

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.35449 OF 2012

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ORDER:

This petition is filed for a writ of *Mandamus* declaring the proceedings of the 2nd respondent in Dis.No.3249/09 Pan.3, dated 18.05.2010, as illegal and arbitrary and contrary to the Judgment of the Supreme Court.

All the petitioners herein are residents of Umashankar Nagar/Bhagyanagar Colony, Kanuru Road, Vijayawada. The original owners of the subject property, admeasuring Ac.5.04 cents in R.S.No.253/1A, 254/2, 263/3 of Kanuru Village, have obtained layout which was approved by the 3rd respondent in LP.No.50/80 and petitioners have purchased plots from the original owners and have constructed residential houses and are residing there. The grievance of the petitioners is that the respondents without any authority have allotted an extent of land admeasuring 1115 Sq.Ys., which is left as open space in the aforesaid layout to the 5th respondents for construction of office building. Aggrieved by the same, the petitioners filed the present writ petition.

The 5th respondent to whom the above allotment is made, filed counter stating that as its office is running in a rented private building since its establishment, it has requested the District Collector, Krishna District for proposal and allotment of any site for construction of the building under Letter dated 23.09.2009; that there upon the District Collector addressed a letter dated 21.10.2009 to the District Panchayat officer Krishna and also to the Tahsildar, Penamaluru, requesting to identify a suitable site

admeasuring an extent of 1000 Sq.Ys. at Kanuru Gram Panchayat and to give departmental consent to transfer the same to the 5th respondent for construction of their office building; and that in turn the District Panchayat Officer sent a memo in ROC.No.3249/2009.P3, dated 05.02.2010 to the Secretary, Gram Panchayat, Kanuru to allot 1000 Sq.Ys of site by duly passing a resolution through the Gram Panchayat. It is stated that thereafter, the Gram Panchayat, Kanuru selected 1000 Sq.Ys of vacant common site in RS.No.254/2 and passed a resolution in its general body meeting conducted on 23.03.2010 under resolution No.21 and submitted the said fact to the District Panchayat Officer, through letter dated 30.04.2010 addressed by the Panchayat Secretary of the 4th respondent; and thereafter the Panchayat Raj Department through letter dated 18.05.2010 granted permission to the Gram Panchayat, Kanuru to allot and transfer the said site to the 5th respondent in pursuance of the powers vested under G.O.Ms.No.215, Panchayat Raj & Village Development (Panchayat) Department dated 25.06.2001 and also intimated the said fact to the District Collector, Krishna vide letter dated 29.09.2010; and that the Panchayat Secretary, Kanuru also delivered possession of 23 cents (1115 Sq.Ys.) of vacant site belonging to Kanuru Gram Panchayat through proceedings dated 18.08.2011 to the 5th respondent. It is further stated that the Government also issued orders, according administrative approval for Rs.93 lakhs for construction of office building of the 5th respondent over the government allotted land in Kanuru Grama Panchayat in RS.No.254/2 in LP.No.50/80 in Penamaluru Mandal with permission to execute the work by the Executive Engineer, APEWIDC Limited, Machilipatnam vide G.O.Ms.No.60, dated

01.05.2012. It is also stated that after completion of all the requisite formalities, and the process of delivery of the property to 5th respondent, foundation stone was laid for commencing the construction work. It is further stated that the site in question is a vacant site entirely vested in the 4th respondent Gram Panchayat and it has got right to use the same for any purpose it desires and it followed all the procedures in delivering the property to the 5th respondent for construction of office building and that the site in question was not reserved as open site to be used by the petitioners and the petitioners never used the same for any purpose as averred in the petition and finally sought for dismissal of the writ petition.

Heard Sri O.Manohar Reddy, learned counsel for the petitioner; Smt.K.Mani Deepika, learned counsel for the 3rd respondent and the learned Assistant Government Pleader for respondent No.5.

When the 5th respondent disputed that the site in question which is the subject matter of the writ petition is not reserved for open space, this Court called for the original lay out plan in LP.No.50/80 and the same is produced by Smt.K.Mani Deepika, learned counsel appearing for the 3rd respondent.

A perusal of the lay out plan goes to show that the subject site is earmarked for open space in LP.No.50/80 sanctioned for RS.Nos.253/1A, 254/2, 263/3 of Kanur Village. As such, the averment made by the 5th respondent in his counter 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