

(2001) 10 AP CK 0083

In the Andhra Pradesh High Court

Case No : Writ Petition No. 3264 of 1998

IDPL Employees Co-operative House Building Society

APPELLANT

Vs

Hyderabad Urban Development Authority, Hyderabad

RESPONDENT

Date of Decision : 31-10-2001

Acts Referred:

Andhra Pradesh Urban Areas (Development) Act, 1975 — Section 12(2), 14(2)
Constitution of India, 1950 — Article 14, 226

Citation : (2002) 1 ALD 819 : (2002) 3 ALT 26

Hon'ble Judges : N.V. Ramana, J

Bench : Single Bench

Advocate : A. Ramakrishna, for the Appellant; Additional Advocate-General and T. Niranjan Reddy, SC for HUDA, for the Respondent

Final Decision : Allowed

Judgement

1. This writ petition is filed to declare the order bearing No. 8109/MP2/HUDA/94, dated 10-12-1999, as illegal and arbitrary and for a consequential direction to the respondent to release the draft layout.

2. The petitioner is a Society. Its case, in brief, is that it is the owner of the property in question admeasuring Ac. 50-00. situated in S. No. 163, having purchased the same in the year 1987, and is in continuous possession and enjoyment thereof since then. In the year 1987 the petitioner-society approached the Government for change of land use from conservation zone to residential zone, under the A.P. Urban Development Act, 1975. The Government after considering the representation of the petitioner-society issued draft notification on 8-12-1989 inviting objections, subject to certain conditions. On 25-7-1994 the Government addressed a letter to the Vice-Chairman, HUDA, to confirm the draft notification subject to conditions mentioned therein. In pursuance of the said letter, the respondent vide his letter, dated 28-7-1994, directed the petitioner-society and another society to remit an amount of Rs. 4,04,687/-towards developmental charges and an amount of Rs. 50,000/-

towards processing charges within a period of three weeks from the date of receipt of the said letter and that in case the said amount was not paid, the Government will be informed to close the case. It is further contended that since the petitioner-society paid the said amounts on 5-8-1994 in compliance with the said directions, the respondent by his letter, dated 2-9-1994, requested the Government to approve the draft notification by issuing a GO and accordingly the Government issued G.O.Ms. No. 511, dated 20-9-1994, permitting the petitioner-society to change the land use from conservation to residential subject to two conditions mentioned therein. On 18-11-1994, after receiving approval of the final Notification from the Government, the petitioner-society applied to the respondent for draft lay out. In spite of several representations made by the petitioner-society, there is neither any reply from the respondent nor the lay out has been released. Therefore, the petitioner-society initially filed the present writ petition for the following relief:

"To direct the respondent to release the draft layout for S.No. 163 of Hydernagar Village, Balanagar Mandal, Rangareddy District."

3. While admitting the writ petition on 27-2-1998, this Court granted interim directions in WPMP No. 3837 of 1998, which are as follows:

"There shall be interim directions as prayed for on condition the petitioner files an affidavit within two weeks from today, declaring that the total extent of land held by such holder does not exceed the ceiling limit, and in compliance of with other Rules and Regulations in force."

4. Aggrieved by the said interim directions, the respondent preferred Writ Appeal No. 1414 of 1998, which was dismissed by a Division Bench of this Court on 21-9-1998.

5. In compliance with the interim directions of this Court, dated 27-2-1998, the petitioner-society fled an affidavit before the Chairman, HUDA, on 7-3-1998. The Vice-Chairman, HUDA, in his letter, dated 12-5-1998, requested the petitioner-society to produce No Objection Certificate from the District Collector, Rangareddy District, for approval of draft lay out. On 19-5-1998 the President of the petitioner-society, in reply to the said letter, addressed a letter to the Vice-Chairman, HUDA, stating as follows:

"With reference to your letter 5th cited we would like to bring to your kind notice that the Government of A.P., issued Memo No.1278/JA/86-28 Rev, dated 24-6-1989, directing the Collector, R.R. District, to mutate our 50 Acres of land in S.No. 163 in the Revenue Records in our favour (Xerox copy is enclosed). Subsequently, the MRO, Balanagar Mandal, issued proceedings No. 8/ 1057/93, dated 23-06-1993, declaring our society as the owner of 50 Acres of land in S.No. 163 of Hydernagar Village (A Xerox copy is enclosed). These two documents are self-explanatory.

We are also enclosing a Xerox copy of Faisalpatti issued by the MRO, Balanagar

Mandal, in respect of our society land in

S.No. 163."

6. Again, the Secretary of the petitioner-society addressed a letter, dated 3-6-1998, to the Vice Chairman, HUDA, requesting to furnish the relevant provision under which the application has to be made and further requested to keep the file pending till the reply is received from the Vice Chairman. HUDA, and thereafter till the petitioner-society gets No-Objection Certificate. Finally, the Vice-Chairman, HUDA, by his order, dated 10-12-1999, informed the Secretary of the petitioner-society that the proposals for lay-out in S.No. 163 of Hydernagar are rejected and not considered.

7. The respondent filed counter-affidavit contending that Section 14 (2) of Act 7 of 1992 was amended whereby the following words are inserted in Section 14 (2) of the A.P. Urban Areas (Development) Act, 1975, "and a copy of the title deed of the land duly attested by a Gazetted Officer of the Government together with an Urban Land Ceiling Clearance Certificate if the extent of the land exceeds the ceiling limit or an affidavit declaring that the total extent of the land held by such holder, his or her spouse and unmarried minor children, does not exceed the ceiling limit." It is further contended that in view of the said amendment, for processing the application for issuing draft lay out, production of Ceiling Clearance Certificate, if the extent of the land exceeds the ceiling limit, is mandatory. It is further contended that the application submitted u/s 14(2) of the Act shall accompany with fee as may be prescribed by the authority along with a copy of the title deed of the land duly attested by a Gazetted Officer together with Urban Land Ceiling Clearance Certificate, if the extent of the land exceeds the ceiling limit. It is further contended that the petitioner-society submitted an application for permission to carry on development in an extent of Ac.49-51 cents. Except production of Urban Land Ceiling Clearance Certificate, the respondent is not insisting for any other documents. It is further contended that the Government while permitting change of land use from conservation to residential, in exercise of powers u/s 12 (2) of the Act, imposed two conditions viz., (1) the lay out for the site should be approved by the HUDA and (2) the applicants should submit Urban Land Ceiling Clearance Certificate before release of final lay out.

8. The learned Counsel for the petitioner-society submits that the impugned order, by which permission for, the lay out to the petitioner-society is rejected is a very cryptic and the same was issued without giving any reasons. The said order is a non-speaking order of one line. Thus contending he requested to quash the same.

9. The learned Additional Advocate-General appearing on behalf of the respondent submits that u/s 14(2) of the Act the petitioner-society has to file an affidavit and also Urban Land Ceiling Clearance Certificate from the Urban Land Ceiling Authorities stating that the land in question is within the land ceiling limit

and as the petitioner-society has not complied with the said objections raised by the respondent, the impugned order, dated 10-12-1999, has been passed. He further submits that in the present case since the petitioner-society has not filed the Urban Land Ceiling Clearance Certificate, the respondent has not processed the application of the petitioner-society for release of draft lay out.

10. I have perused the impugned order, dated 10-12-1999, passed by the respondent, which is as follows:

"With reference to your application cited abuse, it is to inform that the layout proposals submitted by you in Sy. No. 163 of Hydernagar Village is hereby rejected and not considered.

11. I am not inclined to go into the legal issues involved in this writ petition. However, a perusal of the impugned order, dated 10-12-1999, shows that the same was passed without application of mind and without any reasons, and is not a speaking order. Apart from that, the conduct of the respondents shows that except dragging on the matter for years together, it does not want to take a decision in this regard. Further, when this Court has granted interim directions, the respondent, while passing the impugned order rejecting the request of the petitioner-society, should have explained the circumstances for such a rejection. The tenor of the impugned order shows that the same was passed without application of mind.

12. Therefore, I have no hesitation to quash the impugned order since it is bereft of reasons and without application of mind. The requirement of recording reasons is one of the facets of principles of Natural Justice, which govern the exercise of power by administrative authorities. By recording reasons, the chance of arbitrariness in the mode and manner of exercise of power is excluded and a degree of fairness in the process of decision making is ensured.

13. In *S.N. Mukherjee Vs. Union of India*, , the Supreme Court held that the exercise of power by an administrative authority, exercising quasi-judicial functions, would require the authority to record reasons in the order and communicate the same to the aggrieved party. Except in cases where the requirement has been dispensed with, expressly or by necessary implication, an administrative authority exercising judicial or quasi-judicial functions is required to record reasons for its decision.

14. The salutary principle of recording reasons by an administrative authority can also be examined from another angle. The aggrieved party has a right to approach the High Court under Article 226 of the Constitution of India and seek judicial review of the order passed by the statutory authorities or public functionaries. Unless, reasons for the decisions are spelt-out in the order, the right conferred on the aggrieved party to seek judicial review under Article 226 of the Constitution of India is rendered meaningless. Unless the order, on the face of it, reflects the reasons for arriving at the decision, it is not possible for Courts to adjudicate whether or not the order suffers from arbitrariness or any

other illegality. It is, therefore, necessary that the administrative authorities exercising statutory powers should record the reasons for their decision. While the reasons need not be elaborate, it should be sufficient to reflect proper application of mind by the authority and should indicate the factors, which weighed with the authority in arriving at his decision.

15. The contentions advanced to the effect that the reasons for passing the order of rejection though not stated in the order itself, and has been stated in the counter-affidavit cannot be accepted. In *Commissioner of Police, Bombay Vs. Gordhandas Bhanji*, , the Supreme Court held as follows :

"Public orders, publicity made, in exercise of a statutory authority cannot be construed in light of the explanation subsequently given by the Officer making the order of what he meant, or of what was in mind, or what he intended to do."

16. In *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, , the Supreme Court held as follows:

"When a statutory functionary makes an order based on certain grounds its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of an affidavit, or otherwise an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validity by additional ground, later brought out".

17. After referring to the judgment in the case of *Gordhan Das (supra)*, the Supreme Court in the case of *Mohinder Singh Gill (supra)*, held as follows"

"Orders are not like old wine becoming better as they grow older."

18. The learned Additional Advocate-General tried to justify the impugned order, dated 10-12-1999, on the ground that the reason for rejection of the request of the petitioner-society was explained in the counter-affidavit, which cannot be accepted. Further, the reasons mentioned in the counter-affidavit can neither be a substitute nor a justification for failure to record reasons in the order itself. Therefore, the impugned order is liable to be quashed for the aforementioned reasons.

19. At this stage the learned Counsel for the petitioner submits that in pursuance of the interim directions of this Court, dated 27-2-1998, the petitioner-society has in fact filed an affidavit and the respondent has not passed any orders in this regard yet. He seeks for a direction to the respondent to pass a speaking order particularly in the light of the interim directions of this court, dated 27-2-1998, as the petitioner-society has complied with the directions of this court by filing an affidavit and till date the respondent has not passed any order in this regard.

20. Keeping in view the said position, while quashing the impugned order, dated 10-12-1999, which is a non-speaking order. I direct the respondent to taken into consideration all the circumstances and the affidavit filed by the petitioner-society, in pursuance of the interim directions of this court, and pass appropriate

order in the light of the observations made above, and in accordance with law.

21. Accordingly the writ petition is allowed and the impugned order, dated 10-12-1999, issued by the respondent, is quashed. However, in the circumstances, there shall be no order as to costs.