
(1982) 11 AP CK 0016
In the Andhra Pradesh High Court
Case No : Writ Appeal No. 650 of 1982

Brij Raj Pershad	Vs	APPELLANT
Rama Seethamma and Others		RESPONDENT

Date of Decision : 05-11-1982

Acts Referred:

Constitution of India, 1950 — Article 226
Hyderabad Municipal Corporation Act, 1956 — Section 112, 148
Municipal Corporation of Hyderabad (Acquisition and Disposal of Immovable Property) Rules, 1970 — Rule 8

Citation : AIR 1983 AP 118

Hon'ble Judges : Ramachandra Raju, J;Chennakesav Reddi, J

Bench : Division Bench

Advocate : P. Balakrishna Murthy, for the Appellant; B.V. Bakshi, for D.M. Deshmukg, K. Janardhan Rao for M.C.H., for the Respondent

Judgement

P. Ramachandra Raju, J.—This writ appeal is directed against the Judgment of our learned brother P.A. Choudary, J. Allowing W.P. No. 3968 of 1982.

2. There is an extent of 583.76 sq. Yards of land near cement nala, Chappal Bazaar, Belonging to the Municipal corporation of Hyderabad, the 1st respondent in the writ petition. About 4 to 5 hundred sq. Yards out of that site was earmarked by the corporation for a play ground. On a portion of the balance area of the site, the corporation constructed public latrines some time during 1930 to serve the needs of such of the local inhabitants who were not then having the facility of latrines in their huts or houses. Another portion of the balance area was recently encroached upon by one buchaiah a retired corporation employee. Buchaiah had erected some unauthorised structures in a portion of the land in his occupation even without obtaining the necessary permission from the corporation. The 2nd respondent in the writ petition is a recognised private Kinder Garten and Upper Primary school established in kachiguda area in the year 1966 with in initial strength of 40 students. The school was being conducted in three different rented buildings. By 1974 the strength of the school rose up to

400 students. The school authorities made several efforts to secure a proper single building for its purposes. As the site originally earmarked for a playground was lying vacant the neighbouring residents began to use the vacant site as a dumping ground and were thereby polluting the atmosphere the parents association of the school applied to the corporation by their letter dated 28-11-1974 to allot the vacant piece of land free of cost to the management of the school authority. The application was duly recommended by the District Educational officer. The site was jointly inspected in early 1975 by the then Minister for Health and by Mr. Luther, the then special officer of the corporation and both of them felt that some area out of the site could be considered for allotment to the school. Thereafter matters drifted till about June, 1978 when again the request for allotment was reiterated by the district Educational officer and by Mr. Venkatramaiah, an M.L.A. residing in that area. As there was still no response, the residents of the locality made a public representation in April, 1979 to the special officer, bringing to his notice that in 1930 there were very few houses and such houses were not provided with latrines of modern type and that with passage of time, all the houses adjoining the area are equipped with proper latrines and that continuance of the public latrines had become a health hazard and that they are obliged to keep the doors and windows of their houses always closed as the site was emitting bad smell and became a breeding place for mosquitoes. The then special officer took a decision to alienate the land in favour of the school on payment of Rs. 3/- per sq. Yard and informed the Government of his decision by his letter dated 2nd May, 1979. The 2nd respondent school remitted the sum of Rs. 1, 752/- towards the cost of the land and requested the corporation to execute the necessary registered document and hand over physical possession of the land to the school. Buchaiah then intervened with a representation dated 26-6-1979 stating that he initially raised a house with thatched roof after obtaining some oral permission from one Krishna Reddy, the then city planner and that after the thatched house had collapsed he raised another house with bricks and mud walls and he was prepared to pay rent for the site and requested the 1st respondent to desist from the proposed action of demolition of his house. At about the same time, some other residents requested the corporation not to proceed further with the alienation in favour of the 2nd respondent but keep intact the public latrines and the playground. It was also indicated that the residents are not having the benefit of a community hall or a reading room. The subordinate corporation officials were then alerted to remove the public latrines as well as the encroachment. As matters were still being delayed, a sizeable number of local residents made a representation during September 1979 to the then Chief Minister and the then special officer for ensuring the allotment of site to the school after removing the unwanted latrines and the encroachments. At about this point of time the site was inspected by the then Minister for Labour before whom a local representation was made for retaining the public latrines and the Municipal playground and the Minister wanted the special officer to re-examine the matter. The special officer informed the Government that the decision earlier

taken for selling the site to the school cannot possibly be revised. The special officer then placed the matter before the General body through the standing committee of the corporation and both the standing committee and council approved the proposal of the special officer to sell the land in favour of the school at Rs. 3/- per Sq yard. The Government by its memo No. 3024/K1/78-5 M.A. dated 9-5-1980 rejected the request of the school authorities immediately, thereafter the 2nd respondent filed W.P. No. 2768/80 to quash that memo by his Judgment dated 23-6-1981 held that the decision regarding the sale was validly taken by the corporation and the impugned memo was violative of the principles of natural justice and does not purport to have been made by the Government in exercise of its revisional powers under S. 679. The learned Judge further observed that the Municipal corporation shall be free to take such further action as it thinks fit in pursuance of the aforesaid decision of the commissioner and corporation within the meaning of S. 148 (3) of the Act, and that the order in the writ petition does not preclude the Government from exercising its revisional powers according to law, if it is so advised in the circumstances of the case. The 2nd respondent was requesting the 1st respondent to execute the necessary sale deed and deliver vacant possession. As there was some delay on the part of the corporation contempt proceedings were initiated against the corporation and its officials. On 4-6-1982, the public latrines were demolished and the construction made by Buchaiah was partly removed. It is in this background that the writ petition was filed by the several petitioners, questioning the authority of the corporation to demolish the pre-existing public latrines or to sell the municipal property at a low price. They made various allegations against the respondent of the 2nd respondent school and stated that the transaction in favour of the school is a fictitious and fishy transaction and smacks of malice and corruption. The respondents in their counters questioned the standing of the petitioners to file the petition. The malice or corruption attributed to the 1st respondent was denied. The demolition of the public latrines was justified on the ground that all the houses in and around the locality were equipped with separate private latrines and the continuance of the public latrine was no longer necessary. The open site was being used as a dumping ground and such use was hazardous to the health of the neighbouring residents. In situations where property is alienated for purposes of a school or other social public purposes, the municipal property was sold at a nominal price. There was even a case of gift of an extensive extent of acs. 5.05 made of the municipal property in favour of Ramakrishna math. Buchaiah is behind the writ petition, which is filed on 15-6-1982. Buchaiah's involvement is apparent from the fact that he filed O.S. No. 2145/82 on file of the 6th Asst. Judge city civil Court, Hyderabad, for an injunction restraining the corporation from demolishing the house he had earlier erected.

3. Our learned brother held that the petitioners have the locus standi to file the writ petition and that no bad faith can be attributed to the 2nd respondent. The learned Judge proceeded to decide the case on the real question whether the

action of the Municipal corporation of Hyderabad in proposing to sell its land at Rs. 3/- per sq. Yard can be justified in terms of the Hyderabad Municipal corporation Act, 1955. The learned Judge felt that as there is no decision that the public latrines were no longer required, it is not open to the corporation to remove the public latrines. The learned judge took Judicial notice of the fact that the land in the area would cost a minimum of Rs. 500/- per sq. Yard is an outright gift though comouflaged as sale and the corporation should deal with the property as a trustee for the rate-payers and cannot alienate the same for a grossly inadequate consideration. The learned Judge accordingly declared the proceedings of the special officer dated 2-5-1979 as ultra vires of his powers under the Hyderabad Municipal corporation Act, 1955.

4. Mr. Balakrishna Murthy, learned counsel appearing for the school and Mr. Janardhana Rao, learned counsel appearing for the corporation submitted that the decision of the corporation submitted that the decision of hte corporation to alienate the property in favour of the school was within the powers of the corporation and was bona fide having regard to all the circumstances of the case. They have taken us through the relevant provisions of the Hyderabad Municipal corporation Act, 1955. Section 148 of the Act provides for the disopsal of propeprty belonging to the corporation. Sub-sections (3) and (4) of S. 148 are relevant in terms of sub-sec. (3), the commissioner with the sanction of the corporation may lease, sell or otherwise dispose of any movable or Immovable property belonging to the corporation. Under subsec. (4) the sanction of the corporation may be given either generally or for any class of cases or specially for any particular case. The records disclose that the proposal to alienate the property was aapproved in the case both by the standing committee and by hte corporation Mr. Bakshi, learned counsel appearing for the writ petitioners submitted that ever since 1970, it is only the commissioner appointed as special officer that has been discharging the functions of the standing committee and that of the corporation and the inbuilt checks over the action of the commissioner provided in S. 148 are not available in a case where the commissioner himself is appointed as special officer and that we should critically examine the alienation that is involved in the case. The Act provides for the discharge by the special officer of the functions of the standing committee and that of the corporation. The commissioner as special officer was acting only in terms of the Act. The decision of the special officer who was constituted either the standing committee or the corporation cannot be any the less than the decision of the standing committee or the corporation under s. 148 of the Act. We accordingly reject this submission.

5. Mr. Bakshi relied on r. 8 of the municipal corporation of hyderabad (Acquisition and disposal of Immovable property) Rules 1970 to persuade us to hold that the said rule has been violated in this case. That Rule required the corporation to public in the A.P. Gazette a notice of the proposed transfer, giving full particulars of the property to be transferred, the name of the proposed transferred, the consideration for the transfer, if the consideration for the transfer if the

consideration for the transfer if the consideration for the transfer exceeded Rs. 5,000/- and by affixture of the notice in the conspicuous place specified therein. The consideration for the transfer in this case is less than Rs. 5,000/- There was therefore no need for the corporation to have made any publication of the proposed transfer as required under the said rule. The proposed transfer cannot therefore be questioned as violating rule No. 8

6. Our learned brother felt that the corporation holds the property in trust for the tax-payers; the commissioner could sell the property only for an adequate consideration and the impugned transaction is in substance a gift which the commissioner is not empowered to make in favour of the school. It is not disputed that the corporation is the owner of the property. When once the corporation is the owner. The commissioner had the power to dispose of the property either by lease, sale or otherwise. Even assuming that the transaction is in the nature of a gift, such gift is still within the competence of the commissioner. The purpose for which the transfer is made becomes material. The transfer is made to enable the school to function at a single place and to take in a larger number of students. The site which is proposed to be transferred was being misused by the residents of the locality as a dumping ground. The major extent of the site was no doubt set apart initially as a play ground. When it was being misused as a dumping ground, the rubbish has turned out to be a health hazard to the neighbouring residents. It was giving a bad odour necessitating the neighbouring residents even to close their windows and doors to avoid the foul smell. So far as the public latrines are concerned. Such latrines were serving the purpose at a time when the houses in the locality were not having any latrines of their own with the passage of time, each houses owner has constructed his own latrine. There was therefore, no further need for the corporation to have maintained the public latrines existing in a part of the site. As some vacant place belonging to the corporation was available bunchaiah a retired corporation employee, could encroach in a portion of the site and construct an unauthorised structure. The residents of the locality made a representation to alienate the site in favour of the school which was serving the educational needs of the local residents . it is in the background of these circumstances that the commissioner took the decision to transfer the property in favour of the school but at the same time stipulating for the payment of a nominal price of Rs. 3/- per sq. Yard. The proposed transfer was for consideration Rs. 1,752/- It cannot in the circumstances, be a gift. The transfer being for consideration amounts only to a sale. That was how the transaction was construed by Jeevan Reddy, J. In W.P. No. 2768/80. The learned Judge has noticed the Judgment dated 23-6-1981 in the said writ petition but did not give effect to that judgment by advancing two reasons. One of the reasons given was that the present writ petition was filed during the pendency of W.P. No. 2768/80. This is not factually correct as W.P. NO. 1768/80 was disposed of on 23-6-1981. The other reason given was that Jeevan reddy J. In his judgment in W.P. No. 2768/80 expressly left it open for the Government to exercise its revisional powers against the orders of the special

officer. The Government it is common ground, has not yet revised the orders of the special officer. One cannot therefore proceed on any hypothesis that the Government would at some future time, interfere with the orders of the special officer. In coming to the conclusion that the transaction is camouflaged as a sale, the learned Judge did not properly appreciate the Judgment of Jeevan Reddy, J. In W.P. No. 2768/80.

7. We are unable to agree with the learned Judge that the property in question partakes the nature of trust property. The property belongs to the corporation in its own right. It is not a property alienated in its favour by constituting any trust. The proposed transfer cannot, therefore, be examined on any hypothesis that the corporation was holding the property in trust for the benefit of the tax-payers. The sale in favour of the school was no doubt for an inadequate consideration. We have set out the circumstances in which the corporation took the decision to transfer the property and why the corporation stipulated for the rate of Rs. 3/- per sq. Yard. There have been instances in the past where the corporation had even gifted an extent of Acs. 5.05 of municipal land in favour of Ramakrishna Math G.O. Rt. No. 427 M.A. dated 7-9-1976 would indicate that even the Government directed that assignment to be made by the corporation in favour of Ramakrishna Math free of cost. The special officer has, therefore, acted within his powers in agreeing to make the transfer in favour of the school at Rs. 3/- per sq. Yard.

8. Mr. Bakshi submitted that the construction, maintenance and cleansing of public latrines is an obligation on the part of the corporation. He pressed into service S. 112 of the Corporation Act. Section 112 mandates the corporation to make adequate provision for that purpose. Section 115 of the Act enumerates matters which may be provided for by the corporation at its discretion. Those two sections read together would only indicate that the corporation should make a budgetary provision for the obligatory duties for works falling under S. 112 of the Act. The public latrines on the site were so constructed about 30 years back. After the houses surrounding the site were all equipped with private latrines, there was no longer any need for the corporation to have allowed the continuance of the public latrine which was not serving the purpose for which it was originally constructed. The corporation had, therefore, every right to remove the public latrine and the petitioners have no right to have the public latrine maintained by the corporation.

The learned Judge observed:

"It may even be conceivable that in the course of time these public latrines would not serve the purpose of the residents for whose convenience they have been once constructed. In all these conceivable cases the Municipal Corporation might enjoy power to remove these public latrines and use the land for any other alternative municipal purposes. But in this case I do not find any finding that these latrines are no longer required by the residents of that area. In the absence of such a finding, I hold that the Municipal Corporation cannot remove

the latrines".

We have been taken through the correspondence. Such correspondence left no doubt whatsoever that the public latrine was no longer serving the purpose for which it was originally constructed. There need not be any resolution of the corporation authorising the removal of the public latrine. We cannot also approve the observation made by the learned Judge that the corporation can use its land for only an alternative municipal purpose. When the statute gives express power to the corporation to transfer the property courts cannot interfere with the exercise of such right by imposing any restrictions by way of requiring the corporation to use such property only for an alternative municipal purpose. Mr Bakshi has submitted that in the beginning the special officer proceeded on the basis that the land was being used only at a later point of time that the file was prepared to make it appear that the public latrine fell into disuse. These are disputed questions of fact which this Court cannot determine in exercise of its writ Jurisdiction. Going by the records and the counters filed in the case we have to proceed on the basis that the public latrines fell into disuse and were not serving the needs of the neighbouring residents. The major extent of the site was being misused by the neighbouring residents as a dumping ground and such user of the property was proving a health hazard for the neighbouring residents. The corporation is, therefore within its rights to have decided the transfer in favour of the school.

9. Mr. Balakrishna Murthy has also questioned the standing of the writ petitioners to have invoked the writ Jurisdiction of this Court. The learned Judge rejected this contention. As neighbouring residents of the locality, the writ petitioners have the required standing for invoking the writ jurisdiction of this Court. It is enough if reference is made to *The Warangal Chamber of Commerce Vs. Director of Marketing, Government of Andhra Pradesh, Hyderabad and Others*, and *S.P. Gupta Vs. President of India and Others*, . In the former of the cases, a Division Bench of this Court observed (at p. 248):

"Restrictive rules about locus standi are in general inimical to a fair and healthy system of administration. That does not mean that courts should trespass on the work and fast development of the Government to bring large-scale social and economic changes. The passivity in the general run of men is wanning indeed a good trend. Where there was resignation and acquiescence before fate now there is a growing activity and aspiration for a full development of a better society. Therefore, courts should view with liberality the question of stading to maintain a writ petition. Even a member of the public who has sufficient interest in the fit matter should be accorded locus standi to approach the Court for relief. No more restriction should be placed on what constitutes sufficient interest to see that administrative authorities Act in accordance with law and natural justice. It is not possible to (discover?) and formulate any hard and fast rules for this problem of locus standi. It ultimately resolves itself to one of discretion to be exercised in each case on the facts and circumstances of that case".

In the later case the Supreme Court observed:

"a rate-payer of a local authority is accorded standing to challenge an illegal action of the local authority.....But we must hasten to make it clear that the individual who moves the Court for judicial redress in cases of this kind must be acting bona fide with a view to vindicating the cause of justice and if he is acting for personal gain or private profit or out of political motivation or other oblique consideration, the Court should not allow itself to be activated at the instance of such person and must reject his application at the threshold.....We may also point out that as a matter of prudence and not as a rule of law, the Court may confine this strategic exercise of Jurisdiction to cases where legal wrong or legal injury is caused to a determinate class or group of persons or the constitutional or legal right of such determinate class or group of persons is violated and as far as possible not entertain cases as far as possible, not entertain cases of individual wrong or injury at the instance of a third party, where there is an effective legal aid organisation which can take care of such cases".

The writ petitioners were making some use of the vacant site. May be such use was unauthorised and the corporation could effectively interfere to avoid such unauthorised use. Even so the writ petitioners have the needed standing to have moved this Court. We are not persuaded to hold that the writ petitioners were activated by Buchaiah was interested only in a part of the land he had encroached upon. He was not asserting any rights over the property which he had not encroached upon. The writ petitioners have their own sense of grievance over the action of the Municipal corporation proposing to transfer the property in favour of the school. Such sense of grievance which is bona fide shared by the writ petitioners gives them the standing to have invoked the writ jurisdiction of this Court. We are satisfied that the writ petitioners have not acted with any oblique motive to voice the grievance of Buchaiah. They have acted to express their own felt grievance. We accordingly reject this submission.

10. Certain allegations have been made in the writ petition against Brij Raj prasad, the Honorary correspondent of the school and certain apprehensions that the school would alienate away the site have been expressed. The proposed alienation is in favour of the school and not in favour of Brij Raj pershad in his individual capacity. Brij Raj pershad in his individual capacity. Brij Raj pershad was only acting in his capacity as honorary correspondent of the school. He is not by this transaction trying to enrich himself section 53 of the A.P. Education Act, 1981 provided for the prohibition of transfer of lands and buildings by education institutions without the permission from Government in certain cases. Such permission of the Government is required in cases where the property of the school has been acquired, constructed, improved or altered with the aid of any grant made from the state funds or if any land or building has been transferred by the corporation it is possible for the school authorities to contend that prior permission of the Government for making a transfer is not required. It is stated by Mr. Balakrishna Murthy that the school authorities are agreeable to have a

condition incorporated in the sale deed that the land would be reconveyed in favour of the corporation if at any time the school authorities want to alienate the property Under R. 5 of the Municipal corporation of Hyderabad (Acquisition and disposal of Immovable property) Rules 1970 it is open to the corporation to execute the sale deed in the prescribed form with such variations as the circumstances may require. It is therefore for the corporation and the school authorities to agree upon the necessary reconveyance clause to be provided for in the deed of transfer to be executed by the corporation in favour of the school.

11. In view of our conclusion that the proposed transfer does not suffer from any vice, the impugned proceedings of the special officer are upheld as valid. We accordingly set aside the order of our learned brother and allow the appeal, dismissing W.P. No. 3968 of 1982. The parties, in the circumstances, are directed to bear thier respective costs.

12. Appeal allowed.