

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

WRIT PETITION No.21206 of 2003

ORDER:

Heard Sri C.Hanumantha Rao, learned counsel for petitioner and Sri Chatla Madhu, learned Standing Counsel for Greater Hyderabad Municipal Corporation, which has now taken over the Qutbullapur Municipality.

2. Petitioner has filed this Writ Petition challenging the action of Qutbullapur Municipality in constructing a building in an area earmarked for park in the approved lay out No.1048/MPU/HUDA/82 in Sy.No.83 of Jeedimetla Village, Qutbullapur Mandal, Ranga Reddy District and seeks a direction to remove the said structures from the park area and for a declaration that respondents cannot use any part or parts of the area earmarked for park in the lay out for any other purpose in future also.

3. Petitioner is an Association of the residents of Venkateswara Enclave which has come up in Sy.No.83 of Jeedimetla village, Qutbullapur Mandal, Ranga Reddy District. An extent of Ac.13.07 gts. in this survey number originally belonging to one Smt.Santhabai and others. They converted it into non-agricultural purpose and obtained a residential layout from the then Hyderabad Urban Development Authority vide permit in file No.10418/MPU/HUDA/82 dt.24-06-1989. Copy of the said layout has been filed in material papers. The said lay out shows that in the

middle of the layout, an open area is earmarked as a park. The total extent of the open area in the layout is 5218 sq. mts. representing 10.08% of the extent of Ac.13.07 gts. The members of the Association purchased plots for valuable consideration and also built houses in the layout in the plots earmarked to them.

4. Petitioner contends that these areas earmarked for parks in the approved layout are lung places in the colony and are meant only for greenery and play ground for children in the colony and that none of the respondents have any right or authority to utilize any part of the area earmarked for park in the approved lay out for any purpose. They contended that respondents however intend to build a shopping complex of two floors in the area earmarked for park and also utilize the same for certain offices of the State Government and having come to know of the same, they gave a representation on 13-09-2003, but the respondents were bent upon erecting a building even without permission in the area earmarked for park contrary to G.O.Ms.No.72 Municipal Administration & Urban Development (J1) Department dt.21-02-2002 as well as the decision of the Division Bench of this Court in **Co-operative Housing Society Ltd., Saleemnagar Vs. Municipal Corporation of Hyderabad¹** and **Bhagya Nagar Colony Welfare Association Vs. Government of Andhra Pradesh and others²**.

¹ 2001(5) ALD 663

² 2003(1) Decisions Today (AP) 349

5. On 26-09-2003, this Court directed notice before admission and directed the State Government to examine petitioner's representation dt.13-09-2003 within one week from the date of receipt of copy of that order and directed *status quo* existing as on that day be maintained. Subsequently, Writ Petition was admitted on 20-02-2004. Since a submission was made by the counsel for Hyderabad Urban Development Authority that construction had already been completed in some portion of the park and E-seva centre is running in the constructed area, this Court directed on 20-02-2004 that *status quo* granted on 26-09-2003 shall be continued with regard to the remaining park area and modified the earlier order.

6. Counter-affidavit is filed by the then Qutbullapur Municipality (6th respondent) admitting that Hyderabad Urban Development Authority had granted a permit for a layout with No.4284/MP2/H/89 dt.05-10-1989 in Sy.No.83 of Jeedimetla; that there is a layout open area of extent 5216 sq. mts therein; that this area is distributed in 3 different places in the layout; an extent of 228 sq. mts out of this 5216 sq. mts was utilized for construction of E-seva centre in the first floor and library room and shopping rooms in ground floor. It is asserted that this construction is for the convenience of the inhabitants of the locality and that the space where construction is made belongs to the Qutbullapur Municipality and is not the property of the residents of the colony. It is stated that utilization of an area earmarked for park for construction of E-seva

centre, which is necessary for the general public cannot be termed as “misutilisation”. According to the 6th respondent, there is no other municipal vacant land available in Qutbullapur Municipality and therefore the site in question was selected since it is most convenient to the public. It is stated that the entire open space reserved for park is not utilized and only a small portion of 228 sq. mts is utilized for E-Seva centre and for shopping complex. The fact that G.O.Ms.No.72 Municipal Administration dt.20-02-2002 prohibits utilization of reserved open spaces in the layouts for the purpose other than intended original use, is not denied.

7. From the above contentions of the parties it is clear that in the sanctioned layout obtained by Smt.Santhabai where the members of the petitioner Association have constructed houses, an extent of 5216 sq. mts was earmarked for a park and the Qutbullapur Municipality has built a two floor structure therein which is being used for E-Seva centre, public library and a shopping area.

8. G.O.Ms.No.72 Municipal Administration and Urban Development (J1) Department dt.20-02-2002 issued by the then State Government of Andhra Pradesh directs all Municipal Corporations and Municipalities and Panchayats in the State not to propose utilization of reserved open spaces of a layout for the purpose other than the intended original use such as park, play ground, community structure, urban forestry and similar eco-conservation programmes.

9. In the present case, it is an admitted fact that E-Seva centre building of 228 sq. mts is constructed in the area earmarked for a park in the sanctioned layout. Thus, Qutbullapur Municipality has clearly violated the said G.O.

10. A Division Bench of this Court in **Co-operative Housing Society Ltd., Saleemnagar** (1 supra) dealt with similar issue as to whether in an area earmarked for a park, a party can be allowed to make construction of a school by the Greater Hyderabad Municipal Corporation. It observed that the right to clean environment is part of Article 21 of the Constitution of India and the land earmarked for park cannot be converted or changed into the land for other purposes. It held that if the Corporation had no jurisdiction to grant permission for construction of the building in a park, no amount of consent can validate the decision of the Corporation which was a nullity. It observed that the Corporation, being a statutory authority, must exercise its jurisdiction within the four corners of the statute and any action taken beyond the power by Corporation shall be *ultra vires*. It referred to the judgment of the Supreme Court in **Bangalore Medical Trust Vs. B.S.Muddappa**³, wherein the Supreme Court held that a private nursing home could neither be considered to be an amenity nor it could be considered improvement over necessity like a public park, and that the exercise of power in conversion of public park into private nursing home is contrary to the purpose for which it is conferred under the statute. It also

³ (1991) 4 SCC 54

referred to the judgment of the Supreme Court in **M.I. Builders Pvt. Ltd. Vs. Radhey Syam Sahu and others**⁴ and held that the Municipal Corporation is a trustee for the proper management of the open spaces earmarked for parks and true nature of the park, as it existed, cannot be destroyed since it would violate the doctrine of public trust. It also considered the other decision of this Court on the point and held that the structures erected in the area earmarked for a park should be removed and the park should be restored to its original position and the Corporation should maintain the park.

11. This decision was followed by a learned Single Judge of this Court in **Bhagya Nagar Colony Welfare Association** (2 supra). In that decision, this Court referred to the decision of the Supreme Court in **Virender Gaur Vs. State of Haryana**⁵, **Bangalore Medical Trust** (3 supra) and **M.I. Builders Pvt. Ltd.** (4 supra) and also Article 48-A of the Constitution of India, which directs the State to endeavour to protect and improve the environment and to safeguard the forests and wild life of the country, and held that quality of life in urban areas including the parks and open areas in urban areas should be protected. It directed removal of all structures in the open area earmarked for a park in the layout whatever the cost with which the construction was already made.

12. Having regard to the above settled legal position, the area earmarked for park in the sanctioned layout cannot be put to any

⁴ AIR 1999 SC 2468

⁵ (1995) 2 SCC 577

other use. Having regard to G.O.Ms.No.72 dt.20-02-2002, the stand of the Greater Hyderabad Municipal Corporation/ Quthbullapur Municipality that they are justified in utilizing a portion of the land earmarked for the park in the layout referred to above in Sy.No.83 of Jeedimetla village because there was no other municipal vacant land available or that the structures erected would benefit the residents of the area, cannot also be countenanced.

13. Assuming for the sake of argument that the Quthbullapur Municipality or the Greater Hyderabad Municipal Corporation have the responsibility over the said open area in view of the vesting of the same under the Municipal law, such vesting is only for the purpose of management and title does not pass to the Municipalities/Municipal Corporation. They only hold the property in public trust and they have no jurisdiction to deal with the area earmarked for a park in the sanctioned layout in any manner they choose.

14. Therefore, the Greater Hyderabad Municipal Corporation as well as respondents in the Writ Petition and the State of Telangana, which succeeded from the State of Andhra Pradesh, shall dismantle the structures erected by the then Quthbullapur Municipality in 228 sq. mts area forming part of the area earmarked for the park in the sanctioned layout within two (02) months from the date of receipt of a copy of this order and restore the park in the said area also as it originally stood and they shall continue to maintain the same.

15. The Writ Petition is allowed with the above directions. No costs.

16. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 07-08-2017

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