

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.2520 of 2008

ORDER:

In the present writ petition, challenge is to the action of the respondent authorities in utilizing the open area in the approved layout plan bearing L.P.No.66/2005/R in respect of an extent of Ac.0.23 cents situated in R.S.Nos.37 and 38/2 of Kovvada Village, kakinada Rural Mandal, East Godavari District for construction of houses under Indiramma Scheme.

Petitioners are the purchasers of the vacant plots in the above mentioned layout plan. It is the case of the petitioners that the land owners of an extent of Ac.2.38 cents in the said survey numbers through their General Power of Attorney holder, Sri C. Veerabhadra Rao, applied for sanction of layout plan to the Regional Deputy Director of Town and Country Planning, Rajahmundry, through the 5th respondent – Gram Panchayat in the month of September, 2005 and the said proposals were approved by the Regional Deputy Director vide Lr.Dis.No.1022/2005/R1, dated 26.09.2005. As per the said approved layout plan, out of total extent of Ac.2.38 cents, 10% area is earmarked as open space and the said 10% comes to approximately Ac.0.238 cents and 33.52% area is earmarked for formation of roads and the said extent comes to approximately Ac.0.798 cents and the remaining land is divided into 30 residential plots of different dimensions. It is further stated that the land owners of the said layout

immediately formed the internal roads and handed over them along with the open space in the layout to the 5th respondent – Gram Panchayat by way of a registered gift deed bearing No.13227 of 2006, dated 22.09.2006. It is further stated that subsequently the plots in the layout were sold by the owners and the petitioners purchased the same for valuable consideration under registered documents for the purpose of construction of residential houses. By the time of filing the writ petition, petitioner Nos.1 and 3 are the retired employees and petitioner Nos.2 and 4 are in service. It is alleged in the affidavit filed in support of the writ petition that at the instance of local politicians, the respondents took a decision to construct G+2 houses in the open space gifted by the petitioners.

According to the learned counsel for the petitioners, the said pressure resulted in issuance of proceedings bearing Ref.No.A/1562/2006, dated 20.09.2006, by the Revenue Divisional Officer, Kakinada, 3rd respondent, requesting the District Panchayat Officer to issue approval orders to handover an extent of Ac.0.23 cents out of the layout plan bearing L.P.No.66/2005/R, which is obviously earmarked for public purpose and gifted by the land owners to the 5th respondent – Gram Panchayat.

Heard Sri N. Siva Reddy, learned counsel for the petitioners, learned Government Pleader for Revenue and Sri Ravi Chimalapati, learned Standing counsel for the 5th

respondent – Gram Panchayat apart from perusing the material available before the Court.

According to the learned counsel for the petitioners, the impugned action on the part of the respondent authorities is illegal, arbitrary, without jurisdiction and violative of Article 48-A of the Constitution of India. It is contended by the learned counsel that the promoters conveyed the title of the subject area for the open space and public roads and it is obligatory on the part of the respondent authorities to see that the same is utilized for the communal purpose and for the purpose for which the promoters gifted the same in favour of the Gram Panchayat. It is further contended that in the event of allowing the respondents to proceed with the impugned action there would not be any lung space for the petitioners and the other residents of the locality. In support of his submissions and contentions, he placed reliance on the judgments of the Hon'ble Supreme Court in **Bangalore Medical Trust v. B.S. Muddappa**¹ and this Court in **Bhagya Nagar Colony Welfare Association Hyderabad v. Government of A.P.**².

On the contrary, it is submitted by the learned Government Pleader and the learned Standing counsel for the 5th respondent – Gram Panchayat that there is no illegality nor there exists any infirmity in the impugned action and the respondents are entitled to utilize the land gifted to the 5th

¹ (1991) 4 SCC 54 = AIR 1991 SC 1902

² 2003 (4) ALD 74

respondent by the promoters for the purpose of construction of G+2 houses for weaker sections.

There is absolutely no controversy on the reality that in the layout approved vide L.P.No.66/2005/R by the Regional Deputy Director the open space of 10% earmarked by the promoters would come to approximately Ac.0.23 cents. It is not the case of the respondents that the land owners committed any irregularities in getting the layout approved. In the gift deed executed in favour of the Gram Panchayat also the said extent is shown as open space for public purposes. As per Article 48A of the Constitution of India, it is obligatory on the part of the Government to protect and improve environment also. Construction of houses is undoubtedly a basic requirement, but, at the same time, the Constitutional mandates as enshrined in Article 48A cannot be lost sight of by the respondents. In this context, it may be appropriate to refer to the judgment of the Hon'ble Apex Court in **Bangalore Medical Trust (supra)**, wherein the Apex Court deprecated similar action. In fact, this Court in the case of **Bhagya Nagar Colony Welfare Association, Hyderabad (supra)** by relying upon the aforementioned judgment of the Apex Court deprecated similar impugned action.

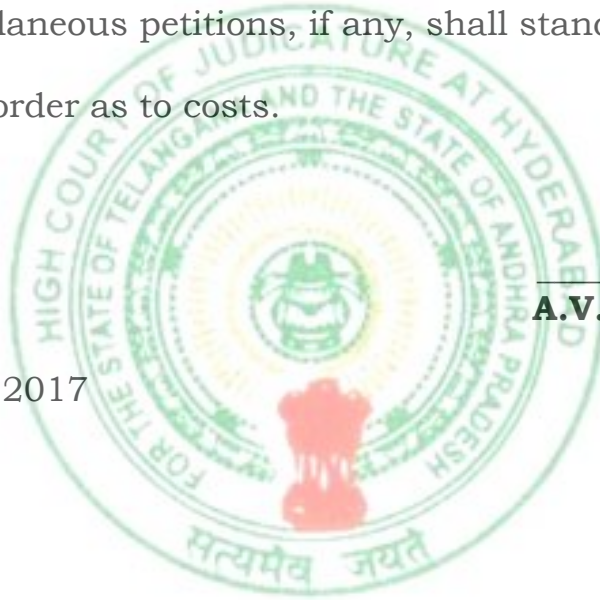
In the considered opinion of this Court, having earmarked the subject property of open space for the residents, it is absolutely not open for the respondent

authorities in utilizing the said land for construction thereby depriving the residents of the locality their lung space and accordingly, the impugned action is violative of Constitutional mandate as enshrined in Article 48A of the Constitution.

For the aforesaid reasons, the Writ Petition is allowed declaring the impugned action as arbitrary and violative of Constitution mandate. Consequently, the respondents are directed not to utilize the subject open space for construction of houses as proposed.

Miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

Date: 06.06.2017
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A.V.SESHA SAI, J