

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

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WRIT PETITION No.19694 of 2015

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ORDER :

The petitioner submitted an application on 26.03.2015 for grant of lay out and the said application was processed. Initially, an objection raised was that the petitioner has to obtain 'No Objection Certificate' from the Revenue Authorities under Andhra Pradesh Agricultural Land (Conversion for Non-Agricultural Purposes) Act, 2006 (for short 'the Act'). Aggrieved thereby, the petitioner filed W.P.No.13788 of 2015 and this Court passed an interim order dated 01.05.2015 directing the respondents to release the final layout, without insisting for production of 'No Objection Certificate' under the Act and the petitioner was directed to file an affidavit before the respondents to the effect that in the event of his not succeeding in the writ petition, he would discharge his liability under the provisions of the Act. After the said interim orders, in further consideration of the claim of the petitioner, the layout permission application was rejected vide proceedings dated 27.06.2015 on the ground that as per the prospective plan prepared for CRDA area, the site proposed for layout was earmarked as agricultural protection zone. Holding that in the interest of environment, food security and to protect agricultural land from urbanization, the proposal was rejected. Aggrieved thereby, this writ petition is filed.

2. This Court, by order dated 02.07.2015 in W.P.M.P.No.25427 of 2015 granted interim direction as prayed

for. Alleging that on the ground that no time limit is prescribed in the interim order, the respondent-Authority is not considering the layout application submitted by the petitioner, petitioner filed W.P.M.P.No.30677 of 2015 praying to fix time-limit for passing orders. In the meanwhile, the Authorities filed W.V.M.P.No.3739 of 2015 praying to vacate the interim order.

3. Learned counsel for the petitioner as well as learned Standing Counsel representing the respondent-Authority made extensive submissions on the rival stands with reference to granting of layout permissions falling within the jurisdiction of the respondent-Authority.

4. The principal contention urged by learned counsel for the petitioner is that preparation of perspective plan is regulated by Sections 38 and 39 of the Act. Section 38(2) mandates preparation of perspective plan and on preparation of such plan, in terms of Section 39(1), the same should be notified inviting objections or suggestions from any person or body of persons giving time period of thirty days. The objections should be considered and after according appropriate sanction, the perspective plan should be notified. According to the learned counsel, no perspective plan is drawn and no objections are called for. Thus, no such perspective plan is existing as on today. Therefore, the rejection of the layout application submitted by the petitioner on the ground that the application is contrary to the perspective plan, is illegal. To substantiate his contention that no perspective plan is approved, the petitioner filed as additional document, which is the information furnished under the Right to Information Act by the Public Information

Officer, vide his proceedings dated 14.07.2015, wherein it is admitted that perspective plan has not been prepared by C.R.D.A. The learned counsel for the petitioner, therefore, submits that the reason assigned by the respondent-Authority in rejecting the application is erroneous and is liable to be set aside on that ground alone.

5. Though elaborate submissions are made by the learned Standing Counsel, he is fair in submitting that as of now, no perspective plan is notified and erroneously, the perspective plan was mentioned in the order impugned as a reason for rejection of the application submitted by the petitioner. The learned Standing Counsel sought to emphasize that in view of other provisions of the Act, more particularly Section 110 of the Act, read with G.O.Ms.No.44 dated 21.01.2009 which is in force, the layout permission application submitted by the petitioner is liable to be rejected.

6. Though, the submission of the learned Standing Counsel is attractive at the first blush, having seen the order impugned in the writ petition, it is clear that this was not the reason assigned for rejection of the layout permission application filed by the petitioner. Though there is a reference to Section 110 of the Act in the order impugned, a reading of the same shows it proceeds as if, the perspective plan is already prepared and the site proposed for layout by the petitioner is not meeting the requirements. As evident from the material filed along with the writ petition and as fairly stated by the learned Standing Counsel, there is no such perspective plan. Therefore, the reason assigned in the order impugned is not sustainable. It is

settled principle of law that the order of the statutory Authority should be supported by the reasons assigned therein, but such Authority cannot supplement/improve upon his decision, taking support from any other issue in the form of counter-affidavit or by way of oral instructions. What is stated in a counter-affidavit cannot be the basis to test the validity of decision of the statutory authority. It must stand the test of judicial scrutiny on its own. It is also appropriate to note that the very fact that there was no perspective plan would show that there was no application of mind before passing the order impugned in this writ petition and such ground alone is sufficient to set aside the order impugned.

7. Having regard to the same, the order impugned is not sustainable and is liable to be set aside.

8. Accordingly, this writ petition is allowed setting aside the order dated 27.06.2015. The 2nd respondent is directed to reconsider the layout application submitted by the petitioner without reference to the reasoning assigned in the impugned order dated 27.06.2015, as expeditiously as possible, preferably within six(6) weeks from the date of receipt of a copy of this order. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand dismissed.

P.NAVEEN

RAO, J

Date : 13.10.2015

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