

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Writ Petition No.14171 of 2017

ORDER:

This Writ petition, under Article 226 of the Constitution of India, is filed by the petitioners seeking the following relief:

‘to issue a Writ of Mandamus or any other appropriate writ, order or direction, declaring the action of the respondents 2 to 4 herein in proposing to construct of 1500 KL capacity ELSR 15 m overhead water tank in the part namely ‘Sri Kadiyala Venkata Krishna Rao Nagara Palaka Udyanavanam’ situated at Nagarjuna Nagar, Vijayawada, Krishna District earmarked as open space in the sanctioned layout vide L.P.No.357/79 in R.S.No.324/1 of Gunadala Village, Vijayawada Urban, Krishna District as illegal, arbitrary, unreasonable, violative of Articles 14 and 21 of Constitution of India and contrary to the provisions of Hyderabad Municipal Corporation Act, 1956 and pass such further order or orders as this Hon’ble Court may deem fit and proper...’

I have heard the submissions of Sri P. Durga Prasad, learned counsel for the petitioners; learned Government Pleader for Municipal Administration and Urban Development Authority representing the 1st respondent; Sri T.S. Venkata Ramana, learned Standing Counsel representing respondents 2 & 3. I have perused the material record.

From the pleadings and submissions, it is discernable that the petitioners are questioning the action of the respondents 2 & 3 in proposing to construct 1500 KL capacity ELSR 15m overhead water tank in Sri Kadiyala Venkata Krishna Rao Nagara Palaka Udyanavanam situate at Nagarjuna Nagar, Vijayawada, Krishna District, which is an earmarked open place for park in the sanctioned lay out *vide* LP.No.357/79 in R.S.No.324/1 of Gunadala Village, Vijayawada Urban.

Learned counsel for the petitioners would submit as follows: - 'The proposed place for overhead tank is a park is undisputed. In the open place which is earmarked for park, a park has been developed and the park is being maintained by the 2nd respondent with the help of the residents of Nagarjuna Nagar. It is a unique park as no such park like the instant park exists in Vijayawada city. The said park was developed in a total area of Ac.0.70 cents without utilising any part of the same for any other purpose and the park is rich in greenery and is intended for recreational purpose of the members of the colony & children and for morning & evening walks of the residents of the colony. When some persons entered into the park and started making some markings, the petitioners objected for the same and came to know from the replies given by the said persons that there is a proposal to construct a overhead water tank. On coming to know of the same, the petitioners along with other residents of Nagarjuna Nagar and Sri Ramachandra Nagar objected for the same and further approached the 2nd respondent and requested not to make any constructions in the park and deprive the residents of the said Nagarjuna Nagar and Sri Ramachandra Nagar of the amenity of park. At that time, the 2nd respondent stated that a tender notice, dated 02.08.2016, was issued for construction of 1500 KL capacity ELSR 15m overhead water tank in Nagarjuna Nagar division and that the 4th respondent was allotted the construction work of the said tank. Therefore, the residents of localities in and around Nagarjuna Nagar and the petitioners made detailed representation to the 2nd respondent bringing to the notice of the authorities that there is another existing open space earmarked in L.P.No.357/79, which is under the control of Municipal Corporation, and that in that open space no development has taken place so far and that only a compound wall was constructed around that open

place and that if necessary the same can be used for construction of overhead tank and requested to shift the proposal to construct ESLR over head tank from the instant park place to the said open place earmarked in L.P.No.357/79, which is not developed. The petitioners and other residents of Nagarjuna Nagar also made representations, dated 01.03.2017 and 06.03.2017; the same were received by the authorities, but, no action has been taken so far. The change of open place intended for park, which is well developed into a park, into a place for construction of overhead tank and using any part of the park for construction of overhead tank by deviating from the terms and conditions imposed at the time of granting of lay out is illegal, arbitrary, unreasonable, violative of Articles 14 and 21 of the Constitution of India and contrary to the provisions of the HMC Act, 1955. Hence, the writ petition is filed.'

In support of the said contention learned counsel for the petitioners placed reliance on a decision in **Kalasagaram, Secunderabad Cultural Association v. State of Andhra Pradesh and others**¹ wherein this Court held at paragraphs 11 & 16 as follows:

11) It is settled law that the land reserved for public purpose namely, play ground/park in the sanctioned layout cannot be allowed to be used for any other purposes including for any other public purpose. In such view of the matter, such lands reserved for play ground/park etc. Cannot be alienated by the municipal corporation in exercise of its purported power under section 148 of the act. The power under section 148 to alienate moveable or immoveable property subject to the conditions mentioned therein is not available in respect of the lands which are reserved for play grounds, roads, parks etc. In the sanctioned layout. The land which is reserved for such purpose cannot be said to be the land belonging to the municipal corporation and available for alienation within the meaning of section 148 of the act. No doubt, after the approval and sanction of layout such lands

¹ 1997 (6) ALD 277

which are reserved for public purpose and on communal benefits shall stand vests in the municipal corporation but only for the utilisation by the corporation for the purpose for which such land is reserved in the sanctioned layout. The land cannot be utilised for any of the purpose and at any rate it can never be alienated by way of lease, exchange of sale either by the commissioner or by the corporation as the case may be. In such view of the matter, the inescapable conclusion is that the respondent - corporation could not have alienated the land in question in favour of the petitioner under the lease deed dated 17 - 7 - 1982. The decision is absolutely illegal, ultra vires and void.

(16) Be that as it may, the court in exercise of its jurisdiction under article 226 of the constitution of india cannot compel the government or statutory authorities to act in an illegal manner. The respondent - municipal corporation ought not to have granted lease of the. Said land to the petitioner herein as it is reserved as open space and for a specified purpose, namely, play grounds, perks. The land reserved for such purpose cannot be even allowed to be utilised for any other public purpose. Land reserved for a park and play ground can never be allowed to be converting to be utilised even for any other public purpose (see bangalore medical trust v. S. Muddappa and others, air 1991 sc 1902. It is not as if an equal extent of a land was made available in the same layout for the play grounds and parks by allotting the land in question to the petitioner.

At this stage, it is pertinent to note that this Court, while admitting the writ petition, on 21.04.2017, granted an interim direction. The said order reads as under:

‘There shall be an interim direction to Respondents 2 to 4 not to construct 1500 KL capacity ELSR 15 m. overhead water tank in ‘Sri Kadiyala Venkata Krishna Rao Nagara Palaka Udyanavanam, Krishna District, earmarked as the open space in the sanctioned layout vide L.P.No.357/79 in R.S.No.324/1 of Gunadala Village, Vijayawada Urban.’

On behalf of the respondents 2 & 3, the 2nd respondent filed a counter affidavit along with material documents, *inter alia*, contending as follows:

The material allegations in the affidavit filed in support of the writ petition are false. In order to supply drinking water to the residents of

Nagarjuna Nagar, Currency Nagar, Sri Kanaka Durga Nagar, Srinivasa Nagar Bank Colony and other surrounding colonies, the public representatives have requested to prepare a comprehensive water supply plan for the entire East Assembly Constituency with surface water as source. Accordingly, a detailed project report was prepared duly conducting a detailed survey & analysis to provide 24 x 7 drinking water facility to all the areas of Vijayawada East Assembly Constituency with sufficient pressure and surface water as source. Further, it is proposed to construct several ELSRs, pumping mains, gravity mains and distribution network. The DPR is designed and projected for ultimate population sufficient for the next 30 years. There is no ELSR in the surrounding areas of Nagarjuna Nagar Colony. The existing Srinivasa Nagar Bank Colony ELSR was constructed with only 1000 KL capacity and it is not sufficient to meet the existing needs of the growing population and the increasing group houses and apartments. The Council has resolved to implement the said resolution, dated 04.04.2016, and accordingly it is proposed to construct 1500 KL capacity ELSR in Nagarjuna nagar and supply drinking water to Nagarjuna nagar and the surrounding colonies as well duly drawing the treated water from the 46 MLD water treatment plant located at Gangiredduladibba for which the pumping mains are already laid. Technical experts have prepared the Project report and the same was approved by the Council and it is thus proposed that Kadiayala Venkata Krishna Rao VMC park is the suitable place to construct the proposed ELSR so as to draw the treated water with natural gravitation. Accordingly, the process of tenders has been taken up duly getting prior approval of the Government of Andhra Pradesh vide Proceedings of CDMA, dated 27.06.2016, and the same was also got approved by the Commissioner of Tenders vide proceedings, dated 21.09.2016.

The open space of about Ac.0.70 cents [85.10 x 43.70 mtrs., approximately] has been developed by the 2nd respondent as park under the name and style Sri Kadiayala Venkata Krishna Rao Nagara Palaka Udyanavanam. The residents developed the park by relentless efforts is not true. The park was developed and is being maintained by horticulture wing of the respondent corporation and its staff at the own cost of VMC. The corporation is maintaining several parks and the instant park is one of such parks. The land required for construction of proposed ELSR is only 24 x 25 metres which is 1/6th of the total site of the existing park. While establishing the water overhead tank, the park will not be damaged. There is no other park like the instant park in Vijayawada is not correct. Vijayawada Municipal Corporation is constructing many parks for the purpose of recreation of the citizens of the city and for environmental conservation and also keeping in view the fact that the city is now evaluated as capital city for the State of Andhra Pradesh. The open place mentioned by the petitioners or any other open place is not suitable for the desired purpose as the treated water from Gangiredduladibba water treatment plant has to be received by virtue of natural gravity to the place of ELSR tank. There is no necessity for the Corporation to take any secret steps in this regard. The 4th respondent has become a successful bidder after completion of the tender process. A letter of acceptance has been issued, on 10.10.2016, and the site has also been handed over to the contract agency and they have started their activity as it is a time bound project. Out of the total site of the park, only 1/6th of the park site is projected for construction of the proposed ELSR. The construction work is taken up under 14th Finance Commission Grant basing on the specifications and guidelines of the authorised technical agency in order to draw the treated water from the water treatment plant located at Gangiredduladibba by virtue of

natural gravity and serve to the public residing in and around Nagarjuna Nagar; and, the water facility scheme was proposed to satisfy the thirst of around two lakh people keeping in view the vast interests of the public. The action of the respondents in this case, that is, providing safe water to the inhabitants of the locality is not contrary to the Rules, the provisions of the Constitution of India and HMC Act. Hence, the writ petition may be dismissed.

I have perused the material record including the documents filed with the counter namely Plan, Key plan, representation, comprehensive water supply improvement scheme to Vijayawada East Constituency (i.e., information on the project).

Both the learned counsel made submissions in line with the pleadings of the parties.

Though it is one of the contentions of the petitioners that there is an alternative open site enclosed by compound wall which is not developed and is not being put to use for any purpose and that the existence of such site is already brought to the notice of the respondent authorities with a request to shift the proposed construction of overhead water tank from the proposed area of the park to the said alternative site, their main contention is that the proposed place where the construction of the proposed ELSR 1500 KL capacity water tank is being constructed is a well developed park and that it is earmarked as a park in the lay out and that it cannot be put to any other use including for construction of the proposed over head water tank and that despite representations, dated 01.03.2017 and 06.03.2017 the respondent authorities are proceeding to make construction of the water tank in the well developed park which is an earmarked park as per the sanctioned lay out and

that no exemption was granted by the competent authority even if such authority is competent to do so under facts and in law and that the proposal for construction of a water tank in a well developed ear marked park is contrary to the decision in Kalasagaram's case [supra].

Learned standing counsel would submit as follows:

The alternative site proposed for construction of the water tank by the petitioners is unsuited for construction of ELSR for the reasons stated in the counter affidavit. The proposal for construction of the subject ELSR in the subject park occupying an area of only 1/6th of the entire area of the park was proposed after technical experts have examined the whole issue including it as a part of comprehensive water supply improvement scheme to East Constituency Circle 3 in VMC to clear water requirement of lakhs of people of that area and also the future requirement for providing 24 x 7 water supply to the residents of Nagarjuna Nagar, Currency Nagar, Sri Kanaka Durga Nagar, Srinivasa Nagar Bank Colony. The main water source is Gangiredduladibba; and, pipelines are laid taking into consideration the lie of the lands from that dibba to the proposed ELSR in the subject park. There is also proposal to construct other ELSR pumping mains, gravity mains and distribution network; and, the entire project is designed and projected for ultimate population sufficient for the next 30 years. There is no ELSR in the surrounding areas of Nagarjuna Nagar; and the drinking water from the proposed ELSR on its completion would be supplied to the surrounding areas of Nagarjuna Nagar from the existing Srinivasa Nagar Bank colony ELSR which was constructed with only 1000 KL capacity; it is not sufficient to meet the existing needs of the growing population due to construction of several group houses and apartments. As

per the report of the comprehensive water supply plan for the entire East Assembly Constituency, the Council has resolved to implement the same vide its resolution, dated 04.04.2016. Accordingly it is proposed to construct 1500 KL capacity ELSR in Nagarjuna Nagar for supply of drinking water to Nagarjuna Nagar and the surrounding colonies as well, duly drawing the treated water from the 46 MLD water treatment plant located at Gangiredduladibba.

He would emphasise that there is no other suitable area in the vicinity and that the land required for construction of the proposed ELSR is only of 24 x 25 metres, which is only 1/6th of the area of the total site of the existing park, and that the constructions would be made without any damage to the greenery and other establishments of the park.

Learned standing counsel appearing for the respondents 2 & 3 also brings to the notice of this Court a decision of the Supreme Court in **Machavarapu Srinivasa Rao and another v. The Vijayawada, Guntur, Tenali, Mangalagiri Urban Development Authority and others**² wherein the questions that fell for consideration were – ‘whether respondent no.1-Vijayawada, Guntur, Tenali, Mangalagiri Urban Development Authority, had jurisdiction to grant permission to respondent No.3-Sri Venkateswara Swamivari Alaya Nirmana Committee for construction of temple at the site of which land use was shown as recreational in the Zonal Development Plan approved by the State Government?’; and, ‘whether the Division Bench of the High Court of Andhra Pradesh was justified in refusing to nullify the decision taken by respondent No.1 by assuming that it was only a case of allotment of site?’ The cited decision was relied upon in support of the proposition that the

² (2011)12 SCC 154

State Government is vested with the power to make modifications in the development plan though such power is not unlimited and that such modifications can be made only by the State Government that too after following the procedure prescribed under Section 12(3) of Andhra Pradesh Urban Areas (Development) Act, 1975. Relying on this decision, it is stated that there is no absolute prohibition for modification of development plan. The relevant observations in the above cited decision, which are relied upon, are as follows:

‘An analysis of the above noted provisions shows that once the Master Plan or the Zonal Development Plan is approved by the State Government, no one including the State Government/Development Authority can use land for any purpose other than the one specified therein. There is no provision in the Act under which the Development Authority can sanction construction of a building etc. or use of land for a purpose other than the one specified in the Master Plan/Zonal Development Plan. The power vested in the Development Authority to make modification in the development plan is also not unlimited. It cannot make important alterations in the character of the plan. Such modification can be made only by the State Government and that too after following the procedure prescribed under Section 12(3).’

Further, during the course of arguments, it is stated that when the matter was earlier taken up by one of my learned predecessors, there was a suggestion to the Vijayawada Municipal Corporation to seek exemption from the competent authority of the Government and that, therefore, a resolution was already passed by the Council and that a request that was made for exemption is pending consideration with the competent authority of the Government.

Even as per the submissions made by placing reliance on the decision of the Supreme Court in Machavarapu Srinivasa Rao (Supra), it is manifest that the State Government, if it comes to the conclusion that it has got the power in

the instant matter, it has to take an appropriate decision in the matter in accordance with the procedure established by law. In that view of the matter, the State Government is now required to take a considered appropriate decision in the matter exercising independent discretion by keeping in view not only all the facts but also the legal position obtaining. Therefore, in the considered view of this Court, it is not appropriate for this Court to make any observations in this writ petition as the State Government has to take independent decision in the matter.

In the result, the Writ Petition is disposed of without going into the merits of the matter leaving it open to the the State Government before which the request of Vijayawada Municipal Corporation for exemption is pending to take an independent and well considered decision in the matter, having regard to the facts and legal position obtaining. However, if the said authority is inclined to grant exemption, the reasons therefor shall be recorded and such reasoned decision taken shall be duly communicated to the petitioners within a week after taking such decision. Till such exercise is completed, the interim direction granted by this Court earlier shall be in force.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

M.SEETHARAMA MURTI, J

18.12.2017

Note: Issue CC by 20.12.2017.

[B/o]

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