

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 20771 of 2009

ORDER:

1) The present writ petition came to be filed seeking issuance of Writ of Certiorari calling for the record, relating to revised layout vide permit No.2103/ MP3/ H/ 94, dated 01.05.1995 issued by respondent No.4 in favour of respondent No.2 in earmarking the area admeasuring Ac.2.39 gts., situated between Road Nos.2 and 3, Phase I and II in KPHB Colony, Kukatpally, Hyderabad, for commercial purposes, as arbitrary, illegal, null and void, liable to be set aside; and consequently direct the respondent authorities to retain the said land as open area, as parks, as per the original permit sanctioned by the Government in the year 1978.

2) The averments in the affidavit filed in support of the writ petition would show that the petitioner is an association registered under the Societies Registration Act. It is stated that the members of the petitioner association are owners of the buildings in K.P.H.B.Colony, which was laid down by the Andhra Pradesh Housing Board in the year 1978 and the layout was also approved by the HUDA. The total extent of the land covered under the Phase I and II is Ac.222.00. In the said layout 904 plots for MIG, 1056 plots for LIG and 1320 plots for E.W.S. was allotted. As per the original plan sanctioned by the HUDA, the land demarcated was Ac.26.62 gts. for open spaces, and Ac.11.040 gts., for commercial spaces. While things stood thus, respondent

No.2 issued a notification on 24.04.2004, calling for applications from developers, for development of commercial and residential complexes in an extent of Ac.12.00 of land at K.P.H.B.Colony. Questioning the said notification, the petitioners filed W.P.No.8982 of 2004. The said writ petition was disposed of on 11.06.2009, with a liberty to file a fresh writ petition questioning the action of the respondent authorities with regard to the revised layout. Hence, the petitioners filed the present writ petition.

3) Learned counsel for the petitioner would submit that the land admeasuring Ac.2.39 gts., which was earmarked for open spaces in the layout approved in the year 1978, was subsequently changed in the revised layout. The said revised layout was not approved by the HUDA. He further submits that as on to day, the said land is used as a park and that grave injustice would be caused to the residents of the colony, if the authorities sell or use the said land for commercial purpose.

4) Though no counter is filed, learned Standing Counsel for the respondent submits that in view of the revised layout which has been approved by the authority, the plea of the petitioner that the said area has to be treated as an open area cannot be accepted. According to him, the total extent of land, which is to be kept vacant as an open space is maintained even the revised layout and merely because there has been change in the location of the open spaces, the petitioner is not justified in demanding to keep the area in dispute, also as an open space.

5) The short question that arises for consideration is whether the Government was justified in de-notifying the area which was earlier earmarked for a particular purpose in the layout.

6) It is not in dispute that in the year 1978, a layout was prepared showing the subject land as an open space. It is said that the said layout was changed in the year 1995, showing the disputed land, towards allotment of house sites.

7) It is stated by the learned counsel for the petitioner that as on today, this Ac.2.39 gts., of land is lying vacant, which is being used by the residents of the locality as park and which is also the breathing space for the people residing in that area. As stated earlier, no counter is filed and no revised layout has been placed by the learned counsel for the respondents to show the existence of a revised plan. On the other hand, learned counsel for the petitioner placed on record, the documentary evidence to show that even in the year 2000, a letter was addressed referring to the lay out of the year 1978.

8) It is to be noted here that neither a revised layout is placed on record nor a counter has been filed explaining the fact position. But, it is an admitted fact that in the earlier layout, land to an extent of Ac.2.39 gts., which is subject matter of dispute in the present writ petition, was shown as open area, which according to the petitioner is being used by the residents of that area for walking, jogging, yoga etc.

9) In *M.I. Builders Private Limited v. Radhey Shyam Sahu*¹, Lucknow Nagar Mahapalika constructed underground shopping complex in a historic park known as Jhandewala Park situated at Aminabad Market, Lucknow. The same was challenged before the Lucknow Bench of Allahabad High Court, which held, that the decision of Lucknow Municipality as illegal, arbitrary and unconstitutional. As M.I. Builders Pvt. Limited, which was entrusted with the work of construction of shopping complex had completed part of construction, it sought Special Leave and preferred Civil Appeal before the Supreme Court. The Supreme Court affirmed the view of Lucknow Bench of Allahabad High Court and also directed to dismantle and demolish all the constructions made in the public park and also restore the place as a park to its original shape. The apex Court observed as under:

...As said earlier, High Court rightly exercised its power of judicial review in the present case. It has examined the manner in which the decision was made by the Mahapalika. Second principle laid in *Tata Cellular's* case applies in all respects. High Court held that the maintenance of the park because of its historical importance and environmental necessity was in itself a public purpose and, therefore, the construction of an underground market in the garb of decongesting the area was wholly contrary and prejudicial to the public purpose. By allowing the construction Mahapalika had deprived its residents as also others of the quality of life to which they were entitled to under the Constitution and the Act. The agreement smacks of arbitrariness, unfairness and favouritism. The agreement was opposed to public policy.

¹ AIR 1999 SC 2468

It was not in public interest. Whole process of law was subverted to benefit the builder. We agree with the findings and conclusions of the High Court.”

10) In *Sri Ramakrishna Educational Society, Nandyal v. Chairman, Nandyal Municipality, Kurnool District and another*² a learned Single Judge of this Court while dealing with the powers of authorities to change the area earmarked for open spaces observed as under:

“Therefore, it is a settled law of the land, nay, it is axiomatic that when once a layout is approved showing an open space meant for a park or for a recreational purpose or playground, under no circumstance, a public authority, be it the Government, the District Collector or the Municipal body, can utilize the land for any other purpose. This is especially so, when the land is earmarked as a green space/ park meant for the use of the people of the locality. I may hasten to add that even if the Municipality has permitted such constructions, all such permissions are contrary to law laid down by the Supreme Court. Rule of Law requires that they should be ignored, as they are void.

The area earmarked as playground in the layout can be used by the residents of the locality as well as Nandyal Town not only for the purpose of children's games and sports but can be used for different purposes like walking track, for growing tree clusters or for common meeting place. When once the layout was approved considering the playground is part of the common area, the same cannot be converted into a business/ commercial area by allowing a Rythu Bazar. Such conversion is impermissible in law.”

² (2006) 3 ALD 242

11) In *K.Sugunamma and another v. State of Telangana and others*³ another single Judge of this Court held as under:

“Regulator mandates that whenever a housing colony is proposed, the developer must provide open spaces within the colony. Such open spaces will yield to establishment of play-grounds and development of parks. As per the norms and regulations governing the development of layouts, the open space and the roads formed in the layout become the property of the concerned local body and they became property of the community as a whole.

Parks are public places intended for the benefit of the people. Such public places which are intended for public utility cannot be encroached upon by any person and it is against public interest to grant regularization on such encroachments. Thus, diluting the scope of restrictions imposed in the scheme of regularization by way of circular by the Chief Commissioner, Land Administration, itself is not legal and valid.”

12) The population of Hyderabad and the area and the year in which the present layout is laid, is far far less than what it is today, but by virtue of urbanization, large number of persons are being forced to live within the limited open spaces. Construction of huge buildings within the specified agglomeration is posing enormous threat to the atmosphere in residential areas. The master plan which was prepared in the year 1978 might have kept in mind the growth of population in the concerned urban agglomeration, but the growth of population over years in urban areas more particularly in a city like Hyderabad, is beyond one's imagination. Such being the position, there is nothing wrong in

³ (2015) 5 ALD 392

keeping some more space as an open space, enabling the residents and others to use the same either for walking, jogging or yoga etc. The basic requirement of having atleast some open space in each area morethan what has been prescribed in the layout prepared long back, appears to be the necessity of the day. Further, even if the Government intends to establish/raise a commercial building, they can do so at a different place but definitely not in a residential area which is already congested, and which fact can be taken judicial note of.

13) In view of the judgments referred to above and having regard to the facts and circumstances of the case, there is no justification for the respondents to say that they intend to auction the subject land for commercial purpose or for house plots, at the cost of health and well being of the residents of the locality, who are already put to lot of suffering due to lack of enough open space.

14) Accordingly, the writ petition is allowed. There shall be no order as to costs.

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

JUSTICE C. PRAVEEN KUMAR

21.09.2017
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