

THE HON'BLE THE CHIEF JUSTICE SATISH CHANDRA SHARMA

AND

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT APPEAL No.403 of 2018

JUDGMENT: *(Per the Hon'ble the Chief Justice Satish Chandra Sharma)*

The present writ appeal is arising out of an order dated 21.09.2017 passed by the learned Single Judge in W.P.No.20771 of 2009.

The facts of the case reveal that a writ petition was preferred by the respondent No.1/writ petitioner i.e., M/s.Kukatpally Housing Board Colony I & II Phase Residents Welfare Association, being aggrieved by the revised layout permit issued in favour of the appellant No.1/Housing Board earmarking the area admeasuring Acs.2.39 guntas situated in between road No.2 and 3, Phase I & II, KPHB Colony, Kukatpally, Hyderabad, for commercial purposes. It was stated in the writ petition that the members of the respondent No.1/writ petitioner are the owners of the buildings in

the KPHB Colony. It was also stated that a layout was sanctioned and approved in the year 1978 by the Hyderabad Urban Development Authority. The total extent of the land covered under the Phase I and II is Acs.222.00 and it includes 904 plots for MIG, 1056 plots for LIG and 1320 plots for EWS. An area of Acs.26.62 guntas was earmarked for open spaces and Acs.11.040 guntas for commercial spaces. The appellant No.1/Housing Board, in respect of the area which was being used as a park and which was earmarked as a park, started issuing advertisements for disposing of the same and in those circumstances, a writ petition was preferred i.e., W.P.No.8982 of 2004 and the same was dismissed on 11.06.2009 with a liberty to file a fresh writ petition questioning the authorities in revising the layout. It was argued before the learned Single Judge that in the year 1978 a layout was prepared reflecting the open space, which is a park, and the layout was changed in the year 1995. In

the second round of litigation, the appellant No.1/Housing Board did not file any counter affidavit nor was any revised layout placed before the learned Single Judge. On the contrary, the documents filed by the respondent No.1/writ petitioner reflected that the area admeasuring Acs.2.39 guntas is a park. In those circumstances, the learned Single Judge has allowed the writ petition.

Paragraphs 7 to 15 of the order passed by the learned Single Judge in W.P.No.20771 of 2009, dated 21.09.2017, are reproduced as under:-

“7) It is stated by the learned counsel for the petitioner that as on today, this Ac.2.39 gts., of land is lying vacant, which is being used by the residents of the locality as park and which is also the breathing space for the people residing in that area. As stated earlier, no counter is filed and no revised layout has been placed by the learned counsel for the respondents to show the existence of a revised plan. On the other hand, learned counsel for the petitioner placed on record, the documentary evidence to show that even in the year 2000, a letter was addressed referring to the lay out of the year 1978.

8) It is to be noted here that neither a revised layout is placed on record nor a counter has been filed explaining the fact position. But, it is an admitted fact that in the earlier layout, land to an extent of Ac.2.39 gts., which is subject matter of dispute in the present writ petition, was shown as open area, which according to the petitioner is being used by the residents of that area for walking, jogging, yoga etc.

9) In **M.I. Builders Private Limited v. Radhey Shyam Sahu** (AIR 1999 SC 2468), Lucknow Nagar Mahapalika constructed underground shopping complex in a historic park known as Jhandewala Park situated at Aminabad Market, Lucknow. The same was challenged before the Lucknow Bench of Allahabad High Court, which held, that the decision of Lucknow Municipality as illegal, arbitrary and unconstitutional. As M.I. Builders Pvt. Limited, which was entrusted with the work of construction of shopping complex had completed part of construction, it sought Special Leave and preferred Civil Appeal before the Supreme Court. The Supreme Court affirmed the view of Lucknow Bench of Allahabad High Court and also directed to dismantle and demolish all the constructions made in the public park and also restore the place as a park to its original shape. The apex Court observed as under:

...As said earlier, High Court rightly exercised its power of judicial review in the present case. It has examined the manner in which the decision was made by the Mahapalika. Second principle laid in Tata Cellular's case applies in all respects. High Court held that the maintenance of the park because of its

historical importance and environmental necessity was in itself a public purpose and, therefore, the construction of an underground market in the garb of decongesting the area was wholly contrary and prejudicial to the public purpose. By allowing the construction Mahapalika had deprived its residents as also others of the quality of life to which they were entitled to under the Constitution and the Act. The agreement smacks of arbitrariness, unfairness and favouritism. The agreement was opposed to public policy. It was not in public interest. Whole process of law was subverted to benefit the builder. We agree with the findings and conclusions of the High Court."

10) In **Sri Ramakrishna Educational Society, Nandyal v. Chairman, Nandyal Municipality, Kurnool District and another** ((2006) 3 ALD 242) a learned Single Judge of this Court while dealing with the powers of authorities to change the area earmarked for open spaces observed as under:

"Therefore, it is a settled law of the land, nay, it is axiomatic that when once a layout is approved showing an open space meant for a park or for a recreational purpose or playground, under no circumstance, a public authority, be it the Government, the District Collector or the Municipal body, can utilize the land for any other purpose. This is especially so, when the land is earmarked as a green space/ park meant for the use of the people of the locality. I may hasten to add that even if the Municipality has permitted such constructions, all such permissions are contrary to law laid down by the Supreme Court. Rule of Law requires that they should be ignored, as they are void.

The area earmarked as playground in the layout can be used by the residents of the locality as well as Nandyal Town not only for the purpose of children's games and sports but can be used for different purposes like walking track, for growing tree clusters or for common meeting place. When once the layout was approved considering the playground is part of

the common area, the same cannot be converted into a business/commercial area by allowing a Rythu Bazar. Such conversion is impermissible in law."

11) In **K.Sugunamma and another v. State of Telangana and others** ((2015) 5 ALD 392) another single Judge of this Court held as under:

"Regulator mandates that whenever a housing colony is proposed, the developer must provide open spaces within the colony. Such open spaces will yield to establishment of play-grounds and development of parks. As per the norms and regulations governing the development of layouts, the open space and the roads formed in the layout become the property of the concerned local body and they became property of the community as a whole.

Parks are public places intended for the benefit of the people. Such public places which are intended for public utility cannot be encroached upon by any person and it is against public interest to grant regularization on such encroachments. Thus, diluting the scope of restrictions imposed in the scheme of regularization by way of circular by the Chief Commissioner, Land Administration, itself is not legal and valid."

12) The population of Hyderabad and the area and the year in which the present layout is laid, is far far less than what it is today, but by virtue of urbanization, large number of persons are being forced to live within the limited open spaces. Construction of huge buildings within the specified agglomeration is posing enormous threat to the atmosphere in residential areas. The master plan which was prepared in the year 1978 might have kept in mind the growth of population in the concerned urban agglomeration, but the growth of population over years in urban areas more particularly

in a city like Hyderabad, is beyond one's imagination. Such being the position, there is nothing wrong in keeping some more space as an open space, enabling the residents and others to use the same either for walking, jogging or yoga etc. The basic requirement of having atleast some open space in each area more than what has been prescribed in the layout prepared long back, appears to be the necessity of the day. Further, even if the Government intends to establish/raise a commercial building, they can do so at a different place but definitely not in a residential area which is already congested, and which fact can be taken judicial note of.

13) In view of the judgments referred to above and having regard to the facts and circumstances of the case, there is no justification for the respondents to say that they intend to auction the subject land for commercial purpose or for house plots, at the cost of health and well being of the residents of the locality, who are already put to lot of suffering due to lack of enough open space.

14) Accordingly, the writ petition is allowed. There shall be no order as to costs.

15) Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.”

The most shocking aspect of the case is that the writ petition was preferred in the year 2009, it was

decided in the year 2017 and the appellant No.1/Housing Board, for the reasons best known to it did not file any counter affidavit, nor was a revised layout brought on record. The fact remains that right from 1978, when the first layout was sanctioned, the open space is reflected as a park. It is being used as a park by the residents of the colony. It is the only breathing space for the people residing in the area and by permitting the appellant No.1/Housing Board to construct a commercial complex will certainly result in a concrete jungle within the residential colony.

The order passed by the learned Single Judge is based upon the material brought on record by the parties and therefore, this Court does not find any reason to interfere with the order passed by the learned Single Judge in the peculiar facts and circumstances of the case.

The learned counsel for the appellants has placed reliance upon the decision rendered by the High Court of Judicature, Andhra Pradesh at Hyderabad, in the case of **Andhra Pradesh Housing Board Colony Development and Welfare Association v. The Vice-Chairman and Housing Commissioner, Andhra Pradesh Housing Board and another** (W.P.No.521 of 2005, dated 15.03.2005) and his contention is that in the light of the said decision, the revised layout has to be given effect to.

In the considered opinion of this Court, by issuing a revised layout every time, the areas which are meant for parks and for playgrounds are being reduced or being wiped out from the layout and such an action is impermissible in larger public interest.

This Court does not find any reason to interfere with the order passed by the learned Single Judge.

The writ appeal is accordingly dismissed.

The miscellaneous applications pending, if any,
shall stand closed. There shall be no order as to costs.

SATISH CHANDRA SHARMA, CJ

ABHINAND KUMAR SHAVILI, J

22.03.2022

vs