

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.39837 of 2015

ORDER:

Heard the learned counsel for the petitioners, learned Government Pleader for Municipal Administration, appearing for 1st respondent and Sri N.Praveen Kumar, learned counsel for 4th respondent.

2. Though notice was served on respondent Nos.2 and 3, none appears for respondent Nos.2 and 3.

3. Petitioners are husband and wife. They purchased land under two registered sale deeds dt.08-01-1963 (document Nos.375/1963 and 376 of 1963) an extent of 1600 sq. yds. (Plot Nos.34, 35 and 36) in Sy. Nos.208 and 209 in Mancheri, near Bellampally Chowrasta Junction. In 1977, 4th respondent proposed to widen the road indicated in the Master plan to 80' width and it started laying road in the petitioners' plot in 1985 without petitioners' consent or notice without acquiring petitioners' land.

4. Petitioners filed a suit O.S.No.2089 of 1985 before the District Munsif at Laxetipet against 4th respondent and its contractor. The suit was decreed on 14-01-1989 restraining 4th respondent and its contractor from interfering with the peaceful possession and enjoyment of the petitioners over the land described in the

plaint schedule. This order attained finality and was not questioned by 4th respondent.

5. In 2009, the 4th respondent filed a suit against the petitioners before the Principal Senior Civil Judge at Mancherial to declare that it is the owner of the plaint schedule land measuring 70'x 230' out of Sy. No.208 situated at Mancherial and to pass perpetual injunction restraining petitioners from interfering with it's right to form road and construct drainage over the subject land.

6. In that suit, negotiations took place between the petitioners and the 4th respondent and the 4th respondent stated before the Court on 15-12-2014 through its Commissioner that it would propose some alternative land to be allotted to the petitioner in lieu of the disputed land. The same was recorded and the matter was referred to Lok Adalat. Thereafter the suit was not taken up for disposal and is still stated to be pending.

7. Petitioners contend that the 4th respondent sent a letter vide Dis No.G/1244/2011 dt.28-12-2011 to the 2nd respondent to consider for providing the alternative Government land for equal value of the petitioners' plots and the Director, Town and Country Planning in the erstwhile State of Andhra Pradesh also

directed 4th respondent to take necessary action at the level of Municipality. According to the petitioners, the Municipal Council of 4th respondent passed resolution No.247 dt.26-12-2011 accepting the offer of the petitioners to allot in the outskirts of the municipal limits, certain land in Sy.No.406 adjacent to land sanctioned for construction of Court buildings. Thereafter, 3rd respondent addressed a letter Rc.G/4642/2012 dt.14-09-2013 furnishing the detailed report to the 2nd respondent along with location sketch agreeing that an extent of Ac.1.19 gts in Sy. No.406 situated in Mancherial town be given to petitioners in lieu of monetary compensation over the land in Sy. Nos.208 and 209 shown in the Master plan as 80' road can be provided.

8. However, the 2nd respondent did not accept for the same on the ground that the land proposed to the petitioner was *shikham* land of *Ramunicheruvu* which is prohibited from assignment under certain Government Orders and requested 3rd respondent to identify suitable other Government land to be given to the petitioners.

9. Petitioners contend that they are Senior citizens and in spite of the fact that proposal to give alternative land was made to them by the Commissioner of 4th respondent on 15-12-2010 in O.S.No.213 of 2010 on the file of Principal Senior Civil Judge, Mancherial, till

date nothing has happened, that no compensation has been given to petitioners and no alternative land also has been given to the petitioners. They allege that the respondents are simply dragging the issue decades together. Petitioners contend that due to widening/formation of road, they would be left with 240'x10' area in the northern side of their three plots and 4th respondent be directed to grant special construction permission without any set backs. Alternatively, they contend that by taking 240'x60' area of the petitioners land, the required 80' road can be formed including existing 20' road subject to the options given by petitioners.

10. They therefore seek a Writ of Mandamus to declare the inaction of 4th respondent for not providing alternative land equivalent to plot Nos.34 to 36 in Sy. No.208 and 209 of Mancheria Municipality for widening of the road to 80' under Master plan or alternatively to award compensation as per the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation & Resettlement Act, 2013 (for brevity 'the 2013 Act') for deprivation of the land and to pass consequential orders.

11. Counter affidavit was filed only by 4th respondent and the other respondents have not filed any counter.

12. The 4th respondent contends that plot Nos.34 to 36 in Sy. Nos.208 and 209 of Mancherial was not acquired and therefore there is no question of payment of compensation or providing alternative land as per the 2013 Act. But the 4th respondent does not dispute the statement made by the Commissioner of 4th respondent on 15-12-2010 in O.S.No.230 of 2009 before the Principal Senior Civil Judge, Mancherial that the Municipality proposes to give alternative land to the petitioners in lieu of the disputed land. It is stated that the 4th respondent has to act as per advise of the Municipal Council subject to mandatory provisions of laws in the interest of general public and in accordance with the resolution of the Municipal Council.

13. The fact that the Municipal Commissioner sent a letter Dis. No.G1244/2011 dt.28-12-2011 to the 2nd respondent is admitted to be true. The 4th respondent admits that statements made by the petitioners regarding proposals to allot alternative land to the petitioners are true, that the process is in progress at the level of the 3rd respondent and other respondents and matter has not been finalized. He stated that he cannot take steps for land acquisition and the Municipality cannot give permission for construction by violating Municipal Laws, Building Rules and Government Orders which are in

force. He stated that the subject matter is involved in a civil case pending enquiry and Writ Petition is not maintainable and is liable to be dismissed.

14. The question for consideration is *“whether land belonging to the petitioners can be utilized for widening of road to 80’ of the Master plan issued by 4th respondent without paying any compensation and whether the petitioners can be deprived of permission to make construction by the 4th respondent on the plea that as per the Master plan, no construction can be allowed therein.”*

15. The title of the petitioners to the land purchased by them under the above sale deeds has not been denied and it is also not denied that the petitioners had obtained an injunction against the 4th respondent on 14-09-1989 in O.S.No.2089 of 1985 in respect of plot Nos.34 to 36 measuring 70’ x 80; 70’x 70’ and 70’x 80’ in Sy. Nos.208 and 209 at Mancherial. This injunction order subsists and has not been vacated or set aside in appeal.

16. Though the 4th respondent has filed O.S.No.230 of 2009 before the Principal Senior Civil Judge at Mancherial seeking a decree that the 4th respondent is the owner of land admeasuring 70’ x 230’ out of Sy. No.208 situated at Mancherial against the petitioners and to pass perpetual injunction restraining the

petitioners from interfering with the formation of road and construction of drainage by it, no decree has been passed in the suit till date either by the said Court or by the Lok Adalat although the offer was made by the Commissioner of 4th respondent that it proposes some land to be allotted to the petitioners in lieu of the land in respect of which the suit was filed. Thereafter, the suit remained pending and no orders have been passed therein.

17. The proposal to allot alternative land to petitioners in Sy. No.406 of Mancherial made by the 3rd respondent to 2nd respondent was not accepted by 2nd respondent and as of date no land is proposed to be given to the petitioners by the respondents in lieu of the land purchased by them notwithstanding the fact that the 4th respondent Municipal Council passed a resolution No.247 dt.26-12-2011 that such land should be allotted to the petitioners.

18. The A.P. Urban Areas (Development) Act, 1975 was enacted by the then Andhra Pradesh State Legislature for development of urban areas in the State of Andhra Pradesh according to plan and for matters ancillary thereto. The said Legislation is regulatory in nature and it restricts the right of an owner of property to use and develop his land in larger public interest. It therefore requires strict construction and such restrictions must be reasonable restrictions. In any event, it is not an

expropriatory statute.

19. Section [15](#) thereof prohibits land use contrary to that earmarked in the statutory master plan/zonal development plan.

20. The two competing interests i.e. the interest of the State vis-a-vis the general public to have better living conditions and the right of property of an individual, though not a fundamental right but which is still a constitutional and human right, need to be balanced. Therefore, enforcement of the said Act should be done in such a way that a citizen is not deprived of his property save in accordance with law. If a zoning classification imposes unreasonable restrictions, it cannot be sustained.

21. In **Pt. Chet Ram Vashist Vs. Municipal Corporation 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. "

22. This decision was followed in Indore Vikas Pradhikaran Vs. Pure Industrial Coke & Chemicals Limited and others ^[2] (supra) and the latter judgment was followed

in M. Naga Venkata Lakshmi Vs. Visakhapatnam Municipal Corporation and another^[3](supra).

23. 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 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.

24. Section [17](#) and [18](#) of the A.P. Urban Areas (Development) Act, 1975 state:

"Section [17](#)-Plans to stand modified in certain cases:

(1) Where any land situated in any development area is required by the Master Plan or Zonal Development Plan to be kept as an open space or unbuilt upon or is designated in any such plan as subject to compulsory acquisition, if at the expiration of ten years from the date of operation of the plan under Section [10](#) or where such land has been so required or designated by any amendment of such plan, from the date of operation of such amendment, the land is not compulsorily acquired, the owner of the land may serve on the Government a notice requiring his interest in the land to be so acquired.

(2) If the Government fail to acquire the land within a period of six months from the date of receipt of the notice, the Master Plan or Zonal Development Plan, as the case may be, shall have effect after the expiration of the said six months, as if the land were not required to be kept as an open space or unbuilt upon or were not designated as subject to compulsory acquisition.

Section [18](#)-Compulsory acquisition of land:

(1) If, in the opinion of the Government, any land is required for the purpose of development or for any other

purpose under this Act, the Government may acquire such land under the provisions of the Land Acquisition Act, 1894.

(2) Where any land has been acquired by the Government they may, after they have taken possession of the land, transfer the land to the Authority or any local authority for the purpose for which the land has been acquired on payment by the Authority or the local authority of the compensation awarded under that Act and of the charges incurred by the Government in connection with the acquisition. "

25. Since the respondents do not deny the title of the petitioners to the land claimed by them, but insist that since the land belonging to the petitioners is required for widening the road to 80' under the Master plan notified under the AP Urban Areas (Development) Act, 1975, I am of the opinion that the respondents have no choice but to initiate proceedings under Section 18 of the AP Urban Areas (Development) Act, 1975 to acquire the land belonging to the petitioners under the 2013 Act if they want to deprive the petitioners of the said land and use the same for widening of the road to 80' as indicated in the Master plan. If not the petitioners would be deprived of the valuable property without compensation and it would amount to legitimizing the arbitrary and expropriatory action of the respondents which is impermissible in view of the law declared by the Supreme Court of India in the above decisions.

26. The plea of the 4th respondent that the civil suit O.S.No.230 of 2009 filed by 4th respondent against the petitioners is pending is of no avail, since it was the 4th respondent which impliedly accepted the title of the petitioners and offered alternative land to them through its Commissioner on 15-12-2010 before the Principal Senior Civil Judge, Mancheri in that case. Admittedly it had not been able to provide any alternative land to the petitioners and has also not pursued the said suit thereafter.

27. However 4th respondent is unwilling to give permission to petitioners to construct in the subject land on the ground that it would violate Municipal Laws, Building Rules and Government Orders.

28. Since 4th respondent cannot deprive the petitioners of valuable property belonging to them without any compensation, I am of the opinion that the Writ Petition deserves to be allowed.

29. Accordingly, the Writ Petition is allowed and the respondents are directed to forthwith initiate proceedings for acquisition of the petitioners' land under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation & Resettlement Act, 2013 and pay compensation to the petitioners under the said Act within three months from the date of receipt of a copy of this order. The 4th respondent shall also pay costs of

Rs.10,000/- (Rupees Ten Thousand only) to the petitioners within two weeks from the date of receipt of a copy of this order. No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 17-08-2016

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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