

HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

W.P.No.20939 of 2012

ORDER

The petitioner, who is a journalist, filed the present writ petition, challenging the order dated 3.7.2012 passed by the respondent, cancelling the allotment of plot No.92, situated in Pithapuram Colony, Visakhapatnam, to him *vide* proceedings dated 21.11.2005.

In the affidavit filed in support of the writ petition, it is stated that the petitioner started "Vizag Reporter", the first Telugu evening daily from Visakhapatnam and the same is being published regularly though its circulation is confined in and around Vizag. Initially, it was published in tabloid form and later on, it was printed in broad sheet mode from the year 2010. It is registered with the Registrar of Newspapers for India. He submitted an application on 6.6.2005 to the respondent for allotment of site to an extent of 200 square yards in Pithapuram Colony, or MVP Colony at upset value. After some correspondence on 21.11.2005, the respondent allotted an extent of 370 square yards in Pithapuram Colony in favour of the petitioner @ Rs.5,750/- per square yard based on the basic value of the registration department, subject to certain terms and conditions. The petitioner paid the entire sale consideration between 17.5.2005 and 8.5.2006 to the respondent and a sale deed dated 24.5.2006 was executed in favour of the petitioner. When he applied for 'no

objection certificate', the respondent issued the same on 24.4.2007 permitting him to construct jointly along with the adjacent neighbours. Construction permission was also issued by the Greater Visakha Municipal Corporation dated 9.6.2008. Accordingly, the building was constructed within the stipulated time of two years and it was also assessed to the property tax. The office of the newspaper including the press was shifted to the new premises in 2009. While so, the respondent issued a notice on 29.4.2012 alleging violation of the condition laid down in the allotment order. The petitioner requested to furnish copies mentioned in the said notice. However, the petitioner submitted a reply on 16.6.2012 stating that he has not violated the terms and conditions laid down in the allotment order. When an order was passed on 3.7.2012 cancelling the allotment, the present writ petition is filed.

A counter-affidavit is filed by the respondent stating that no objection given by the respondent is in tune with the terms and conditions of the sale deed and one of the conditions mentioned in the sale deed was that it shall be utilized for the purpose for which it was allotted. No permission was granted for change of use. As per the report of the DPRO dated 27.4.2012, the petitioner has not shifted the press and publication of the newspaper has not been conducted in the premises. In those circumstances only, a notice dated 29.4.2012 was issued to the petitioner and he submitted a representation on 16.6.2012. It was also stated that an order was

passed by the Hon'ble Lokayukta on 2.5.2012 perusing the report submitted by the respondent on 29.4.2012 directing him to take necessary action to restore the land and submit a report as to the action taken by him. In pursuance of the order dated 2.5.2012, the allotment made in favour of the petitioner was cancelled and he was asked to vacate the plot and handover vacant possession within 48 hours.

The petitioner filed a reply affidavit stating that the Hon'ble Lokayukta had taken the case *suo motu* on the report of ABN News and called for a report from the respondent. The respondent submitted a report without verifying the facts and records. The petitioner was not issued any notice by the Hon'ble Lokayukta and is not a party to the said proceedings. The sale deed was executed and small scale newspaper is being published. The petitioner has not violated the conditions of allotment.

The facts in this case are not in dispute. Pursuant to the application made by the petitioner, he was allotted an extent of 370 square yards of land on the market value and sale deed was executed on 24.5.2006. He submitted a representation to the respondent on 11.12.2006 for development of the land jointly along with neighbours and to obtain bank loans & plans, and permission was granted. He also sought permission to sell additional floors in the proposed building and permission was accorded in April, 2007. The Commissioner, Greater Visakhapatnam Municipal Corporation, issued proceedings on 9.6.2008 granting permission

for construction of G + 3 upper floors in the total site admeasuring 367,82 square meters.

It appears that Hon'ble Lokayukta registered a complaint No.218/2011/B1 and passed an order on 23.11.2011 to protect the land from being converted into a residential complex as well as for restoration of the land in question, as per the provisions of the Act, which was allotted for the purpose of establishing a printing unit. It appears that joint inspection was conducted consisting of Estate Officer, Chief Engineer, Chief Urban Planner, VUDA and District Public Relation Officer, Visakhapatnam, on 27.4.2012. The petitioner was present at the time of joint inspection. It was recorded that the petitioner has stated that he has not violated any of the conditions. He further stated that all the inhabitants are partners of the Vizag reporter daily news paper only and the building is being used permanently for residential purpose. In the ground floor, one room is being used for Vizag reporter office where three computers were found. One printing machine is existed in the stilt floor. But the petitioner stated that as per the Government orders, they could not use the printing machine since the machine is useful to publish only tabloid size newspaper. The joint inspection revealed that the newspaper is not being published in the premises and it is coming regularly from some other place. Ultimately, it was decided to issue a notice and report was submitted to the Hon'ble Lokayukta. The impugned order dated

3.7.2012 was passed pursuant to the order passed by the Hon'ble Lokayukta on 2.5.2012 and it reads as under:

“While it was so, the Hon'ble Lokayukta passed order dated 2.5.2012 perusing the report dated 29.4.2012 submitted by the Vice Chairman, VUDA directing the Vice-Chairman, VUDA to take necessary action to restore the land and submit a report as to the action taken by him and appear in person on 11.7.2012.

The facts and circumstances mentioned supra made it clear that the allottee Sri V.S.Mohan has violated the conditions of allotment and hence the allotment is liable for cancellation.

In pursuance of the orders passed by the Hon'ble Lokayukta dated 2.5.2012 mentioned under the reference 5th read above, the allotment of O.B.No.92 at Pithapuram Colony is hereby cancelled and restored back to Visakhapatnam Urban Development Authority.

Sri V.S.Mohan is hereby directed to immediately vacate the O.B.No.92 at Pithapuram and deliver the possession to Visakhapatnam Urban Development Authority within 48 hours from the date of receipt of this order, failing which the property will be seized.”

The order dated 2.5.2012 of Hon'ble Lokayukta revealed that the petitioner was not made a party and no notice was issued to the petitioner. The relevant documents were not considered by the Honb'le Lokayukta before passing the said order. The documents filed by the petitioner clearly show that he obtained permission on various dates and no specific violation was pointed out in the impugned order. The terms and conditions of allotment read as follows:

- “1.That the publishers shall utilize the construction of building for establishing a publication unit only. They shall not utilize the site for any other purpose for which it is allotted.
- 2.That the publisher shall obtain necessary license/permissions etc., from the concern authorities such as Municipal Corporation etc.

3. That the publisher shall ensure to start construction of building within 6 months from the date of allotment and complete the same within two years.

4. That the publisher shall not sell/sub lease/alienate etc., of the said site to any other person/institution.

5. No saleable rights devolved on the allottee and the publisher shall put the land into use within 2 years.”

The Hon’ble Lokayukta passed the order without putting the petitioner on notice. The impugned order was passed pursuant to the orders of Hon’ble Lokayukta. In the circumstances, this Court is satisfied that the impugned order passed by the respondent on 3.7.2012 is vitiated on account of non-application of mind.

Accordingly, the Writ Petition is allowed and the impugned order dated 3.7.2012 is set aside.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE A.RAMALINGESWARA RAO

22nd November, 2016

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