

THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN

AND

THE HON'BLE SRI JUSTICE C.V.BHASKAR REDDY

W.A.No. 81 of 2007

JUDGMENT: *(Per the Hon'ble the Chief Justice Ujjal Bhuyan)*

Heard Ms. Poornasri, learned counsel for the appellant.

2. This appeal is directed against the order dated 17.11.2005 passed by the learned Single Judge dismissing W.P.No.35220 of 1998 filed by the appellant as the writ petitioner.

3. The related writ petition was filed for a direction to the respondent to develop a park in the space earmarked therefor in the approved lay out dated 25.09.1976.

4. According to the appellant-Society, it had purchased land admeasuring 11,138.32 square yards in Survey Nos.33 and 34 (old) corresponding to new survey No.188 in Domalguda area (earlier known as Gaganmahal village) for the purpose of building houses and providing accommodation to its members. In this connection, it had sought for approval of lay out from the Municipal Corporation of Hyderabad (MCH). The same was refused on the

ground that land to the extent of 650 square meters was not earmarked as a park/lung space for the housing colony.

5. According to the appellant, it had entered into an agreement to purchase land to an extent of 425 square meters belonging to respondent No.5 and thereafter, submitted revised lay out, which was approved on 25.09.1976. Thereafter, houses were constructed by the members of the appellant-Society. The plot of 650 square meters earmarked for park/lung space, which was fenced by the municipal authorities, was being used by the residents of the locality. Sale deed dated 10.08.1976 executed by respondent No.5 in respect of 425 square meters in favour of the appellant, when presented for registration, was returned with the condition that it should be presented afresh with a clearance certificate from the Urban Land Ceiling (ULC) authority. Instead of fresh presentation with the clearance certificate, respondent No.5 started making constructions in the area earmarked for park/lung space, which led to litigation.

6. Alleging that respondents No.2 and 3, without taking steps to develop 425 square meters earmarked as park/lung space, were permitting construction by respondent No.5, appellant as the writ petitioner filed the related writ petition seeking a direction to respondents No.2 and 3 to develop 650 square meters earmarked as park/lung space shown in the revised lay out dated 25.09.1976 after removing the construction made by respondents No.5 and 6.

7. Learned Single Judge on going through the materials on record observed as under:

There can be no dispute for the proposition that all areas earmarked as parks and lung space, which vest in the local bodies, cannot be used for any purpose, other than the purpose for which they are intended. Since the prayer in the petition is to direct the respondents to develop the area into a park as per the approved lay out dated 25-9-1976 modifying the permit No.92/19 dated 1-8-1974, the point for consideration in this petition is whether the petitioner can be granted that relief.

8. Thereafter, learned Single Judge noticed as under:

On my direction, the learned standing counsel for MCH produced the concerned file. It shows that on a

representation made by the 5th respondent that inasmuch as the agreement between him and the petitioner is cancelled, he continues to be the owner of 425 square meters of site, earlier agreed to be sold to the petitioner, a show cause notice as to why the revised permit dated 25-9-1976 should not be cancelled was issued to the petitioner by the MCH. In response to that notice, the Secretary of the petitioner, through his letter dated 25-7-1998 made a request to furnish a copy of the representation dated 29-4-1998 of the 5th respondent for the petitioner to give a proper reply, while alleging that that notice is not in accordance with the judgment of this Court. In response to the said letter, second respondent, through his letter R.No.3535/TPL/MCH/ 98 /2090 dated 27-8-1998 furnished a copy of representation of the 5th respondent dated 29-4-1998 to the petitioner, and the same was received on behalf of the petitioner on 28-8-1998. But petitioner failed to send a reply to the show cause notice. Therefore, *vide* proceedings in L.R.No.3535/TPL/MCH/98 dated 21-9-1998, revised lay out, approved *vide* permit No.75/35 dated 25-9-1976, was revoked and petitioner was asked to handover the reserved open space for park/public purpose, as per the original approved lay out permit No. 92/19 dated 1-8-1974.

After receipt of those proceedings only petitioner thought it fit to file this petition.

9. After advertng to the earlier orders that were passed by the Court in previous round of litigation, learned Single Judge dismissed the writ petition by holding as under:

Since the petitioner sought for and obtained a revised lay out by showing 625 Square meters including the land of 425 square yards of site agreed to be purchased by it from the 5th respondent, it is for the petitioner only to provide an alternative site. Though MCH has no jurisdiction to go into the question of title, merely because petitioner has shown the land agreed to be purchased by it, as its land in the lay out *i.e.*, MCH, it has the right and authority to revoke the revised lay out when the vendor makes a representation to it that inasmuch as the agreement has been cancelled, he may be permitted to use the same, after issuing a show cause notice to the petitioner. Though petitioner was given an opportunity to give a reply on the representation of the 5th respondent, petitioner failed to send a reply. So MCH revoked the revised lay out. Consequently, the original lay out dated 1-8-1974 stood revived and so it is for the petitioner to provide the lung space. Petitioner cannot by showing the lands of others as

the land belonging to it, be heard to say that the land of others shown by it should not be used for any other purpose and enjoy its own land at the expense of respondents 5 and 6. If the petitioner feels that it still has a right or interest as 425 square yards agreed to be sold to it by the 5th respondent, basing on which, it obtained the revised lay out, it has to establish its right therein in a Civil Court, and it may not be necessary for respondents No.5 and 6 to go to a Civil Court to establish their right.

10. We have carefully considered the order passed by the learned Single Judge. Learned Single Judge has rightly held that after the revised lay out dated 25.09.1976 was cancelled, it was for the writ petitioner (appellant-Society) to provide alternative site. Therefore, the original lay out dated 01.08.1974 stood revived. In other words, land admeasuring 650 square meters, which was earmarked as park/lung space had to be used as such. It was not open to the appellant to show the land of others as land belonging to it and seek development of such land as the park/lung space but continue to enjoy the land belonging to it for purposes other than park/lung space. We may mention that learned Single Judge has

not only dismissed the writ petition but observed that it was an abuse of the process of the court and imposed cost.

11. On thorough consideration of all aspects of the matter, we do not find any error or infirmity in the view taken by the learned Single Judge.

12. Writ Appeal is accordingly dismissed. No costs.

As a sequel, miscellaneous petitions, pending if any, stand dismissed.

UJJAL BHUYAN, CJ

C.V.BHASKAR REDDY, J

Date: 07.09.2022
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