

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION Nos.34571 and 34676 of 2013

COMMON ORDER :

At request of counsel on both sides, these Writ Petitions, though listed under the '*Interlocutory*' caption, were taken up for hearing.

2. In these Writ Petitions the petitioners assail proceedings in Rc.No.695/10/I-1/ANN-III/1 dt.23.09.2013 and Rc.No.695/10/I-1/ANN-III/2 dt.23.09.2013 issued by the Vice-Chairman of the Visakhapatnam Urban Development Authority (for short, 'the 4th respondent'). The Visakhapatnam Urban Development Authority is impleaded as 3rd respondent.

THE CONTENTS OF THE IMPUGNED SHOW CAUSE NOTICES :

3. In these show cause notices, the 4th respondent asked the respective petitioners to show-cause why allotments of developed plots made to them vide proceedings Rc.No.695/10/I-1 dt.18.01.2011 and proceedings in Rc.No.695/10/I-1 dt.13.01.2011 respectively by the then 4th respondent, cannot be cancelled and possession of the plot and building thereon (if it exists) cannot be resumed besides initiating criminal action against them, and asking petitioners to inform by way of a reply within fifteen (15) days thereon.

4. According to the said show cause notices dt.23.09.2013, portions of the land owned by petitioners in Survey No.348/1 of Madhurawada (Village), Visakhapatnam (Rural), Visakhapatnam District, were taken over for the purpose of formation of road in the Area development Plan in the year 2011, and in lieu thereof, developed plots in Madhurawada layout were allotted to petitioners vide proceedings Rc.No.695/10/I-1 dt.18.01.2011 and 13.01.2011 respectively by the 4th respondent; that sale deeds were also executed in their favour on 21.02.2011 and 17.06.2011; that subsequently on 12.03.2012, a report was submitted to the State Government informing that the 3rd respondent had sustained a total loss of Rs.539.49 crores in different layouts due to allotment of developed plots to persons like the petitioners; that a Committee consisting of Estate Officer, Secretary, Chief Urban Planner and Chief Accounts Officer, was constituted on 15.05.2013 to go into the said issue; that the said Committee gave findings on 30.07.2013 which were placed before the Board of 3rd respondent; and the Board after perusing the details passed a resolution No.54 dt.05.08.2013, proposed to cancel the allotments made to petitioners and others on the ground that this was done without following proper procedure. It is contended that there is no provision in the Andhra Pradesh Urban Areas (Development) Act, 1975 (**for short, 'the 1975 Act'**) to give developed plots to private persons and the acceptance of developed plots by petitioners amounts to misrepresentation of facts and fraud, thereby exhibiting criminal intention of cheating the Government and

public at large with the connivance of the Officials of the 3rd respondent; that the then Vice-Chairman of the 4th respondent had no authority under law to allot developed plots to petitioners and this illegality cannot be allowed to be perpetuated; and therefore, it was proposed to cancel the said allotments made to petitioners and to resume the plots and buildings thereon (if existing) apart from initiating criminal action against the petitioners.

CONTENTIONS OF PETITIONERS

5. The petitioners contended that there is no provision under the 1975 Act to empower the respondents to dispossess the petitioners from the subject property and the impugned show-cause notices themselves are without jurisdiction and beyond the competence of the 3rd respondent; that the provisions of the Land Acquisition Act, 1894 (for short, the '1894 Act') are applicable by virtue of Sections 18 and 19 of the 1975 Act ; and that the said provisions also permit exchange of land where procedure of paying compensation under the 1894 Act was not followed.

6. They contend that they are in possession of the developed plots allotted to them in lieu of the portions of land taken from them for road-widening; that if the respondents wish to re-possess the property, they can only do so by resorting to the common law remedy and they cannot invoke the provisions of the 1975 Act.

7. They also contend that the 4th respondent is simply implementing the decisions of the Board of Directors of which he himself is a party, and therefore, there is pre-judging of the issue by the 4th respondent and his becoming a judge in its own cause.

THE INTERIM ORDERS PENDING THE W.Ps

8. On 03.01.2018, in I.A.No.2 of 2017 in WP.No.34571 of 2013, and in I.A.No.2 of 2017 in WP.No.34676 of 2013, while admitting the Writ Petitions, this Court gave a direction that possession of the petitioners over the subject property should not be interfered with by the respondent nos.3 and 4 until further orders.

9. However, in both the matters stay of further proceedings by the 3rd respondent pursuant to the respective show-cause notices dt.23.9.2013 issued to them has not been stayed.

THE STAND OF THE RESPONDENT NO.S 3 AND 4

10. Counter-affidavit is filed by respondent nos.3 and 4 reiterating the allegations contained in the impugned show-cause notices.

11. It is stated that the then Estate Officer in collusion with other erring officials of the 3rd respondent including the then Vice-Chairman mischievously and with ulterior motives prepared a note and recommended to allot developed plots to the petitioners in the developed layout of Madhurawada Village in lieu of the land taken from the petitioners for the purpose of road-widening; that sale deeds were also executed by such officials of the 3rd respondent in favour of

petitioners; and the allotment and registration are both illegal and liable to be cancelled since the respective petitioners are indulging in criminal fraud and conspiracy with the officials of the 3rd respondent and obtained developed plots in their favour; that the allotment and registration of the same is illegal and *void ab initio* and liable to be cancelled.

12. It is contended that when roads are laid, the 3rd respondent only facilitates the same and the petitioners who lost their land in the road formation have to seek relief against the State Government and its Roads and Buildings (R & B) Department and not with the 3rd respondent; that the land which was utilized for road-widening was in fact open, raw, undeveloped, unoccupied, unused and uneven land; and in lieu thereof, the petitioners could not have been given a developed plot with black top roads, drainage on either side, equal to the extent of land lost; this is contrary to public interest; and that such allotment of plots in favour of petitioners as well as the subsequent execution of sale deeds in their favour and has resulted in the 3rd respondent sustaining huge monetary loss.

13. It is contended that complaint in this regard has been made to the Government of Andhra Pradesh, and the same is registered and is being inquired by the Central Bureau of Investigation; that there is neither established policy of the State Government to allot land to land compensation to land losers under any road projects nor any resolution of the 3rd respondent-Board to allot such developed lands

directly by it; that petitioners got registration of the allotted plots by playing fraud on the 4th respondent; and therefore, the allotment as well as consequent sale deeds which were obtained by misrepresentation of facts, suppression of material facts and by playing fraud with the connivance of officials of the 3rd respondent, are liable to be cancelled.

14. It is also stated that the recitals regarding delivery of possession and title made in the sale deed carry no sanctity and in the instant case the schedule property which is a plot in a layout is not available on the ground; that the layout is still in the formative stage and can be seen only on paper, and the plot allotted to petitioners cannot be identified on the ground. They contend that so there is no question of delivery of possession of the plots and that the possession of the property remained with the 3rd respondent and it was never delivered to petitioners.

15. It is also contended that the Board of the 3rd respondent passed resolution No.54 dt.05.08.2013 to cancel the allotments which are irregular, illegal and without following the due procedure and that was why the impugned show-cause notices dt.23.09.2013 were issued to petitioners; that the 3rd respondent had the authority to issue the said show-cause notices in public interest and its action therefore cannot be challenged.

16. Lastly it is also stated that a civil suit has been filed in a local jurisdictional court at Visakhapatnam against the respective petitioners and the erring officials of the 3rd respondent for cancellation of the sale deeds executed in their favour and that the same is pending trial; and that in view of the said pending of the civil suit also the respondents pray that the Writ Petition be dismissed.

17. I have noted the contentions of both sides.

THE CONSIDERATION BY THE COURT

18. The petitioners contend that they were deprived of land by the 3rd respondent for the purpose of laying a road in the Area Development Plan, and that in lieu thereof, the respondents have allotted plots in Madurawada layout, a developed layout as compensation, and sale deeds were also executed in their favour by the 3rd respondent.

19. The 3rd respondent contends that there is no power in the 1975 Act to allot alternative land / developed plots to persons who have been deprived of land by the 3rd respondent, and that such persons are only entitled to compensation under the 1894 Act. It is also contended by respondent nos.3 and 4 that in collusion with the then Vice-chairman of the 4th respondent, proposals were initiated for giving developed plots in Madhurawada layout to the petitioners contrary to the provisions in the Act and sale deeds were also

executed; and that this was contrary to public interest and law, and that was why the impugned show-cause notices were issued.

20. Though the petitioners' counsel relied upon Sections 18 and 19 of the 1975 Act to contend that the said Act permits exchange of land also for land taken from the private citizens (as was done in the instance case), a reading of Sections 18 and 19 does not support this contention.

21. Section 18 of 1975 Act provides for compulsory acquisition of land for development by invoking provisions of the 1894 Act only, and thereafter transferring it to the local authorities like the 3rd respondent, but does not permit *land to land* compensation.

22. Section 19 of the 1975 Act empowers disposal of the land by the local authorities like the 3rd respondent which was acquired by the State Government and transferred to it.

23. Therefore, there is power conferred on the 3rd respondent or any of its officials including its then Vice Chairman to allot land to petitioners in lieu of land which they have been deprived of for the purpose road formation by the 3rd respondent.

24. Thus there was no power vested on the officials of the 3rd respondent including the then Vice-Chairman of the 4th respondent to pass orders on 13.01.2011 and 18.01.2011 to allot alternative plots of equal extents in developed layout in Survey Nos.351/1P and 2P and 352/1P and 2P in favour of petitioners. So such allotment of

alternative land to the petitioners in lieu of the land taken from them for road formation by 3rd respondent in 2011 is illegal, not permitted by the Act and an abuse of power by them.

25. The only right which the petitioners have is to get compensation for the land which they have been deprived of by the 3rd respondent for the purpose of formation of road in the area development plan of Madhurawada and nothing more.

26. It is also important to note that the petitioners have only questioned show cause notices issued to them by 4th respondent. These issuing of the impugned show cause notices is an act of complying with principles of natural justice by the 3rd/ 4th respondent for cancelling the allotments of the alternative plots by the then 4th respondent without having any power under the 1975 Act to make such allotments.

27. The Supreme court in **Special Director v. Mohd. Ghulam Ghose**¹, declared that the High Courts ought not to interfere with show cause notices normally unless there is lack of jurisdiction. It held:

“ 5. This Court in a large number of cases has deprecated the practice of the High Courts entertaining writ petitions questioning legality of the show-cause notices stalling enquiries as proposed and retarding investigative process to find actual facts with the participation and in the presence of the parties. Unless the High Court is satisfied that the show-cause notice was totally non est in the eye of the law for

¹ (2004) 3 SCC 440

absolute want of jurisdiction of the authority to even investigate into facts, writ petitions should not be entertained for the mere asking and as a matter of routine, and the writ petitioner should invariably be directed to respond to the show-cause notice and take all stands highlighted in the writ petition. Whether the show-cause notice was founded on any legal premises, is a jurisdictional issue which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved could approach the court. Further, when the court passes an interim order it should be careful to see that the statutory functionaries specially and specifically constituted for the purpose are not denuded of powers and authority to initially decide the matter and ensure that ultimate relief which may or may not be finally granted in the writ petition is not accorded to the writ petitioner even at the threshold by the interim protection granted.”

28. This applies on all fours to the instant case. When the allotment/transfer of the alternative plots to petitioners was made by the then 4th respondent without any power under the Act to do so, no exception can be taken to the issuance of the show-cause notices to undo the allotments/transfers of plots made contrary to law and to public interest by the 4th respondent.

29. Therefore, I see no infirmity in the issuance of the impugned show-cause notices to both the petitioners proposing to cancel the allotment made in their favour and also for initiating criminal action against the petitioners.

30. It is not the case of petitioners that they have given reply to the said show-cause notices. Nothing prevented them from doing so. Without giving any reply thereto, they cannot be allowed to take

advantage of their own wrong and stall further action commenced in public interest by the respondent no.s 3 and 4.

31. Therefore, the Writ Petitions are dismissed directing the 3rd / 4th respondent to take appropriate action pursuant to the said show-cause notices in regard to the petitioners. No order as to costs.

32. The interim orders granted on 03.01.2018, in I.A.No.2 of 2017 in WP.No.34571 of 2013 and in I.A.No.2 of 2017 in WP.No.34676 of 2013, shall stand dissolved.

33. As a sequel, miscellaneous petitions pending if any, in these Writ Petitions, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 05.06.2018

Ndr/*

