

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.42282 of 2015

ORDER:

In this Writ Petition, petitioners assail the action of the respondents in rejecting petitioners' application for grant of building permission vide proceedings B.A.No.179/2015-G2 dt.30-10-2015, B.A.No.177/2015-G2 dt.31-10-2015 and B.A.No. 178/2015-G2, dt.30-10-2015. They seek a direction to the respondents to grant building permission in respect of their property admeasuring Ac.0.22 cts, Ac.0.08 cts and Ac.0.08 cts respectively in Sy. No.581 at Ward No.1, Bollavaram village, Proddutur Town Municipalilty, Kadapa.

2. The 1st petitioner is the owner of Ac.0.22 cts in Sy. No.581 which he obtained under a registered settlement deed from his maternal uncle on 02-06-2012. The 2nd petitioner owns Ac.0.08 cts in the same survey number which he obtained under registered sale deed dt.14-09-1982 executed by Kandula Krishna Reddy. The 3rd petitioner is the owner of Ac.0.08 cts in the same survey number which he purchased from Kandula Pedda Obul Reddy. Copies of the sale deeds have been filed by the petitioners.

3. Petitioners applied for building permission to 2nd respondent Municipality for construction of houses in the respective sites owned by them by paying requisite fee in Exs.P-4, P-5 and P-6 respectively.

4. Vide impugned endorsements B.A.No.179/2015-G2 dt.30-10-2015; B.A.No.177/2015-G2 dt.31-10-2015; B.A.No.178/2015-G2, dt.30-10-2015, the 2nd respondent rejected the same with the following cryptic reason:

“Proposed construction falls in the reserved open site for park purpose as per Master Plan.”

5. Petitioners however contend that as per the Master Plan issued by the 1st respondent under G.O.Ms.No.73 MA dt.17-02-1989 (filed as Ex.P-10), the land in Sy. No.581 is marked as residential purpose only and is not marked for open site for park purpose. They contend that permission can be refused by the respondents only on the grounds set out in Section 215 of the A.P. Municipalities Act, 1965 and not otherwise and the reasons given by 2nd respondent do not fall within Section 215 of the said Act. Petitioners contend that it is not open to the respondents to reject an application for building permission on the ground that sites owned by them are earmarked for park unless the respondents acquire their lands by invoking the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

6. Counter is filed by respondent Nos.2 and 3 admitting that petitioners did apply for construction of residential building in their sites which fall in Sy. No.581 of Bollavaram village. But they contend that the proposed construction would fall in the reserved open site

earmarked for park purpose as per the approved Master Plan notified by the G.O.Ms.No.73 dt.17-02-1989 and state that for that reason building permission could not be granted to the petitioners since it would go against the Master Plan. They contend that they have acted as per the provisions of the AP Municipalities Act, 1965 and their action cannot be found fault with.

7. The point that arises for consideration is “whether the 2nd respondent has rightly refused the petitioners’ application for building permission on the above ground”.

8. Under sub section (1) of Section 215 of the AP Municipalities Act, 1965 refusal for grant of approval to make construction of a building in a site can be justified if the use of the site for the work would contravene the provisions of any law.

9. The stand taken by the respondent Nos.2 and 3 indicates that permission was refused to the petitioners on the ground that grant of such permission would violate the Master Plan for Proddutur Municipality wherein the land in Sy. No.581 is earmarked as an open site for park purpose.

10. The petitioners have filed a photo copy of the Master Plan along with the material papers in the Writ Petition but the Standing Counsel for 2nd respondent was not able to show from the said Master Plan that the land in Sy.No.581 of Bollavaram village purchased by the petitioners is earmarked for park.

11. The petitioners also filed Ex.P-10 containing particulars of the Master Plan of Proddutur Municipality and in page-2 thereof the land in Sy. No.581 is designated for *residential use* and not as open site/park. No material is placed by respondents refuting this evidence placed on record by the petitioners.

12. Be that as it may, the said Master Plan was issued vide G.O.Ms.No.73 dt.17-02-1989 by 1st respondent under the provisions of the A.P.Urban Areas Development Act, 1975.

13. The said statute was enacted by the then Andhra Pradesh State Legislature for constitution of Urban Development Authorities for the purposes of planning, coordination, supervising/promoting and securing the planned development of designated development areas notified under Sec. 13(1) of the said Act. The said Legislation therefore is in the nature of the regulatory statute which 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.

14. The two competing interests i.e. the interest of the State vis-à-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 provisions of the said Act including the

regulations framed under Section 59 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.

15. In **Pt. Chet Ram Vashist v. Municipal Corpn. 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 condition 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

¹ (1995) 1SCC 47

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 was depriving the owner of its property and vesting it in the Corporation 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.”

16. This decision was followed in **Chairman, Indore Vikas Pradhikaran Vs. Pure Industrial Coke & Chemicals Ltd. and others**² and the latter judgment was followed in **M. Naga Venkata Lakshmi v. Visakhapatnam Municipal Corporation and another**³.

17. In **M. Naga Venkata Lakshmi** (6 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 not the appellant's plot. 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

² (2007)8 SCC 705

³ (2007)8 SCC 748

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:

“7.On what basis the layout plan had been drawn resulting in deprivation of a valuable right of the appellant, therefore, was required to be determined. Furthermore, if VUDA wanted to deprive the appellant from a valuable right of property, the question which should have been posed was as to whether therefor the authorities should have acquired the property or not.

8. We may notice that recently a Bench of this Court in Chairman, Indore Vikas Pradhikaran v. Pure Industrial Coke & Chemicals Ltd.¹ held: (SCC p. 732, para 56)

“56[58]. Property, while ceasing to be a fundamental right would, however, be given express recognition as a legal right, provisions being made that no person shall be deprived of his property save in accordance with law.”

9. Prima facie, it appears that there is no provision in terms whereof the appellant could be deprived of her right to property without payment of any compensation.”

18. 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 for fresh consideration.

19. From the above decisions, it is clear that if the property of a private citizen is notified in the Master Plan for a public purpose, then if the State insists on the use of the said property in the manner designated in the Master Plan, it has no choice but to acquire the same

and pay adequate compensation to the person who is likely to be deprived of use of such property.

20. Section 18 of the A.P.Urban Areas Development Act, 1975 states as follows:

“Section 18. Compulsary 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.”

21. In my considered opinion, if the respondents intend to compel the petitioners to let go of the land in Sy.No.581 claimed by them without putting it to any use or making construction therein, and allow it to be used as a park, they have no option but to acquire the same under Section 18 of the said Act in accordance with the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and pay compensation to petitioners for the said land. If not, the petitioners would be deprived of valuable property without compensation and it would amount to legitimising the arbitrary and expropriatory action of

respondents contrary to the provisions of the Act and the law declared by the Supreme Court in the above decisions.

22. Similar view has been taken by this Court in **Smt.Channavajala Vijaya Lakshmi Vs. The State of Telangana, rep. by the Principal Secretary, Municipal Administration, Hyderabad and others⁴, Mohammed Ahmed Ali Vs. The State of Telangana Hyderabad and others⁵ and Syed Jahangir and others Vs. The District Collector, Hyderabad and others⁶.**

23. So the respondents cannot be allowed to interfere with the possession and enjoyment of petitioners of the land claimed by them in Sy.No.581 in any manner unless and until the respondents initiate proceedings under Section 18 of the Act in accordance with the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 for acquisition of the lands of petitioners and pay compensation to the petitioner.

24. In para-5 of the counter affidavit filed by 2nd and 3rd respondents, however, it is stated that due to paucity of funds, acquisition of the land of the petitioners in Sy. No.581 could not be carried out.

25. In view of this stand of the respondents, they cannot be allowed to deprive the petitioners of the use of their sites in Sy.

⁴ W.P.No.34412 of 2014 dt.08-12-2014

⁵ W.P.No.24427 of 2014 dt.16-10-2014

⁶ W.P.No.26405 of 2012 dt.17-08-2016

No.581 without acquiring the same under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

26. Consequently, the respondents' actions in rejecting petitioners' applications for building permissions in the subject sites cannot be sustained on the ground that their sites are earmarked as open sites for parks in the Master Plan notified vide G.O.Ms.No.73 dt.17-02-1989.

27. Accordingly, the Writ Petition is allowed; the impugned endorsements B.A.No.179/2015-G2 dt.30-10-2015, B.A.No.177/2015-G2 dt.31-10-2015 and B.A.No.178/2015-G2, dt.30-10-2015 are set aside; and the respondent Nos.2 and 3 are directed to grant permission to the petitioners for making construction of residential buildings in their respective sites, if otherwise their applications are in order. This exercise shall be done within four weeks from the date of receipt of a copy of this order. No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 12-09-2016

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