

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.33585 of 2013

Dated : 17.07.2015

Between:

Chintala Prakash S/o.C. Appaiah,
Hindu, Aged 48 yrs, Occu : Business,
R/o.H.No.12-1-334/6, Lalapet, Secunderabad.

.. Petitioner

And

Government of Andhra Pradesh,
rep., by its Principal Secretary,
Municipal Administrative Dept.,
Secretariat, Hyderabad & 2 others

.. Respondents

This Court made the following :

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ORDER :

The petitioner claims to be a resident of Sanjeevaiah Cooperative Housing Society Layout, formed in Sy.No.221, Malkajgiri. According to the petitioner, when the original layout was formed, 850 Square yards was left as an open space and accordingly lay out was formed. Subsequently, the extent of open space was reduced to 225 Square yards and the rest of the extent is again formed into house plots. In the said manner, the 3rd respondent in the writ petition obtained building permission showing it as a private plot and started construction. When it has come to the notice of the petitioner that an illegal building permission was granted to 3rd respondent on an open plot, which vests in the Municipal Corporation, the petitioner has raised his grievance and instituted this writ petition challenging the permission granted to the 3rd respondent, as evident from the letter dated 10.07.2013 impugned in the writ petition.

2. Having regard to the contention of the petitioner that in an open space earmarked in the lay out, an illegal construction is taking place, this Court stayed further construction. Aggrieved thereby, the 3rd respondent filed W.V.M.P.No.3805 of 2013. The 2nd respondent also filed counter affidavit.

3. With the consent of learned counsel for the petitioner, learned standing counsel appearing for 2nd respondent and learned counsel for the 3rd respondent, this writ petition is disposed of.

4. Learned counsel for the petitioner contends that the original lay out shows the open space which is marked with pink ink in the sketch filed as P.8 at Page No.42 along with the writ petition. This entire space is earmarked as open space required to be utilized as

common space for all the residents of the colony. There was also a huge well existing in the said open space. Learned counsel further contends that as seen from the endorsement made in Page No.42 that such open space was existing as early as in December, 1985 and therefore, the question of undertaking construction on the said extent of land is *ex-facie* illegal. Therefore, the permission granted to 3rd respondent should be set aside.

5. Referring to the averments in Para No.5 of the counter affidavit filed by the 2nd respondent, learned counsel for the petitioner contends that the counter affidavit is vague as to when the final lay out was approved. Whereas according to the averments in the counter and the further documents furnished to the petitioner would show that as late as, on 17.12.1985, the President of the Society was informed to pay betterment charges and unless the betterment charges are paid, the question of granting approval for the final lay out would not arise. Whereas the final lay out is claimed to have been approved much before 1985. All this would show that some post-facto manipulation is made to show the extent of open space as 225 Square yards only as against the original extent of open space of 850 square yards.

6. Learned counsel for the 3rd respondent contends that in the tentative lay out, larger open space was shown. Two lay outs were approved initially and then, a comprehensive lay out was submitted which was approved in January, 1985 and the approved lay out clearly shows that the open space is only 225 Square yards and adjacent to the open space, two house plots were formed. He further submits that this plot was purchased by the 3rd respondent as early as in the year 1982 and the 3rd respondent was a bonafide purchaser. He therefore, submits that the title validly vests in him and that he is not in illegal occupation of any open space and therefore, building permission was validly granted.

7. It is not in dispute that there were two tentative lay outs

initially approved by the Municipal Corporation and subsequently, a comprehensive lay out was submitted by the Developer and it appears that the said lay out was approved in January 1985. A copy of the approved lay out was filed as material paper at page No.68 along with the WVMP.No.3805 of 2013 by the 3rd respondent. In this lay out small extent of open space is shown adjacent to 30 feet/30 feet road and there are two plots adjacent to this open space, one plot is facing North 30 feet road and another plot is facing East 30 feet road. No material is brought on record to show that this is a concocted document or that there was no such approval granted by the competent authority in the year 1985 in the small extent of open space than what was originally shown in the tentative lay out of one of the two phases. Unless it is established by clear evidence to show that lay out relied upon by the 3rd respondent and supported by the 2nd respondent is not correct, and the extent of open space is not reduced to 225 Square yards, the claim of the petitioner that 3rd respondent is undertaking illegal construction in open space and that the permission to undertake such construction was illegally granted by the 2nd respondent cannot be accepted. When the petitioner makes specific allegation of such illegal construction, the burden lies on the petitioner to establish that the open space area is 850 square yards and the plot on which the 3rd respondent is undertaking to construct a house was part of the open space. The petitioner has not discharged his primary requirement before challenging the said permission granted to 3rd respondent. Thus, there is no material on record to hold that the permission granted to 3rd respondent by the 2nd respondent as illegal, warranting interference by this Court.

8. Having regard to the above discussion, the Writ Petition is dismissed. The interim order granted on 22.11.2013 stands vacated. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall

stand dismissed.

17th July, 2015.
Rds

P.NAVEEN RAO,J