

HONOURABLE SRI JUSTICE RAJA ELANGO

WRIT PETITIONS Nos.38253, 38254, 38255 and 38256 of 2014

COMMON ORDER:

1. Since the issue involved in these writ petitions is one and the same, these writ petitions are heard together and are being disposed of by this common order.

2. All the above writ petitions are filed questioning the order passed by the 1st respondent in Memo dated 20.8.2014 overruling the objections raised by the petitioners and restoring the change of land use confirmation order issued in G.O.Ms.No.369, M.A. & U.D. (H1) Department, dated 27.9.2012.

3. The case of the petitioners is as follows:

The Master Plan for Bhimavaram Town was sanctioned by the 1st respondent in G.O.Ms.No.951, dated 27.11.1987 as per the statutory procedure contemplated under the Town Planning Act, 1920. In the said Master Plan, the site of an extent of Ac.1.1946 cents in Ward No.32 in R.S.Nos.90/6, 90/9 and 90/10 of Bhimavaram Town was earmarked for primary school, local commercial and 30' and 40' wide roads as ingress and egress to the houses of the petitioners. The said master plan became final in the year 1987 itself. While so, the unofficial respondents Nos.3 to 5 made an application for change of land use on the ground that the purpose for which sanctioned plan was made, has not been implemented for the last 25 years. Respondents Nos.1 and 2 accorded permission without following the statutory rules and regulations. Under Section 15(2)(a) of the Town Planning Act, the State Government at any time may vary or revoke a scheme sanctioned under Section 14 of the Act, only by a notification in

official Gazette. Under Section 15(2)(b) of the Act, the State Government shall publish a draft notification and shall consider any objections or suggestions from the council and the public affected by the scheme, before issuing final notification under Section 15(2)(a) of the said Act. It is also mandatory under Rule 72(2) (c) of the Rules of Town Planning Act, the Government after publication of draft notification under Section 15(2)(b) shall also communicate copies of the draft to the Municipal Council as well as to every local authority within whose limits any portion of the area included in the scheme is situated. Contrary to the said rules, the official respondents called for objections by giving a publication in Andhra Bhoomi daily. As per 1987 approved master plan, the total extent for both the proposals is about Ac.3.00 including 40' and 30' roads. Now by virtue of the proposed revised plan, the Government accorded permission duly approving the change of land use for the total extent of Ac.3.00 cents instead of granting permission for only Ac.0.90 cents. There are several variations in the existing master plan and the modified master plan issued as per Govt. Memo No.20274/H1/2012-2, dated 16.7.2012. Earlier, the petitioners along with some others filed W.P.No.40645 of 2012 questioning the notification issued in G.O.Ms.No.369, Municipal Administration and Urban Development (H1) Department dated 27.9.2012 published in Andhra Pradesh Gazette Part I, Extraordinary No.461, dated 16.8.2012 by which land use is changed as residential from primary school and local commercial use by deleting 30' and 40' wide road in the master plan of Bhimavaram. The said writ petition was dismissed. Questioning the same, the petitioners therein filed appeal in W.A.No.1797 of 2013 and a Division Bench of this Court disposed of the said appeal with the following directions:

“The State will keep the impugned notification in abeyance and also the operation of the judgment and order passed by the learned trial Judge until the time we direct hereunder:

In the event, the appellants before us raise any objection in writing as against the proposal which was published officially, within seven days from the date of receipt of the copy of this judgment and order, then, the State shall consider those objections and in the process, notice has to be served upon the appellants before consideration, and hearing should be given to the appellants by serving prior notice. Similar notice shall also be served upon respondents Nos.3 to 5 herein and after hearing the matter finally, obviously a speaking order shall be passed. This must be done within a period of three weeks from the date of receipt of the objections.”

Pursuant to the above directions, the petitioners filed objections on 19.11.2013 and the objections were heard on 10.12.2013 by the 1st respondent. The hearing was completed within 15 minutes. No proper opportunity was given to the petitioners to submit their objections elaborately. None of the objections were considered by the official respondents. Respondents Nos.1 and 2 passed the order in Memo dated 20.8.2014 without considering the objections of the petitioners. Hence, the petitioners filed the above writ petitions.

4. While admitting the writ petitions, this Court passed interim order suspending the impugned memo.

5. The 1st respondent filed a vacate stay petition along with the common counter-affidavit with the following averments:

(i) Earlier, a proposal was received by the Government for change of land use of Ac.1.1946 cents from Primary school, local commercial and deletion of 30' and 40' wide master plan roads to residential use. The change of land use was recommended after obtaining report from the Director of Town and Country Planning, A.P. Hyderabad, who stated in the report that Bhimavaram Municipality examined the proposal as per the Government Memo No.31738/H1/2011, dated 8.5.2012 and 13.7.2012, wherein certain guidelines were issued so as to explore the possibilities of

achieving the objectives of the Master Plan, and the Education Department has reported that there is no need to establish School in the proposed site since there are number of schools in the vicinity. In the report, he also recommended for deletion of roads. The draft variation pertaining to change of land use in Urban Development Authorities, Municipalities and Corporations are being published in A.P. Gazette only and in order to have transparency and to inform all the concerned about the modifications to the Master Plan, the Government issued instructions to all ULBs/Corporations etc., vide Memo No.11411/12/2012, dated 30.6.2012 stating that all draft variations shall be published in two reputed news papers calling for objections/suggestions within 15 days from the general public.

(ii) In pursuance of the directions of this Court in Writ Appeal, the petitioners filed objections. Notices were served to the petitioners for attending the hearing either in person or through counsel. In the hearing, the objections filed were examined. The Director of Town and Country Planning (DTCP) has been requested vide Government Memo No.1042/H1/2013, dated 11.12.2013 to get the site in question physically surveyed by the senior officers concerned and submit a comprehensive report covering all the objections in the representations of the petitioners with specific recommendations duly incorporating the Master Plan features and the subject site, to Government for taking necessary action in the matter. The following are the main objections and the decisions of the Government.

Objection No.1: Deprivation of access to the existing development in the site.

Decision: The Director of Town and Country Planning reported that 40' wide roads along the Eastern side and northern side of Sy.Nos.90/6, 9 and 10, are the proposals

pertaining to widening of the existing roads, which were re-aligned by the Department vide L.P.No.44/87 in the year 1987. As per the change of land use, the proposed 30' wide road along the western side was shown as deleted and hence, there is no substance in the said objection.

Objection No.2: Complaint against non-compliance of procedure under the Master plan pertaining to Town Planning Act;

Decision: The Director of Town and Country Planning reported that the procedures required to be followed by the Local authority and Government for change of Land use of Master Plan under Section 15 and Rule 72 of the APTP Act, have been observed while changing the land use i.e., as per Government Memo No.20274/H1/2012-2, dated 16.7.2012. The DTCP prepared a part proposed GTP Map, schedule of boundaries and the Commissioner, Bhimavaram Municipality collected development/conversion charges. Objections and suggestions were called for by publishing the matter in Local News Daily Andhra Bhoomi dated 15.5.2012 by displaying at conspicuous places giving time of 15 days. The DTCP reported that the Commissioner, Bhimavaram Municipality vide letter dated 14.12.2012 informed that no objections or suggestions were received in the matter. Therefore, the Government issued confirmation orders in G.O.Ms.No.369, MA & UD Department, dated 27.9.2012. As such, there are no violations of the Act and Rules.

Objection No.3: Deprivation of site for location of facility of the school.

Decision: The DTCP reported that the Commissioner, Bhimavaram Municipality informed that as per the resolution of the Council vide C.R.No.534, dated 27.1.2011 the local authority does not have funds to acquire site and that there are schools already existing in the vicinity of the site. Under such circumstances, the land use can be modified. Further, as per the report of the Education Department officials, there is no need to establish another school in the site proposed for

change of land use as there are number of schools within the vicinity of proposed site.

After careful examination of the matter, the Government vide Memo No.1042/H1/2013, dated 20.8.2014 overruled the objections raised and restored the change of land use confirmation orders issued vide G.O.Ms.No.369, MA & UD, dated 27.9.2012. Therefore, there is nothing to interfere with the order in the impugned memo.

6. Learned Counsel for the petitioners submitted that the order in the impugned memo was passed without considering the objections of the petitioners and that the 1st respondent without verifying the actual situation existing in the land in question and without giving proper opportunity to the petitioners, passed the order in the impugned memo.

7. Learned Government Pleader submitted that earlier the petitioners filed a writ petition with a plea that they were not given any opportunity to file their objections for change of land use and that in pursuance of the directions of a Division Bench of this Court in Writ Appeal, sufficient opportunity was given to the petitioners before passing the order in the impugned memo and that the approach of the petitioners time and again with the same plea is not sustainable and hence, the writ petitions are liable to be dismissed.

8. From the material on record, it is apparent that on the earlier occasion, the petitioners filed W.P.No.40645 of 2012 before this Court contending that no opportunity was given to them to file objections, before changing the land use vide orders in G.O.Ms.No.369, dated 27.9.2012. The said writ petition was dismissed. When the petitioners

carried the matter in appeal, a Division Bench of this Court directed the State Government to keep the notification impugned therein in abeyance while directing to give an opportunity to the petitioners to file their objections and thereafter, to pass appropriate orders. Pursuant to the directions issued by a Division Bench of this Court in the Writ Appeal, the petitioners filed their objections and the same were considered and rejected. Now, they have filed the present writ petitions raising the same grounds that they were not given sufficient opportunity. The very approach of the petitioners raising the same plea once again, is not sustainable. It is also apparent on the face of the record that each and every objection raised by the petitioners, was considered and answered. Therefore, it cannot be said that the petitioners were not given sufficient opportunity.

9. The fact remains undisputed is that the land in question was earmarked for the purpose of town planning of Bhimavaram 25 years ago and since then, no such steps have been taken to implement the sanctioned master plan. In this regard, the Education Department informed the Government that there is no need to construct a school in the land in question on the ground that there were number of schools in the vicinity. In this back ground of the matter, the very approach of respondents-3 to 5 before the authorities, seeking for change of land use after a lapse of 25 years, appears to be a genuine and bonafide one to consider their request and in pursuance of the same, while restoring the land in question to them, the respondents have also followed the procedure. Further, it is the case of the respondents that the local authority does not have any funds to acquire site for any purpose. The decision of the official respondents is in accordance with law. The order in the impugned memo does not warrant

any interference by this Court and consequently, these writ petitions are liable to be dismissed.

10. Accordingly, the above Writ Petitions are dismissed. No costs. It is made clear that the interim order of suspension passed by this Court earlier in these writ petitions shall stand vacated. Miscellaneous petitions pending, if any, shall stand closed.

Date: 11.09.2017
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RAJA ELANGO, J



HONOURABLE SRI JUSTICE RAJA ELANGO

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