
(2022) 06 TEL CK 0085
In the Telangana High Court
Case No : Writ Petition No. 11734 Of 2018

Mayuri Nagar Wel. Assn.

APPELLANT

Vs

State Of Ts.

RESPONDENT

Date of Decision : 23-06-2022

Acts Referred:

Hyderabad Metropolitan Development Authority Act, 2008 — Section 15
Haryana Urban Development Authority Act, 1977 — Section 58
Andhra Pradesh Urban Areas (Development) Act, 1975 — Section 12(3)
Maharashtra Ownership Flats (Regulation Of The Promotion Of Construction, Sale, Management And Transfer) Act, 1963 — Section 3(f)

Citation : (2022) 06 TEL CK 0085

Hon'ble Judges : P.Madhavi Devi, J

Bench : Single Bench

Advocate : Sricharan Telaprolu

Final Decision : Disposed Of

Judgement

1. This writ petition is filed seeking a writ of mandamus declaring the action of the second respondent in proposing to sell parts of the land in Miyapur residential complex earmarked as open areas and amenities in the approved plan of the lay out in Sy.No.159, 28/1 and 20 of Miyapur, Serilingampally Mandal, Ranga Reddy District, through E-Auction-cum-E-Tender of sale of land parcels/ open plots/stray bits of HMDA dated 19.3.2018 mentioned at sy.no.8 (40 plots) of the table of contents of the said notification of the 2nd respondent, as illegal and arbitrary and consequently to direct the respondents not to alienate the common areas in the lay out and pass such other order or orders as this Court deems fit in the facts and circumstances of the case.

2. Brief facts leading to the filing of this writ petition are that an extent of 380.47 of surplus land in sy.no.159, 28/1 and 20 of Miyapur, Serilingampally, Ranga Reddy District was assigned by the Government of Andhra Pradesh in favour of Hyderabad Urban Development Authority (HUDA) in the year 1981. The said land was developed by the said authority into a lay out with plotting which was

approved in the year 1986 through file No.10552/PFO/Huda/83. In the said lay out, several parts of the land were earmarked for providing public amenities such as Parks, Health Centre, Community Hall, Bus Shelter, Post Office, Police Station etc. Subsequently, the then urban development authority, again issued a revised lay out and sold few of the plots. Further by virtue of the Hyderabad Metropolitan Development Authority Act 2008, Hyderabad Urban Development Authority was dissolved and the 2nd respondent is constituted and is under an obligation to utilize the areas meant for public purposes in the lay out only for the purposes they were earmarked for. However, the contention of the petitioners is that the 2nd respondent, which is statutory authority, has issued an E-Tender cum E-Auction notice for sale of the open areas and areas earmarked for providing amenities to private persons without developing the same for providing amenities and public facilities to the residents of Mayuri Nagar Colony. It is submitted that once there is an approved lay out and certain areas are earmarked for public amenities and open areas, they cannot be utilised for any other purpose. Therefore, challenging the E-tender cum E-auction notification dated 19-03-2018, this Writ Petition has been filed.

3. The Learned counsel for the petitioner, while reiterating the above proposition referred to the GO Ms No. 72 Municipal Administration and Urban Development (J1) Department, dated 20.02.2002. It is submitted that in the open areas that are available in the original lay out as well as the revised lay out, there are huge trees and rocks existing and if the said areas are alienated and cleared for construction, the same will affect the ecology and environment in the colony which in turn would affect the comfort of living of the members and residents of the first petitioner association and that if the areas meant for common facilities/amenities are sold to private parties, the members will be deprived of the said facilities. The petitioner also pointed out the plots which have been earmarked for common facilities and as to how the respondents are flouting their own rules by alienating the said properties to private persons through E-Auction cum E-Tender process. Therefore, the petitioner is seeking setting aside of the E-Auction process and to direct the respondents not to alienate the common areas in the layout.

4. The learned counsel for the petitioner has also drawn the attention of this court to the copy of the lay out filed along with the writ petition and pointed out that all the plots have been given specific plot numbers, whereas the areas which have been earmarked as open spaces meant for common purposes/amenities have not been given any numbers and therefore they cannot be termed as plotted areas and have to be construed as open areas or areas meant for amenities and cannot be alienated. He has also referred to GO.Ms.No.391, MA and UD department, dated 23.6.1980 and Rule 4-B therein, wherein, it is specified that in any lay out or specification for residential area, minimum of 10% of the entire lay out area shall be reserved for parks and play area and recreational space. It is submitted that it is for this purpose that the open plots have been left out within the lay out and by sale of such properties, the

respondent no.1 is flouting its own guidelines.

5. In support of his above contentions he placed reliance upon the following 3 judgments.

1. P.Srinivas Kumar Vs. Greater Hyderabad Municipal Corporation and other reported in 2011 SCC online AP 937

2. Nahalchand Laloochand Private Limited vs. Panchali Cooperative Housing Society Limited reported in 2010 SCC online SC 955

3. Machavarapu Srinivasa Rao and Another Vs.The Vijayawada, Guntur, Tenali, Mangalagiri URban Development Authority and Others in 2011 12 SCC154

6. The learned counsel for respondent no.1 and 2 relied upon the averments of the counter affidavit and submitted that the even as per revised lay out prepared in the year 1995 in an extent of 239.46 Acres, open area to the extent of 13.70% was left out and amenities area was also earmarked at 6.11%. According to him, as per GO MS. No.391, 23.06.1980, only 10% of the entire lay out area is required to be reserved for parks and play area and recreational space. According to him, vide GO. Ms. No. 526, dt. 31.7.2008, it was further clarified that 10% of the land shall be earmarked for open spaces and recreation and community development including the social infrastructure. It is submitted that even as per the revised plan approved in the year 1995, 13.70% was earmarked for open spaces which is more than the area actually required to be kept for the said purposes as per rules. It is further reiterated that the authority has left open 13.70% of the land and no plot in this area has been put up for E-Auction. Further, in the counter affidavit, the respondents have also shown the plots which have been put up for sale and as to how they are not part of the open space earmarked towards 10% of the lay out area. He also placed reliance upon the following decisions in support of his contentions.

1. Industrial Association of Small Scale industries, through its chairman, Shyam Vs. State of Maharashtra through its Secretary, Industries Department Mantralaya and Others. Reported in 2019 SCC Bombay 778.

2. Madhya Pradesh Housing and Infrastructure Development Board and Another Vs. Vijay Bodana and Others reported in 2020 4 SCC 521.

Therefore, according to the learned counsel for the respondents, there is no violation of any rules/guidelines by the respondents in conducting the E-Auction/ E-Tender process. It is also submitted that after 1995, and before the year 2018, some plots were already auctioned and registered in favour of successful builders and only left over plots were put up for sale. He submits that the layout approved in the year 1995 and the subsequent sale of certain plots have never been challenged and therefore the layout has become final and as the land covered by unsold plots is vested with the respondents, the writ petitioners association had no right over the said land. It is submitted that land left out after earmarking the land for open spaces can be utilised by HMDA for any of its

purposes. He referred to GO.Ms.No.321, dt.23.6.1980 whereunder, under Rule 4-B, 10% of the total lay out has to be marked towards open spaces and also to GO.Ms.No.521 and Rule 52. Thereunder, where 10 % of the plotted area is to be ear marked for open spaces. He also referred to GO.Ms.No.228, dt. 3.4.2008, wherein above position has been reiterated under Rule 8. He submitted that there is no allegation by the petitioners that the open areas left over is less than 10% of the plotted area. Therefore, he prayed for dismissal of the writ petition.

7. The respondents 4 and 5 are the bidders in the open auction. The learned counsel representing the respondent 4 and 5, submitted that when any plot is put up for sale by HMDA, the normal presumption is that the same is free from litigation and believing the same, the respondents No.4 and 5 have participated in the auction and have been declared the successful Auction parties and therefore the property should be directed to be registered in their names. It is submitted that EMD and 25% of the bid amount has already been deposited with HMDA in the year 2018 itself and only provisional certificate was issued to them. They also reiterated the submissions of the respondent No.1 that 10% of the total area has already been left over towards open area and therefore there cannot be any challenge to the E-Auction process.

8. The learned counsel representing the respondent no.6, i.e. another successful bidder in the E-Auction, submitted that plots purchased by the members of petitioner association were identified in the 1996 itself and therefore the land which is left over without earmarking for any specific purpose, can be sold by the respondent No.2 being the owner of the property. He submitted that the HMDA, being the owner of the property, has the power to modify the plan and there was no legal or statutory right to the petitioners to claim open spaces to remain as such forever. Respondent No.6 relied upon the decision of the Hon'ble Supreme Court in the case of Jagmittar Sain Bhagat and Others Vs. Director, Health Services, Haryana reported in 2013 10 SCC 136 in support of his contentions.

9. In reply to the above submissions, the learned counsel for the petitioner submitted that the first petitioner being the welfare association and its members having purchased the plots, the legitimate expectation was that the plots, which have been shown as earmarked for open spaces or common amenities, will be maintained in the same way in the future. It is submitted that section 58 of the HUDA Act and even the reliance upon Section 15 of HMDA Act by the respondents would further show that, though the HMDA has the power to modify the layout, the same has not been done by the HMDA in this case.

10. Having regard to the said rival contentions and material on record, it is seen that the basic objection of the writ petitioner association to the E-Auction cum E-Tender initiated by the first and the second respondents is that the areas which are earmarked as open areas and for amenities are being sold away by the first and second respondents and thus the respondents, who have to follow the rules and regulations framed by them for regulation of the lay outs in the State of Telangana are being flouted by them. As per GO.MS.No.288, dt.3.4.2008 i.e. the

latest notification, 10% of the total area is to be earmarked for parks, play grounds, open spaces and for infrastructure such as schools, dispensary, hospital public utilities, shopping complex, bus stands etc. but the same is not being followed by them.

11. In all the decisions relied upon by the learned counsel for the petitioner, the issue is as to whether the authority can change the land use without modifying the development plan. The Hon'ble Supreme Court in the case of Machavarapu Srinivasa Rao and another cited supra, Court was considering the case of permission given by the respondent No.1, (i.e. allotment of land of respondent No.1 therein,) to the respondent No.2 therein, for the construction of a temple in the land reserved for park in the development plan. The Hon'ble Supreme Court held that the word 'development' is comprehensive and it includes within its ambit all or any of the works contemplated in a master plan or in the zonal development plan and it also covers carrying out of building, engineering, mining or other operations in, on, over or under land, or making of any material change in existing building or land and re development of land, but 'works of temporary nature' are excluded from meaning of 'development'. It was further held once the State Government approves a master plan or Zonal development plan, no one can change or alter the plan and allot land for any other purposes than the one specified in the approved plan. Thus it was held that only 'the State Government' can make modifications to the approved plan after following the procedure laid down in the section 12(3) of Act and that the powers of the development authority (DA) in this regard are limited. It is further held that it is only the State Government which could have changed the land use, that too, after following the prescribed procedure under section 12(3) of the Andhra Pradesh Urban Areas (DA of 1975).

12. In the case of Nahal Chand Laloo chand Private Limited Vs. Panchali Cooperative Housing Society Limited, the Hon'ble Supreme Court has considered the meaning of 'common areas' referred in Section 3(f) of Maharashtra MAOA Maharashtra Ownership of flats (regulation of the promotion of construction, sale management and Transfer) Act of 1963 and observed that MOFA restricts the right of the promoter in the block or building constructed for flats or to be constructed for flats to which that act applies, and that the promoter has no right to sell any portion of such building which is not a flat, within the meaning of section 2(a-1), and that the entire land and building has to be conveyed to the organisation and that the only right which remains with the promoter is to sell unsold flats and therefore it is clear that the promoter has no right to sell stilt parking spaces as these are neither a flat nor appurtenant or attachment to a flat.

13. The learned counsel for the petitioner has relied upon this judgment to buttress the point that the respondent can only sell the plots which are unsold and cannot sell any other area which are marked for common and open spaces.

14. In the case of R.Srinivas Kumar Vs GHMC and others reported in 2013(4) ALD 161, the single judge of this court was considering the issue of policy of the

GHMC to comply with the elementary norms of civic administration. After considering the judgment of the Hon'ble Supreme Court in various case laws, this Court issued the following directions:-

60. In view of the law laid down by the Hon'ble Supreme Court which are directly applicable to the facts presented before the Court, this Court issues the following directions:

1. The Respondent Corporation should ensure that there is no deviation from the Master Plan or sanctioned plan under any circumstances. If there is any deviation, the GHMC should take immediate action to enforce the same.

2. The Respondent Corporation should periodically assess whether existing buildings are in accordance with the Master Plan. The concerned officials should be held accountable if there is any violation of the Master Plan.

3. With respect to existing construction, which is illegal and is in deviation of Master Plan, the GHMC should take action to demolish the same.

4. If there is any violation of the Master Plan or the GHMC sanctioned plan, GHMC should immediately inform the AP TRANSCO and HMWSSB to take appropriate action.

5. All public roads should be used for the movement of traffic and cannot be used for allotment to private agencies for the purpose of parking.

6. GHMC should notify designated parking zones in various places for the purpose of parking. GHMC should construct multi-layered parking zones at various places throughout the city.

7. GHMC should ensure that footpaths are used only for pedestrians and by standers. Under no circumstances, should the footpaths be used for hawking or any other material.

8. All commercial establishments in the city should have their own parking facility and cannot use the road for the purpose of parking. GHMC should not give permission to any new commercial establishment unless, they provide sufficient parking space for users of the said premises. With respect to the existing establishments, GHMC should serve notice on all commercial establishments within the city, requiring them to create appropriate parking space within six months. If the said establishments fail to do so, GHMC should take appropriate action for cancellation of their licence under the A.P. Shops and Establishments Act.

15. In the case of Industrial Association and small scale industries v. State of Maharashtra 2019 SCC online Bombay 778, the judgment cited by the learned counsel for the respondents, the Bombay High Court has reiterated that though the power to amend, alter or modify the layout is with the development authority, it cannot alienate an area for open spaces and amenity plots less than that provided under clauses 21. 5 and 21.6 of the regulations of the 2009.

However, it was held that area beyond the required percentage of open space can be utilised for further development of the industrial area by following the procedure.

16. In the case of Madhya Pradesh Housing and Infrastructure Development Board and another, the Hon'ble Supreme Court has held that the principle of promissory estoppel cannot be relied upon to hold that once the layout plan is prepared, the same cannot be modified or changed. It was held that the change or modification is permitted under the Adhinayam, provided the modification or change is in accordance with law i.e. as per the procedure laid down and satisfies the development norms and conditions of the development plans, zonal plans and town planning schemes. It was further held that the modification cannot be struck down when the law permits such change which is in terms of the statute and the plans, that have the force of law and as long as the layout plans conform to the development control norms, the Court would not substitute its own opinion as to what principle of policy would best serve greater public or private interest.

17. From the above judgments it is noticed/observed that the HMDA/HUDA the authority which has formed and approved lay out, it cannot by itself change the land use without approval of the State Government. In the present case, the respondent HMDA has not obtained any permission from the State Government for change of land use of the plots which have not been numbered and which are presumably for common spaces and open areas. When the HMDA is selling the plots, it may not be able to restrict the use of the land by the purchasers. It cannot stipulate the condition that the purchaser can only make constructions catering to a particular need in the lay out. As rightly pointed out by the learned counsel for the petitioner, the HMDA is required to leave minimum of 10 % of the layout area for common areas and open spaces. Undisputably, the area left out for common areas and also open spaces in the layout is much more than 10%.

18. The claim of the respondent is that nearly 13.75 % of the revised layout in the year 1995 has been earmarked as open spaces and that they are not interfering with the same.

19. When this contention was canvassed before this Court, the learned counsel for the petitioner has proposed that a committee consisting of the representatives of the petitioner society/association as well the respondents 2 and 3 and the officials of GHMC and revenue officials may be formed and directed to measure the open areas left in the lay out to examine and verify whether the open areas as claimed to have been left out are as per the stipulations/guidelines under the HMDA Act. It is submitted that if the open areas which are left out, after excluding the areas which have been put up for sale are more than 10% of the total area in the layout, then the petitioners would not have any objection to the auction sale.

20. In view of the fact that the respondent No.1 has not followed the prescribed procedure for change of land use, this court is of the opinion that the R1 could

not have offered the said plots for sale without the change of land use. However, in order to arrive at a solution to the problem on hand, the above suggestion given by the learned counsel for the petitioner is accepted. Therefore, this court deems it fit and proper to direct the respondents 2 and 3 to constitute a committee along with the officials of GHMC and also the representatives of the petitioner as well as the concerned revenue authorities within a period of 30 days from the date of receipt of this order, to examine whether the open areas which are left out after putting certain areas for auction sale are more than 10% and if such is the case and if it is found that the left out open areas are more than 10% of the total area of the layout, then the respondent no.2 and 3 are at liberty to follow the procedure for change of land use and thereafter proceed to sell the said properties in accordance with the procedure laid down under the Act. However, if it is found that the land which is left out for open areas is less than 10% of the total area of the layout, then the respondents 2 and 3 shall cancel the auction sale and only after leaving the 10% of the land for open spaces, can they take recourse to get permission from the state Government for change of land use and thereafter for alienation of the balance of the land. The entire exercise of forming a committee and measuring of the open areas in the layout shall be carried out within a period of 120 days from the date of receipt of copy of this order.

21. The writ petition is accordingly disposed of. No order as to costs.

Miscellaneous applications, if any pending, shall also stand dismissed.