

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WP.No.1611 of 2004

ORDER :

Heard the counsel for petitioner, Sri Pasham Krishna Reddy, learned Standing Counsel for Greater Hyderabad Municipal Corporation, Sri P. Harsha Reddy, counsel for 2nd respondent.

2. In this Writ Petition the petitioner assails the inaction of 1st respondent, the then Commissioner, L.B. Nagar Municipality (which is now taken over by the GHMC) against the 2nd respondent who is attempting to make construction in the public place shown by him in a layout sanctioned in 1981 by the then Gram Panchayat, Karmanghat in Survey Nos.141 and 142 of Karmanghat which is located within the then L.B. Nagar Municipality / present Greater Hyderabad Municipal Corporation area (for short, 'GHMC').

3. The 2nd respondent was the owner of an extent of Acs.5.30 guntas in the above survey numbers in the above village. He converted the said land into house plots and obtained a layout in 1981 from the Karmanghat Gram Panchayat. He made 44 plots of different extents. He sold it to several persons and they formed the petitioner-Association. The members of the Association constructed houses in the said plots.

4. It is not in dispute that in the sanctioned layout an extent of 661.11 Sq.Yds. was shown as a public place and it is adjacent to plot

nos.23 and 24. This area of 661.11 Sq.Yds, though described as a public place in the sanctioned layout, is admitted to be set apart for a park by the 2nd respondent under an irrevocable General Power of Attorney bearing document No.2041 of 1987 executed by him in favour of one B. Ramulu in respect of plot Nos.23 and 24, and on the basis of which the said plots were sold on 19.07.1990 to one Smt. B. Bharatamma.

5. The petitioner-Association contends that the said open area has a well, that they intended to develop it into a park called 'Rajeev Park', but when they intended to do so on 07.12.2003, the 2nd respondent stopped them from doing anything. They then gave a representation dt.03.01.2004 to the 1st respondent complaining of the action of the 2nd respondent. They contended that the open public place of 661.11 Sq.Yds. should be protected from encroachment, and it is the responsibility of the Municipal Corporation to protect the same.

6. The counsel for petitioner reiterated the said contentions and contended that the Corporation should develop the public place shown by the 2nd respondent in the layout prepared by him, and it has not done so in spite of a representation in that regard.

7. Though no counter-affidavit is filed by the Commissioner, L.B. Nagar Municipality, R.R. District / GHMC, Sri Pasham Krishna Reddy, learned Standing Counsel for GHMC, states that the L.B.

Nagar Municipality is now merged with the GHMC; that the open place shown in the layout is still in existence; and when the 2nd respondent sought to built a compound wall around the said place, it was removed by the Corporation. He asserts that the GHMC will take all possible steps to protect the said open area from encroachment, and would also develop the same as a park.

8. The 2nd respondent filed a counter-affidavit stating that he had filed O.S.No.51 of 2004 before the II Additional Junior Civil Judge, R.R. District against the then Commissioner, L.B. Nagar Municipality, R.R. District and two members of the petitioner-Association seeking perpetual injunction restraining them from interfering with the possession and enjoyment over the property alleging that the public place area shown in the layout is still his own property, and he obtained a perpetual injunction on 17.03.2011 in respect of 233.33 Sq.Yds.

9. Admittedly, the petitioner-Association is not a party to the said judgment and therefore it does not bind the petitioner-Association. Also, the copy of the judgment produced by the counsel for 2nd respondent does not show that the said Court was apprised of the fact that the 2nd respondent intended this area to be used as a park as has been admitted by him in the irrevocable General Power of Attorney executed by him on 03.08.1987 on the basis of which plot nos.23 and 24 forming part of the layout were sold by the General Power of Attorney holder to one Sri B. Ramulu.

10. Having suppressed the said fact from the Civil Court, the 2nd respondent cannot now seek to contend that the property of 661.11 Sq.Yds. described by him as public place in the layout sanctioned by the then Gram Panchayat Karmanghat is his private property, and not earmarked for a park.

11. In Co-operative Housing Society Ltd., Saleemnagar Vs. Municipal Corporation of Hyderabad¹ a Division Bench of this Court has taken the view that areas earmarked for parks in sanctioned layout cannot be put to any other use and if it is put to any use, it violates Article 48-A of the Constitution of India. It directed removal of structures erected in the area earmarked for a park in the sanctioned layout.

12. Having regard to the said decision, this Writ Petition is allowed directing the Commissioner, L.B. Nagar Municipality, R.R. District / GHMC to ensure that the area of 661.11Sq.Yds. in the layout of 1981 got sanctioned by the 2nd respondent in Survey Nos.141 and 142 of Karmanghat Village is developed as a park only; and it shall ensure that the 2nd respondent shall not put the land to any other use other than as a park.

13. Accordingly, the Writ Petition is allowed as above. No order as to costs.

¹ 2001(5) ALD 663

14. As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 07-08-2017

Ndr/*

