

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

WRIT PETITION Nos.36413 of 2014 and 26653 of 2015

COMMON ORDER:

1. Heard Sri V.Srinivas, Advocate for Sri R.A.Chary, counsel for petitioner in both Writ Petitions, the Government Pleader for Assignment(AP) for respondents 1 to 4 in W.P.No.26653 of 2015 & for respondents 1 & 2 in W.P.No.36413 of 2014, and Sri S.Laxminarayana Reddy, Standing Counsel for Greater Visakhapatnam Municipal Corporation(GVMC) which is 3rd respondent in W.P.No.36413 of 2014 and 5th respondent in W.P.No.26653 of 2015.

2. Petitioner herein is a registered firm. An extent of Acs.12.51 gts in survey No.92/3 of Yendada Village, Visakhapatnam Rural Mandal was allotted to it vide G.O.Ms.No.1447 Revenue (Assgn.I) Department, dt.06.12.2008 on payment of market value of Rs.45,00,000/- per acre. This was recommended by the then District Collector, Visakhapatnam. The allotment was made for construction of cottages for orphans and aged people. The said G.O. mentioned that condition stipulated in Board Standing Order-24 would be applicable for this alienation.

3. This was done after the classification of the said land as 'hill poramboke' in revenue record was changed by the District Collector facilitating the alienation and permitting its utilization for public purpose.

4. Subsequently, on the directions of the District Collector, Visakhapatnam, a Registered Deed of Conveyance was executed on 04.10.2010 at Visakhapatnam by the then Government of A.P. through its Tahsildar, Visakhapatnam(Rural) in favour of the petitioner and the same was registered in the office of the Sub-Registrar, Madurwada specifically stating that a sum of Rs.5,62,95,000/- was transferred by the petitioner to the State and that possession was handed over on 29.09.2010 of the said land. It also recited that the transferee requested for transfer of absolute right and title over the subject property by way of Deed of Conveyance and that was why the Deed of Conveyance was executed conveying absolute right, title and interest in the subject property to the petitioner/transferee.

5. Petitioner leveled the land after obtaining permission from the Mines Department as it was hillock and contained hard rock, after obtaining permission from the Home Department to it for carrying out blasting operations in 2012. It then approached the GVMC and Visakhapatnam Urban Development Authority (VUDA) for grant of permission and approval/sanction of layout.

6. While this was pending, the Revenue Divisional Officer, Visakhapatnam issued a show cause notice on 03.03.2012 to petitioner to show cause why the allotment of the above mentioned land shall not be cancelled, as it was kept vacant. Petitioner submitted its explanation on 12.03.2012 explaining various steps it had taken for

developing the land. However, no order was passed on the said show cause notice by the Revenue Divisional Officer.

7. Later, the District Collector, Visakhapatnam addressed letter on 20.07.2012 to the Commissioner of GVMC and Vice Chairman of VUDA stating that a meeting was held on 06.07.2012, that the A.P. Legislative Assembly Public Accounts Committee observed that alienation in favour of petitioner was ordered at low cost and issued instructions to submit proposals to the Government for cancellation of the G.O.Ms.No.1447 dt.06.12.2008 and also instructed the GVMC and VUDA not to approve layout and building plan submitted by the petitioner.

8. Petitioner questioned the same in W.P.No.23908 of 2013 before this Court.

9. The said Writ Petition was allowed on 21.10.2013. It was held that so long as the allotment made to the petitioner and the registered sale deed executed in its favour remained in force, none of the respondents in the Writ Petition, including the Government of Andhra Pradesh had power or authority to interfere with the right of the petitioner to utilize the subject land for the purpose for which it was allotted and sold. It was observed that if the District Collector opines that the allotment itself was vitiated by any illegalities, he can only initiate appropriate proceedings against the petitioner in accordance with law and till such proceedings are initiated and appropriate orders are passed by the Competent Authority, the District Collector had no

right to address the letter dt.20.07.2012 either to the GVMC or to the VUDA.

10. Thereafter, petitioner submitted representation to the Commissioner of GVMC on 24.02.2014 for grant of permission for construction of old age home cluster for aged people in the subject land stating that such application had already been made by it and requesting the GVMC to accord approval for undertaking construction activity.

11. Thereupon, the GVMC issued an endorsement BA.No.10899/2014/DCP-I/G1, dt.03.03.2014 referring to G.O.Ms.No.474 Revenue (Assn.I) Department dt.23.08.2013 instructing that any permission, approval or development of government allotted/assigned land can be made only after obtaining clearance from the Collector as per rules in vogue, and that the petitioner should submit NOC from the District Collector, Visakhapatnam to take further action in the matter, and the plans submitted by the petitioner on 25.02.2014 were returned unapproved.

12. Petitioner then applied on 31.05.2014 to the District Collector for issuance of NOC.

13. Since no orders were passed by the District Collector, Visakhapatnam on the said application, petitioner filed W.P.No.36413 of 2014 challenging the inaction of the District Collector, Visakhapatnam in issuing NOC to the petitioner as a precondition for grant of approval/permission to be granted by the GVMC and to direct

the District Collector to consider the application dt.31.05.2014 of the petitioner for grant of NOC.

14. Pending the said Writ Petition, the District Collector, Visakhapatnam issued a Final Memo dt.21.06.2015 stating that the Government is entitled to resume the land wholly or in part with any buildings thereon, in the event of infringement of any of the conditions of the grant; that in a land audit conducted by the Tahsildar on the alienated lands in Visakhapatnam Rural Mandal, it came to light that petitioner had not put to use the entire land alienated to it within the stipulated period and violated the conditions specified in the proceedings; that the Government had empowered him to cancel and resume the land in such an event; and the petitioner should inform him reasons for not utilizing the land for the purpose given, and also for not developing the land within the time frame as per the proceedings and condition of alienation within ten days.

15. Petitioner submitted a detailed explanation on 17.07.2015 to the District Collector setting out that it could not put the land to use only because necessary permissions were not issued by the GVMC and the District Collector himself did not respond to its representation dt.31.05.2014 for issuance of NOC. It pointed out that there is no violation by the petitioner since the petitioner had applied for permission as per the Council of Ministers' approved project report only and the District Collector and GVMC had not given any permission to it to develop the land or to utilize the land as per the

Conveyance Deed executed by the Tahsildar on 04.10.2010. It was also pointed out that the basis for issuing the said final memo to it is G.O.Ms.No.57 Revenue (Assgn.I) Department dt.16.02.2015 (*which was mentioned as reference No.7 in the Final Memo dt.21.05.2015*) and the said G.O. will have no application in cases where there is alienation of land in favour of a party *on market value basis* where Deeds of Conveyance have been executed in favour of transferee. It referred to order dt.21.10.2013 in W.P.No.23908 of 2013 wherein this Court has observed that as long as the allotment made to the petitioner and the registered sale deed executed in its favour remain in force, the District Collector had no power or authority to interfere with the right of the petitioner to utilize the land for the purpose for which it was allotted and sold.

16. When there was an attempt to dispossess the petitioner without passing any orders on the detailed explanation dt.17.07.2015 submitted by it to the final memo dt.21.06.2015 issued by the District collector, petitioner filed W.P.No.20348 of 2015 before this court.

17. The said Writ Petition was disposed of on 24.07.2015 directing the 2nd respondent to consider petitioner's explanation dt.17.07.2015 to his final memo dt.21.06.2015 and pass appropriate orders in accordance with law, and till such order is passed and communicated to the petitioner, petitioner should neither be dispossessed nor any coercive steps should be taken against him.

18. Thereafter, the District Collector, Visakhapatnam issued proceedings Rc.NO.3037/2006/E2, dt.18.08.2015 canceling the allotment of land to the petitioner and to resume the land.

19. In the said order, the explanation of the petitioner was adverted to, but it was observed that land was allotted to the petitioner duly stipulating condition as mentioned in Board Standing Order-24, that though the land was handed over to the petitioner on 29.09.2010, petitioner did not utilize it till 2012 except carrying out mining operations under a pretence of leveling it; as per BSO-24 Section I(1), the 'cardinal point' for placing the State land at the disposal of a person, an institution or a local body is for public purpose only, but in the instance case, the petitioner had proposed to dispose of 60% of allotted land of Acs.12.50 acres through sale to old age people and it is not a public purpose and thus it had violated the conditions of allotment.

20. Reference is also made to an observation of the Principal Accountant General, A.P., Hyderabad on 28.07.2009 that allotment of land to the petitioner is not a public purpose; that while issuing orders for handing over possession of the land, an additional condition was also imposed that the alienation of the land is subject to the orders of the Government, if any, with reference to observations made by the Principal Accountant General with regard to fixation of market rate or purpose of the land allotted, which are brought to the notice of the Government; and Principal Accountant General, A.P., had made an

observation regarding fixation of market value for the subject land to the affect that the land is highly valuable and important for public purposes and that the value fixed for the land was low. He therefore, directed the Tahsildar, Visakhapatnam to take possession of the land from the petitioner and protect the same by constructing a compound wall and fencing and report compliance.

21. Assailing the same, petitioner filed W.P.No.26653 of 2015.

22. On 21.08.2015 in W.P.MP.No.34618 of 2015 in W.P.No.26653 of 2015 this Court held that once the land has been alienated to the petitioner by the State of A.P., by collecting market value of Rs.5.62 crores and by executing registered document No.3471/2010 dt.04.10.2010, there was no justification for the State of A.P., to burden the petitioner with any condition including the condition that he must utilize the land for the purpose for which it was alienated. It held that such a condition would amount to putting a clog on the ownership of the petitioner and was *ex facie* void under Section 10 of the Transfer of Property Act, 1882 and that the impugned order dt.18.08.2015 of the District Collector, Visakhapatnam cannot *prima facie* be sustained. It stayed all further proceedings pursuant to the said order.

23. Subsequently, W.V.MP.No.2228 of 2016 was filed by respondents 1 to 4 in W.P.No.26653 of 2015 to vacate the said order.

24. While so, the District Collector, Visakhapatnam issued another proceeding dt.10.09.2015 to handover the land to the VUDA.

25. This was questioned in W.P.No.30975 of 2015. Thereafter, the District Collector withdrew the proceedings dt.10.09.2015 through another proceeding dt.03.10.2015 and consequently, the said Writ Petition No.30975 of 2015 became infructuous and was closed on 27.07.2016.

26. On 27.07.2016 WV.MP.No.2228 of 2016 in WPMP No.34618 of 2015 in WP .No.26653 of 2015 was also dismissed. This Court rejected the contention of the respondents that the possession of the land was taken on 20.08.2015 on the ground that in the proceedings dt.10.09.2015 issued by the District Collector a different view was taken that the beat of Tom Tom was conducted on 21.08.2015; that the land was allotted after payment of market value and conveyance deed was also executed in favour of the petitioner; and that any condition imposed after such alienation was made would be void under Section 10 of the Transfer of Property Act, 1882.

27. Sri V.Srinivas, learned counsel for petitioner contended that the land had been alienated to the petitioner on payment of market value vide G.O.Ms.No.1447 dt.06-12-2008; that thereafter a registered deed of conveyance was executed in petitioner's favour on 04-10-2010 after property was delivered to it on 29-09-2010 under a delivery receipt by the Tahsildar, Visakhapatnam Rural (4th respondent); that acquisition of land has been changed into zero-yiti land as per proceedings dt.19-11-2010 of the 4th respondent; that the 3rd respondent had even granted a certificate on 11-11-2011 that the State

had no objection to obtain loans from Banks and other financial institutions to petitioner; that once the property is alienated on payment of market value, any condition imposed therein either with regard to purpose for which the land is alienated or duration within which the land is put to be put to use for the said purpose become null and void and unenforceable under Section 11 of the Transfer of Property Act, 1882.

28. He contended that the petitioner still intends to put the alienated land to use only for construction of cottages for old age people and orphans, that there is no specified time limit within which such construction is to be completed in G.O.Ms.No.1447 dt.06-12-2008, that no such period was also stipulated in the deed of conveyance executed on 04-10-2010 in favour of petitioner, and the Collector cannot state that petitioner did not build within any specified time.

29. He contended that for making construction in the subject land when petitioner approached the GVMC on 25.2.2014, it insisted on 3.3.2014 that petitioner produce a NOC from the District Collector; and in spite of application made by petitioner for issuance of such NOC on 31.5.2014, the District Collector did not act and grant it; and he has acted arbitrarily and in trying now to annul the alienation on the pretext that petitioner did not make any construction in the land. He contended that having failed to issue NOC as sought by GVMC, the District Collector cannot attempt to cancel the alienation in favour

of the petitioner unilaterally by taking advantage of his own inaction in issuing NOC.

30. He also contended that BSO 24 has no application and the respondents are unable to point out which particular provision of BSO 24, even if it applies, is violated by petitioner, when petitioner is still intending to put the land to the same purpose for which it was alienated to it.

31. Learned Government Pleader for Assignment appearing for respondents supported the action of the District Collector.

32. To a pointed question from the Court as to why the District Collector did not grant NOC when petitioner requested for such NOC so that it can obtain construction permission from the GVMC, he did not have any answer.

33. He also had no answer to the question as to what was the period petitioner was supposed to complete the construction, whether such period was stipulated at all and if so where; and how the petitioner can be blamed for not making construction when it was the District Collector, who did not give the NOC to enable petitioner to obtain building permission from the GVMC.

34. He also could not explain how in the face of Section 10 of the Transfer of Property Act, 1882, any condition even if imposed prior to transfer limiting the enjoyment of the property by the petitioner could be enforced.

35. He also could not explain how possession can be taken on 20-08-2015 by conducting panchanama when the tom-tom was conducted on 21-08-2015 as per proceedings dt.10-09-2015 issued by the District Collector particularly when the interim order was granted on 21-08-2015 in W.P.M.P.No.34618 of 2015 in W.P.No.26653 of 2015.

36. Sec.11 of the Transfer of Property Act,1882 states:

“Section 11 - Restriction repugnant to interest created:

Where, on a transfer of property, an interest therein is created absolutely in favour of any person, but the terms of the transfer direct that such interest shall be applied or enjoyed by him in a particular manner, he shall be entitled to receive and dispose of such interest as if there were no such direction.

1 [Where any such direction has been made in respect of one piece of immovable property for the purpose of securing the beneficial enjoyment of another piece of such property, nothing in this section shall be deemed to affect any right which the transferor may have to enforce such direction or any remedy which he may have in respect of a breach thereof.]

37. Thus when transfer is completed (on execution of sale deed in case of immovable property) any restriction contained in the transfer deed disentitling the transferee from operating or disposing of his interest would be void and even when such a restriction is created, transferee can enjoy the property ignoring the same. In view of Section 4 of TP Act, all the provisions relating to contracts shall apply to TP Act and, therefore, any transfer or conveyance incorporating restraint clauses would be void and the purchaser can ignore such

clauses. (See **A.B.C. India Limited vs. The A.P. Industrial Infrastructure Corporation Limited**¹ (16.07.2010 - APHC)).

38. In **K.Gopal Reddy v. Secretary and others**² it was held:

*“22....If the 1st respondent did nothing more than to allot the plot to the petitioner, it was always open to it to cancel the same by issuing a show-cause notice indicating the reasons therefore, and after considering the explanation that may have been offered in response to such notice. However, if the plot is conveyed through a sale deed in accordance with law, the question of the 1st respondent setting at naught such a transaction does not arise. The law is settled beyond any pale of doubt in this regard. Way back in 1930, a full bench of the Allahabad High Court held in *Dip Narain Singh v Nageswar Prasad*, AIR 1940 All. 1, held that once a document transferring the immovable property has been registered, the transaction passes out of the domain of mere contract and into the one of conveyance, and that once the property is conveyed under a document, it continues to be governed by the provisions of the Transfer of Property Act. These observations were referred with approval by the Supreme Court in *State of Kerala v. Cochin Chemical Refineries Ltd*, MANU/SC/0150/1968MANU/SC/0150/1968 : [1968]3SCR556 . Recently this Court in *Badugu Venkata Durga Rao v. Surneni Lakshmi*, MANU/AP/0021/2001MANU/AP/0021/2001:*

¹ Manu/AP/0423/2010

² 2004(2)ALD 317

2001(1)ALD86 , had an occasion to apply the same principle.”

39. So even if there was any condition restricting user of the land in the GOMS.No.1147 dt.6.12.2008 or imposed under BSO.24 on petitioner, once a registered conveyance is executed, under Sec.11 of the Transfer of Property Act,1882, such a condition restricting enjoyment of the property is void. Be that as it may, as already noted by me, the petitioner still reiterates that he intends to use the subject land only for constructing cottages for old aged people and orphans. No other condition is proved to have been violated by him and no time limit to do so is contained in any single document produced by respondents.

40. The facts on record show that for making construction in the subject land when petitioner approached the GVMC on 25.2.2014, it insisted on 3.3.2014 that petitioner produce a NOC from the District Collector, and in spite of application made by petitioner for issuance of such NOC on 31.5.2014, the District Collector did not act and grant it. So he has acted arbitrarily and in trying now to annul the alienation on the pretext that petitioner did not make any construction in the land. It is clear that he is trying to take advantage of his own wrong i.e, inaction in issuing NOC.

41. In **Eureka Forbes Ltd. v. Allahabad Bank**³, the Supreme Court held:

³ (2010) 6 SCC 193

“The maxim nullus commodum capere potest de injuria sua propria has a clear mandate of law that, a person who by manipulation of a process frustrates the legal rights of others, should not be permitted to take advantage of his wrong or manipulations. In the present case Respondents 2 and 3 and the appellant have acted together while disposing off the hypothecated goods, and now, they cannot be permitted to turn back to argue, that since the goods have been sold, liability cannot be fastened upon Respondents 2 and 3 and in any case on the appellant.”

42. Similar view was taken in **Union of India v. Major General Madan Lal Yadav⁴** and in **Lily Thomas v. Union of India⁵**.

43. Therefore both the grounds mentioned in the Final Memo dt.21-06-2015 by the District Collector i.e. that the entire land for the purpose was not put into use by petitioner within stipulated period and that petitioner violated conditions specified in G.O.Ms.No.1447 dt.06-12-2008 are liable to be rejected.

44. Curiously in the Final Order dt.18-08-2015 passed by the District Collector directing resumption of land, though the explanation of the petitioner dt.17-07-2015 to the Final Memo dt.21-06-2015 is extracted, no valid reason is assigned why such explanation is not liable to be accepted.

45. That apart it is stated in the above order dt.18-08-2015 that the petitioner proposed to dispose of 60% of the allotted land on sale to old age people. On what basis the District Collector came to such a

⁴ (1996) 4 SCC 127

⁵ (2000) 6 SCC 224.

conclusion is not mentioned because petitioner did not state anywhere that petitioner had such intention.

46. Also a reference is made to an observation dt.28-07-2009 of the Principal Accountant General of A.P., Hyderabad that the land is very valuable and that is also a ground to cancel the transaction. This factor was not even mentioned in the Final Memo dt.21-06-2015 issued to the petitioner. Grounds which are not even mentioned in the said Memo, which is in the nature of a show cause notice issued to the petitioner, cannot be a ground to cancel the transaction.

47. When the market value was fixed by the State Government for the transaction and the same was paid by the petitioner and registered conveyance was executed in petitioner's favour, the transaction cannot be annulled by the District Collector on the ground of inadequacy of consideration. Inadequacy of consideration is not a ground to annul the sale deed more so, when Rs.5,62,95,000/- fixed by the State Government @ Rs.45.00 lakhs per acre was paid by the petitioner and received by the State.

48. Also the State being a party to the Conveyance Deed dt.04-10-2010, cannot by way of a unilateral cancellation, annul it and such action is not permissible in view of Rule 26 (1) (k) (i) of the Rules framed under the Registration Act, 1908.

49. I therefore hold that the impugned order dt.18-08-2015 issued by the District Collector, Visakhapatnam canceling the Conveyance

Deed dt.04-10-2010 is clearly illegal, arbitrary and violative of Article 14 and 300-A of the Constitution of India.

50. Accordingly, W.P.No.36413 of 2014 as well as W.P.No.26653 of 2015 are both allowed with costs of Rs.10,000/- (Rupees Ten Thousand only) to be paid by 1st respondent to petitioner; order dt.18-08-2015 of the District Collector, Visakhapatnam, resuming the land conveyed to the petitioner under the Conveyance Deed dt.04-10-2010 (Document No.3471/2010) is set aside; the respondents shall restore possession of the land, if they have taken possession, to the petitioner forthwith; and they shall not interfere in any manner with the possession and enjoyment of the petitioner over the subject property. The District Collector, Visakhapatnam is also directed to issue NOC to the petitioner to enable the petitioner to obtain construction permission from the GVMC for constructing cottages for old age persons and orphans in the subject land forthwith.

51. Miscellaneous petitions, pending if any, shall stand closed.

M.S.RAMACHANDRA RAO, J

19th December, 2017.

Gra/vsv