

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE MS JUSTICE J.UMA DEVI

Writ Petition Nos.14935 and 18204 of 2017

COMMON ORDER: (Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan)

Heard Sri M.Surender Rao, learned Senior Counsel appearing on behalf of the petitioner in W.P.No.18204 of 2017, Sri Tata Singaiah Goud, learned counsel for the petitioners in W.P.No.14935 of 2017, learned Government Pleader for Municipal Administration appearing on behalf of the Director of Town and Country Planning, learned Government Pleader for Panchayat Raj, Sri G.Seshadri, learned Standing Counsel for Gram Panchayat and Sri K.Sarvabhuma Rao, learned counsel appearing on behalf of the erstwhile Sarpanch, who has sought to implead himself as the 9th respondent in W.P.No.18204 of 2017 and, with their consent, both these writ petitions are disposed of at the stage of admission. The parties herein shall, hereinafter, be referred to as they are arrayed in W.P.No.18204 of 2017.

The dispute in these writ petitions relates to an order passed by the Upa-Lokayukta dated 08.07.2016 in complaint No.2665/2011/B2 whereby the District Collector, Ongole, Prakasam District was directed to resume an extent of Ac.1.00 in Survey No.179 earmarked for open spaces in the original sanctioned lay out, (which had been sold by the President of the ILTD Company Stock Cooperative Industrial Housing Construction Society Limited, Kothapeta), and to hand it over to the Gram Panchayat to be used for public purpose by following due procedure. With respect to the apartment building, under construction in 2324.63 square yards of land in Survey No.186/2 which was also earmarked for open spaces, the concerned authorities were directed to take steps to stop the construction, and hand over the same to the Gram Panchayat or the Municipality.

Learned Government Pleader for Municipal Administration has placed before us a photostat copy of a sanctioned lay out in L.P.No.42/57, which he had obtained from the District Town and Country Planning Officer, Ongole, to contend that the subject building is under construction in the open space earmarked for the Girls High School play ground.

Sri K.Sarvabhuma Rao, learned counsel for the impleaded 9th respondent in W.P.No.18204 of 2017, would submit that the lay out, approved in the year 1957, was subsequently revised in the year 1960; though the society was formed in the year 1959, and plots were allotted to the members immediately thereafter, the subject plots were sold only in the year 2010 more than 50 years after the society was formed, and the layout was sanctioned; the President of the Society had, in collusion with the officials concerned, suppressed the fact that a lay out had been sanctioned only with a view to surreptitiously sell the subject land to several individuals, six of whom had, in turn, handed it over to the petitioner for development.

On the other hand, M.Surender Rao, learned Senior Counsel appearing on behalf of the petitioner in W.P.No.18204 of 2017, would put the genuineness of the 1957 lay out in issue. He would contend that the very fact that the society itself came into existence only in the year 1958 would falsify the respondents' claim of a lay out having been sanctioned in the year 1957; the order of the Upa-Lokayukta was passed behind the petitioner's back and without putting the owners of the subject land, who had purchased it in the year 2010, on notice; consequently, the petitioner was deprived of the opportunity of pointing out that there was no sanctioned lay out; and the then Director of Town and Country Planning was justified in according permission for construction on the basis that the subject lay out was unauthorised.

If, as is now contended before us, there is a sanctioned lay out in existence, and the copy of the lay out produced before us is genuine, then it does appear that the construction raised by the petitioner is on the land earmarked for the Girls High School. If, on the other hand, the copy of the lay out produced before us is not genuine, then the other contentions as to whether the Director of Town and Country Planning was justified in treating the subject lay out as unauthorised, and in permitting the petitioner to raise construction on payment of penal charges, would necessitate examination.

While the copy of the lay out, placed before us, does appear to indicate that the construction being raised by the petitioner is in an open space earmarked for the Girls High School, we cannot also lose sight of the fact that the order of the Upa-Lokayukta was passed without putting either the petitioner or the owners of the subject land on notice; and without giving them an opportunity of being heard.

All the learned counsel, appearing on either side, are in agreement that, instead of keeping the writ petitions pending on the file of this Court, it would suffice if the order of the Upa-Lokayukta is set aside for violation of principles of natural justice; and the matter is remanded to the institution of the Lokayukta for its consideration afresh, and in accordance with law, after giving all the parties, including the petitioner and the impleaded 9th respondent, an opportunity of being heard. As larger public interest would require open spaces to be left as such, we direct that no further construction shall be made by the petitioner, till the matter is heard afresh by the Institution of the Lokayukta, and orders are passed in accordance with law. The District Town and Country Planning Officer, Ongole shall, along with the Sarpanch of the Kothapet Gram Panchayat, take photographs of the subject building (as it exists as on date), and make

available copies thereof to the petitioner and to the impleaded 9th respondent; and place the same before the Institution of the Lokayukta before the matter is heard afresh. While the petitioner may retain possession of the subject land, he shall not alienate or create third party rights over the subject land and shall also not make any further construction till the matter is finally heard and decided by the Institution of the Lokayukta.

We request the Institution of the Lokayukta to hear the matter at the earliest, and pass an order afresh, preferably within three months from the date of receipt of a copy of this order, after giving an opportunity of being heard to all the parties herein. Needless to state that all the parties to these proceedings shall be entitled to initiate appropriate legal proceedings after orders are passed afresh by the Institution of the Lokayukta.

Both the Writ Petitions are disposed of accordingly. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(J.UMA DEVI, J)

11th September, 2017
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AND
THE HON'BLE MS JUSTICE J.UMA DEVI**



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Date: 11.09.2017

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