

**THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO**

**W.P.No.5660` of 2012**

**ORDER:**

Heard the learned counsel for the petitioners, learned Government Pleader for respondent Nos.1 and 2, Sri A.Panduranga Rao, learned counsel for 3<sup>rd</sup> respondent and Sri O.Manohar Reddy, learned counsel for 4<sup>th</sup> respondent.

2. This Writ Petition is filed by the petitioners challenging the G.O.Ms.No.447, Municipal Administration & Urban Development (H1) Department dt.26-09-2011 approving variation to the Nellore General Town Planning Scheme (Master Plan) sanctioned in G.O.Ms.No.11, MA, dt.27-01-2011 which was issued in Government Memo No.13890/H1/2011-2, Municipal Administration and Urban Development dt.07-07-2011 and which has been published in the Extra Ordinary Gazette 344 part-I dt.12-07-2011.

3. Under the AP Town Planning Act, 1920, a master plan of Nellore town had been sanctioned vide G.O.Ms.No.969, MA dt.21-11-1978. After 30 years had elapsed, 3<sup>rd</sup> respondent passed resolution to revise the Master Plan on 24-06-2009. This was forwarded to 1<sup>st</sup> respondent on 20-03-2010. In response thereto, 1<sup>st</sup> respondent issued G.O.Ms.No.161 dt.07-04-2010 proposing a draft Master Plan for Nellore Town and proposing to call for objections and suggestions from the public. Thereupon 3<sup>rd</sup> respondent issued a Notification dt.24-04-2010 calling for objections and suggestions from the general public under Rule 14 (1) of the AP Town Plan Rules, 1920. The objections and suggestions were forwarded on 16-10-2010 to 2<sup>nd</sup> respondent for technical opinion. The 4<sup>th</sup> respondent had objected and sought for deletion of 40' wide road pressing through his land in Sy. No.537. But his objections were disregarded by the learned counsel for 3<sup>rd</sup> respondent and were forwarded to 2<sup>nd</sup> respondent and thereafter, 1<sup>st</sup> respondent issued G.O.Ms.No.11 dt.27-01-2011 sanctioning the General Town Planning Scheme for Nellore town.

4. The 4<sup>th</sup> respondent made a representation on 14-12-2010 to the Hon'ble Minister for Municipal Administration and Urban Development, Government of Andhra Pradesh, stating that the objections filed by him were not properly considered by 3<sup>rd</sup> respondent.

5. Thereafter, reports were again called by 2<sup>nd</sup> and 3<sup>rd</sup> respondents and 3<sup>rd</sup> respondent on 20-05-2011 submitted proposals for deletion of 40' wide road passing through the site of 4<sup>th</sup> respondent along with a Municipal Resolution No.17 dt. 05-05-2011

and sent it to 1<sup>st</sup> respondent by his letter dt.03-06-2011.

6. Thereafter, 1<sup>st</sup> respondent vide Memo No.13890/H1/2011-1 dt.24-06-2011 agreed in principle for deletion of 40' wide road in the proposed Master Plan passing through

the lands of Sy. No.537 belonging to 4<sup>th</sup> respondent.

7. The petitioners however objected to the deletion. Their objections were also considered by 3<sup>rd</sup> respondent and by letter

dt.30-08-2011, 3<sup>rd</sup> respondent opined that none of the petitioners had sites in and around the 40' wide road proposed Master Plan road and they have access to their sites from a 60' wide road proposed in the Master Plan and recommended for the deletion of 40' wide road which was proposed to go through 4<sup>th</sup> respondent site.

8. After taking into consideration this report of 3<sup>rd</sup> respondent as well as a letter dt.09-09-2011 of 2<sup>nd</sup> respondent, 1<sup>st</sup> respondent issued G.O.Ms.No.447, MA, dt.26-09-2011 deleting the proposed 40' wide road.

9. The petitioner questions this in this Writ petition on the ground that such deletion was illegal, arbitrary and against the public interest and that the proposed 40' wide road not only affects the property of 4<sup>th</sup> respondent but also affects the petitioners' land and the petitioners had not objected because it would benefit the general public of the Saraswathinagar. They contend that 1<sup>st</sup> respondent did not consider the effect of deletion of proposed 40' wide road and ought to have retained it instead of deleting it at the instance of 4<sup>th</sup> respondent. Reference is also made to a letter of 2<sup>nd</sup> respondent dt.29-01-2011 referring to a letter dt.24-12-2010 of the Hon'ble Minister and it is contended that the impugned G.O. was issued on the basis of extraneous considerations.

10. In the counter affidavits filed by 2<sup>nd</sup> and 3<sup>rd</sup> respondents, these contentions have been denied and it is specifically alleged that the plots of the petitioners have access to a proposed 60' Master Plan road and they would have ingress and egress to their plots and the petitioners had deliberately suppressed this fact. They contended that the reports of 3<sup>rd</sup> respondent and 2<sup>nd</sup> respondent clearly show that there is no necessity for the proposed 40' road in the 4<sup>th</sup> respondent land and the petitioners have not established how public interest is affected by deletion of 40' wide road. They point out that the proposed 40' road does not even touch the plots of the petitioners since the lands of the petitioners are in Sy. Nos.579/1, 579/2 and 579/3. It was also denied that to the west of Saraswathinagar where the petitioners reside, there is a 40' existing road which connects GNT road i.e. NH-5 road. They state that the petitioners never had any right of access through 4<sup>th</sup> respondent's land at any point of time. The respondent Nos.2 and 3 have also disputed Ex.P.-13 sketch filed by the petitioners.

11. I have noted the submissions of all the parties.

12. AP Town Planning Act, 1920, under which the impugned proceedings have been issued was enacted to regulate the development of towns and to secure their present future inhabitants sanitary conditions, amenities and convenience. It contemplates framing of town planning scheme by issuing a draft scheme, inviting objections thereto, consideration of the said objections and publishing a final scheme in Sections 8 to 14 thereof. Section 15 provides for making a variation of an already sanctioned scheme.

13. In the present case, under the impugned proceedings G.O.Ms.No.447 dt.26-09-2011, 1<sup>st</sup> respondent had varied the town planning scheme notified vide G.O.Ms.No.11 dt.07-01-2011 and had deleted the proposed 40' road which was supposed to pass through 4<sup>th</sup> respondent land in Sy. No.537. This G.O.Ms.No.447 dt.26-09-2011 has been issued after taking into account the objections raised by 4<sup>th</sup> respondent that the proposed 40' Master Plan road would cut his land diagonally and deprive him of the use of land for any construction purpose and after considering the reports of the experts of the Town Planning Department as well as 3<sup>rd</sup> respondent Municipal Corporation.

14. It is not the case of the petitioners that the petitioners had a right of access at any point of time through 4<sup>th</sup> respondent property of Ac.0.40 cts. located in Sy. No.537. According to them, such proposed 40' road would provide better access to their plots and they would also be losing some land if such a road is created. They do not dispute that 60' proposed Master Plan road is coming up adjacent to their properties and they would have access to that road. It is not their case that if this 40' Master Plan proposed road is not laid, they would have no access to their lands at all. It may be that the petitioners would not mind losing some land out of their property for the proposed 40' wide road, but they cannot impose such a view on 4<sup>th</sup> respondent particularly if according to 4<sup>th</sup> respondent such a proposed 40' road would render his entire Ac.0.40 cts land in Sy. No.537 useless for any construction purpose in future.

15. Although the petitioners have raised the plea of public interest, it is clear from their pleadings and it is only their private interest which is being agitated and not any public interest. When a decision has been taken by 1<sup>st</sup> respondent on the basis of reports of experts of the Town Planning Department of 2<sup>nd</sup> and 3<sup>rd</sup> respondents that the deletion of 40' proposed road from the Master Plan notified vide G.O.Ms.No.11 dt.07-01-2011 is not in any way impacting the petitioners and that the petitioners have access to the 60' proposed master plan road, it is not for this Court to go into the issue and take a contrary view. This Court has non-expertise in issues of town planning and therefore cannot impose its own view to that taken by the experts of town planning who are employed by respondent Nos.2 and 3.

16. It may be that the objections raised by 4<sup>th</sup> respondent were originally not considered prior to G.O.Ms.No.11 dt.07-01-2011, but that does not preclude the 1<sup>st</sup> respondent from exercising the power under Section 15 of the Act and vary the Master Plan if public interest is not affected thereby.

17. The contention of the petitioner that the decision was taken by the respondents at the instance of the Hon'ble Minister is also belied inasmuch as proceedings dt.29-01-2011 relied upon by them refer to the letter dt.24-12-2010 of the Hon'ble Minister and these proceedings deal with lands in Sy. Nos.1181-A, 1180 and 1167 and not lands in Sy. No.537 at all.

18. I am of the opinion that the Writ Petition is totally misconceived and has no merit. Accordingly it is dismissed. No costs.

19. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

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**JUSTICE M.S.RAMACHANDRA RAO**

Date: 24-02-2016  
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