

**HON'BLE THE CHIEF JUSTICE
SRI THOTTATHIL B. RADHAKRISHNAN
AND
HON'BLE SRI JUSTICE S.V.BHATT**

WRIT APPEAL No.1514 OF 2017

JUDGMENT: *(Per the Hon'ble Sri Justice S.V.Bhatt)*

Heard Mr. P.Sri Harsha Reddy for appellant, Mr.M.Sudhir Kumar for 1st respondent and Mr.Sampath Prabhakar Reddy for 2nd respondent-GHMC.

The 2nd respondent in W.P.No.1611 of 2004 is the appellant. The writ appeal is filed challenging the order dated 07.08.2017 in W.P.No.1611 of 2004. The 1st respondent herein filed W.P.No.1611 of 2004 for Mandamus declaring the inaction of the Commissioner, L.B.Nagar Municipality, Ranga Reddy District/2nd respondent herein in initiating action against appellant in respect of representation dated 03.01.2004 as illegal and further prayed for a direction to 2nd respondent herein to develop public place shown in the layout prepared in the year 1981 for Sy.Nos.141 and 142 of Karmanghat Village, L.B.Nagar Municipality, Saroornagar Revenue Mandal, Ranga Reddy District.

The 1st respondent is a welfare association. The appellant was the owner of an extent of 05.30 gts of agricultural land in Sy.Nos.141 and 142 of Karmanghat Village. The agricultural land was converted into 44 house plots of different extents and the plots were sold to individuals. The plot owners have constructed houses and have formed the petitioner Welfare Association. According to petitioners, the plots were alienated

in the layout in favour of members of petitioner association by reference to a sanction layout, wherein the appellant had set apart public place and is called Rajiv Park. On 07.12.2003, the association proposed to develop the public place as a full fledged park. The efforts of petitioner association were resisted by the appellant and his followers or agents. According to appellant, the area is not public place and is retained by the land owner. Therefore, the association cannot develop open public place available in Sy.Nso.141 and 142 as a park. The appellant filed counter affidavit and the principal objection is that the appellant filed O.S.No.51 of 2004 on the file of II-Additional Junior Civil Judge, Ranga Reddy District for injunction against the 2nd respondent herein and also a few plot owners. O.S.No.51 of 2004 was filed for perpetual injunction restraining the defendants therein from interfering with appellant's possession. The subject matter of O.S.No.51 of 2004 was an extent of 233.33 sq. yards which is more fully described as agricultural well in the suit schedule. On 17.03.2011, the suit was decreed granting perpetual injunction in favour of appellant and, therefore, the members of 1st respondent association and the 2nd respondent are precluded from interfering with the peaceful possession and enjoyment of the appellant.

The learned Single Judge by considering these circumstances and particularly taking note of the layout by reference to which plots were sold and the obligation to protect the parks earmarked in layout held as follows:

“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”.

Hence, the appeal.

Mr. Sri Harsha Reddy contends that the impugned direction in the order under appeal to ensure that 661.11 sq. yards in Sy.Nos.141 and 142 of Karmanghat Village is developed as park and that the appellant shall not be allowed to put the land to any other use except as a park, is illegal. According to him, the layout relied on by the 1st respondent is not the layout by reference to which the plots were alienated alternatively by operation of perpetual injunction granted by the trial Court in O.S.No.51 of 2004, the appellant is free to enjoy the property as an absolute owner and, therefore, prays for setting aside the order under appeal.

Mr.Sudhir Kumar, on the contrary, contends that the appellant by reference to gram panchayat layout granted in the year 1981 sold all the plots. Once the agricultural land is converted into a layout, the owner retains only the plotted area but not the area shown as open public place.

In the layout developed and operated by appellant, the vacant land now available is part of open public place. Therefore, the appellant cannot construct a building or put to use the available vacant space for any purpose other than for which it is earmarked in the layout. He further contends that the burden is on appellant to show that the available open space is not earmarked for open public place and having sold the plots to the members of Welfare Association/R1, the very space earmarked cannot be used for a different purpose. He prays for dismissing the appeal.

The learned standing counsel produced File No.3/C23/13921/2017 concerning Plot No.21. The file has a few photographs showing the physical features of the open space and that layout was approved with open space.

The finding of the learned Single Judge is that once house plots are sold by reference to a layout, the open public place is required to be maintained for the benefit of plot owners. The appellant being the land owner having converted the agricultural land into plots cannot ignore the condition with which the layout was operated and open plots sold to third parties. The effort of appellant is to show that the place where the appellant proposes to construct a building does not cover an extent of 661.11 sq. yards but only 211 sq. yards. The appellant failed to show that the public place earmarked for park is different from the place against which the 1st respondent is complaining before the authorities. Therefore, the objection now raised is more taken to suit the claim of the appellant.

The next objection is that the injunction in O.S.No.51 of 2004 operates against the respondents and, therefore, the order in the writ petition runs contrary to the perpetual injunction granted by the civil Court. This objection, in our considered, view is untenable. The 1st respondent herein is not one of the defendants in O.S.No.51 of 2004. The suit is for perpetual injunction not to interfere with the alleged possession of appellant in respect of 233.33 sq. yards. The boundaries shown in the suit schedule and the public open place now produced from the file firstly must tally before a conclusion is recorded. Secondly, the prayer is only to continue to maintain an open public place which is earmarked by the appellant land owner. This Court, after perusing the record, is convinced that no ground is made out for interference under Clause 15 of the Letters Patent.

The writ appeal fails and is, accordingly, dismissed. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any pending, stand closed.

THOTTATHIL B. RADHAKRISHNAN, CJ

S.V.BHATT, J

12th September, 2018
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