
(2000) 07 AP CK 0047

In the Andhra Pradesh High Court

Case No : Writ Petition No. 26145 of 1999

Divyanagar Plot Owners Association, Kachwanisingaram

APPELLANT

Vs

Government of Andhra Pradesh and another

RESPONDENT

Date of Decision : 12-07-2000

Acts Referred:

Andhra Pradesh Urban Areas (Development) Act, 1975 — Section 13, 14(2), 34, 7(2)
Bangalore Development Authority Act, 1976 — Section 65

Citation : AIR 2000 AP 478 : (2000) 4 ALD 625 : (2000) 4 ALT 380

Hon'ble Judges : G. Bikshapathy, J

Bench : Single Bench

**Advocate : Mr. C.V. Mohan Reddy, for Mr. Ch. Srinivas, for the Appellant;
Government Pleader, for Municipal Administration and Mr. T. Niranjana Reddy, SC
for HUDA, for the Respondent**

Judgement

1. This writ petition is filed seeking a writ of mandamus declaring the action of the 2nd respondent in not regularising and releasing the lay out in respect of land measuring Ac. 52-11 guntas in S.Nos. 50, 51 parts, 52, 53 and 54 parts situated at Kachiwanisingaram village, Ghatkesar Mandal, Ranga Reddy District belonging to the members of the petitioner association and demanding the petitioners to pay a sum of Rs.10,57,764/- towards development charges and Rs.4,23,106/-towards processing charges vide letter 9647/ P7/RL/HUDA/98 dated 25-9-1999 without implementing Clause (10) of G.O. Ms. No.469 MA Department, dated 31-7-1999 and subsequent direction issued vide letter dated 1-11-1999 as illegal, arbitrary and for consequential directions.

The petitioner is the President of the plot owners association in respect of the land situated in Sy. Nos.50, 51, 52, 53 and 54 parts of Kachiwanisingaram village, Ghatkesar Mandal, Ranga Reddy District. It is his case that the plot owners in the layout in Sy. Nos.50, 51 parts, 52, 53 and 54 parts have initially formed into an association and subsequently got registered as an Association under A.P. (Telangana Area) Public Societies Act, 1350-Fasli. It is his further case that the land in question falls in the hamlet of Pratapa Singaram Gram Panchayat

and the Gram Panchayat had sanctioned and approved the layout in 1973. All the plot owners purchased plots in the above said layout. Hyderabad Urban Development Authority, the 2nd respondent herein, issued a notification directing that wherever layouts are not approved they may be got regularised by paying the necessary fee. In pursuance of such a notification the petitioner-association submitted an application to the Divisional Panchayat Officer, East Division, Ranga Reddy district on 4-9-1998 along with the layout copies and relevant papers issued by the Gram Panchayat for onward transmission to the 2nd respondent for regularisation of the layout. After considering the layout submitted by the petitioner, the 2nd respondent asked the petitioner to pay development charges of Rs.10,52,764/- and processing fee of Rs.50,000/- in connection with the change of land use and required the petitioner to comply with the same within 30 days. Accordingly the petitioner-association has remitted a sum of Rs.50,000/- vide challan No.4034 dated 29-6-1999 and Rs.10,52,764/-vide Challan No.4036 dated 29-6-1999. It is also stated that the petitioner- association also deposited another sum of Rs.5,000/- on 7-7-1999 towards shortfall amount of development charges. Thereafter the Government issued G.O. Ms. No.469 MA, dated 31-7-1999 converting to area into Residential Zone. The 2nd respondent thereafter directed the petitioner-association to pay a sum of Rs.10,57,764/- towards development charges and Rs.4,23,106/-towards processing fee, totaling to Rs.14,80,870/- for regularising the layout. As the petitioner-association is not in a position to pay the said amount, they approached this Court seeking appropriate directions.

The Government in this letter dated 1-11-1999 reiterated the direction issued in G.O. Ms.469. Since the 2nd respondent has not released the layout duly regularising the same by implementing the orders of the Government, the present writ petition has been filed.

2. The learned Counsel for the petitioner submits that the directions issued by the Government in G.O. Ms. No.469, dated 31-7-1999 are binding on the 2nd respondent u/s 34 of the Andhra Pradesh Urban Areas (Development) Act, 1975 (the Act, for brevity) and, therefore, there is no other option left to the 2nd respondent except to release the final layout duly regularising the same as required in the G.Os., mentioned in G.O. Ms. No.469, dated 31-7-1999.

3. On the other hand, it is contended by the learned Standing Counsel for the 2nd respondent that the Government has no power to issue such directions u/s 34 of the Act. He further submits that any instructions or directions that can be issued by the Government should be in conformity with the Act and for better administration of the Act. Sub-section (2) of Section 14 of the Act clearly stipulates that whenever an application is made for sanction of layout, it should be accompanied by the prescribed fee. Therefore, any application not accompanied by the prescribed fee is liable to be rejected and such application cannot be allowed to be received by the 2nd respondent, which goes against the spirit of Section 14. Therefore, the learned Standing Counsel submits that the

Government could not have issued such direction and even if such direction is issued, it is not binding on the 2nd respondent. In support of this contention he relies on a decision of the Supreme Court in Commissioner, Bangalore Development Authority Vs. S. Vasudeva and Others, , wherein a similar question came up for consideration before the Supreme Court. He also submits that development charges are required to be collected in accordance with the provisions contained in G.O. Ms. No.51 M.A., dated 5-2-1996 and the petitioner-association has to pay about Rs.14,80,870/- for releasing the final layout.

4. For proper appreciation of the case, it is necessary to consider the nature of the direction given by the Government in G.O. Ms. No.469. Clause (10) of G.O. Ms. No.469 is extracted below. The Government issued G.O. Ms. No.469, M.A., Municipal Administration and Urban Development (II) Department, dated 31-7-1999 regularising the layout subject to the conditions laid down therein. Clause (10) of the said G.O. reads as follows:

"10. The HUDA shall take action to scrutinise and regularise the layout (forwarded to HUDA by the Divisional Panchayat Officer, East Division, Ranga Reddy District) as per rules and as per G.O. Ms. No.367, M.A., dated 4-7-1998 and G.O. Ms. No.409, M.A., dated 4-8-1996 and the appropriate development charges and short fall open space charges shall be collected proportionately on pro-rata basis from individual holders as and when they approach for building permission."

In the communication dated 1-11-1999 the Government informed the 2nd respondent to implement the order passed in G.O. Ms. No.469. The communication reads as follows:

"...It is to inform that in its earlier report dated 5-3-1999 Hyderabad Urban Development Authority has stated that some plots have already been registered in favour of individuals in 1998. In such circumstances if orders in the G.O. first cited are not implemented the policy of regularisation of unauthorised layouts will not only be defeated but adversely effect the persons who are coming forward for regularisation of layouts and ultimately the areas may continue to be under illegal layouts whereby it may not be possible to recover any revenue.

You are, therefore, requested to implement the orders in the G.O. first cited to regularise the layout and collect development charges on pro-rata basis as already mentioned in the said G.O."

5. Under sub-section (1) of Section 14 of the Act every person or body including the department of the Government desiring to obtain permission referred to in Section 13 shall make an application in writing to the Authority in such form containing such particulars in respect of the development to which the application relates. Under sub-section (2) every application under sub-section (!) shall be accompanied by such fee as may be prescribed.

6. The question that arises for consideration is whether the Government is vested

with the power to direct the 2nd respondent to process the application without complying with the statutory requirement of paying the prescribed fee u/s 14(2) of the Act.

7. For proper appreciation of the case it is necessary to extract Sections 14 and 34 of the Act, which read thus:

"14 Application for permission :--(1) Every person or body including a Department of the Government desiring to obtain the permission referred to in Section 13 shall make an application in writing to the Authority in such form and containing such particulars in respect of the development to which the application relates as may be determined by regulations.

(2) Every application under subsection (1) shall be accompanied by such fee as may be prescribed :

Provided that no such fee shall be necessary in the case of an application made by a Department of the Government, or any local authority.

(3) On receipt of an application for permission under sub-section (1), the Authority, after making such enquiry as it considers necessary, in relation to any matter specified in clause (d) of subsection (2) of Section 7, or in relation to any other matter, shall by order in writing either grant the permission, subject to such conditions, if any, as may be specified in the order or refuse to grant such permission.

(4) Where permission is refused, the grounds of such refusal shall be recorded in writing and communicated to the applicant in the manner determined by regulations.

(5) If, within ninety days after the receipt of any application made under this section for permission, or of any information or further information required under rules or regulations, the Authority has neither granted nor refused its permission such permission shall be deemed to have been granted; and the applicant may proceed to carry out the development but not so as to contravene any of the provisions of this Act or any rules or regulations made under the Act.

(6) The Authority shall keep a register of applications for permission under this section in such form as may be determined by regulations.

(7) The said register shall contain such particulars including information as to the manner in which applications for permission have been dealt with, as may be determined by regulations and shall be available for inspection by any member of the public during specified hours on payment of such fee, not exceeding five, as may be determined by regulations.

(8) Where permission is refused under this Section the applicant or any person claiming through him shall not be entitled to get refund of the fee paid on the application for permission."

"34. Control by Government:--(1) The Authority shall carry out such directions as may be issued to it, from time to time, by the Government for the efficient administration of this Act.

(2) If, in, or in connection with, the exercise of its powers and discharge of its functions by the Authority under this Act, any dispute arises between the Authority and the Government, the decision of the Government thereon shall be final.

(3) The Government may, at any time either on its own motion or on application made to them in this behalf, call for the records of any case disposed of, or order passed by the Authority for the purpose of satisfying themselves as to the legality or propriety or correctness of any order passed or direction issued and may pass such order or issue such direction in relation thereto as they think fit:

Provided that the Government shall not pass an order adversely affecting any person without affording such person an opportunity of being heard.

(4) The Government may depute any officer to inspect or examine the office of the Authority, service, work or thing and to report thereon and any officer so deputed may for the purposes or such inspection or examination exercise the following powers-

(a) to call for any extract from any proceedings of the authority or other committee constituted under this Act, record, correspondence, plan or other documents;

(b) to call for any return, estimates, statement of accounts or statistics;

(c) to call for any report;

(d) and the Authority shall furnish the same."

8. u/s 34 of the Act, it is open for the Government to issue such directions to the 2nd respondent from time to time for efficient administration of the Act. Therefore, it has to be only construed that any direction that will be issued by the Government should be in conformity with the provisions of the Act, but it cannot be in derogation of the provisions of the Act. Section 14(2) of the Act requires that every application should be submitted along with the prescribed fee. When such requirement has not been complied with by the petitioner association, would it be open for the Government to relax that condition when no such power is vested in it. The intendment of the Act is to develop the urban areas in the State of Andhra Pradesh according to plan. The 2nd respondent is required to process the applications by receiving the necessary fee as stipulated in Section 14(2) of the Act. When such an application is submitted without the prescribed fee and the Government issues a direction to the 2nd respondent to collect the development charges from the individual land owners when they make application for building permission, it has to be considered whether such a direction is for the efficient administration of the Act. In such a situation, the

Supreme Court in S. Vasudeva's case (supra) held that it is not permissible for the Government to issue such directions. While considering the question whether the Government has power to issue directions to the authority u/s 65 of the Bangalore Development Authority Act, which is in pan materia with Section 34 of the Act, the Supreme Court held as follows:

"As we read the above section, the Government has no power to issue any directions which are in conflict with the provisions of the Act and, by necessary implication, in conflict with the rules framed under the said Act. The directions which can be given u/s 65 are such which are necessary or expedient for the carrying out of the purposes of the Act. When Rule 14, as it stood in the year 1994-95, did not permit sale of vacant sites by an allottee to anybody else, even after getting permission from BDA, the Government could not have permitted or directed the said land to be sold or transferred. This being the position, the transfer of land by 13 such ex-Legislators and ex-Ministers who were members of the respondent Society and whose names are included In BDA's letter dated 27-10-1995/28-10-1995 written to the Principal Secretary to Government, Housing and Urban Development Department, Bangalore, was clearly illegal and the permission so granted and the consequent transfer of land would become liable to be set aside."

9. Following the above dicta of the Supreme Court and considering the purpose of the Act, I am fully satisfied that the directions issued by the Government in G.O. Ms. No.469, M.A., dated 31-7-1999 reiterated in the letter dated 1-11-1999 are contrary to Section 14(2) of the Act. The very purpose of the Act would be frustrated if the Government gives such a direction to release the layout and collect the development charges from the individual land owners when they make application seeking building permission when the statute itself provides that the application shall be accompanied by prescribed fee. However, it is always open for the Government to issue directions for proper implementation of the Act, which includes efficient administration of the Act.

10. For the foregoing reasons, I do not see any merit in the writ petition and it is accordingly dismissed. In the circumstances, there shall be no order as to costs.