

**HON'BLE THE ACTING CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN
AND
HON'BLE SRI JUSTICE A. RAJASHEKER REDDY**

WRIT APPEAL No. 339 of 2019

JUDGMENT: *(per the Hon'ble the Acting Chief Justice Raghvendra Singh Chauhan)*

The appellants are aggrieved by the judgment dated 25.03.2019 passed by the learned Single Judge in writ petition No.35251 of 2017 whereby the learned Single Judge has dismissed the writ petition filed by the appellants.

Briefly, the facts of the case are that the appellants claim to be the residents of Sri Sai Enclave, Baswa Gardens, Vinayak Nagar, Nizamabad. They further claim that opposite to their house in the layout, an area was earmarked for establishing a park as per the sanctioned layout plan. However, the Municipal Corporation, Nizamabad, respondent No.3, has sanctioned funds under the 'Amrut Scheme', which is funded by the Central and State Governments, for construction of an overhead water tank in the earmarked area for park. Despite the fact that the water tank is supposed to cater to the water needs of not only the residents of Sri Sai Enclave, but also of ten to twelve colonies in the vicinity, the appellants were aggrieved by the construction of the said water tank. Hence, they filed the writ petition. However, by the impugned order, the learned Single Judge has dismissed the writ

petition as mentioned hereinabove. Hence, this appeal before this Court.

The learned counsel for the appellants has raised a single contention before this Court, namely, that the power to change the nature of the land was not with the Municipal Corporation, Nizamabad, the respondent No.3. Therefore, nature of the land could not be changed by the respondent No.3.

Heard the learned counsel and perused the impugned order.

The contention with regard to the power of the Municipality to change the nature of the land was not even raised before the learned Single Judge. Since it is a new plea, it cannot be raised at the appellate stage.

Moreover, the learned Single Judge has noticed the fact that in the Gift (Settlement) Deed dated 16.01.1997, executed by Kanuganti Estates in favour of the Municipal Commissioner, it was clearly stated that as per the layout, “the donor leaves the existing open space to be utilized for the public at large for charitable purposes”. Therefore, according to the learned Single Judge, the site was never earmarked as a park. Furthermore, considering the fact that the water is a scarce commodity, considering the fact that the water is essential for human survival,

and considering the fact that the water tank would cater not only to the layout, but also to ten to twelve other colonies in the vicinity, the learned Single Judge is certainly justified in concluding that the construction of overhead water tank is for public purpose. Hence, it was in conformity with the Gift (Settlement) Deed mentioned hereinabove.

Since the learned Single Judge has given cogent and convincing reasons for dismissing the writ petition, this Court does not find any merit in the present writ appeal.

Hence, this writ appeal is hereby dismissed.

Pending miscellaneous petitions, if any, shall also stand dismissed. There shall be no order as to costs.

RAGHVENDRA SINGH CHAUHAN, ACJ

Date: 22.04.2019

A. RAJASHEKER REDDY, J

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