

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

W.P. No. 32782 OF 2011

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ORDER :

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This writ petition is filed seeking writ of mandamus declaring the action of the respondents 1 to 3 in not getting the respondents 4 to 7 vacated from a public park situated in Sy.No.167 of B.K.Palle Village, Madanpalle Mandal, Chittoor District in an extent of Ac.0.50 cents, duly occupied by the respondents 4 to 7 by putting a TV relay station and not handing over the same to the petitioners' society as illegal and arbitrary and consequently to direct the respondents 4 to 7 to vacate the subject premises.

2. It is the case of the petitioner that the petitioner's society was formed in Madanapalle town, Chittoor District prior to Independence, roads were divided and plots were laid and some vacant places were also earmarked for public purpose. A park was earmarked in the middle of the colony in Sy.No.167 in an extent of Ac.0.50 cents. On 04.02.2002, the first respondent has leased out the same to the respondents 4 to 7 for the purpose of Doordarshan Centre for a period of three years on temporary basis, which is not binding on the petitioner's association and that the said TV relay station is detrimental to the interest of the public and its utility. By virtue of which, people and children of that locality are suffering without a public park. Plenty of government land is available around the Madanapalle Town and the State Government is ready to provide sufficient land in the peripheral areas of Madanapalle town to put up TV relay centre by Doordarshan. It is stated that as per G.O.Ms.No.72, dated 20.02.2002, places earmarked for public purposes cannot be converted to any other purpose. The relay centre is also emitting lot of radiation, which is hazardous to the public and their health. That in spite of giving several representations by the petitioner association, the respondents 4 to 7 are not vacating the said premises and respondents 1 to 3 are not initiating any steps in that direction, thereby depriving the right of people of that locality. Aggrieved by the same, the present writ petition is filed.

3. First respondent filed counter denying the averments in the affidavit filed in support of the writ petition stating that the place where the TV tower was situated is originally reserved open space for park in LP No.267/51 and it was leased out to the respondents 4 to 7 and the said lease was expired on 03.02.2008. Though the lease period expired, the respondents 4 to 7 have not paid rent to the first respondent, the first respondent issued notice dated 07.08.2010 requesting them to vacate the premises and also to pay the arrears of rent. As per G.O.Ms.No.72 MA, dated 20.02.2008, the open spaces meant in any approved layouts must be utilized for that purpose only i.e., parks and play grounds. It is stated that in spite of several requests and demands, the respondents 4 to 7 failed to vacate the premises.

4. Counter affidavit is filed on behalf of the respondents 4 to 7 denying the averments made in the writ affidavit stating that the area leased out to Doordarshan is only about 30 cents and not 50 cents and the same is in their occupation since 1994 and not from 2002. That the said premises was initially given on lease for a period of five years and subsequently renewed every three years once. It was renewed in the year 2002 till February, 2005. These respondents are regular in payment of rents. The subject premises was used as a Municipal Guest house at the time of their taking over lease in the year 1994 and it is not used as park or public utility. Municipal authorities are still in custody of about 20 cents in the same campus wherein two buildings constructed by the municipality are being used as an office for the water and sanitation works and also as a godown. Doordarshan Relay centre was installed in the municipal guest house on a permanent basis by investing more than a crore rupee. Doordarshan Relay station is working in the interest of deprived and rural sections of the society, who cannot afford to pay the DTH and cable network. An area in P & T Colony has been earmarked for a park by the Municipality. The petitioner is not a party to the lease agreement entered between the first respondent and these respondents. These respondents have not encroached upon the lands of the petitioner's society or for that purpose on the land of the civic body and that the construction of the portacabin was done only on receipt of a written permission by the municipal authorities. These respondents made payment on 23.12.2011 against municipality demand notice dated 15.12.2011. G.O.Ms.No.72, dated 20.02.2002 mentioned about the leases

of land prospectively and no mention is made of retrospective deals. These respondents were permitted to invest to construct a portacabin on 26.03.2003, much later than G.O.Ms.No.72, dated 20.02.2002. Reply has been given to the letter addressed by the Municipal Commissioner on 26.07.2011 requesting them to renew the lease agreement as agreed upon.

5. Heard Sri M.N.Narasimha Reddy, learned counsel for the petitioner, Sri Md.Saleem, learned Standing Counsel for the first respondent Municipality, learned Government Pleader for Municipal Administration for 2nd respondent, learned Government Pleader for Revenue 3rd respondent and Sri B.Narayana Reddy, learned Standing Counsel for the respondents 4 to 7.

6. In this case, as alleged by the petitioner and also as admitted by the first respondent, the subject premises where the TV Tower was situated is originally reserved open space for park in L.P.No.267/51 and it was leased out to the respondents 4 to 7, and they have established TV Relay Station and that the lease period expired on 03.02.2008. Since the respondents 4 to 7 have not paid rents, the first respondent issued notice on 07.08.2010 requesting the respondents 4 to 7 to vacate the said premises by paying the arrears of rent. In spite of the said notice, the respondents 4 to 7 neither paid arrears of rent nor vacated the premises.

7. When once the respondent No.1 admitted that G.O.Ms.No.72, dated 20.02.2002 has been issued wherein it is clearly mentioned that open spaces meant in any approved layouts must be utilized for that purpose only i.e., parks and play grounds, the same cannot be used for any other purpose. Therefore, the respondents 4 to 7 cannot turn around and say that it is not a parking place. Moreover, the lease granted in favour of the respondents 4 to 7 has expired in the year 2008 and that the first respondent also directed them to vacate the premises by paying the arrears of rent. Though the first respondent issued notice for eviction, they have not taken any further steps in evicting the respondents 4 to 7. The stand of the petitioner is supported by orders in G.O.Ms.No.72, dated 20.02.2002 and also judgments relied on by the first respondent in the counter.

In view of the above discussion, the first respondent has to take necessary action for utilizing the premises leased out in favour of the respondents 4 to 7 in

accordance with the directions in G.O.Ms.No.72, dated 20.02.2002. Since it is stated that the respondents 4 to 7 have established a TV Relay station, the first respondent has to take appropriate steps in accordance with the Judgment of the Hon'ble Supreme Court and also G.O.Ms.No.72, dated 20.02.2002 within a period of six months from the date of receipt of a copy of this order.

With the above direction, this writ petition is disposed of. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any pending in this writ petition, shall stand dismissed.

_____ **A.RAJASHEKER REDDY, J**

10.06.2015.

KVS

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

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Date: 10-06-2015

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