

HON' BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

W.P. No. 29630 of 2013

ORDER:-

This writ petition is filed seeking to declare the Notice in Rc.No. 7107/ 05/ 1-1/ ANN-III/ 15, dated 23.09.2013 issued by the 2nd respondent – Urban Development Authority, as illegal and arbitrary.

The case of the petitioner is that it is the absolute owner and possessor of the subject property; as 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 lands to the Government; the Government, after approving its proposal, issued proceedings dated 28.06.2010 allotting lands admeasuring Ac.1.16 cents in Sy. Nos. 185/ 3,4, 186/ 1, 187/ 2,3 and 188/ 16 of Kapulappadu village and Plot Nos.212, 213, 214, 215 and 216 of Kurmannapalem, Phase-VI in Sy.Nos.34 and 35 towards full and final settlement and executed registered sale deeds dated 06.07.2010 and 08.07.2010 in favour of the petitioner. While so, the grievance of the petitioner is that the 2nd respondent issued Notice dated 23.09.2013 proposing to cancel the allotment made to it. 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, cancellation of the Registration of Sale Deeds by an executive order is illegal and without jurisdiction. The only remedy available under law 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 Rules of 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; the VUDA, 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; 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 lands 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. 736 of 2013 before the Court of IV Additional District Judge, Visakhapatnam seeking cancellation of the sale deeds executed in its favour.

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. 736 of 2013 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

