

THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

WVMP.No.4948 of 2015

&

WVMP.No.4831 of 2015

&

WVMP.No.3695 of 2015

In

WP.No.27961 of 2015

And

WP.No.27961 of 2015

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ORDER:

This Writ Petition has been filed by 1st petitioner challenging the action of respondent nos.1 and 2 in proposing to construct an electrical sub-station in an extent of Ac.0.22 cents in Ambedkar Colony covered by Survey No.43/1 of Pedagantyada Village and Mandal, Visakhapatnam. Petitioners also challenge the proceedings RC.No.512/2015/E3 dt.11.05.2015 of 3rd respondent.

2. The 1st petitioner purports to be a Society registered under the Societies Registration Act, 1860, consisting of residents of Ambedkar Colony, Pedagantyada, Visakhapatnam District which falls within the Survey No.43/1A of Pedagantyada Village and Mandal, Visakhapatnam.

3. The 2nd petitioner claims to be another Society consisting of members of Scheduled Castes and Scheduled Tribes striving for the welfare of members of Scheduled Castes and Scheduled Tribes in general in Pedagantyada and Gajuwaka Mandals of Visakhapatnam.

4. There is no dispute that the Ambedkar colony came up on account of assignment of small plots admeasuring 60 Sq.yds. by the State Government in favour of 130 families of the Scheduled castes and Scheduled Tribes in 1991.

5. According to petitioners in the middle of this colony there is a Sulabh complex (common lavatory facility) and also a vacant site of 0.22 cents.

6. The petitioners contend that this Ac.0.22 cents is required by residents of the colony to set up a community centre so that residents of the colony can perform their family functions and ceremonies there.

7. The 2nd respondent herein however wrote to Tahsildar, Pedagantyada on 09.02.2015 stating that there is a colony in Pedagantyada Mandal formed pursuant to a layout sanctioned by

4th respondent and that the existing infrastructure for supply of power to the members of public in that colony is inadequate causing frequent overload and frequent

interruptions of power supply. He therefore sought allotment of land for construction of a new 33/11 KV sub-station to meet the demand and supply of reliable power to the public.

8. The Tahsildar, Pedagantyada identified the extent of Ac.0.22 cents in Survey No.43/1A of Pedagantyada Village and Mandal which is Government land located within the Ambedkar colony for the purpose of construction of a 33/11 K.V. sub-station.

9. Thereafter, the Revenue Divisional Officer, Visakhapatnam along with Tahsildar, Pedagantyada and the 2nd respondent conducted field inspection on 31.03.2015 in the above land and submitted a report on 24.04.2015 stating that this land is suitable for construction of 33/11 K.V. sub-station for the residents of the VUDA colony in the interests of public since it is free from encroachments.

10. The Government had issued Memo No.20264/Assn-I (1)/13 dt.06.11.2013 granting permission to District Collector to grant advance possession of Government land in case of transfer of Government land from one department to another department and also to DISCOM/TRANSCO for establishment of sub-stations.

11. In view of the above Government memo, the 3rd respondent granted permission to Tahsildar,

Pedagantyada to hand over advance possession of this Ac.0.22 cents of land in favour of respondent nos.1 and 2 for construction of the 33/11 KV sub-station subject to submission of regular alienation proposals in terms of G.O.Ms.No.571 Revenue (Assignment.I) department dt.14.09.2012. The

3rd respondent also directed the Tahsildar to handover this land and furnish the land handing over receipts and submit the regular alienation proposals in terms of G.O.Ms.No.571 within thirty (30) days. The 3rd respondent further directed the Assistant Director, Survey and Land Records, Visakhapatnam, the Tahsildar, Pedagantyada and 2nd respondent to superimpose the alienated land in the map of the master plan in consultation with VUDA authorities, and furnish the same to his office.

12. The petitioners contend that 3rd respondent had not obtained permission from 4th respondent as required under Section 13 of the Andhra Pradesh Urban Areas (Development) Act, 1975 before permitting this land to be used for the 33/11 K.V. sub-station, and that the electric sub-station cannot be erected in the middle of the residential colony of weaker sections for the purpose of supplying power to a colony developed by VUDA since open land is available to provide public amenities in the VUDA colony. They contend that the land should have

been allotted to them for construction of a community centre, that this was also endorsed by a Member of Legislative Assembly and that the community centre is more beneficial to them than construction of 33/11 K.V. sub-station which would benefit only the residents of VUDA colony. It is also contended that G.O.Ms.No.633 Revenue (A) Department dt.05.05.1982 banned alienation of Government land to the Electricity Board free of cost and that Government had framed recently G.O.Ms.No.571 Revenue (Assignment .I) Department dt.14.09.2012 laying down guidelines with regard to allotment of Government land for various purposes to various departments. It is alleged that land can only be alienated on payment of market value as determined by the Revenue Divisional Officer under the said G.O., and this also has not been done. They also contend that the District Collector did not personally inspect the premises and that if the memo dt.06.11.2013 empowered the District Collector to grant advance possession he alone has to do it and he cannot sub-delegate to his subordinates.

13. The counsel for petitioners reiterated the same submissions.

14. On 01.09.2015, this Court directed maintenance of *status quo* prevailing as on that day.

15. To vacate the said order, WVMP.No.3695 of 2015, WVMP No.4948 of 2015 and WVMP.No.4831 of 2015

have been filed by respondent nos.1 to 3.

16. The District Collector filed a counter-affidavit stating that the land which is allotted to respondent nos.1 and 2 is Government land and not the land of the members of petitioner-Societies. He contended that there is an existing 33/11 K.V. sub-station in Pedagantyada catering to the power requirement of residents of Pedagantyada Mandal and Gajuwaka Mandal, but the 2nd respondent felt that there is a drastic increase in electricity needs day by day and the existing infrastructure for supplying power to cater to these loads is not adequate causing frequent interruptions and low voltage to the public; that the 2nd respondent requested to allot land for construction of a new sub-station to meet the demand of power requirements and supply of reliable power to the public of Pedagantyada Mandal and Gajuwaka Mandal; and considering the same he had accorded permission to Tahsildar to hand over advance possession of the vacant Government land of Ac.0.22 cents within the Ambedkar colony for construction of the sub-station subject to submission of regular alienation proposals in terms of G.O.Ms.No.571 dt.14.09.2012. He contended that the site had been handed over to 2nd respondent and if the proposed sub-station comes up, it would cater to the needs of all the residents of Pedagantyada Mandal and Gajuwaka Mandal. He contended that the construction of

sub-station is in the interests of the general public of both Pedagantyada Mandal and Gajuwaka Mandal and that after obtaining permission from him, the respondent nos.1 and 2 started leveling the land for construction of the sub-station but the local residents then obstructed and stopped the work. He also contended that there is no violation of G.O.Ms.No.571 dt.14.09.2012 inasmuch as the allotment is subject to submission of regular alienation proposals under the said G.O. It is also alleged that petitioners with ulterior motive are obstructing the construction of 33/11 K.V. sub-station and there is no contravention to the guidelines contemplated under G.O.Ms.No.571 dt.14.09.2012.

17. The respondent nos.1 and 2 have also adopted the similar stand of 3rd respondent.

18. In view of the rival contentions, the question which arises for consideration is:

“ Whether the action of 3rd respondent in allotting 0.22 cents of land for the purpose of electric sub-station in the Ambedkar colony is valid or not?”.

19. Before answering this question, the Court has to see whether issues about location of infrastructure at a particular area are justiciable or not. In other words, whether this Court is entitled to go into the issue whether

the community hall for the benefit of residents of the Ambedkar colony or whether the 33/11 K.V. sub-station should be allowed to come up in the Ac.0.22 cents of Government land located in the Ambedkar colony.

20. The said issue is no longer *res integra*. In **J.R. Raghupathy v. State of Andhra Pradesh**^[1], the Supreme Court considered the question whether the decision of a State Government to locate a Mandal Headquarters at a particular place can be interfered under Article 226 of the Constitution of India on the ground that it violated certain guidelines. The Supreme Court categorically held that unless the decision was arbitrary or capricious and not one reached in good faith or actuated with improper considerations or influenced by extraneous considerations, it cannot be interfered with and that the decision of the State Government in the matter of location of Mandal Headquarters is in the sole discretion of the Government. It further held that the High Court ought not to have interfered with the decision of the Government in locating the Mandal Headquarters on the ground that certain guidelines are violated and observed that guidelines are only administrative instructions not having statutory force and do not give rise to any legal right in favour of petitioners.

21. In para no.29 of the above judgment, the Supreme Court approved the following passage in the book of

Administrative Law by H.W.R. Wade as under :

“On the one hand, where Parliament confers powers upon some Minister or other authority to be used in discretion, it is obvious that the discretion ought to be that of the designated authority and not that of the court. Whether the discretion is exercised prudently or imprudently, the authority’s word is to be law and the remedy is to be political only. On the other hand, Parliament cannot be supposed to have intended that the power should be open to serious abuse. It must have assumed that the designated authority would act properly and responsibly, with a view to doing what was best in the public interest and most consistent with the policy of the statute. It is from this presumption that the courts take their warrant to impose legal bounds on even the most extensive discretion.”

22. Therefore, in view of the above legal position and since the material on record does not disclose that the decision of 3rd respondent is arbitrary or capricious and was not reached in good faith or actuated with improper consideration or influenced by extraneous considerations, and the decision to allot Ac.0.22 cents to respondent nos.1 and 2 appears to be clearly in public interest, I am of the view that the said decision is not liable to be interfered with under Article 226 of the Constitution of India at the instance of petitioners.

23. I am also of the opinion that petitioners-Societies cannot have any grievance if other citizens are provided amenities such as a 33/11 K.V. sub-station in the Government land located within the Ambedkar Colony, and filing of Writ Petition itself does not appear to be *bona*

fide since the object appears to be to stall the construction of 33/11 K.V. sub-station to the prejudice of other residents of Pedagantyada Mandal and Gajuwaka Mandal. The delay in making construction would undoubtedly result in cost escalation thereby causing serious prejudice to public interest, and also the interests of respondents of these two Mandals.

24. The allegation regarding violation of G.O.Ms.No.571 dt.14.09.2012 is also not having any substance since the very proceeding dt.11.05.2015 of the 3rd respondent states that the alienation proposals in terms of the said G.O. should be submitted to him within thirty (30) days. Therefore, it is clear that the alienation of the land by 3rd respondent in favour of 1st respondent is not in violation of G.O.Ms.No.571 but is in conformity thereto.

25. As regards the allegation that the alienation of the land in favour of respondent nos.1 and 2 is in violation of the provisions of the Andhra Pradesh Urban Areas (Development) Act, 1975 is concerned and the plea that the consent of 4th respondent has not been taken, I am of the opinion that even if the said provision is said to be applicable, since there is no dispute that the reason for alienation in favour of 1st respondent is to provide continuous power supply to a colony developed by 4th

respondent itself, it is doubtful if

4th respondent would have any objection to any such development.

26. Therefore, the 4th respondent is directed to grant approval, if not already granted, for conversion of the Ac.0.22 cents of land in Ambedkar Colony alienated by 3rd respondent to respondent nos.1 and 2 for the purpose of setting up 33/11 K.V. electric substation within two (02) weeks from the date of receipt of a copy of the order. On receipt of the approval of 4th respondent, the respondent nos.1 and 2 shall be informed of the same by respondent nos.3 and 4, and respondent nos.1 and 2 can then proceed with construction of 33/11 K.V. sub-station in the subject land.

27. Therefore, WVMP.No.4948 of 2015, WVMP.No.4831 of 2015 and WVMP.No.3695 of 2015 are allowed and the order dt.01.09.2015 is vacated. The Writ Petition is disposed of with the above directions. No order as to costs.

28. As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 29-01-2016

Ndr/*

[\[1\]](#) AIR 1988 SUPREME COURT 1681