

HON' BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

W.P. No. 29562 of 2013

ORDER:-

This writ petition is filed seeking to declare the Notice in Rc.No. 695/ 10/ 1-1/ Ann-III/ 12, dated 23.09.2013 issued by the 2nd respondent – Urban Development Authority, as illegal and arbitrary.

The case of the petitioner – Haigreeva Infratech Projects Limited is that it is the owner of the subject property; and its lands are proposed to be acquired by the Government for formation of 100 feet Master Plan Road by providing alternate sites; the petitioner agreed to offer its lands to the Government for the said proposal; the Government issued proceedings dated 17.02.2011 allotting the land admeasuring Ac.0.40½ cents in Sy.Nos. 188/ 8 and 189/ 3 of Kopulappadu village and Plot Nos.6 and 7 in Sy.No.332 part of Rishikonda village towards full and final settlement and executed registered sale deeds dated 23.04.2011 in favour of the petitioner. While so, the petitioner's grievance is that the 2nd respondent issued Notice dated 23.09.2013 proposing to cancel the allotment made to the petitioner. It is stated that this Court, in number of judgments including judgment reported in 2008(3) ALT 760, has categorically held that by considering the provisions of Section 17 read with Rule

26(k)(1) of Registration Act, Section 31(1) of Specific Relief Act and Section 1 of Transfer of Property Act, the cancellation of the Registration of Sale Deeds by an executive order, is illegal and without jurisdiction. The only remedy available under law to the 2nd respondent for cancellation of the registered sale deed is by filing a civil suit under Section 31 of the Specific Relief Act or by following the procedure under Rule 26(k)(i) of the Registration Act.

The 2nd respondent filed counter affidavit stating *inter alia* that the Vice Chairman, VUDA, Visakhapatnam has submitted a detailed report to the Government duly indicating that on the whole VUDA has sustained heavy loss on different layouts due to irregular allotment of developed plots; on the said report, the Government directed the Vigilance and Enforcement Department to conduct an enquiry into the allotments made by VUDA, which, vide Resolution No.47, dated 20.07.2013, approved for constitution of committee of the Heads of Department to finalize the list of irregular allotments and to present report thereof; the committee submitted a report on 30.07.2013, and the Board of VUDA has resolved to initiate necessary proceedings for cancellation of such illegal allotments of alternate sites and issued Show Cause Notice dated 23.09.2013 to the petitioner calling upon it to show cause as to why plots allotted in its favour should

not be cancelled; the Government has clarified that there is no policy of the Government for allotment of land to the effected persons, except issuance of TDRs. or set back relaxations or payment of compensation amounts.

Heard the learned counsel for the petitioner and the learned Standing Counsel for Visakhapatnam Urban Development Authority appearing on behalf of the 2nd respondent and perused the material placed on record.

The learned counsel for the petitioner submits that the 2nd respondent has filed O.S.No. 214 of 2016 before the Senior Civil Judge, Visakhapatnam for cancellation of the sale deeds executed in favour of the petitioner.

The learned Standing Counsel has not controverted the submission made by the learned counsel for the petitioner.

In view of the undisputed fact that O.S.No. 214 of 2016 filed by the 2nd respondent is pending adjudication before the trial Court, the impugned Notice in Rc.No.695/ 10/ I-1/ ANN-III/ 12, dated 23.09.2013 issued by the 2nd respondent is hereby set aside and the 2nd respondent is directed to work out its remedies before the civil Court.

Accordingly, the writ petition is allowed. No order as to costs.

As a sequel, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

KONGARA VIJAYA LAKSHMI, J

03.12.2018
bcj