on the Judgments rendered by this

Court and Apex Court in ***Purushottam v. State of Karnataka and others***^[1]; ***Dr.G.N.Khajuria and others v. Delhi Development Authority and others***^[2]; ***Sri balaji Park Residents Welfare Assocaition v. Vice Chairman, VUDA, Visakhapatnam and another***^[3]; and ***Kalasagaram, Secunderabad Cultural Association v. State of Andhra Pradesh and others***^[4] wherein it is held that the lung space provided for betterment of environment cannot be utilized for any other purposes or any public purposes. The same is not disputed by the respondents. The issue is no longer *res integra*.

In view of the above, the lis in the writ petition is squarely covered by the above referred Judgments rendered by this Court as well as Apex Court.

Accordingly, the writ petition is allowed. 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

06.10.2015
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^[1] (2014) 3 Supreme Court Cases 721

^[2] (1995) 5 Supreme Court Cases 762

^[3] 2001(6) ALD 325 (DB)

^[4] 1997 (6) ALD 277