

(2001) 10 AP CK 0001

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 18755 and 19215 of 2001

Adarsha Welfare Association

APPELLANT

Vs

The A.P. Housing Board

RESPONDENT

Date of Decision : 03-10-2001

Acts Referred:

Andhra Pradesh Housing Board Act, 1956 — Section 22, 26, 29, 30, 31
Andhra Pradesh Urban Areas (Development) Act, 1975 — Section 12

Citation : (2001) 10 AP CK 0001

Hon'ble Judges : S.B. Sinha, C.J.;V.V.S. Rao, J

Bench : Division Bench

Advocate : T. Jagdish, for the Appellant; J. Prabhakara Rao, S.C. for APHB, for the Respondent

Judgement

S.B. Sinha, C.J.—These writ petitions involving common questions of fact and law were taken up for hearing together and are being disposed of by this common order.

2. Both these writ petitions, by way of Public Interest Litigation, have been filed questioning the action of the Housing Board-respondent in attempting to make constructions in the lung space and area earmarked for park contrary to the provisions of the Andhra Pradesh Housing Board Act, 1956 (for short "the Act").

FACTS:

3. The facts in Writ Petition No. 18755 of 2001 are taken up for the purpose of deciding the question. The petitioner-association consists of the allottees and owners of various plots and dwelling units situated in Vengalrao Nagar Housing Board Colony.

4. The Housing Board has acquired 45 acres of land for the purpose of constructing dwelling units, made allotments the applicants after taking out lots and realised the entire spent for laying out the plots. The Housing Board drew a lay out, which was approved by the Town Planning Authorities of Municipal

Corporation of Hyderabad, earmarking open spaces, parks, commercial community areas and green area. The Housing Board could not allot a portion of land earmarked for park area, which is occupied by a hutment colony. The grievance of the petitioner is that the Housing Board, instead of getting the park area cleared from the occupation of slum dwellers, now intends to develop commercial zone in the area allotted to police station. It is also stated that an area of 5 acres, which is earmarked to create lung space and for park along with community hall, has been occupied by slum dwellers. The tender notifications dated 1-5-2000 and 28-6-2000 issued by the respondent inviting tenders for construction of a four storied complex having 16 residential flats with stilt.

5. The Executive Engineer (Northern Division) of the respondent-Housing Board filed counter affidavit inter alia stating that the land to an extent of Ac. 42-19 guntas and 58 square yards was acquired and taken possession of by the respondent under the provisions of the Land Acquisition Act and 614 dwelling units have been constructed. The petitioners have made their own constructions in the colony by restructuring several houses and now they cannot complain of lack of lung space. It is denied that residents of the colony made application for getting the slum cleared. It is stated that the piece of land marked as "L" in the lay out was meant for the purpose of construction of police station and as police station building is not necessary, the Board has decided to construct a residential complex after obtaining sanction from the Municipal Corporation of Hyderabad. The respondent-Board made application to the Municipal Corporation seeking permission to construct a residential complex in an area of 1000 square yards and it was granted. The Government also accorded administrative sanction to the construction of residential complex vide G.O.Ms/No. 150 dated 19-11-1999 and thereafter tender notice was issued. It is stated that a commercial complex is proposed to be constructed in the space marked as "K" for which the Government has accorded administrative sanction by G.O.Ms. No. 14. dated 2-2-2000 and the Municipal Corporation has given permission.

6. It is also stated in the counter affidavit that there was a dispute in respect of two acres of land and the matter is now pending with the Supreme Court of India for adjudication. The respondent states that no construction contrary to or in deviation of lay out is being made and the areas earmarked as open spaces in the lay out have not been disturbed by the Board.

RELEVANT PROVISIONS:

7. The Andhra Pradesh Housing Board Act, 1956 (Act No. 46 of 1956) was enacted to provide for measures to be taken to deal with and satisfy the need of housing accommodation. Section 26 of the Act provides that the Government may sanction the programme, the budget and schedule of the staff of officers and servants forwarded to it with such modifications as it deems fit and the programme, the budget and the schedule so sanctioned shall be laid before the Legislative Assembly as soon as may be after the programme is published. Section 29, which provides for variation of programme by the Board after it is

sanctioned, reach

The Board may, at any time, vary programme or any part thereof included in the programme sanctioned by the Government.

Provided that no such variation shall be made if it involves an expenditure in excess of ten per cent of the amount as originally sanctioned for the execution of any housing scheme included in such programme, or affects its scope or purpose.

8. Section 31 of the Act deals with publication of housing scheme in Andhra Pradesh Gazette and it reads thus:

(1) Before proceeding to execute any housing scheme u/s 30 the Board shall, by Notification in the Andhra Pradesh Gazette, publish the scheme. The Notification shall specify that the plan, showing the area which it is proposed to include in the housing scheme and the surrounding lands, shall be open to inspection of the public at all reasonable hours at the office of the Board.

(2) If within two weeks from the date of publication of the Housing Scheme any person communicates in writing to the Board any suggestion or objection relating to the scheme, the Board shall consider such suggestion or objection and may modify the scheme as it thinks fit.

(3) The Board shall then by Notification in the Andhra Pradesh Gazette publish the final scheme. The Notification shall specify that the plan, showing the area included in the final scheme and the surrounding lands and other particulars as may be prescribed shall be open to inspection of the public at all reasonable hours at the Office of the Board.

(4) The publication of a Notification in the Andhra Pradesh Gazette under Sub-section (3) shall be conclusive evidence that the said scheme has been duly framed.

9. Section 22(g) provides that a Housing Scheme may provide for the sale (including on hire purchase system), letting or exchange of any property comprised in the scheme.

10. The allottee of a plot in terms of the provisions of the said Act pays for all amenities which are to be provided, including the lung space as also the facility to be provided as for example, the place earmarked for the public purpose. A police station was required to be set up for public purpose. Even assuming that having regard to the fact that there exists another police station at Sanathnagar and as such it may not be necessary for the present to set up a police station in the area, we are of the opinion that the said plot of land having 1000 square yards cannot be used for residential purpose.

11. The Housing Board having received the entire price for the land in question, as also the development cost, cannot unjustly enrich itself by selling away the plots of land in an area which was earmarked for public purpose. For the purpose of conversion of lay out plan, regional development plan or the master plan, the

procedure laid down in the A.P. Urban Development Authority Act, must be taken recourse to. In the instant case, the lay out plan was made in the year 1974 whereas the master plan was made in the year 1976. The master plan having been drawn up a later point of time, the lay out plan must give way thereto. The procedure as laid down u/s 12 of the Urban Development Act must be followed before a master plan can be modified.

12. In *M.C. Mehta Vs. Union of India and Others* *M/s. Delhi Development Authority*, , it has been held by the Apex Court:

While it is true that this Court has directed user of land left with the owner to be developed in accordance with the user permitted under the Master Plan but the whole aim, object and spirit of the order was to meet the community need and it is in this context also that Mr. Gopal Subramaniam drew our attention to the Appendix to the Zonal Development Plan pertaining to area "G". We are, however, unable to accede to such a submission since time has not come as yet in any event to assess the situation in its entirety. The Zonal Development Plans produced before the Court has not been finalised as yet since it is presently in the draft stage and as such no reliance can be placed by this Court on the data and the materials available thereon. A proposal cannot be said to be a final declaration of the community need. We are thus unable to record our concurrence therewith for the reasons noticed above.

13. The Apex Court in *Bangalore Medical Trust Vs. B.S. Muddappa and others*, held that a private nursing home could neither be considered to be an amenity nor it could be considered improvement over necessity like a public park and that the exercise of power in conversion of public park into private nursing home, therefore, was contrary to the purpose for which it is conferred under the statute.

14. In *M.I. Builders Pvt. Ltd. Vs. Radhey Shyam Sahu and Others*, , the Apex Court rejecting the argument of Doctrine of Administrative Inconvenience held:

Mahapalika is the trustee for the proper management of the park. When true nature of the park, as it existed, is destroyed it would be violative of the Doctrine of Public Trust as expounded by this Court in *M.C. Mehta Vs. Kamal Nath and Others*, . Public Trust Doctrine is part of Indian law. In that case the respondent who had constructed a hotel located at the bank of River Beas interfered with the natural flow of the River. This Court said that the issue presented in that case illustrated "the classic struggle between those members of the public who would preserve our rivers, forests, parks and open lands in their pristine purity and those charged with administrative responsibilities who, under the pressures of the changing needs of an increasingly complex society, find it necessary to encroach to some extent upon open lands heretofore considered inviolate to change.

15. So far as the lands earmarked for commercial purpose are concerned, admittedly, they are meant for outright sale. It is no doubt true that if the land in question was earmarked for a commercial purpose, the Board would be entitled

to construct shopping complex wherefor it is stated that requisite sanction had been obtained from the Municipal Corporation of Hyderabad.

16. However, having regard to the fact that ecology must be given primacy, in the opinion of this Court the Board, before raising constructions, should see to it that the encroachments made in an area of 5 acres, which is earmarked to create lung space and for park along with community hall, be removed. Once the requisite lung space is provided to the residents of the area, the State may proceed to make constructions in the proposed shopping complex area.

17. The writ petitions are disposed of with the aforementioned directions.

No order as to costs.