

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION Nos.20547 and 25330 of 2009

COMMON ORDER:

Since the parties are common and the issue is inter-related, both the writ petitions are being disposed of by this common order.

The case of the petitioners is that the Government allotted some land to Jubilee Hills Co-operative House Building Society, Jubilee Hills, Hyderabad (for short 'the Society') for the purpose of development of residential plots in Jubilee Hills area and a layout was prepared and the same was approved by the Corporation clearly earmarking the roads, footpaths, open spaces including the parks, which have been handed over to the Corporation in view of the provisions of the Hyderabad Municipal Corporation Act (for short 'the Act'). The petitioners state that the entire area was developed as residential colony with good ambience, greenery and lung space, as such, they purchased plots and constructed houses therein. They further state that in the above said open space, there is a big park known as Lotus Pond and the surrounding area has been developed as a green belt. While so, on noticing that some constructions for commercial purpose are being made in the open space meant for public utility, the petitioners filed W.P.No.20547 of 2009.

In the said writ petition, on the submissions made by the learned Standing Counsel that a portion of the park has been leased out to a private agency to establish an Eatery by Urban

Forestry Wing of GHMC, this Court passed an order on 29.10.2009 in WPMP No.28290 of 2009 directing the Corporation to ensure that no further constructions shall take place and no commercial activity is undertaken in the open space. Thereafter, respondent No.5 - M/s.Udi Foods & Beverages (India) Private Limited filed an implead application along with vacate stay petition enclosing the proceedings, dated 20.05.2008, issued by the Corporation granting lease in its favour with respect to 1550 square feet of open space, earmarked for the purpose of Cycad Garden, for establishment of Soya Station and to make pucca constructions, that too, ground + two upper floors, for a period of 15 years. Questioning the said proceedings, the petitioners filed W.P.No.25330 of 2009.

The petitioners state that the Corporation is resorting to distract the very nature of the pond by converting the lung space into commercial. They further state that under the Zoning Regulations and the Layout Rules, no land earmarked for open space shall be permitted to carry out constructions for undertaking commercial activities. They further state that the construction is being made with pre-cast elements, which can be dismantled at any point of time, but, the walls were constructed with bricks and a slab was laid for the first floor and efforts are being made to lay the second slab. They set out the details as to how and in what manner, the constructions made by respondent No.5 would disturb the lung space or serenity of the park area.

They also state that no procedure is followed by the Corporation in leasing out the open space.

Respondent No.4-Society filed a counter-affidavit in W.P.No.25330 of 2009 stating that the Society had not permitted the Corporation or the third parties for raising such constructions in the alleged open space and none approached them therefor; that the Corporation has no right to lease out the open space and that except road No.36, all other localities are purely residential zones, which includes road No.92.

Respondent No.5 in W.P.No.25330 of 2009, in its counter-affidavit, asserts that as per G.O.Ms.No.554, dated 30.07.2007, road No.92 has been declared as a commercial one and under a lease deed, dated 06.11.2008, it was permitted to set up a Soya Station and to make pucca constructions that too ground + two upper floors under the name and style of 'Bean me Up' to serve salads; juices; cuisine based on soya bean and its products like tofu, tempeh; soya milk, coffee and tea, health drinks; international cuisine like Italian, Thai, French based on soya bean; breakfast, lunch, dinner based on above and 100% fat free ice cream-GELATO under the brand name 'AMORE'. It further asserts that the health hub will also have the activity of yoga, meditation, organic foods, juices, salads etc., and the people would come to the park for relaxation and playing with children and that the elderly people can have the benefit of having organic food, juices etc. It also asserts that the interior of the hotel

has proper ventilation and natural lighting so as to save electricity consumption and to live in harmony with nature. There is hardly any use of glass, cement, paint, aluminum, ceramic tiles either in the building or in the furniture. Therefore, it is prayed that the writ petition is not maintainable and the same may be dismissed.

The Corporation filed a counter-affidavit in W.P.No.20547 of 2008 stating that the developmental activities undertaken for establishment of health hub are not commercial in nature and it is for the benefit of the people, who visit the park; that the said building is not a commercial complex and that it justified the establishment of the hub and denied the allegation made by the petitioners that the structures are permanent.

Learned counsel for the petitioners reiterated the specific contentions in the writ affidavits. He placed reliance upon the judgments of the Supreme Court in **Span Resorts Case** {1997 (1) SCC 388} and the Division Bench of this Court in **P.Nagaraju and another Vs. Ananthapur Municipality**¹ and submits that the area earmarked for public utility cannot be converted for carrying out any other activity.

Learned Standing Counsel for the Corporation, in all fairness, places on record a copy of G.O.Ms.No.72, Municipal Administration & Urban Development (G1) Department, dated 20.02.2002, and submits that in the said G.O., the Government

¹ 2004 (6) ALD 307

after taking note of the judgments of the Supreme Court as well as the High Courts, observed as under:

“Government have examined the matter and decided to take action as per the High Court and Supreme Court judgments on this issue. Government accordingly direct in continuation of references 1st and 3rd read above and in supersession of para 5 of G.O. 4th read above that all Nagar Panchayats/Municipalities/Municipal Corporations in the State shall not propose to utilize the reserved open spaces of a layout for the purpose of other than the intended original use such as a park, play ground, community structure, urban forestry and similar eco-conservation programme. Alienation proposals in respect of Municipal Vacant lands if any available which are other than the reserved open spaces can be proposed for remunerative purposes like shopping/office complexes etc.”

It may be noted, at the outset, that even assuming that lease of open space in favour of respondent No.5 may be for the public utility, the same has not been granted by following the transparent method i.e., calling for expression of interest from others, who would like to set up such kind of health hubs etc., as such, granting such lease in favour of respondent No.5 is *per se* illegal and unauthorized. It is well settled that public legacy cannot be distributed without following due process of law. It may also be noted that though the action of the Corporation in permitting respondent No.5 for setting up of a health hub is justified, the fact of the matter is that essentially, an eatery is being set up by respondent No.5, as admitted in the counter-affidavit by the Corporation, and that setting up of a hotel with fancy name in a park and serving different varieties of food products therein does not take away the said eatery out of the purview of the broader

definition of ,hotel/restaurant, as essentially, the parks are earmarked for lung space and therefore, it is essential to ensure that every inch of the open space is required to be used for public utility. Further, it cannot be said that setting up of a small eatery does not disturb the park area. It is` well settled that the areas earmarked for lung space or parks cannot be converted into for any other purpose.

For the above said reasons, the proceedings, dated 20.05.2008, issued by the Corporation allotting 1550 square feet of open space in favour of respondent No.5 are set aside. It is made clear that as respondent No.5 appeared to have erected the structures on the permission given by the Corporation, it may be allowed to take away the material, if any, left at the site and at the same time, ensuring restoration of the original space. It is also made clear that the respondent authorities shall ensure that the structures already made may be removed.

The writ petitions are accordingly allowed.

Miscellaneous petitions, if any, pending in these writ petitions shall stand disposed of. There shall be no order as to costs.

CHALLA KODANDA RAM, J

Dt:02.08.2018

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