

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 18302 of 2007

ORDER:

1) The present writ petition came to be filed with the following prayer:

“issuance of writ of mandamus declaring the action of respondent No.2 in issuing auction notification in the newspapers on 27.07.2007 vide No.1471/ CE/ AEE4/ 2004 dated 25.07.2007 to sell the plots within the A.P.Housing Board Colony (Ratnagiri colony), P.M.Palem, Visakhapatnam, as un-constitutional; and consequently direct the respondents not to deal with these plots in any manner whatsoever.”

2) The averments in the affidavit filed in support of the writ petition would show that the deponent claims to be an Associate President of the petitioner's organization. The present writ petition came to be filed challenging the action of respondent No.2 in selling away the open spaces meant for specific usages to be under the control of the local authorities as illegal and improper. The A.P.Housing Board, procured large extent of land for providing plots/ houses to the middle class families and lower income group people. It is stated that whenever a layout is laid by the housing board and whenever VUDA approves the said layout, a condition is being imposed that 10%of the total area should be earmarked as open spaces and the same has to be handed over to the local authority. Though the rules contemplate earmarking of 10%of the open spaces, but VUDA in the present layout, has

left out only 4% of the total extent of land towards open spaces. It is stated that in the month of October, 2002, the Housing board made every effort to sell the vacant plots earmarked for primary health centres, dispensaries, upper primary and high schools, in favour of un-official respondents for establishment of a school. It is stated that except plotted area, the housing board has no authority to sell even an inch of land. Hence, the action of the authorities in selling away the land to respondent Nos.6 and 7, who are corporate mega educational institutions, for establishment of a school without giving any opportunity for the Mandal Parishad of P.M.Palem and when other similar schools providing education at less cost, is subject matter of challenge in the present writ petition.

3) Respondent Nos.2 and 5 filed their counter stating that unsold plots which are not suitable for housing scheme, such as odd and stray bits were put to auction as per the procedure in vogue. It is stated that the place earmarked in the master plan is used for the purpose for which it has been earmarked and there is no misuse of the same. It is further stated that common area like parks, roads, play grounds were already handed over to local bodies to maintain the areas earmarked for the said purpose. However, the areas that were earmarked for specific usage like High schools, primary schools, dispensaries, primary health centres etc. will be permitted to be used and that space earmarked for specific purpose cannot be used by allottees and the residents of the area. Details about the open land and places

earmarked for school and other purposes are disclosed in the counter. As per the details, the salable area of houses constructed is 2,76,282.23 square yards whereas the left over plots and stray pieces development available is 9,765.36 square yards, schools and hospitals is 31,154 square yards.

4) Respondent No.1 filed counter stating that after obtaining the land, a layout was prepared earmarking some areas for specific purposes such as commercial, schools and hospitals. It is also admitted that the housing board has handed over open spaces to the local authorities, as per the specifications and the averment that only 4% of the open spaces has been left is denied. It is stated that in view of subsequent G.O.s, the authorities have left 5.24 % for open spaces, which is well within the limits prescribed. It is also stated that the Housing Board issued notification for sale of areas earmarked for specific purposes on a condition that those areas shall be used for the said purpose only.

5) Respondent No.6 also filed counter contending that they have participated in the auction, quoted highest rate and became successful bidder. It is said that as per the terms and conditions of the auction notification, they deposited 25% of the auction amount and 1% towards auction expenses ie. Rs.4,00,94,000/- within 24 hours and the remaining 75% has to be paid within three months. It is also stated that they purchased the subject property to establish a high school so as to secure social order for promotion of welfare of the people. It is also stated that the

auction was conducted after obtaining approval from respondent No.3, as such, the same is legal and valid.

6) In all the counters referred to above, it has been stated that stray plots which cannot be used for constructing the houses have been auctioned, but however a different stand is sought to be taken in the affidavit which is filed recently by respondent No.5, wherein it has been stated that the Government allotted Ac.127.29 cents of land in P.M.Palem to respondent No.2 for the purpose of constructing integrated housing schemes comprising of LIG, MIG, HIG and alienating the same to the general public. Respondent No.2 is said to have paid the entire market value. For the purpose of developing the aforesaid land, respondent No.2 submitted a layout plan to respondent No.3 which was approved in the year 1990. It is also stated that as per the lay out, Ac.7.22 cents was earmarked for open spaces, Ac.45.63 cents for roads, Ac.8.55 cents for schools and Ac.76.45 cents for plots, shops and commercial areas. It is also stated that the area earmarked for schools (including dispensaries) is not part of the open spaces, as is evident from the layout plan. Respondent No.2 has already conveyed Ac.8.22 cents of land in favour of the concerned Gram Panchayat.

7) The short question that arises for consideration is whether the Housing Board has got any authority to sell the land, which was handed over to them for the purpose of providing houses to

LIG, MIG, HIG and also for providing basic necessities like education, medical and health.

8) In order to appreciate the same, it would be useful to refer to Section 45 of the Andhra Pradesh Housing Board Act, 1956 and Rule 29 of the Andhra Pradesh Housing Board Rules, 1959, which are as under:

“Section 45: Power to dispose of land: Subject to any rules made by the Government under this Act, the Board may retain, sell, exchange, mortgage or otherwise dispose of, any land, building or other property vesting in it and situated in the area comprised in any housing scheme sanctioned under this Act.”

Rule 29: Disposal of property: The Board may lease or sell any land or building vesting in it and situated in the area comprised in any housing scheme sanctioned under this Act, subject to the following conditions, namely:-

- (i) The transfer by sale or lease shall be by public auction.
- (ii) A notice of the proposed sale or lease of the property shall be published in the Andhra Pradesh Gazette, and in not less than two prominent newspapers, once in English and the other in the Chief language of the locality.
- (iii) The sale shall be conducted subject to such terms and conditions as may be fixed by the Board from time to time.
- (iv) The property that may be sold or leased shall be transferred through a conveyance deed that may be drawn up by the board in consultation with its legal adviser, provided that the Board may dispense with the above procedure in regard to sale and lease of

any land or building with the concurrence of Government.

Provided further that the procedure laid down in conditions (i) and (ii) shall not be applicable in respect of temporary lease of any land for a period of not exceeding one year and revising a rent not exceeding Rs.250/- p.m.”

9) A conjoint reading of the two provisions, makes it clear that the Housing Board has got power to sell or lease the land, exchange, mortgage etc. of any land, building or other property vesting in it and situated in the area comprised under any housing scheme. The Rule also prescribe a procedure as to how the same has to be done.

10) Though the authorities have got the power but the question is whether the same was done in accordance with the procedure prescribed and also whether the land which is sought to be alienated, falls within the area earmarked for public purpose.

11) Admittedly, the land is earmarked for the purpose of establishment of Upper Primary, High School and Primary Health Centre.

12) One of the arguments which is sought to be advanced by the learned counsel for the petitioners is that when the entire area consists of residents, who are of lower income group or middle income group, one cannot afford to have education in such a high-tech educational institute, which is sought to be established by a corporate like respondent No.6. It may be true that the purpose of giving land to the Panchayat for establishment of school, for

imparting education at very low cost would be defeated if the land is auctioned and allotted for establishment of corporate schools which normally cater the needs of well to do people. But at the same time, one cannot prevent establishment on the said ground as the rules do not prohibit the same. The discretion which is sought to be exercised by the Board for establishment of the primary and high school in the said area cannot be interfered with, more so, when they derived such power under Section 45 of the A.P. Housing Board Act and Rule 29 of the Andhra Pradesh Housing Board Rules. It is also brought to the notice of the Court by the counsel for respondent No.6 that substantial amount ie. 4,00,94,000/- was paid towards cost of the land. But, merely because huge sum of money has been deposited, does not mean that the land has to be allotted in their favour.

13) It is also to be noted here that initially there was an interim order, but subsequently the same was vacated. But in view of the pendency of the writ petition, the authorities have not taken any steps.

14) Insofar as earmarking of 5.24% of total extent of land as against 10% in view of subsequent circulars and government orders, morethan 5%of land was ear marked for open spaces and the same was handed over to the Gram Panchayat. Therefore, the petitioners cannot claim that there was any violation insofar as the allotment of land, earmarked for open spaces.

15) As stated earlier, the discretion which is exercised, for allotment of land to the schools and ear marked for specific purpose, is different from the open spaces which has been allotted to the Gram Panchayat. But, merely because respondent No.6 paid substantial amount towards cost of land, they cannot use it for any other purpose, otherthan the purpose for which it has been earmarked and allotted ie. Running of a highschool. Hence, respondent No.6, to whom the land is sold, cannot be allowed to use it for any other purpose otherthan the purpose for which the land has been specified ie. for establishment of a school. If any violation is committed by respondent No.6 with regard to usage of land for which it has been sold to them or if it is not used in the manner in which it has to be used, the authorities are at liberty to cancel the same.

16) With the above direction, the writ petition is disposed of. There shall be no order as to costs.

17) Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE C. PRAVEEN KUMAR

18.09.2017
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