
(1998) 09 AP CK 0045

In the Andhra Pradesh High Court

Case No : Writ Petition No. 18276 of 1998

Defence Colony Resident Welfare Association

APPELLANT

Vs

District Collector, Ranga Reddy Dist. and Others

RESPONDENT

Date of Decision : 07-09-1998

Acts Referred:

Andhra Pradesh (Andhra Area) Town Planning Act, 1920 — Section 4

Andhra Pradesh Municipalities (Layout) Rules, 1970 — Rule 10, 10(1), 10(4), 14, 2

Andhra Pradesh Municipalities Act, 1965 — Section 184(2), 185, 185(3)

Citation : (1998) 5 ALD 681 : (1998) 5 ALT 556

Hon'ble Judges : J. Chelameswar, J

Bench : Single Bench

Advocate : Mr. P. Sri Raghu Ram, for the Appellant; Government Pleader for Revenue and Mr. G. Chandraiah, SC for the P.H. Corporation, for the Respondent

Judgement

1. The petitioner is "Defence Colony Residents Welfare Association" claiming to be a registered Society and represented by its President one C.V.B.K. Murthy. The affidavit is absolutely silent as to under which law the Society is registered, nor any information about the membership, the activities, the aims and objectives of the Society are given in the affidavit.

2. The writ petition purports to have been filed in public interest.

3. In the year 1964, the Government allotted an extent of Ac.I 12.03 guntas in Survey No.218/1 of Malkajigiri Village, in the erstwhile Hyderabad Taluq in Hyderabad District to the Defence Personnel Co-operative Housing Society. It is alleged that subsequent to the said grant, a lay-out was sanctioned. The affidavit is absolutely silent as to when the lay-out was sanctioned and by which authority. It is further alleged in the affidavit: "Most of these house sites have been alienated and nearly 70% of the area has now been developed as fully constructed housing colony. This is the only information furnished by the petitioner as far as the Colony and its lay-out.

4. The petitioner then proceeds to make vague allegations that some time past,

some revenue officers wanted to take possession of the vacant land which is left for the development of lawns and greenery, for the purpose of constructing Mandal Revenue Office and it is further alleged that on. opposition (we do not know by whom), the said proposal was dropped. It is further alleged in the affidavit that a few days prior to the filing of the writ petition, some police personnel from the office of the Superintendent of Police, Ranga Reddy District, started marking the land which is earmarked as open lawns in front of plotNos.580, 581 and 582. When questioned by the local people, it was informed that a police station was proposed to be constructed in the said land. The relevant allegations in this regard are as follows:

"However, a few days back some police personnel from the office of Superintendent of Police, Ranga Reddy District started marking the land which is earmarked as open lawns in front of Plot Nos.580, 581 and 582. When questioned by the local people, they were told that the police are going to construct a Police Station in the said land. On further enquiry they were told that the District Collector had allotted the land to them and hence they have the right to construct a Police Station."

In the background of the above-mentioned facts, the present writ petition is filed with a prayer as follows:

"I therefore pray that this Hon"ble Court may be pleased to issue a Writ, Order or direction more especially one in the nature of Writ of Mandamus declaring the action of the 1st respondent in allotting the land meant for open lawns in the Defence Colony i.e., Defence Housing Co-operative Society Ltd., lay-out, Malkajgiri, Ranga Reddy District, as illegal, without jurisdiction and consequently direct the respondents not to make any construction in the Society land comprised in Survey No.218/1, Malkajgiri, Ranga Reddy District, and pass such other order or orders as are deemed fit and proper in the circumstances of the case."

Counter-affidavits have been filed by the respondents 2, 4 and 5. From the counter-affidavit of the second respondent, it appears that the lay-out in question was approved by the erstwhile Gram Panchayat, Malkajgiri Village in the year 1966 and subsequently the said Gram Panchayat came to be notified as a Municipality under Andhra Pradesh Municipalities Act, 1965 in the year 1981. Further it appears that both the revenue and police departments made representations to the Municipality seeking allotment of land for the construction of Mandal Revenue Office and Police Station respectively in Survey No.218/1 of the Defence Colony. Considering the representations, it appears, the Municipality passed resolutions dated 19-2-1997 and 5-7-1997 for allotting the land for the construction of Police Station and Mandal Revenue Office respectively. The resolutions were followed by an order of the Collector, Ranga Reddy District dated 29-7-1997. Which reads as follows:

"ORDER: Through the orders 1st cited, an extent of 200 sq.Yards from the vacant

land earmarked for the Public purpose in the layout of Defence Employees Colony, R.K. Puram i.e., Sy.No.218/1 of Malkajgiri was allotted for construction of Mandal Revenue Office Building of Malkajgiri under Saramadanam Programme.

Through reference 2nd cited, The Municipal Council Malkajgiri has sent proposals for revising the orders issued vide reference 1 st cited, requesting to allot 1400 sq. Yards to Mandal Revenue Office & 1000 Sq.Yards to Neredmet Police Station.

1. For the Construction of 1,400 sq.Yards MROs office Malkajgiri
2. For the construction of Police Station, Neredmet 1,000 Sq.Yards.

The Municipal Council, Malkajgiri is requested to furnish the revised resolution in this regard."

5. On the basis of the above bald pleadings, a great deal of argument is sought to be advanced in this case, firstly, that the action of the first respondent in issuing the above order is illegal and not authorised by law; secondly, that such an order would be in contravention of the provisions of the Andhra Pradesh Municipalities Act," 1965 and thirdly the latest legal fancy-- environmental hazard.

6. The learned Counsel for the petitioner submitted that the plot in issue is earmarked in the lay-out sanctioned in favour of the Defence Personnel Co-operative Housing Society, for the purpose of open lawns and greenery; therefore the proposed alteration of the usage of the said piece of land would result in an environmental hazard. He further submitted that parcels of land left out for such purposes lay out shall either vest in the local authority or with the owner who obtained layout and the Collector (RI) has no legal authority to allot the same to 3rd parties. Further it is submitted that the parcels of land earmarked for the specified purpose in the lay-out should be utilised only for such purposes as indicated in the lay-out and cannot be utilised for any other purpose including any other public purpose.

7. To examine the correctness of the submission of the learned Counsel for the petitioner, a scrutiny of the relevant provisions of the Andhra Pradesh Municipalities Act, 1965 and Rules made thereunder is acquired.

8. The administration of urban areas in A.P. is regulated by the Andhra Pradesh Municipalities Act, 1965 or the Hyderabad Municipal Corporation Act, 1956. For the purpose of this case, we are concerned only with the Municipalities Act. The said Act deals with the creation, management, powers and functions of the Municipality. In order to secure the development of towns in a systematic manner, providing for the necessary sanitary conditions, amenities, etc., the Andhra Pradesh Town Planning Act 1920 was passed.

9. Under the Town Planning Act, every Municipal Council is obligated to prepare a general town planning scheme in respect of all lands within the Municipality. Such a Scheme is required to be sanctioned by the State Government after an

elaborate process of considering objections and various recommendations. Section 4 of the Town Planning Act envisages that Town Planning Scheme may provide for any or all of the matters enumerated therein. Sub-section (k) reads as follows:

"(k) the allotment or reservation of land for streets, roads, squares, houses, buildings for religious and charitable purposes, open spaces, gardens recreation, grounds schools, markets, shops, factories, hospitals, dispensaries, Government and municipal buildings, and public purposes of all kinds."

10. It can be seen from the above that the Legislature thought it fit that in preparing a Town Planning Scheme, land may be required to be allotted for the purpose of providing the various facilities which served public purposes.

11. What is important to notice is that among the various categories of buildings, Government buildings were also mentioned.

12. Coming to the Municipalities Act, Section 184 of the Act requires the owner of any agricultural land who intends to utilise or sell such land for building purposes to make a lay-out which is required to be approved by the Council in accordance with rules made in that behalf. The said rules are called "The Andhra Pradesh Municipalities Lay-out Rules, 1970. Section 184, sub-section (2)(b) requires that in making a lay out, the owner shall-

"(b) set apart in the layout adequate area of land on such a scale as may be prescribed for a play-ground, a park, an educational institution or for any other public purpose."

13. Section 185 stipulates when any person making a lay-out, shall make a written application to the Municipality with the plan showing among other things the area set apart for public purposes under clause (b) of subsection (2) of Section 184.

14. The procedure and the details of the requirements of an application for lay-out are prescribed under the rules referred to above. Rule 5 stipulates the particulars that are to be given by an applicant. Sub-rule (f) is relevant for the purpose of this case which reads as follows:

"(f) places set apart in the lay out for the purposes mentioned in clause (b) of subsection (2) of Section 184 and also places set apart for other communal and public purposes such as shops, bus-stops and parking places;"

Rule 10 reads as follows:

"10(1) The area of land required to be set apart under clause (b) of sub-section (2) of Section 184 shall not be less than 5% of the gross area covered by the lay-out with not more than 8 plots per gross hectare over and above this for the increase of every two plots per gross hectare, the open spaces to be provided shall increase by one more per cent. (Such open space shall, however, be limited to 10% a maximum, irrespective of the size of plots when minimum, extent and

width safety as per sub-rule (1) of Rule 9.)

(2) In case the area, for which a layout is sought for, falls in a Master Plan or in a Town Planning Scheme and for which a draft scheme is already furnished by the Director of Town Planning or in a sanctioned Town Planning Scheme or Master Plan, if a portion of his land falls in the area earmarked in such plan for a common public purpose in the interest of general development of that locality, the owner of such land shall transfer such percentage of the area of layout as prescribed in sub-rule (1) free of cost to the Municipality. In other cases i.e. if the areas so earmarked in the layout under reference are more than such percentage as prescribed in sub-rule (1), he shall also transfer the entire area so proposed to be reserved in the layout and he is entitled to receive compensation at the prevailing market rates from the Municipality for the part of his site which is in excess of the extent of land which he has to provide as persub-rule(1).

(3) Irrespective of the fact, whether an area lies in a notified or sanctioned Town Planning Scheme or the area covered by Master Plan, if the area of land covered by a layout is fairly small say less than half hectare in extent, the owner in such cases also should set apart and transfer such extent as prescribed under sub-rule (1) of the total extent to the Municipality. But the Council is at liberty to dispose of such land with the concurrence of the Director of Town and Country Planning provided it does not form part of compact block of open space which could be carved out with the neighbouring layout areas to anybody at the rate fixed by the District Collector :

Provided that the rate so fixed by the District Collector shall not be less than the registration rate fixed by the Registration Department for the said localities and utilise the amount so realised for acquisition and development of a larger piece of land required for community facilities in the locality as may be decided by the Council, with the approval of the Director of Town and Country Planning.)

(4) The Municipality shall not use the land so transferred for any purpose other than that for which it is so transferred or shall not utilise the amount for any other purpose other than the acquisition of the land for the purpose for which it is so transferred.

(5) The land to be set apart under clause (b) of sub-section (2) or Section 184 as required by sub-rules (1) and (3) in respect of the size of the layout not exceeding one hectare may be provided in the areas set apart for public purpose in the sanctioned General Town Planning Scheme (Master Plan) in the vicinity of the lay out areas as may be decided by the Council with the approval of the Director of Town and Country Planning so as to secure larger extents of land for public purposes.)

Rule 14 reads as follows:

"14. On fulfilment of the conditions laid down in Section 184 to the entire satisfaction of the Secretary, the owner of the layout shall within a reasonable

period which shall not exceed one year from the date of communication of the approval of the layout under sub-section (3) of Section 185, of transfer the private streets or roads along with the lands set apart for parks, play-grounds, educational institutions or for any other public purposes under clause (b) of sub-section (2) of Section 184, or under sub-rule (1) of Rule 10 to the Municipality."

15. An argument is advanced on behalf of the petitioner on the basis of sub-rule (4) of Rule 10 that the land transferred shall not be utilised by the Municipality for any purpose other than the purpose for which it was transferred.

16. Rule 10(1) provides for the percentage of the area required, to be earmarked for the purposes mentioned in Section 184, sub-section (2). Sub-rule (2) contemplates a situation where a person makes an application for lay out of a particular area and there is a Draft Town Planning scheme or a Master Plan under which the area for which a lay out is applied is earmarked for a common public purpose.

17. In such a case, the owner of the land for which the lay out sought is required to transfer free of cost such portion of the land as the owner is required under sub-rule 10(1) to set apart for the purposes mentioned u/s 184(2). The second situation contemplated under sub-rule (2) is that in cases where the land earmarked in the Master Plan for public purposes of the draft scheme engulfs a larger area than the area required to be set apart by the maker of a lay out under Rule 10(1). In that case also, the seeker of the lay-out is obliged to transfer such earmarked area, however the owner is entitled to receive the compensation at market value for such percentage of the land which is in excess of the requirement under Rule 10(1).

18. Sub-rule (3) deals with small layouts about less than half an hectare. The maker of such a small lay out is under an obligation to set apart only such percentage of the land as required under Rule 10(1), but does not appear to be under an obligation to comply with the requirements of Rule 2 even if the land or portion thereof for which the lay-out is sought falls within the area covered by a draft scheme or Master Plan. However, sub-rule (3) authorises the Municipal Council to dispose of such land subject to the limitation that the land so set apart does not form a compact block of open space which could be carved out with the neighbouring lay-out areas.

19. Sub-rule (4) is once again in two parts, it stipulates that the Municipality shall not use the land transferred for any purpose other than that for which it is transferred. Obviously this only deals with the transfers contemplated under sub-rule (2). As sub-rule (3) expressly authorises the Municipality to dispose of the transferred land. The second part of sub-rule (4) deals with "the amount", Obviously referable to the amount arising out of the disposal of the land contemplated under sub-rule (3). This part of the rule stipulates that such amount shall not be utilised for the purposes other than the acquisition of land for which the piece of land was originally transferred by the maker of the lay-out.

20. Thus it can be seen that Rule 10 provides for the transfer of land set apart for public purposes in three contingencies. In case of large layouts, if the area in question falls within an area covered either by a draft scheme or a Master Plan under the Madras Town Planning Act, and thirdly irrespective of the fact whether such an area is covered either by a draft scheme or Master Plan if the area for which lay-out sought is a small extent of say, less than half a hectare.

21. However, with respect to cases not covered by Rule 10(2) and (3) under Rule 14 an obligation is created for the owner of the lay-out to transfer the land set apart for purposes contemplated u/s 184(2) within a period of one year. However, Rule 14 does not prohibit the utilisation of such transferred land for the purposes other than the one mentioned in the lay-out.

22. From the Scheme of the Municipalities Act and the Lay-out Rules, except as observed above, there does not appear to be any general legal obligation created on the part of the Municipality not to utilise the land transferred to it by the maker of a lay-out set apart for the purposes mentioned in Section 184(2), for purposes other than the purposes for which such land is set apart under the lay-out. Apart from that, the purposes for which the land in issue are sought to be utilised are public purposes within the meaning of the Act as will be explained later in this judgment.

23. The learned Counsel for the petitioner placed heavy reliance on a judgment of this Court reported in *Kalasagaram, Secunderabad Cultural Association v. State of Andhra Pradesh*, 1997 (6) ALD 277, wherein dealing with the provisions of the Hyderabad Municipal Corporation Act in the context of the action of the State in seeking to cancel a lease granted earlier in favour of the petitioners of a certain piece of land, which vested with the Municipality on transfer from the maker of a lay-out as part of the land required to be earmarked for certain purposes under the Hyderabad Municipal Corporation Act, the Court held that the alienation of such property in favour of a third party by way of a lease for the purpose of constructing an Auditorium is not permissible.

24. In my view, the case is clearly distinguishable. Firstly, it was a case of alienation in favour of a third party (a registered society). The purpose of alienation in favour of the Society is to enable the Society to construct an Auditorium in the land in issue which was earmarked for play-grounds and parks in the sanctioned lay-out. In the said context, this Court held that the provisions of the Hyderabad Municipal Corporation Act did not authorise such a transfer. The learned Counsel for the petitioner drew my attention to an observation made by the learned single Judge at paragraph 16 of the said judgment, wherein it was held as follows:

".....The land reserved for such purposes cannot be even allowed to be utilised for any other public purpose. Land reserved for a park and play ground can never be allowed to be converting to be utilised even for any other public purpose (See *Bangalore Medical Trust Vs. B.S. Muddappa and others*,

25. With great respect to the learned Judge who rendered the decision, I have very carefully examined the judgment of the Supreme Court reported in Bangalore Medical Trust Vs. B.S. Muddappa and others, and I could not find any principle laid down therein to support the statement of the learned single Judge.

26. Coming to the question whether the purposes for which the land is sought to be utilised: u/s 184 (2)(b), the maker of a lay-out has set apart in the lay-out adequate land on the prescribed scale:

"for a play-ground, a park, an educational institution or for any other public purpose."

whereas under the Town Planning Act of 1920, the Legislature while dealing with the preparation of a Town Planning Scheme stipulated that such Scheme should provide for the various items enumerated in Section 4 of the said Act and as already noticed subsection (k) contemplates:

"(k) the allotment or reservation of land for streets, roads, squares, houses, buildings for religious and charitable purposes, open spaces, gardens recreation grounds, schools, markets, shops, factories, hospitals, dispensaries, Government and Municipal buildings, and public purposes of all kinds;"

An analysis of these two provisions would show that for the proper planning and orderly development of a town, land is required to be planned providing for various facilities. One of the items required to be provided in such planning is area earmarked for the purpose of providing various items like:

buildings for religious and charitable purposes :

schools; markets; shops; hospitals; Government and municipal buildings :

gardens; recreation grounds; and public purposes of all kinds;

27. Coming to the Municipalities Act Section 184(2)(b), in my view, does not and cannot be read as giving an exhaustive list of items which should be accommodated within the area required to be set apart by the maker of a lay-out. It only illustrates some of the probable items of facilities for which the land is to be used. In my view, Section 184(2) (b) stipulates only that a certain portion of the land where the lay-out is sought to be made is to be left out for public purposes and what exactly is the area of such land is dealt under the Lay-out Rules. The later portion of Section 184(2)(b) is only illustrative of the purposes for which such land is to be utilised.

28. In the light of the Scheme of the two enactments referred to above, the next question logically would be what is the purpose for which the land is to be transferred? is it the intention of the lay-out maker when he makes an application seeking the approval of a lay-out showing a particular piece of land within the lay-out as earmarked either for a play-ground or a park or an educational institution that should govern the utilisation of the land for eternity or, is it the legislative policy behind the two enactments that should govern the

utilisation of such land?

29. The Lay-out Rules of 1920 framed under the Municipalities Act are silent as to how much of the extent of the land set apart u/s 184(2) be used for each of the various purposes contemplated under the said Section. In the absence of any specific provision either under the Act or under the Rules made thereunder dealing with the subject, in my view, the Municipality has a wide discretion in utilising such land, subject to the condition that the utilisation contemplated by the Municipality must necessarily be within the scope of the public purposes contemplated under the two enactments referred to earlier, because what exactly is the requirement of the public in the context of the lay-out is a matter to be decided by the Municipality or such other competent authority designated by law and the intention of the maker of the lay-out, in my view, is irrelevant for the purpose of deciding the utilisation of the said land. The land when it is shown in the application seeking approval of the lay-out, as land set apart for the purposes mentioned u/s 184(2), it should be deemed to have been set apart for all the purposes contemplated under the said Section. In the circumstances, the Municipality would be at liberty to utilise such land for any public purpose contemplated under the two enactments as indicated earlier. In my view, Section 184(2)(b) of the Municipalities Act when it contemplates the expression "any other public purpose" it takes within its sweep all the purposes mentioned in the Town Planning Act (Section 4(k)).

30. Coming to the facts of the case, it appears from the counter-affidavits filed on behalf of the respondents that the lay-out in question falls within the jurisdiction of Neredmet Police Station of Hyderabad, which was established sometime in 1987 and has been functioning in a private accommodation so far with limited accommodation causing much inconvenience both to the police department as well as the public in general. It appears, a similar request was made by the revenue department for the construction of the Mandal Revenue Office, Malkajgiri to the Malkajgiri Municipality. Considering the necessity of the requirement of having the Police Station and the Mandal Revenue Office, within the reach of the population falling within their respective jurisdictions, it appears that the Municipal Council passed appropriate resolutions for permitting the construction of the Police Station and the Mandal Revenue Office respectively. The pleading in this behalf in the counter-affidavit filed by the Malkajgiri Municipality at para 6:

"6. While the things stood that on the representation made by the Revenue Officials and also Police Officials for allotment of the above site by the Municipality for construction of Mandal Revenue Office and also Police Station in Sy.No.218/1 of Defence Colony, the Municipality moved the resolution on 22-1-1997 and said resolution has been passed on 19-2-1997 and also resolution dated 5-7-1997 for allotting the land for construction of Police Station and Mandal Revenue Office respectively. Finally, vide Proc.dated 29-7-1997 issued by the Collector, Ranga Reddy District, a particular modification orders have been

issued for allotting 1400 sq. Yards of land for construction of Mandal Revenue Office and 1000 sq. Yardsof land for construction of Police Station of Neredmet, and in pursuance of above proceedings the physical possession of above land has been delivered to the Mandal Revenue Officer, Malkajgiri and Sub-Inspector of Police, Neredmet, vide Lr.dated 8-8-1997."

However, nothing has been brought to my notice as to why the matter was referred to the Collector and what is the legal necessity for the Collector (first respondent) to issue the proceedings in question dated 29-7-1997. At any rate, no objection was raised by the petitioner-Association on this aspect of the matter. As seen above, if it is competent for the Municipality to permit the construction of the Government offices on the land set apart u/s 184, I see no reason to proceed further with this writ petition as the concerned Municipality has already passed resolutions permitting the construction of the Police Station and the Mandal Revenue Office and therefore the same is liable to be dismissed at this stage.

31. However, before parting with the case, I would like to place on record, that this writ petition is claimed to have been filed by the petitioner in the public interest: the statement of the petitioner in para 3 of the affidavit filed in support of the writ petition which runs as follows:

"This writ petition is being filed espousing the cause of the residents whose privacy is being disturbed by virtue of construction of public offices such as the Police Station and Mandal Revenue office abutting residential houses especially on land belonging to the Defence Housing Cooperative Society Ltd."

leaves me with an impression that it is more of a private interest that is sought to be agitated in the garb of public interest. Looked at any angle, I am of the opinion the writ petition deserves to be dismissed and the same is accordingly dismissed.