

HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
HON'BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

Writ Appeal Nos.363 & 370 of 2018

COMMON JUDGMENT: *(per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)*

Heard the learned Advocate General for the State of Andhra Pradesh, Sri M.S. Prasad, learned Senior Counsel appearing on behalf of the 1st respondent-writ petitioner and Sri S. Lakshminarayana Reddy, learned Standing Counsel for the Greater Visakhapatnam Municipal Corporation ("GVMC" for short) and, with their consent, both these appeals are disposed of, at the stage of admission, by this common order.

The 1st respondent herein filed W.P.No.36413 of 2014 seeking a writ of *mandamus* to declare the inaction of the District Collector, Visakhapatnam in issuing a No Objection Certificate to the petitioner, for approval/permission for construction by the Commissioner, GVMC, as illegal and arbitrary; and to, consequently, direct the District Collector, Visakhapatnam to consider their application dated 31.05.2014 for grant of a No Objection Certificate for approval/permission by the Commissioner, GVMC with respect to the property in Sy.No.92/3 of an extent of Ac.12.51 cents situated at Endada Village, Visakhapatnam Rural Mandal, for construction of an Orphanage and Old Age Homes.

They later filed W.P.No.26653 of 2015 seeking a *mandamus* to declare the proceedings dated 18.08.2015, issued by the District Collector, Visakhapatnam proposing to resume the subject land of an extent of Ac.12.51 cents, and to declare that the G.O. referred to by the District Collector to resume the land, i.e G.O.Ms.No.57

dated 16.02.2015, had no application to the present case, as the land was alienated in favour of the petitioner on payment of market value. A further direction was sought to declare the action of the GVMC, in directing the petitioner to obtain NOC from the District Collector for granting construction permission, as illegal and arbitrary.

Facts, to the limited extent necessary, are that G.O.Ms.No.1447 was issued on 06.12.2008 according permission to the District Collector, Visakhapatnam to alienate Government land of an extent of Ac.12.51 cents, in Sy.No.92/3 of Endada Village, Visakhapatnam Rural Mandal, in favour of the 1st respondent-writ petitioner on payment of market value @ Rs.45.00 lakhs per acre as was recommended by the District Collector, Visakhapatnam for construction of Cottages for Aged People and Orphans. The said G.O. refers to the letter of the District Collector dated 14.12.2006 whereby proposals were submitted for alienation of Government land of an extent of Ac.12.51 cents, in favour of the 1st respondent-writ petitioner, on payment of the market value for construction of cottages for aged people and orphans; the land, proposed for alienation, stood registered as a Hill Poramboke in the revenue records; no objections had been received for the A1 notice published, and the sub-division; the Collector had reported that the basic value of adjoining Zeroiti lands was Rs.28.70 lakhs per acre, and the prevailing market value ranged from 40.00 lakhs to 50.00 lakhs per acre; the project, for which the land was requisitioned, included creation of accommodation for aged people and orphans in a environmentally friendly area for which the proposed site was well suited; there was no suitable private land

available in the above location for the comprehensive proposal; there was no requisition from any of the government agencies for the land; The Visakhapatnam Urban Development Authority ("VUDA" for short) had not so far conducted auction of Government lands in Endada village of Visakhapatnam Rural Mandal; and it had auctioned lands in other villages, namely, Madhuravada in Visakhapatnam Rural, and Kapuluppada Village of Bheemunipatnam Mandal, by developing the land.

The said G.O. also refers to the Spl. Chief Secretary and Chief Commissioner of Land Administration, Hyderabad having said, in his letter dated 26.12.2007, that poramboke lands in Visakhapatnam were being alienated to VUDA, Andhra Pradesh Housing Board etc. for housing purposes; if the land was suitable, for construction of Old Age Homes, etc. this could be utilized for a public purpose; the applicant (1st respondent-writ petitioner) could buy private land for their purposes; however, if the proposal of the Collector, Visakhapatnam for the above alienation in favour of the applicant was considered, it could be given at the market value of Rs.1.50 crores per acre.

The G.O. refers to the Government having examined the proposals, and to have observed that the 1st respondent-writ petitioner had submitted its three annual reports, and had requested to allot land for construction of cottages for aged people and orphans; and, hence, it would be appropriate to charge the market value as recommended by the District collector, Visakhapatnam. While the G.O. does not state why the recommendations of the Special Chief Secretary and Chief Commissioner of Land Administration, for alienation of the subject

land in favour of the 1st respondent-writ petition at the market value at Rs.1.50 crores per acre, should not be accepted, the government had, by the said G.O, accorded permission to the District Collector to alienate the land, of Ac.12.51 cents, on payment of market value of Rs.45.00 lakhs per acre ***“for construction of cottages for aged people and orphans”***.

The said G.O. also stipulates that the conditions prescribed in BSO-24 shall be applicable for alienation. Pursuant thereto, a deed of conveyance was executed on 04.10.2010 by the Government represented by the Tahsildar in favour of the 1st respondent-writ petitioner. The preamble to the deed of conveyance refers to G.O.Ms.No.1447 dated 06.12.2008, and the proceedings of the District Collector dated 02.09.2010 directing the Tahsildar, Visakhapatnam (Rural) Mandal to hand over possession of the land to the applicant (respondent-writ petitioner), as they had paid a total sum of Rs.5,62,95,000/- i.e., at Rs.45.00 lakhs per acre, and had also directed him to execute a conveyance deed, and to incorporate necessary changes in the Revenue Records. The conveyance deed also refers to the District Collector having informed that, according to the project report, the 1st respondent-writ petitioner had proposed to build cottages under two categories, and among the special features of the project was that 60% of the total land area would be sold to aged people, and cottages would then be constructed according to their wish. It also refers to receipt of the total consideration of Rs.5,62,95,000/-, and that the transferee to the conveyance deed had absolute right and title over the scheduled property.

The 1st respondent-writ petitioner claims to have approached the Mining Department for grant of permission to level the hillock, and the Police Department for grant of permission to conduct blasting operations; and, thereafter, to have approached the GVMC, in the year 2012, seeking their permission for construction of cottages. The Commissioner-GVMC, by his endorsement dated 03.03.2014, directed the respondent-writ petitioner to submit an NOC from the District Collector and as no action was taken by the District Collector, on their application for grant of NOC, they filed WP No.36413 of 2014 before this Court.

While matters stood thus, a notice was issued to the 1st respondent-writ petitioner on 21.06.2015 calling upon them to show cause why action should not be taken against them for their failure to utilize the land for the purpose for which it was allotted; and as to why the land was not developed within the time frame, and as per the conditions of alienation. The respondent-writ petitioner submitted their explanation thereto and, thereafter, the order dated 18.08.2015 was passed cancelling allotment of Ac.12.51 cents of land, granted in favour of the 1st respondent-writ petitioner earlier vide G.O.Ms.No.1447 dated 06.12.2008; and for resumption of the land to the Government. Aggrieved thereby, the petitioner filed W.P.No.26653 of 2015, and this Court is said to have granted interim suspension of the impugned proceedings.

In the order under appeal, the learned Single Judge, relying on Section 11 of the Transfer of Property Act, 1882, held that, once Government land is alienated and a conveyance deed is executed, it could not be subjected to any conditions; grounds, which were not even mentioned in the show cause notice dated 21.06.2015,

formed the basis for cancellation of the transaction; since the market value, as fixed by the State Government, was paid by the respondent-writ petitioner, a conveyance deed was executed in their favour, and the said deed was registered; the transaction could not, therefore, be annulled by the District Collector on the ground of inadequate consideration; and the impugned order dated 18.08.2015, issued by the District Collector cancelling the conveyance deed, was illegal, arbitrary and violative of Article 14 and 300-A of the Constitution of India.

Both the Writ Petitions were allowed with costs of Rs.10,000/-; the order of resumption was set aside; and the appellants were directed to restore possession of the subject land to the 1st respondent-writ petitioner, and not to interfere in any manner with their possession and enjoyment over the subject property. The District Collector was also directed to issue NOC forthwith to the petitioner to enable them to obtain construction permission from the GVMC for constructing cottages for old age persons and orphans in the subject land.

Learned Advocate General for the State of Andhra Pradesh, after referring to the contents of G.O.Ms.No.1447 dated 06.12.2008, would submit that grant of land to the 1st respondent-writ petitioner is subject to the condition that it would be used for construction of cottages for aged people and orphans; the petitioner intended to alienate 60% of the allotted land in favour of such persons, which was beyond the conditions stipulated in the grant; the Learned Single Judge had erred in relying on Section 11 of the Transfer of Property Act, since the provisions of the Government Grants Act, 1895 makes the Transfer of Property Act,

1882 inapplicable to Government grants; and, in the light of the law declared by the Supreme Court in ***Union of India vs. Dinshaw Shapoorji Anklesari***¹, the conditions stipulated in the grant would continue to apply, notwithstanding alienation of the land by execution of a conveyance deed in favour of the 1st respondent-writ petitioner. He would further submit that, since the 1st respondent-writ petitioner did not carry on any operations in the subject land at least for two years from the date on which possession of the subject land was given to them, the Government had resumed the land; and the learned Single Judge had erred in directing the District Collector to grant an NOC, when the respondent-writ petitioner had merely sought a direction to the District Collector to consider grant of an NOC in their favour.

On the other hand Sri M.S. Prasad, Learned Senior Counsel appearing on behalf of the 1st respondent-writ petitioner, would submit that there was no delay on the part of the respondent-writ petitioner in putting the subject land to use; soon after the deed of conveyance was executed in their favour, the Mining Department was approached for grant of permission to level the hillock; permission was also sought from police officials to conduct blasting operations; it is only after such permissions were accorded, was the respondent-writ petitioner entitled to approach the GVMC for grant of permission for construction; when so approached, the GVMC had directed the respondent-writ petitioner to obtain a No Objection Certificate from the District Collector; and, despite their making an application for grant of an NOC, the District Collector had taken no action in this regard necessitating

¹ (2014)14 SCC 204

their having to invoke the jurisdiction of this Court under Article 226 of the Constitution of India; the allegation of failure of the respondent-writ petitioner to use the subject land was just a ruse to illegally resume the land alienated in their favour, and to deprive the respondent-writ petitioners of the land which belonged to them; a perusal of the impugned order dated 18.08.2015 would show that the grounds on which the allotment was cancelled are not among those reflected in the show cause notice dated 21.06.2015; on this ground alone the impugned order dated 18.08.2015 necessitated being set aside; and since the Learned Single Judge has held the final order dated 18.08.2015 to be illegal, no interference is called for in proceedings under Clause 15 of the Letters Patent.

A bare reading of the final order dated 18.08.2015 shows that the reasons which weighed with the appellants, in cancelling the earlier allotment of Government land in their favour, are not those reflected in the earlier show cause notice dated 21.06.2015. It is unnecessary for us to reproduce the contents of the show cause notice dated 21.06.2015, or the final order dated 18.08.2015, as the Learned Advocate General for the State of Andhra Pradesh would fairly state that the grounds on which the final order dated 18.08.2015 came to be passed were not confined only to those referred to in the show cause notice dated 21.06.2015 issued earlier.

Cancellation of allotment, on grounds which were not put to the notice of the respondent-writ petitioner and to which they were not given an opportunity to rebut, is in violation of principles of natural justice and, on this short ground alone, the impugned

order dated 18.08.2015 is liable to be set aside. Learned Advocate General would submit that, while setting aside the impugned order dated 18.08.2015 on this ground alone may not constitute a patent error necessitating interference in an intra-Court Appeal under Clause 15 of the Letters Patent, the fact remains that the Learned Single Judge did not even grant the appellants liberty to take action afresh; and even if an order is set aside for violation of principles of natural justice, the authorities concerned must be given liberty to take action afresh and in accordance with law.

We find considerable force in the aforesaid submission of the Learned Advocate General. As the impugned order dated 18.08.2015 contains reasons, for cancellation of allotment, which are not reflected in the earlier show cause notice dated 21.06.2015, the impugned order dated 18.08.2015 is liable to be, and is accordingly, set aside. Since the impugned order dated 18.08.2015 is liable to be set aside on this ground alone, it was wholly unnecessary for the Learned Single Judge, and for us, to examine other contentions regarding applicability of Section 11 of the Transfer of Property Act, whether the provisions of the Government Grants Act would prevail over Section 11 of the Transfer of Property Act, etc. Suffice it to make it clear that all other contentions, dealt with in the order under appeal, are left open to be examined, if need be, in appropriate legal proceedings. The order under appeal, whereby the impugned order dated 18.08.2015 was set aside, shall not disable the appellants herein from issuing a notice afresh and, thereafter, to take action in accordance with law. If a fresh notice is issued by the appellants,

it is always open to the respondent-writ petitioner to take all such objections thereto as are available to them in law.

With regards failure of the District Collector to grant NOC to the respondent-writ petitioner, reliance is placed by the Learned Advocate General on G.O.Ms.No.474 dated 23.08.2013 wherein Municipalities and other statutory bodies were directed to refer applications, for grant of permission for construction in Government allotted/assigned lands, to the respective District Collectors for confirmation of fulfillment of the conditions, before issuing approvals/permissions to the allottees/assignees who were allotted/assigned Government land for specific purposes.

While Sri M.S. Prasad, Learned Senior Counsel appearing on behalf of the respondent-writ petitioner, would contend that the said G.O, issued on 23.08.2013, cannot be made applicable retrospectively to application submitted by the 1st respondent-writ petitioner prior thereto in the year 2012 itself, it is wholly unnecessary for us to examine this contention since, even if the said G.O. were to apply, it is not even the case of the District Collector that the respondent-writ petitioner had failed to fulfill the conditions stipulated in G.O.Ms.No.1447 dated 06.12.2008, nor did he state why the respondent-writ petitioner was not entitled for grant of a No Objection Certificate. While the Learned Advocate General for the State of Andhra Pradesh would submit that the 1st respondent-writ petitioner was seeking to alienate 60% of the allotted land, contrary to the conditions of the grant as stipulated in G.O.Ms.No.1447 dated 06.12.2008, and the grant is only for construction of Old age Homes and for an Orphanage, Sri M.S. Prasad, Learned Senior Counsel appearing on behalf of the 1st

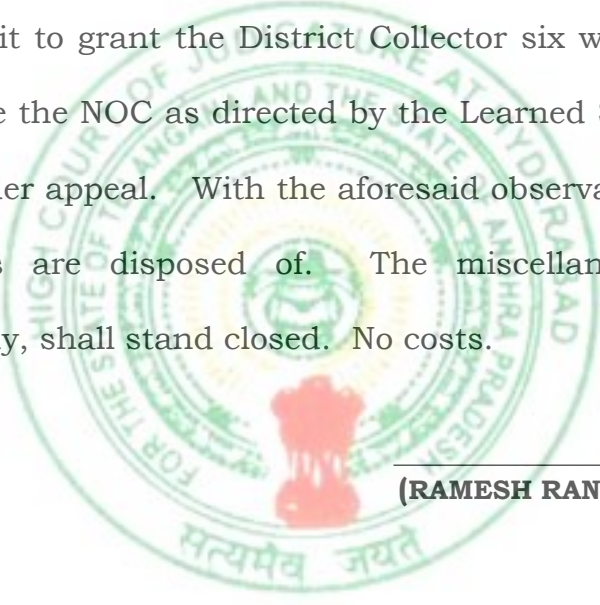
respondent-writ petitioner, would submit that neither has the respondent-writ petitioner expressed any intention to alienate any part of the subject land nor do they intend doing so; the apprehension expressed by the Learned Advocate General in this regard is wholly unfounded; while there is no material on record to show that the 1st respondent-writ petitioner intended to alienate any part of the subject land, reference is made by the Learned Advocate General to a clause in the project report which confers power of alienation of up to 60% of the land; and this clause, which the respondent-writ petitioner has not invoked, is sought to be put against them only to deprive them of the land alienated in their favour under the conveyance deed dated 04.10.2010.

In the light of the submission of Sri M.S.Prasad, Learned Senior Counsel, suffice it, while affirming the order of the Learned Single Judge on the short ground that the impugned order dated 18.08.2015 is in violation of principles of natural justice, as the reasons mentioned therein for cancellation of the allotment are not reflected in the earlier show cause notice dated 21.06.2015, to direct that the appellants shall not alienate or create any third party rights over the subject land.

While it is no doubt true that the Learned Single Judge has directed the District Collector to issue an NOC forth with, though the relief sought for by the 1st respondent-writ petitioner in the Writ Petition was only for a direction to the District Collector to consider grant of NOC, the fact remains that no reasons are forthcoming, even during the course of hearing today, as to why the 1st respondent-writ petitioner should be denied grant of an NOC to approach the GVMC for construction of buildings. It goes without

saying that mere grant of an NOC by the District Collector does not obligate the GVMC to grant permission for construction, as any application, seeking permission for construction, is required to be examined by the municipal authorities concerned in accordance with the provisions of the GHMC Act, and the Rules and Byelaws made thereunder. Grant of an NOC would only enable the 1st respondent-writ petitioner to approach the GVMC seeking their permission for construction.

While we see no reason to interfere with the order of the Learned Single Judge, directing the District Collector to grant NOC, suffice it to grant the District Collector six weeks time from today to issue the NOC as directed by the Learned Single Judge in the order under appeal. With the aforesaid observations, both the Writ Appeals are disposed of. The miscellaneous petitions pending, if any, shall stand closed. No costs.



(RAMESH RANGANATHAN, ACJ)

(KONGARA VIJAYA LAKSHMI, J)

Date: 22.03.2018

BSS/MRKR

HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
HON'BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

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Writ Appeal Nos.363 & 370 of 2018
(per Hon'ble The Acting Chief Justice Ramesh Ranganathan)



Date: 22.03.2018

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