

(2014) 12 AP CK 0183
In the Andhra Pradesh High Court
Case No : Writ Petition No. 16587 of 2008

Lakshmi Nagar Colony Residents Association	APPELLANT
Vs	
Hyderabad Urban Development Authority and Others	RESPONDENT

Date of Decision : 15-12-2014

Acts Referred:

Andhra Pradesh Apartments (Promotion of Construction and Ownership) Act, 1987 —
Section 6, 9 — Andhra Pradesh Urban Areas (Development) Act, 1975 - Section 14,
32, 33, 43

Citation : (2015) 3 ALD 533 : (2015) 3 ALT 258 : (2015) ALT(Rev) 233

Hon'ble Judges : A. Ramalingeswara Rao, J.

Bench : Single Bench

Advocate : Amancharla V. Gopala Rao, for the Appellant; M. Dhananjay Reddy, for the Respondent

Final Decision : Partly Allowed

Judgement

A. Ramalingeswara Rao, J. Heard the learned counsel for petitioner, the learned Standing Counsel for first respondent and the learned counsel for respondents 5 to 9. An extent of Ac.47-18 guntas of land in survey Nos. 143, 153, 154 and 163 (parts) of Boduppall Village, Uppal Mandal, Ranga Reddy District belongs to G. Laxmi Narayana and others. They executed a General Power of Attorney in favour of one Ravinder Reddy. He applied on 17.05.1990 to the first respondent seeking permission for the layout plan. The said land was originally earmarked for conservation use and it was changed to residential use pursuant to G.O.Ms. No. 212, Housing, Municipal Administration & Urban Development Department (I-2), dated 15.05.1990. Initially, a tentative layout was released by proceedings dated 10.08.1990 and the applicant was asked to execute the layout for development works. Ultimately, permission for final layout was issued on 02.09.1992 subject to condition of handing over of roads to the local authority, roads and open spaces shall be planted with shade giving ornamental trees and other conditions. In the final layout, the land use was earmarked as plotted area @ 54.14%, roads area @ 30.34%, open area @ 10.58% and amenities area @

4.94%. Thereafter, the plots were sold to various individuals, who formed into an association called "Lakshmi Nagar Colony Residents Association", the petitioner herein.

2. In the amenities area, an extent of 3603 square yards was earmarked for school purpose. Near the said school area, the purchasers of plot Nos. 5, 6, 7, 8 and 9 already constructed and running a school after obtaining permission from the local Gram Panchayat. It appears that two sale deeds of an extent of 753.23 square metres out of total area of 3603 square yards earmarked for school purpose, was sold in favour of A.V. Srinivasa Rao and B. Damodar by a registered sale deed dated 05.10.2001. The said purchasers submitted an application to the first respondent seeking conversion of school area into residential area in modification of the final layout plan issued in respect of the said land. The owners of plots Nos. 5 to 9, who were running a school by name "Grace Mission High School", gave no objection for treating their land as a land earmarked for school purpose and converting the school land in the layout for residential purpose. The first respondent considered the said application and granted permission by a letter No. 7042/Misc/MP2/Plg/H/2007, dated 30.06.2008 and the same was communicated to the Boduppall Gram Panchayat. The Gram Panchayat objected to the same and addressed a letter to the District Collector (Panchayat Wing), Ranga Reddy District. The petitioner also objected to such change and filed the present Writ Petition.

3. The first respondent filed a counter-affidavit stating that the amenities area is reduced from 4.94% to 3.37% and in respect of other areas like plotted area, roads area and open area, there is no change. Even the amenities area also, the present area of 3.37% is in tune with the rules. When a representation is received from the petitioner pursuant to the orders of this Court suspending the approval of the amendment to the layout, the Gram Panchayat was addressed a letter not to release the layout to the third respondent.

4. The Gram Panchayat, Boduppall, the second respondent, filed a counter-affidavit stating that the modification was done without notice to it and hence a letter was addressed to the District Panchayat Officer on 21.11.2008 and 02.08.2009 and the matter is pending with him. Respondents 5 to 9 filed separate counter-affidavits stating that the amenities area indicated in the layout plan is no way affected. It is further stated that area earmarked for school does not vest in the Gram Panchayat and it is a saleable area. The only restriction is with regard to the nature of usage of that area and there is no prohibition from selling that land.

5. It is contended by the learned counsel for the petitioner that the first respondent has no power to change the final layout after it was issued. Even if it is assumed that such a power exists, the power cannot extend to the extent of modifying the layout by changing the use of the land.

6. The learned Standing Counsel for the first respondent submits that the power

inheres in the first respondent by the very nature of it and when the first respondent has got the power to approve the layout, it has got power to modify or amend the layout.

7. The learned counsel for respondents 5 to 9 submits that there is a distinction between the lands earmarked as open areas and lands specified for amenities purposes. The lands specified for amenities purpose have to be utilised for the same purpose only and when there is an alternative land available for the same purpose, the land which was originally indicated/earmarked for a specific purpose, can be converted for a different purpose, as the total area that is required to be maintained for amenities purpose is not going to be changed.

8. There is no dispute with regard to the facts in the instant case. A provisional layout was issued on 10.08.1990 and subsequently after development of the land, a final layout was issued on 02.09.1992. In the final layout, certain areas were earmarked as open areas and amenities areas. Out of the areas earmarked for amenities, an extent of 3603 square yards is earmarked for school purpose, which is situated near plot Nos. 5 to 8. Plot Nos. 5 to 8 were purchased by the fifth respondent, who constructed a school and is being run in the said plot of land after obtaining permission from the concerned authorities. They expressed no objection for treating their land as school zone in lieu of converting the originally earmarked school area for residential purpose and they also gave a letter to that effect. Basing on the said letter, the first respondent issued proceedings on 30.06.2008 permitting the conversion of school zone into residential area and communicated a copy to the second respondent. The second respondent has objected to the same on the ground that no notice was issued to it before taking action and complained to the District Panchayat Officer, Ranga Reddy District. The petitioner also submits that they also raised objections and the approval was granted without considering their objections.

9. Now the first point with regard to the power of the 1st respondent to change the final lay out has to be considered. The first respondent is vested with the powers under the provisions of the Andhra Pradesh Urban Areas (Development) Act, 1975 (for short, UAD Act). The first respondent has to prepare master plan and zonal development plans. It has to declare development areas and development plans in those and other areas. The applications for permission for layouts are regulated by Section 14 of the UAD Act. The amenities are regulated in Section 32 of the UAD Act and it says that if any amenity in relation to any land in development area has not been provided, it may take action after issuing a show cause notice on the owner of the land. Section 33 says that the local authority is required to assume the responsibility for the maintenance of the amenities which have been provided in the area by the authority. Section 43 deals with the power of the authority to stop unauthorised development.

10. In view of the above provisions empowering the first respondent with regard to the regulation of development of the land in particular areas, more particularly for releasing layouts, it cannot be said that they have no power to modify the

layout once it is released. But, such power of modification can be exercised only after giving notice to the concerned Gram Panchayat and to the residents of the colony. In fact, such a stipulation was insisted upon by the first respondent while processing the file for modification of the layout as could be seen by the notings made by the Director of Planning on 17.10.2007 in the note file. In the note file, it was specifically stated that the request may be agreed with a condition that the applicant should produce a No-objection Certificate from the local Gram Panchayat and Executive Officer and also from the surrounding plot owners before the release of modified layout. It appears that the seventh respondent submitted a representation to the Chairman of the HUDA on 19.11.2007 for waiving the condition of obtaining No objection Certificate and the Chairman made endorsement to consider the case without insisting on No-objection Certificate. Though the Director of Planning expressed doubt on the said endorsement on 21.07.2007 and imposed a condition as aforesaid and without fulfilling those conditions the application for modification was approved. This led the second respondent to complain to the District Panchayat Officer about the irregularity committed by the fifth (sic. first) respondent in approving the modification without notice to it. Hence, the action of the first respondent to the extent it approved the modification without following the principles of natural justice is bad.

11. The second point that falls for consideration is whether the amenities areas in the approved layout plan belong to the petitioner association or to the local authority or to the owner of the land who obtained the layout. In this respect, there is no clarity in the provisions of the UAD Act or the Rules made thereunder. However, the learned counsel for respondents 5 to 9 brought to the notice of this Court Sections 6 and 9 of the Andhra Pradesh Apartments (Promotion of Construction & Ownership) Act, 1987. Section 6 of the said Act says that after sanction of the plan by the local authorities or Urban Development Authority, the promoter shall not make any additions and alterations without the previous consent in writing of the transferee or the transferees. Similarly, Section 9 says that each apartment owner shall be entitled to the percentage of undivided interest in the common areas facilities as expressed in the Declaration and the same shall not be altered without the consent of all the apartment owners. It is further stated therein that the common areas and facilities shall not be separated from the apartment and shall be deemed to be conveyed or encumbered with the apartment.

12. The learned counsel for respondents 5 to 9 submits that similar provisions are not existing in the UAD Act, in the absence of which, it cannot be assumed that title of the land in the common areas vests in the owners of the plots. Here it has to be observed that there is a distinction between common areas and amenities areas. The common areas vest in the local authority to be maintained by the local authorities, whereas there is no provision for transfer of amenities areas to anyone. The amenities areas are mentioned as school, community hall, etc., and it only indicates that though the areas have to be utilised for the

purpose specified therein, it cannot be utilised for any other purpose, as it amounts to violation of the sanctioned layout plan. The title in the lands continues to be with the owner of the lands, as there is no sale of undivided interest in the said land or surrender of that land to the local authority. The intention of the legislature is to maintain a fixed percentage of the land for the purpose of the local residents to be utilised by them for specified purposes. In the instant case it appears that apart from the school in plot Nos. 5 to 8, there are nearly 10 other schools in the surrounding areas without causing any hardship to the residents of that area. But, on that count, it cannot be said that the entire school area can be converted as the residential area or for any other purpose other than amenities. The owner of plot Nos. 5 to 8 submitted an undertaking that the land can be treated as a school area (amenities) in lieu of that portion of the land to be converted as residential area in the school area shown in the layout. In these circumstances, it cannot be said that the petitioners are affected in any manner.

13. The learned counsel for the petitioner relied on *Sri Ramakrishna Educational Society Vs. Chairman, Nandyal Municipality and Another*, , *P. Venkateswarlu Vs. Govt. of Andhra Pradesh and Others*, , *Bhagya Nagar Colony Welfare Association Vs. Government of A.P. and Others*, , *Co-operative Housing Society, Saleemnagar Limited and another Vs. Municipal Corporation of Hyderabad and others*, , *Shri Girish Vyas and Another Vs. The State of Maharastra and Others*, , *Grand Vasant Residents Welfare Association v. Delhi Development Authority* (LPA No. 775/2003 dated 05.03.2014, Delhi High Court), *G. Pandi v. The Commissioner* (W.P. No. 35970/2003 dated 16.07.2012, Madras High Court) and *Pt. Chet Ram Vashist (Dead) by Lrs. Vs. Municipal Corporation of Delhi*, .

14. The decision in *Sri Ramakrishna Educational Society Vs. Chairman, Nandyal Municipality and Another*, , *Bhagya Nagar Colony Welfare Association Vs. Government of A.P. and Others*, , *Co-operative Housing Society, Saleemnagar Limited and another Vs. Municipal Corporation of Hyderabad and others*, , and *Grand Vasant Residents Welfare Association case (supra)* relate to conversion of areas meant for parks for other public purposes. In those circumstances, since the areas vested in the respective local authorities and earmarked for a specific purpose, the Courts held that the said areas shall not be utilised for other purposes. The decision in *Shri Girish Vyas and Another Vs. The State of Maharastra and Others*, relates to modification of final development plan and the procedure involved thereto.

15. In the instant case, neither the master plan nor the zonal development plan is not (sic.) sought to be amended. What is sought to be amended is a layout sanctioned by the first respondent. Hence, those decisions are not applicable to the present case. It is necessary to maintain a distinction between the areas earmarked for open spaces and amenities. There is no stipulation in the rules to execute any gift deed in favour of local authority in respect of "amenities areas", whereas, in respect of open areas and road areas, there is a stipulation to

execute a gift deed in favour of local authorities towards development and maintenance. Thus, in the absence of any special stipulation, the argument of the learned counsel for respondents 3 and 4 appears to be plausible. The amenities areas continue to vest in the owner, who developed the layout and meant for providing amenities when the amenities were absent. When those amenities are available in plenty, whether the same area should be retained is a moot point. However, the total amenities area, by virtue of amending the layout, is not reduced beyond the permissible limit. The area came down from 4.94% to 3.37%. The school area is sought to be converted into a residential area and an equal extent of residential area which is already converted a school area was agreed to be retained as an area left for school.

16. In the circumstances, the public interest is not affected in any manner. But however, the first respondent should take steps for not converting the already converted school area to be utilised for any other purpose in future. The learned counsel for the petitioner could not show any rule or regulation stating that the amenities area vests either in the members of the colony or in the local authority. In any event, it is for the first respondent to take a considered decision keeping in view the various aspects for proper development of the area and public interest. In the instant case, the decision taken by the first respondent cannot be found fault, except for procedural irregularities. For the above reasons, this Writ Petition is partly allowed by setting aside the proceedings of the first respondent in letter No. 7042/Misc/MP2/Plg/H/2007, dated 30.06.2008, and the first respondent is directed to issue appropriate notice to the petitioner and the second respondent before considering the application of respondents 5 to 9 for modification of the layout in the light of the above observations and pass appropriate orders thereon. No costs. Miscellaneous Petitions pending, if any in this Writ Petition, shall stand closed.