

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.28857 of 2014

ORDER:

This Writ Petition is filed seeking a Writ of Mandamus to declare the action of the respondents in issuing proceedings in File No.G2/255/2014 dt.08-09-2014 as illegal and for a consequential declaration that the petitioners are entitled to construct the house in plot No.26/B in Sy. Nos.1285, 1286, 1287 and 1288 of Karimnagar.

2. One S.Venkatachari was the husband of 1st petitioner and father of petitioner Nos.2 and 3. Under a registered sale deed, being document No.111/1966 dt.27-01-1966, he purchased the subject plot measuring 3 1/2 guntas from the Church of South India Trust Association, Karimnagar. The said Venkatachari died subsequently and the petitioners succeeded to the said property.

3. The said property, according to the petitioners, is located in Sy. Nos. 1285, 1286, 1287, 1288 and 1307. The plot purchased by Venkatachari is also shown in the final list dt.10-06-1966 of the plots allotted, which was issued by the vendor of Venkatachari.

4. The petitioners made an application for identification of the plots to the Mandal Surveyor, Karimnagar. The latter issued a notice dt.25-03-2014

proposing to conduct survey on 28-04-2014 at 11.30 a.m. This notice was issued to the petitioners as well as 2nd respondent. The survey was conducted on that day by the Mandal Surveyor and a panchanama was prepared identifying the plot belonging to petitioners. A copy of the said panchanama dt.28-03-2014 is filed by petitioners. In the said panchanama, it is mentioned that the said plot is located in LP No.117/62 which was obtained by the Church of South India Trust Association from the Director of Town Planning.

5. On 27-08-2014, petitioners submitted an application to 2nd respondent for grant of permission for construction of a house in the said plot.

6. By order in File No.G2/255/14 dt.08-09-2014, 2nd respondent rejected it. In the said order, it is stated that the plot claimed by petitioners is part of the open spaces left for public purpose measuring about Ac.1.00 as per TP 11/70 and the same was in the exclusive possession and enjoyment of the 2nd respondent. It is also stated that 2nd respondent had raised a basement around the said area about 20 years back and there are sign boards fixed by 2nd respondent. It is also stated that as per Lay out Plan No.117/62, the entire Ac.1.00 gts including the plot claimed by the petitioners is "open space" left for public purpose and that

in the original Layout Plan 117/62, there is no plot bearing No.26/B. It is stated that the plot claimed by petitioners along with other adjoining area was in the possession of the Municipality since 1970 in which year TP No.11/70 was adopted by Karimnagar Municipality.

7. In the impugned order, there is also reference to a suit O.S.No.263/93 said to have been filed by one Shaik Junaid, W.P.No.375 of 1997 filed by his son, W.P.No.704 of 1997 filed by one Shaik Shajida apart from O.S.No.72 of 1997 filed by Shaik Shadija and about the dismissal of the said proceedings. In these proceedings, according to 2nd respondent, the parties therein claimed the Ac.1.00 area of open space as falling in Sy.No.1255 & Sy.No.1257.

8. Questioning the same, this Writ Petition is filed.

9. The petitioners contended that the said order dt.08-09-2014 is contrary to law and that 2nd respondent failed to appreciate the title and possession of petitioners, that the plan submitted by the petitioners is valid, and the refusal of permission is not supported by any cogent reasons.

10. Counter affidavit is filed by 2nd respondent supporting the impugned order and reiterating its

contents. It is also contended that the entire area in Sy. Nos. 1285, 1286, 1287 and 1288 was completely developed by construction of houses as per layout plan TP 11/70 and there is no plot available as claimed by the petitioners except the one in possession of 2nd respondent. It is reiterated that the plot claimed by the petitioners is a part of open space meant for park and there is no question of granting permission for the petitioners. The copies of the orders in O.S.No.263/93, W.P.No.375 of 1997, W.P.No.704 of 1997 and O.S.No.72 of 1997, mentioned in the impugned order have not been filed by 2nd respondent nor is the relevance of these orders explained in the counter affidavit.

11. A reply affidavit was filed by the petitioners denying that the petitioners' plot falls in the open space in the layout earmarked for park and that it is in the possession of 2nd respondent. It is contended that TP No.11/70, which is being relied by the respondent, is not binding on the petitioners, since Venkatachari, who was predecessor in title of the petitioners, had purchased the subject plot in 1966 and without his knowledge, the plot purchased by him cannot be shown as 'open space' in the TP No.11/70.

12. The learned counsel for the petitioners reiterated stand taken in the affidavit filed in support of the Writ Petition as well as in the rejoinder. In addition he

contended that the plot claimed by petitioners has been identified by the Mandal Surveyor, Karimnagar in the survey conducted by him on 28-03-2014 with clear boundaries in LP No.117/62; when the said layout was prepared in 1962, there was no provision for open places in the layout as per the then existing law i.e. AP (Telangana Area) District Municipalities Act, 1956; therefore, there was no prohibition for sale of the said land in 1966 or for making construction therein, and the title was rightly conveyed to Venkatachari by his vendor; for the first time A.P. Municipalities Layout Rules, 1970 came to be framed vide G.O.Ms.No.62 Municipal Administration dt.28-01-1970 which mentioned about 'open spaces' in Rule 5 thereof; the said Rules do not have any retrospective operation and do not affect the title of Venkatachari or after him the petitioners; and that if 2nd respondent intends to maintain the plot of the petitioners as an open space, it is incumbent on 2nd respondent to acquire the same in accordance with the provision of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. If not, they are bound to grant sanction to petitioners for making construction of a house therein.

13. He also relied upon judgment of this Court in W.P.No.362 of 2005 and pointed out that in the said case arising in the Andhra Area where the Andhra Pradesh

(Andhra Area) District Municipalities Act, 1920 applied, this Court had held that there is no provision therein of reserving of areas for public purpose and set aside the order passed by Guntur Municipality which refused permission for construction on the ground that the land of the petitioners therein was reserved as an open space in the layout approved under the said Act.

14. The learned counsel for the respondents Sri R.A.Chari reiterated the stand taken by 2nd respondent in the counter affidavit filed by it.

15. I have noted the submissions of both sides.

16. The question which arises for consideration is “whether the petitioners can be denied permission by 2nd respondent for making construction in the plot in question?”

17. Before I deal with the said question, I may point out that the plot in question i.e Plot 26/B was identified and demarcated by the Mandal Surveyor in the L.P.No.117/62 obtained by the Church of South India Trust Association. This can be seen from Ex.P5 panchnama dt.28.3.2014 filed by petitioners. Prior thereto, it appears that notice of the Survey was also given to 2nd respondent as well as the petitioner on 25.3.2014. But none represented the 2nd respondent at the time of the said survey. The survey therefore binds 2nd respondent.

So the existence of the subject plot in the said lay out is not in doubt. Therefore the contention of 2nd respondent that there is no plot bearing no.26/B in the said lay out cannot be accepted.

18. According to 2nd respondent, this plot falls in 'open space' in L.P.117/1962 and in T.P.No.11/70 and it was left for public purpose. It appears that 2nd respondent's contention is that the subject plot was not shown in the Lay out Plan 117/1962 prepared by the erstwhile Karimnagar Municipality.

19. In this regard it is pertinent to point out in 1962 when L.P.No.117/1962 was sanctioned the applicable law was AP (Telangana Area) District Municipalities Act, 1956.

20. Sec.244 of the said Act , in so far it is relevant, provided as under:

"Sec.244. Preparation of Master plan, town development plan and lay outs. (1) (a) Subject to such rules as may be prescribed within the limits of the Municipality.

(b) the Committee may for the purposes of clause (a) arrange to carry out the survey of the area within the limits of the Municipality and of the land contiguous or adjacent thereto and shall submit to the Government a report of the survey together with the Master Plan indicating the manner in which the area within the limits of the Municipality and the land contiguous or adjacent thereto shall be used and the stages by which the Master Plan shall be carried.

(c) the Master Plan shall include such maps and such

descriptive matters as may be deemed necessary to illustrate the proposals, and in particular:

(i) define the present use of every piece of land within the limits of the Municipality and in the land contiguous or adjacent thereto;

(ii) define the sites of the proposed roads, public and other open spaces or allocate areas of land for use for agricultural, residential, industrial or other purposes of any class specified in the plan;

(iii) designate the land subject to compulsory acquisition under the powers in that behalf conferred by this Act or any other law for the time being in force.

(d) the Government may by notification in the Official Gazette declare any area within the limits of the Municipality to be a Master Plan area and shall sanction in the prescribed manner a Master Plan thereto.

(2) Till such time as a Master Plan is sanctioned under clause (d) of sub-section (1) the Government may notify any area within or without the limit of a Municipality as an area in which no building to be erected or re-erected except in accordance with the piecemeal Town Development Plan, or a layout sanctioned by the Government in the manner prescribed. Such Town Development Plan or layout shall, subject to minor alteration be incorporated in the Master Plan.

(3) No report shall be made under clause (b) of sub-section (1) in respect of land falling outside the limits of a Municipality and no notification in respect thereof shall be issued under sub-section (2) without consulting the local authority within whose jurisdiction the land is situated."

21. Thus it is clear that as per Sec.244 (1) (c) (ii), the Master plan prepared pursuant to the said Act shall define the sites of the proposed roads, public and other open spaces. Thus under the said Act, provision for open spaces in layouts / Masterplan was contemplated.

22. Sec.245 provides for notification of the Master plan or any Town Development Plan or a lay out sanctioned by the Government under Sec.244 in the Official Gazette.

23. Sec.248 of the said Act makes it mandatory for owners of land to comply with the layout after sanction.

24. Sec.251 of the said Act states:

“Sec.251. Immovable property required for the purpose of a Master plan, Town Development Plan or lay out shall be deemed to be land needed for a public purpose within the meaning of the Hyderabad Land Acquisition Act, 1309 (Fasli).”

25. It is not the case of the 2nd respondent that the plot in question, which was purchased by Venkatachari, the predecessor in title of petitioners on 27.1.1966, was at anytime acquired prior thereto by the then Karimnagar Municipality under this provision. Thus notwithstanding the showing of the said plot as ‘open space’ in L.P.No.117/1962 , title to the land continued to be with the Church of South India Trust Association and did not vest in the then Karimnagar Municipality. So the said trust could validly convey title to the said plot on 27.1.1966 under a regd.sale deed.

26. The AP (Telangana Area) District Municipalities Act, 1956 was repealed by the A.P.Municipalities Act,1965. After the said Act came into

existence, the A.P.Municipalities (Lay out) Rules, 1970 were framed. In the said rules also, initially there was no provision for vesting of the open spaces in lay outs in the Municipality.

27. So even if the subject plot was shown in T.P.11/70 (sanctioned after the A.P.Municipalities Act, 1965 came into force), as falling in 'open space' and earmarked for public purpose, still the title of Venkatachari in the said plot did not get extinguished.

28. Only recently vide G.O.Ms.no.114 Municipal Administration and Urban development (M1) Department dt.14.3.2006, Rule 14 of the A.P.Municipalities (Lay out) Rules,1970 was introduced by way of substitution which provided that "roads and open spaces such as parks and play grounds earmarked in accordance with the said Rules in a layout approved under Sec.185(3) of the A.P.Municipalities Act,1965 shall stand transferred free of cost and vest in the Municipal Council free from all encumbrances". This provision would have no retrospective effect as it is subordinate legislation and would only operate prospectively. In a judgment delivered on 20.1.2015 in W.P.No.13053 of 2014, this Court has held that the said Rule is only prospective and not retrospective.

29. In 2005, the Karimnagar Municipality became a Municipal Corporation governed by the Greater

Hyderabad Municipal Corporation Act,1955.

30. Rule 10 A of the Municipal Corporation of Hyderabad (Layout) Rules, 1965 introduced vide G.O.Ms.no.229 Municipal Corporation and Urban Development dt.16.4.1994 provides that roads and open spaces such as parks and play grounds earmarked in accordance with the said Rules in a layout approved by it shall stand transferred free of cost to it and vest in the Municipal Corporation free from all encumbrances. Even this rule would have only prospective operation and cannot be retrospective. The ratio of the judgment of this Court in W.P.No.13053 of 2014 that Rule 14 of A.P.Municipalities (Layout) Rules, 1970, being subordinate legislation cannot have retrospective operation, clearly applies to Rule. 10-A of Municipal Corporation of Hyderabad (Layout) Rules,1965 also. Therefore, the 2nd respondent cannot invoke either of these Rules to claim that the plot in question vested in it.

31. In this view of the matter, the plea of the 2nd respondent petitioners cannot claim any right in it, is wholly untenable.

32. It may be that petitioners cannot develop the said plot in view of bar contained in Sec.248 of the Hyderabad Municipalities Act,1956 (and now Sec.452 of the Greater Hyderabad Municipal Corporation Act,1955),

since the 2nd respondent insists that in the plot, which according to it is shown as 'open space' in the layout, no permission for construction can be granted. So the normal attributes of ownership of land have ceased in so far as the petitioners are concerned and they can be said to be holding the land as trustees on behalf of the residents and other members of public. The petitioners cannot transfer the land or use the space in any other manner except by keeping it as an open space. This practically amounts to depriving the petitioners of the plot in question for all intents and purposes without paying any compensation.

33. In **Pt. Chet Ram Vashist v. Municipal Corpn. of Delhi**^[1], the Supreme Court had to consider whether the Municipal Corporation of Delhi, in the absence of any provision in the Delhi Municipal Corporation Act, 1957, was entitled to sanction a plan for building activities by imposing a condition that the open space for parks and schools be transferred to it free of cost. Section 313 of the said Act entitled the Standing Committee of the said Corporation to accord sanction to a layout plan on such conditions as it may think fit. The Supreme Court held that the expression "such conditions" has to be understood so as to advance the objective of the provision and the purpose for which it has been enacted. It held that the Corporation has been given the right to examine that the layout plan is not contrary to any

provision of the Act or the Rules framed by it and therefore it may direct a person seeking a layout plan to leave certain open space, or to adhere to the length and width of the rooms of particular dimensions, or it may direct him to provide certain amenities and facilities to those who purchase land or buildings in its colony. It held that such power cannot be construed to mean that in exercise of placing restriction or imposing conditions before sanctioning a layout plan, it can also claim that it shall be sanctioned only if the owner surrenders a portion of the land and transfers it in favour of the Corporation free of cost. It held that this would be contrary to the language used in the Section and violative of civil rights which vest in every owner to hold his land and transfer it in accordance with law. It therefore held that the resolution passed by the Corporation, directing the appellant to transfer the space reserved for tube-wells, school and park in its favour free of cost by depriving the owner of its property and vesting it in the Corporation, is against the law. It rejected the finding of the High Court that such a condition did not amount to transfer of ownership but it was only a transfer of the right of management. It observed:

“6. Reserving any site for any street, open space, park, school etc. in a layout plan is normally a public purpose as it is inherent in such reservation that it shall be used by the public in general. The effect of such reservation is that the owner ceases to be a legal owner of the land in dispute and he holds the land for the benefit of the

society or the public in general. It may result in creating an obligation in nature of trust and may preclude the owner from transferring or selling his interest in it. It may be true as held by the High Court that the interest which is left in the owner is a residuary interest which may be nothing more than a right to hold this land in trust for the specific purpose specified by the coloniser in the sanctioned layout plan. But the question is, does it entitle the Corporation to claim that the land so specified should be transferred to the authority free of cost. That is not made out from any provision in the Act or on any principle of law. The Corporation by virtue of the land specified as open space may get a right as a custodian of public interest to manage it in the interest of the society in general. But the right to manage as a local body is not the same thing as to claim transfer of the property to itself. The effect of transfer of the property is that the transferor ceases to be owner of it and the ownership stands transferred to the person in whose favour it is transferred. The resolution of the Committee to transfer land in the colony for park and school was an order for transfer without there being any sanction for the same in law."

34. This decision was followed in **Chairman, Indore Vikas Pradhikaran Vs. Pure Industrial Coke & Chemicals Ltd. and others**^[2] and the latter judgment was followed in **M.Naga Venkata Lakshmi v. Visakhapatnam Municipal Corporation and another**^[3].

35. In **M.Naga Venkata Lakshmi** (3 supra), the appellant before the Supreme Court had purchased a plot in a layout in Visakhapatnam under a sale deed dt. 08-07-1982. At that time the said layout was not an approved layout. The competent authority to approve a layout plan

was the Visakhapatnam Urban Development Authority (for short 'VUDA') constituted under the Andhra Pradesh Urban Areas (Development) Act, 1975. A revised plan was prepared in 1989 changing the name of the locality and regularizing the plots of others in the area but the appellant's plot was not so regularized. The appellant's representation to VUDA was not responded to and the appellant's application for sanction of a building plan was rejected by the Visakhapatnam Municipal Corporation on the ground that the proposed constructions fell in a reserved open space of the layout as per the revised plan of 1989. Her Writ Petition was dismissed by the High Court and was confirmed in Writ Appeal. She then approached the Supreme Court. The Supreme Court held that this action of the VUDA and the Visakhapatnam Municipal Corporation amounts to depriving the appellant of a valuable right of property without payment of compensation. It observed that the appellant should have been informed that her land had been earmarked for providing an open space to the other owners of the layout. It held:

"Prima facie, it appears that there is no provision in terms whereof the appellant could be deprived of her right to property without payment of any compensation."

It therefore found fault with the orders passed by the High Court, set aside the said orders and remitted the matter

back to the Single Judge of the High Court for fresh consideration.

36. Recently in **Real Estate Agencies v. State of Goa**^[4] also the principle in **Pt. Chet Ram Vashist** (1 supra) was reiterated.

37. In the present case, it is not the case of 2nd respondent that at the time when TP.No.11/70 was framed, the petitioners was informed by the Karimnagar Municipality that his land was shown as an open space and earmarked for a park. Thus the petitioners have been deprived of use of valuable property without payment of compensation. Assuming for sake of argument without conceding that the 2nd respondent is in possession of the property, title to the property did not vest in it by operation of any law. In fact no provision of any Act was cited by counsel for 2nd respondent under which it acquired title to the subject plot and the petitioners ceased to have title.

38. Thus the subject plot is bound to be acquired by 2nd respondent if it intends that it be kept as an open space in the lay out and deprive petitioners of right to make constructions in it or to use it for any other purpose except as open space/park. If not, the petitioners would be deprived of their valuable property without compensation. Otherwise, it would amount to legitimizing the arbitrary and expropriatory action contrary to the

provisions of the Greater Hyderabad Municipal Corporation Act, 1955 and the law declared by the Supreme Court in the above decisions. Similar view has been taken by this Court in its judgments (i) dt.02.09.2014 in W.P.No.1995 of 2012,(ii) dt.16-10-2014 in W.P.No.24427 of 2014 and (iii) dt.20.1.2015 in W.P.37983 of 2014.

39. In view of law declared by the Supreme Court in the above referred decisions, it is incumbent on the part of the respondents to initiate proceedings under Section 147 of the Greater Hyderabad Municipal Corporation Act, 1955 in accordance with the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 for acquisition of the land of the petitioner for open space/park and pay compensation to the petitioner.

40. Therefore, the Writ Petition is allowed and the respondents are directed to initiate proceedings under Section 147 of the Greater Hyderabad Municipal Corporation Act, 1955 in accordance with the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, for acquisition of the entire land owned by the petitioners for 'open space'/park and pay compensation to the petitioners. The requisition for the said purpose should be sent by the second respondent to the first

respondent within a period of two weeks from the date of receipt of a copy of this order; the first respondent shall initiate the process for acquisition within a period of one month thereafter; and conclude the same within a period of three months.

41. As a sequel, miscellaneous petitions pending, if any, shall stand disposed of.

JUSTICE M.S.RAMACHANDRA RAO

Date: 30.01.2015

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[\[1\]](#) (1995) 1 S.C.C. 47

[\[2\]](#) (2007) 8 S.C.C. 705

[\[3\]](#) 2007(8) S.C.C 748

[\[4\]](#) (2012) 12 SCC 170