

(2008) 12 AP CK 0036

In the Andhra Pradesh High Court

Case No : Writ Petition No. 26011 of 1996

Adarsh Vidyalaya, recognized School (A service unit of the
Grain and Seeds Merchants Association)

APPELLANT

Vs

Nagar Panchayat and Others

RESPONDENT

Date of Decision : 16-12-2008

Acts Referred:

Andhra Pradesh Municipalities Act, 1965 — Section 194, 56, 58, 59, 70

Citation : (2009) 4 ALT 519 : (2009) 15 ALT 519

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

**Advocate : M.V. Durga Prasad, for the Appellant; Polisetty Radha Krishna and
G.P. for Municipal Administration for Respondents 2 to 4, for the Respondent**

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—The petitioner is an educational institution established in the year 1974 by the Association of Grain and Seeds Merchants, Zaheerabad. Initially, it was functioning in a rented building. In the year 1977, it purchased an extent of Ac.2-00 of land vide registered document No. 808 of 77 from the then municipality, which is now called as "Nagarpanchayat"- the first respondent herein. The adjoining land of an extent of Ac.6-00 was being used by the school as play ground and for allied purposes.

2. The petitioner made repeated representations to the Municipality for transfer of Ac.6.00 of land. Through a resolution dated 20.6.1981, the Municipality resolved to allot and transfer Ac.6-01gt. land in favour of the petitioner. This was preceded by an assurance given by the then Minister of Municipal Administration on 2.5.1981. The Municipality addressed a letter, dated 3.8.1981 to the Government in Municipal Administration Department-the fourth respondent for according permission for alienation. On the directions issued by the first respondent, the matter was verified by the authorities of the revenue department and the District Collector-the second respondent fixed the value of

the land at the rate of Rs. 2,000/- per acre vide letters dated 16.10.1984 and 16.1.1985. In view of these developments, the petitioner is said to have spent considerable amount for leveling and clearing the land.

3. Before the resolution dated 20.6.1981 was implemented, the municipality passed resolution dated 2.2.1988 revoking its earlier resolution. The petitioner filed W.P. No. 1489 of 1988 before this Court challenging the resolution dated 2.2.1988. It was pleaded by the municipality before this Court that the proposal to alienate the land in favour of the petitioner was withdrawn in view of the policy of the Government indicated through proceedings, dated 19.7.1986 prohibiting alienation of lands by the local authorities. This Court disposed of the writ petition on 31.7.1992 directing the State Government itself to take a decision as regards the proposal to transfer the land in favour of the petitioner.

4. The first respondent passed a resolution dated 20.11.1995 for allotment of the land in favour of the petitioner at the enhanced rate of Rs. 20,000/- per acre. Petitioner deposited the entire amount within the stipulated time and a sale deed was executed on 24.1.1996 in favour of the petitioner.

5. The Commissioner, Municipal Administration-the third respondent is stated to have suspended the resolution dated 20.11.1995 passed by the first respondent vide his proceedings dated 29.8.1996. Acting on the same, the first respondent issued notice dated 18.11.1996 directing the petitioner to hand over the possession of the land within 30 days. The first respondent also threatened with action u/s 194 of the Andhra Pradesh Municipalities Act, 1965 (for short "the Act") in case possession is not handed over. The writ petition is filed challenging the notice dated 18.11.1996 and proceedings dated 29.8.1996 issued by the third respondent.

6. During the pendency of the writ petition, the petitioner was communicated an order dated 3.1.1996 passed by the fourth respondent in pursuance of the directions issued by this Court in W.P. No. 1489 of 1988. By filing WPMP No. 36286 of 2007 the petitioner sought for amendment of the prayer to enable it to challenge the order, dated 3.1.1996. The WPMP was ordered on 13.6.2008.

7. The petitioner contends that an extent of Ac.6-01gt. was transferred in its favour by the first respondent on the assurance given by the Minister for Municipal Administration and consequently, through resolution dated 20.11.1995; and there is absolutely no basis for the impugned proceedings. They contend that the third respondent is not vested with the powers to suspend the resolution of the municipality and such a power is vested only with the District Collector-the second respondent. It is also pleaded that the suspension of resolution by the second respondent is also a temporary and adhoc measure and the final decision in this regard has to be taken by the fourth respondent and there is nothing on record to disclose that the fourth respondent had interfered with the resolution dated 20.11.1995.

8. On behalf of the respondents, a counter affidavit is filed. It is stated that the

sale in favour of the petitioner is opposed to the Act and the Rules framed thereunder since permission of the fourth respondent was not obtained before executing the sale deed. It is also urged that the petitioner does not derive any right or title on the basis of sale deed, which was executed by the chairman of the Municipality. Respondents contend that the matter was examined by the fourth respondent in pursuance of the direction issued by this Court in W.P. No. 1489 of 1988 duly furnishing the reasons thereof.

9. Mr. M.V. Durga Prasad, learned Counsel for the petitioner submits that the land was in possession and enjoyment of the petitioner for the past several decades and that the institution is serving the needs of children hailing from lower and middle class families in the town. He contends that the fee structure was kept at a low and affordable level, and for all practical purposes, the petitioner is sharing the burden of the first respondent in providing education at an affordable cost. The learned Counsel submits that even according to the value suggested by the second respondent in 1985, it was Rs. 2,000/- per acre, whereas the first respondent collected Rs. 20,000/- per acre in 1995 and it cannot be said that the first respondent has suffered any detriment. The learned Counsel also contends that a validly executed sale deed cannot be ignored or set at naught by the administrative exercise or through the impugned notice.

10. Sri Radha Krishna, learned standing counsel for the first respondent and learned Government Pleader for Municipal Administration for respondents 2 to 4 on the other hand submit that there was absolutely no basis for the resolution dated 20.11.1995 much less to the consequential sale deed. They contend that respondents 2 and 3 have exercised their power under the relevant provisions of the Act and the petitioner does not derive any title from the transfer that is made in pursuance of the resolution dated 20.11.1995.

11. The petitioner has established a school in the year 1974. Within three years thereafter, it purchased an extent of Ac.2-00 of land from the first respondent. Obviously the first respondent was impressed that the petitioner is serving the needy people by establishing a school with affordable fee structure. The adjoining area of Ac.6-00 in Survey No. 163 was being utilized by the school for play ground and allied purposes. On repeated requests made by the petitioner, the then Minister for Municipal Administration is said to have promised in May, 1991 (sic. 1981) that Ac.6-00 of land would be transferred to the petitioner. This was followed by resolution passed by the first respondent on 20.6.1981 for allotment of Ac.6-00 of land to the petitioner subject to approval of concerned authorities. Resolution was forwarded to the Government, which in turn called the records from the revenue authorities. The District Collector-second respondent addressed a letter dated 18.2.1985 recommending transfer of the land at the rate of Rs. 2,000/- per acre. Before the sale deed was executed, the first respondent cancelled (sic. passed) the resolution dated 2.2.1988 revoking its earlier resolution dated 20.6.1981. Consequently, a notice was issued directing the petitioner to hand over the land. In W.P. No. 1489 of 1988 filed by

the petitioner, the first respondent pleaded that the earlier resolution has to be revoked in view of the policy decision of the Government. This Court disposed of the writ petition directing the Government i.e. the fourth respondent to examine the matter. No progress as such has taken place in the matter for quite some time. In the meanwhile, the first respondent passed a resolution dated 20.11.1995 wherein it was directed that the land being sold to the petitioner is at the rate of Rs. 20,000/- per acre. The amount was deposited within the stipulated time and the sale deed was executed on 24.1.1996. Thereby, the petitioner became the absolute owner and enjoyer of the property. Substantial amount is said to have been spent for development also.

12. In the notice, dated 18.11.1996, the first respondent required the petitioner to handover the land. The basis is said to be In order passed by the third respondent suspending the resolution. The first paragraph of the notice reads as under:

With reference to the above you are hereby informed that the Commissioner and Director of Municipal Administration Hyderabad has suspended the council resolution No. 79 dt.20.11.95 which was passed by the council vide reference 3rd cited, with a direction to take necessary action by removing the unauthorized occupation made by you. Meanwhile the Dist. Collector has also issued directions to resume the land to an extent of 6 acres 1 gunta and 90 square yards which was occupied by you vide reference 4th cited.

13. Therefore, it needs to be examined whether there was any basis for the impugned notice. Section 59 of the Act confers powers on the Government to cancel or suspend the resolution passed by the municipalities. It reads as under:

Government's power to cancel or suspend resolutions etc:- (1) The Government may, either suo motu or on representation of any councilor, the chairman or the commissioner by order in writing:

(i) cancel any resolution passed, order issued, or licence or permission granted; or

(ii) prohibit the doing of any act which is about to be done or is being done, in pursuance or under colour of this Act, if in their opinion:

(a) such resolution, order, licence, permission or act has not been passed, issued, granted or authorized in accordance with law; or

(b) such resolution, order, licence, permission or act is in excess of the powers conferred by this Act or any other enactment; or

(c) the execution of such resolution, or order, the continuance in force of such licence or permission or the doing of such act is likely to cause, financial loss to municipality, danger to human life, health or safety or is likely to lead to a riot or breach of peace (or is against public interest).

Provided that the Government shall, before taking action under this section on

any of the grounds referred to in Clauses (a) and (b), give the authority or person concerned an opportunity for explanation;

Provided further that nothing in this sub-section shall enable the Government to set-aside any election which has been held.

(2) If, in the opinion of the Government, immediate action is necessary on any of the grounds referred to in Clause (c) of Sub-section (1), they may suspend the resolution, order, licence, permission or act, as the case may be, for such period as they think fit pending the exercise of the powers under Sub-section (1).

14. From this, it becomes clear that the Government cannot delegate its powers to cancel or suspend resolutions. The circumstances under which the resolution, order or licence can be cancelled and the procedure to be followed before taking such action are indicated in Sub-section (1). Apart from conferring power on the Government under Sub-section (2) to suspend the resolution, the legislature conferred limited power of suspension of a resolution of the municipality on the District Collector also u/s 70 of the Act which reads as under:

Powers of District Collector to suspend a resolution, etc:- If, in the opinion of the District Collector, immediate action is necessary on any of the grounds referred to in Clause (c) of Sub-section (i) of Section 59 he may suspend the resolution, order, licence, permission or act, as the case may be, and report to the Government who may thereupon either rescind the Collector's order or, after giving the authority or person concerned a reasonable opportunity of explanation, direct that it shall continue in force with or without modification permanently or for such period as they think fit.

15. The power to suspend resolution by the District Collector u/s 70 of the Act is limited in its scope and is only a measure pending final action u/s 59 by the Government. In none of these provisions, the Commissioner of Municipal administration figures as an authority. Wherever the Act wanted to confer power on the Commissioner, it did so specifically. For example, Sections 56 and 58 confers specific powers on the Commissioner in several respects. Therefore, the third respondent does not have the power or jurisdiction to suspend the resolution.

16. During the course of arguments, it has been brought to the notice of this Court that the second respondent also passed order suspending the resolution. That, however, would be a temporary measure and would ensure only till the cognizance of the matter is taken by the Government on the report submitted by the District Collector. At any rate, the impugned notice is not based on the orders, said to have been passed by the District Collector. Therefore, the impugned notice has no valid basis in law.

17. The respondents made an attempt to sustain the impugned action on the basis of the orders passed by the fourth respondent in their memo, dated 3.1.1996. The same was passed in pursuance of the directions issued by this

Court in W.P. No. 1489 of 1988. The petitioner contends that the memo, dated 3.1.1996 was not at all communicated to them. The Memo was issued after the sale deed was executed by the Municipality. The Government expressed the view that the lands held by the municipalities are to be utilized for Integrated Development Programme. Basically, it is the responsibility of the local bodies to establish schools to cater to the needs of the residents. The averment made by the petitioner that the school established by it alone was catering to the needs of the local residents and that the fee structure was kept at a low remains unrebutted. This Court is of the view that the memo, dated 3.1.1996 does not have an effect of annulling the sale, which was already executed earlier to it.

18. For the foregoing reasons, the writ petition is allowed and the impugned notice is set-aside. There shall be no order as to costs.