

(2002) 01 AP CK 0057

In the Andhra Pradesh High Court

Case No : Writ Petition No. 21793 of 2001

A. Srinivas

APPELLANT

Vs

Government of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 23-01-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 2 ALD 402 : (2002) 2 ALT 268

Hon'ble Judges : Ar. Lakshmanan, C.J;G. Yethirajulu, J

Bench : Division Bench

Advocate : G. Mohan Rao, for the Appellant; A.G. and S. Ravi, for the Respondent

Final Decision : Dismissed

Judgement

Ar. Lakshmanan, C.J.—This writ petition was filed by the petitioner who was practising as Chartered Accountant praying for issuance of a writ of mandamus declaring G.O. Ms. No.194 dated 19-10-2000 issued by the Secretary to the Government of A.P., Youth Advancement, Tourism and Culture Department as illegal, arbitrary and violative of Articles 14 and 21 of the Constitution of India and to set aside the same and to pass appropriate orders that may be deemed fit in the circumstances of the case.

2, By this petition, the petitioner challenged the action of the respondents in seeking to establish the commercial ventures like theatre, shopping complex etc., in the park known as NTR Gardens, opposite to Hussain Sagar lake. The Government had earlier taken a decision to declare 55 acres of Buddha Purnima Project area as NTR Gardens in 1996 vide GO 44 dated 2-2-1996. Subsequently, this area was developed into a full-fledged park investing huge amount of public money. When this park area was sought to be developed for other purposes, a public interest litigation was filed and this Court delivered the decision in S.R. Ramanujam and Another Vs. The Chief Secretary to Government and Others, , wherein it was held that public park shall not be used for any other purposes.

The petitioner relied on the decisions in Bangalore Medical Trust Vs. B.S. Muddappa and others, and Ganapathi National Middle School Vs. M. Durai Kannan (dead) by LRs. and others, and a decision of this Court in WP No.4598 of 2000 wherein it has been made clear that the park should not be used for any other purposes. It is submitted that the constructions are taking place on and near the water body of the Hussain sagar lake and that the Government issued G.O. Ms. No.194, dated 19-10-2000 under which two acres of the land is being given away for the commercial use to the fourth respondent. It is submitted that the diversion of part of public park for commercial venture is violative of Article 21 of the Constitution of India as it affects lung space in the already congested city of Hyderabad and that by this action, the lake which is already polluted will further be polluted with this venture as more vehicles and other commercial activities will increase on a large scale. According to the petitioner, the construction of the theatre complex and allied commercial activities at this place is not in the interest of the general public and it does not serve any public purpose at the cost of green garden and much needed lung space. It is further submitted that no public objections were called for before issuing the GO and the subject GO converting garden into concrete jungle was also not published for the information of the public. The GO is issued scrumptiously with an intention to avoid public gaze and scrutiny. It is further submitted that this action of the respondents in carving out 2 acres from NTR Gardens for creation of commercial activity is against the principle of sustainable development and precautionary principle. So far no clearance was given by the Pollution Control Board and even if the Board clears it, the park area can never be converted into a commercial venture. Therefore, the petitioner approached this Court in public interest to prevent the action of the Government in proceeding with the construction and commercial activities in the park area.

3. Along with the writ petition, the petitioner has also filed copies of the G.O.44, Municipal Admn., and Urban Development Department dated 2-2-1996, G.O. Ms. No.194 dated 19-10-2000 issued by the Youth Advancement, Tourism and Culture Department, Government of A.P. The Counsel for the petitioner has also filed copies of the judgments in CC No.1752 of 2000, CC No.1156 of 2001, WP No.3860 of 1996 as annexures.

4. The Secretary, Youth Advancement, Tourism and Culture filed a counter-affidavit on behalf of the respondents 1 to 3 denying the allegations made in the writ petition. The Managing Director of the fourth respondent has filed a separate counter-affidavit. Reply affidavit was filed to the counter filed on behalf of the respondents 1 to 3. Another reply affidavit was filed in reply to the additional counter-affidavit filed by the second respondent dated 13-10-2001. The Secretary, Youth Advancement, Tourism and Culture Department, 2nd respondent in this case has also filed additional counter-affidavit on 13-12-2001 for which a reply was filed by the petitioner in reply to the additional counter affidavit dated 13-12-2001.

5. We have perused the entire pleadings, annexures filed along with the writ petition and the material papers filed by the learned Advocate-General on behalf of the respondents 2 and 3. Our attention was also invited to the judgment of this Court in WP No.3860 of 1996, which was filed on a complaint by the Buddhist Society of India wherein this Court has observed that it had satisfied that the character of the space which is clearly assigned for the purposes of recreational use only in accordance with the various divisions of land for use as designed under the Hyderabad Urban Area Development Act is not changed or is proposed to be changed. Our attention was also drawn to another public interest litigation wherein this Court had occasion to deal with the allegations that the earlier orders of this Court are being violated. In WP No.26378 of 2000, this Court referred to the on going works including the Imax theatre and after very elaborate consideration of all relevant issues; it was disposed of with certain directions. It was observed therein that Buddha Poornima Project was converted for commercial purposes and the rest of the land was for recreational purposes. The Court opined that no further permanent structures including those involving commercial activities may be allowed to be raised on or near the water spread or catchment area. The Bench observed as follows:

However, the other aspects of the proposed activities viz., construction of amusement park, etc., may be allowed. But prior thereto, the A.P. Pollution Control Board must go into all aspects of the matter including the questions raised herein and certify that creation of such entertainment parks, etc., for the purpose of encouraging tourism would result only in sustainable development, which would not create any ecological imbalance.

6. Thus, it is seen from the above observations that this Court barred only further permanent structures and not the on going projects. The very same Secretary Smt. Chandana Khan filed affidavit in August, 2001 in CC No.1752 of 2000 wherein full details of the Imax theatre have been set out. Subsequently, another contempt case was filed alleging inter alia that the continuation of Imax theatre project constituted violation of the Court's order dated 15-6-2001. During the course of the arguments, the attention of the Court was drawn to the Imax theatre project and both the contempt cases. It is seen from the counter-affidavit that the Imax theatre is visualised to cost about 50 crores and already an investment of 12 crores has been made on machinery and construction. The work is going on for several months past. The location of the Imax theatre is on the road leading from NTR Marg to Khairtabad via Mint Compound. It is a 100" wide road. It is specifically mentioned in the counter-affidavit that it is nowhere near the water spread of Hussain Sagar lake. After considering all these matters and in the light of the plans submitted to the Court clearly showing that the Hussain Sagar lake is presently surrounded on all sides by roads, the High Court while rejecting CC No.1156 of 2001 on 9-10-2001 clearly observed that the construction activities being carried out as has been stated by the petitioner are outside the catchment area and not on or near the water spread. However, the Bench directed that no further construction should be made in the lake or

catchment area. The place in which construction activities that are being carried on and the Hussain Sagar lake are divided by a road. The fact as regards the existence of the three roads will go a long way in construing the aforementioned judgment. Having regard to the scope and purport of the judgment, it cannot be said that the place in which the constructions being carried on either form part of Hussain Sagar or its catchment area.

7. As seen from the counter-affidavit, the grievance expressed and voiced in the present writ petition has therefore been fully considered by this Court and had been rejected. It is also further submitted that the Pollution Control Board surveyed the entire area and made some suggestions, which have been implemented. Thus it is argued by the State through the learned Advocate-General that the conditions imposed by this Court have been fulfilled and that the present writ petition is only an abuse of process of law.

8. According to the learned Advocate-General, the averments made in the para 4 of the writ petition ignored the subsequent pronouncements of the High Court and that this is a case of a park under formation and not an established park and therefore, it is submitted by the learned Advocate-General that the judgments quoted are not apposite. It is further submitted that the diversion of the part of the public park as commercial area is an event, which occurred in 1995 even before the park was set up and therefore, there is no violation of the Article 21. According to the learned Advocate-General, Imax theatre is not a commercial venture and that it is primarily an educational recreation. We are also of the opinion that it is too late in the day to contend that park should not contain facilities for recreation. In other words, even if the Imax theatre is situated in the park area, there would be nothing objectionable to the said location. There is no adverse effect on lung space as alleged. It is further submitted that the judgment in the contempt case was rendered on 9-10-2001 whereas the present writ petition is filed on 16-10-2001 and therefore, there is lack of bona fides in the present writ petition and that the public interest litigation has been instituted at the instance of persons motivated by extraneous considerations and as such it does not deserve to be entertained.

9. The Managing Director of the fourth respondent has stated in his counter that the present writ petition is intended to scuttle development and progress in Tourism industry by certain vested interests. According to him, the Department of Youth Advancement, Tourism and Culture handed over the site admeasuring approximately 2-00 acres to M/s. Prasad Media Corporation Limited - 4th respondent herein to which one Sri Ramesh Prasad deponent of the affidavit is the director and he had procured equipment from Imax Limited, Canada for a consideration of Rs.16 crores and was incurring interest burden of Rs.25,000/- per day. It is further submitted that as of date, the 4th respondent has spent enormous sum of Rs.15.85 crores and the work is in progress. It is specifically and categorically mentioned that the land allotted to the respondent No.4 has been converted into commercial land, is far away from water bodies and to the

north of the plot is NTR Marg which runs from Telugu Talli statue to Khairtabad flyover and to the west of the plot is the road which links Mint Compound with the Necklace Road and no water body nor any catchment area is affected. According to the respondent, there is no polluting activity in the Imax theatre and except the normal sewage generated by the theatre users no other pollutants are generated by the activity and so far as the vehicular emission is concerned, it is a normal incident of location of a theatre and there is no extraordinary influx of vehicular traffic. As a matter of fact, it is submitted that Imax Corporation of Canada has set up several Imax theatres all over the world which is a premier form of education and entertainment and that the production of Imax Cinema costs large amount of money and that the movies which are shown in the Imax theatre are not the usual movies, but are relating to nature, culture, atmosphere, environment and such other topics of educative and entertainment value. According to the respondent, the writ petition is mischievous and it therefore deserves dismissal.

10. The learned Counsel for the petitioner Mr. G. Mohan Rao invited our attention to the reply affidavit filed by the petitioner to the counter-affidavit on behalf of the respondents 1 to 3. According to him, G.O. Ms. No.194 dated 19-10-2000 issued by the second respondent is not the subject-matter of challenge in any of the earlier writ petitions and the contempt case to which the respondent has referred to in the counter-affidavit relates to another proceeding and that this GO was not brought to the notice in any of the earlier cases and the validity of the said GO was neither challenged nor considered by this Court in any of the earlier cases. He drew our attention to the order passed in judgment reported in S.R. Ramanujam v. Chief Secretary to Government (supra). According to the learned Counsel for the petitioner, this Court in the above judgment has observed that parks and other open spaces in twin cities are hopelessly inadequate as per the standard in this behalf and that the expanding urban agglomeration of the twin cities of Hyderabad and Secunderabad and the per capita recreational area in the city is less than 0.50 sq. metres as against the national standard of 3.00 sq. metres and that the city is already breathing less than the required breath and further depletions by acts of the State of the lung space of the city will make the breathing more difficult

11. The Government of A.P. issued G.O. Ms. No.75 dated 9-3-1997 in which it has made variations to the zonal development plan for zone TV, MCH on 29-12-1995. As per the above G.O., 26 hectares of land, which is earmarked partly for water body use, partly public and semi public use and partly recreational use in TS No.5 (Part), Block B and ward No.80 at Khairtabad village was converted entirely into recreational use zone. The NTR Park is part of 26 hectares of land which is exclusively earmarked for park under zonal development plan. He has also invited to the order passed in WP No.26378 of 2001 (Forum for a better Hyderabad v. Govt. of A.P. 2001 (4) ALD 776). According to the learned Counsel, this Court has already held that no further permanent structures including those involving commercial activities may be

allowed to be raised on or near the water spread or catchment area. He referred to the judgments of this Court in CC No. 1752 of 2000 and CC No.1156 of 2001 wherein this Court dealt with the water spread of Hussain Sagar lake.

12. It is submitted by the petitioner that the construction of commercial complexes in the park is violative of the fundamental rights guaranteed to the citizens under Articles 14 and 21 of the Constitution. The contention of the respondents that even if Imax theatre is situated even in the park area, there is nothing objectionable to the same is contrary to their own affidavit in Contempt Case No.1752 of 2000 and contrary to zoning regulations and the same is in violation of series of judgments of this Court and Supreme Court. The proposed activities also generate garbage resulting in polluting the serene atmosphere of the park. The learned Counsel for the petitioner, therefore, prays that the writ petition may be allowed.

13. Our attention was drawn to the additional counter-affidavit filed by the second respondent wherein it was stated that while filing the counter-affidavit in the writ petition by oversight it was not mentioned that G.O. Ms. No.194, dated 19-10-2000 was amended by correcting the mis-description of the location of the area allotted for Imax theatre through the GO was filed in the Material paper book. The area is located in the commercial zone abutting the NTR park. The expression used "NTR Garden" is not the correct nomenclature. This mistake has been rectified after noticing it by the amendment made through G.O. Ms. No.233, dated 22-10-2001. Our attention was drawn to the order passed in CC No.1752 of 2001, which has been filed as document No.3 along with material papers filed by the learned Advocate-General.

14. We have perused the order passed by the Division Bench in the Contempt Case No.1752 of 2000. According to the petitioner therein, no construction whatsoever nature, should come up in the park in view of the judgment referred to the decision in Ramanujam (supra). It was contended that the souvenir shop having a concrete structure must be held to be violative of the order of this Court. The learned Counsel did not press the issue as regards the construction of Imax theatre being satisfied that the same does not fall within the NTR Park.

15. In our opinion, having invited a finding on merits in the Contempt Case No.1752 of 2000, it is not now permissible for the petitioner to re-agitate the factual matter any further. According to the learned Counsel for the petitioner, the amendment of G.O. Ms. No.194, dated 19-10-2000 by G.O. Ms. No.233, dated 22-10-2001 is carried out only to nullify the writ petition filed by the petitioner and that the amendment does not state the true position of the location of the Imax theatre and other multipurpose complex. The learned Counsel further submitted that once this Court admitted the writ petition challenging the validity of G.O. Ms. No.194, dated 19-10-2000, the matter has become sub-judice and respondents cannot make any amendment to the impugned GO without seeking the permission of this Court and therefore the same is liable to be set aside on this ground. It is further argued that G.O. Ms.

No.194 was already implemented and two acres of land in NTR Garden was handed over to the fourth respondent in terms of the GO and the fourth respondent seems to have started some work after executing lease deed. That being so, no amendment to the said GO can be made after the GO has been implemented and therefore, the amendment carried out is illegal and does not locate the true location of the commercial complex. We are unable to countenance, the said submission. It has been clearly stated in the additional counter-affidavit dated 13-12-2001 that by oversight it was not mentioned that G.O. Ms. No.194 was amended by correcting the mis-description of the location of the area allotted for Imax theatre though the GO was filed in material paper book.

16. That itself shows that there is no suppression on the material facts on the part of the respondents. G.O. Ms. No.233, dated 22-10-2001 has been filed and marked as item No.5 of the annexures. We have perused the said GO it has been clearly mentioned in the GO that in G.O. Ms. No.363 dated 23-8-1995, an extent of four hectares in T.S. No.5/2 (Part) Block No.B, Ward No.80 (Buddha Poornima Project land) of Khairtabad village was designated as commercial use zone under the APUAD Act, 1975. This four hectares of commercial use land is bounded on three sides by Buddha Poornima Project land and on the western side proposed for 100 wide road which also has been allotted to Buddha Poornima Project.

17. G.O. Ms. No.75 dated 3-3-1997, an extent of 26 hectares in the same T.S. Number was converted into recreational use zone and for the purpose of protection, this area including the four hectares of commercial use land was enclosed by see through grills and it is now known as NTR Garden.

18. In G.O. Ms. No. 194, dated 19-10-2000, Imax theatre was ordered to be established in a land of 2 acres in the NTR Gardens. This is an inaccurate description, which has inadvertently crept in. To correct this mistake, it was proposed to amend the said order. It has been clearly mentioned that Imax theatre is actually being constructed only in the commercial use zone of the Buddha Poornima Project. After careful examination, the Government issued the following amendment to the G.O. Ms. No.194:

AMENDMENT

For the words Read as

"NTR Gardens" occurring in paras 1, 3 and 3.1 in G.O, Ms.No.1S4,YAT&C(PMC)Dept., dated 19-10-2000

"Commercial use zone of Buddha Poorn"na Project*

19. The Counsel for the petitioner Sri K.S. Murthy, on 11-10-2001 issued a notice of contempt to the Secretary, Department of Youth Advancement, Tourism and Culture Affairs, Government of Andhra Pradesh, Hyderabad stating that Imax theatre is located in an extent of Ac.2.00 within the NTR Garden. This statement is in contradiction of the sworn affidavit signed and filed ;in August, 2001 before

the High Court and that it is willful contempt of the Court. Through the said notice, the Government of Andhra Pradesh was called upon to intimate as to how such an affidavit was filed which led to the dismissal of CC No. 1752 of 2000. It is also submitted therein that appropriate proceedings including the reopening of the contempt case will be taken up. A reply was sent by the Secretary of the said department to the notice sent by the learned Counsel stating that absolutely no attempt is made to mislead the Court and that the GO was issued as long back as in 1995 and that it was filed in the material papers in the case. It is also specifically mentioned that the casual reference to NTR Gardens as popularly described in G.O. Ms. No.194 was an oversight and has been corrected. In any case, it is stated that the petitioner is fully aware of the location of the Imax theatre and that it is not within the boundaries of the NTR Park. The Secretary has also regretted in the reply notice as to how the responsible Government officers should be harassed by such baseless allegations.

20. We are of the opinion that it is always open to the Government to amend the G.O. Ms. No.194 before a final decision is taken. The mistake that has been crept in was specifically mentioned in the counter-affidavit as well as in the reply notice dated 20-10-2001 issued by the Secretary. The petitioner has not taken any steps to move the Court for reopening the Contempt Case No. 1752 of 2000 as stated in his notice dated 11-10-2001, but however filed the present writ petition to quash the G.O. Ms. No. 194. The Government in our opinion has authority and jurisdiction to rectify the clerical error and to correct the nomenclature and accordingly issued amendment in G.O. Ms. No.233, Youth Advancement, Tourism and Culture dated 22-10-2001.

21. For the reasons aforesaid, we find no merit in the writ petition and, in our view, it is nothing but an abuse of process of Court. The writ petition fails and it is accordingly dismissed. However, there will be no order as to costs.