
(2000) 11 AP CK 0045

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 6301 of 1994 and 7850 of 1997

NGOs. Colony Development Committee, Machilipatnam

APPELLANT

Vs

District Collector, Krishna, Machilipatnam and others

RESPONDENT

Date of Decision : 06-11-2000

Acts Referred:

Andhra Pradesh Municipalities Act, 1965 — Section 37, 40

Citation : (2001) 1 ALD 55 : (2000) 6 ALT 624

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : Mr. Kowturu Vinay Kumar and Mr. V.T.M. Prasad, for the Appellant; Government Pleader for Social Welfare, Mr. E. Sambasiva Pratap, SC for Municipalities and hra Area and Mr. C. Narender Advs., for the Respondent

Judgement

1. As the issue involved in these two writ petitions is common, this order shall dispose of both the writ petitions. The petitioner in WP No.6301 of 1994 is NGOs. Colony Development Committee. It seeks writ of certiorari to quash the proceedings of the District Collector, the first respondent herein, in Rc. No.B3/50/93 dated 29-3-1994. By the said proceedings, the first respondent directed the second respondent to hand over the site admeasuring 2214 Sq.yards situated in the petitioner's colony to Ambedkar Society for Community Hall and to the Deputy Director (Social Welfare) for construction of office of the Assistant Social Welfare Officer. This Court by order dated 5-4-1994 in WP MPNo.7728 of 1994 granted stay of all further proceedings consequent to the proceedings of the first respondent. In obedience to the orders of this Court in interlocutory stage, the first respondent again issued proceedings bearing Re. No.E1/5267/96, dated 30-11-1996 cancelling the orders dated 29-3-1994 by which A.P. Scheduled Castes Welfare Association was allotted the building situated in the land in question. Challenging the orders of the District Collector dated 30-11-1996 the said Association filed Writ Petition No.7850 of 1997 seeking a declaration that the order of the Collector dated 30-11-1996 is in violation of principles of natural justice.

2. Briefly stated the facts are as follows:

The Government allotted an extent of Acs. 7.58 in R.S. No.373 to NGOs. Colony. The layout was approved vide TP No.72/ 1953 by the Director of Town Planning. In the layout, the land admeasuring 2214 Sq.yards was shown as park. However, the park was not constructed. In 1962 a building known as social welfare building was constructed for social welfare department employees. For some time, it was under the occupation of Electricity Department as well as Red Cross Society. During Praja Sadassu held in Pedana, the then president of the petitioner represented to the Hon''ble Minister for Agriculture and Endowments that the land earmarked for park is being utilised for a purpose other than park and requested to develop the land as park. According to the decision in Praja Sadassu, the Commissioner of Municipality, third respondent herein, addressed the District Collector to hand over open space. The revenue authorities appeared to have enquired into the matter, but nothing turned out. Therefore, the petitioners formed into association and have been espousing the cause of the colony people for development of the land into park. They went on making representations in vain. Acting on the representation of the then MLA as well as the representation made by the petitioner in WP No.7850 of 1997, the Collector issued the impugned order on 29-3-1994 allotting the land to the Social Welfare Department as well as Ambedkar Society in equal proportions while keeping the building empty.

3. The petitioner approached this Court placing reliance on the judgment of the Apex Court in Bangalore Medical Trust Vs. B.S. Muddappa and others, , wherein their Lordships laid down that the land earmarked for park cannot be converted or changed into land for other purposes. As already noticed, this Court stayed the allotment and aggrieved by the consequential proceedings A.P. Scheduled Castes Welfare Association filed Writ Petition No.7850 of 1997. The said association contends that by proceedings dated 29-7-1996 the association was allotted the building, that they are using the building for imparting coaching to the unemployed students of SC, ST, and BC for preparing them for competitive examinations and that they are in possession since the date of allotment. They also stated that they have spent considerable amount for repairs and clearance of shrubs surrounding the building.

4. Sri K. Vinaya Kumar, learned Counsel for the petitioner in WP No.6301 of 1994, submitted that as per the lay out TP No.72/1953 the land was earmarked for park and therefore, the Collector ought not to have issued proceedings allotting the land to Ambedkar Society and A.P. Scheduled Castes Welfare Association.

5. As the lay out plan was not readily available, the matter was adjourned enabling the learned Standing Counsel for the respondent-Municipality as well as the learned Government Pleader to submit the plan. The learned Counsel obtained the lay out plan from the Office of the Director of Town Planning and produced the same before this Court. The lay out plan which was approved by

the Director of Town Planning, Government of Madras on 10-8-1953 shows that the South-West corner of the lay out abutting the District Court Road on one side and Edepalli Road on the other side is set apart for park. Indeed, this is the only area in the entire lay out consisting of about 55 plots which is shown as park and there is no other common space or open land in the entire lay out.

6. It is well settled that when approved lay out provides for roads, common areas and area for park, they absolutely vest in the Municipality under the provisions of the A.P. Municipalities Act, 1965 ("the Act" for brevity). It is un-understandable as to how the Municipality has abdicated its powers to protect the land earmarked for park and as to how the District Collector has allotted the land for construction of social welfare office building in 1964 and allotted to Ambedkar Society in 1994 and A.P. Scheduled Castes Association in 1996. Therefore, not only on the ground that the Municipality is not competent to allow social welfare office building to come up in the land, but also on the ground that the District Collector is not competent to deal with the property which absolutely vests in the municipality, the impugned order dated 29-3-1994 is wholly unsustainable. As by the date of communication of the interim order, the A.P. Scheduled Castes Welfare Association was allotted the land and the District Collector took steps in right earnest to withdraw the allotment by issuing proceedings dated 30-11-1996. Therefore, Writ Petition No.7850 of 1997 is wholly misconceived.

7. Sarvasri Sambhasiva Pratap and V.T.M, Prasad, learned Counsel appearing for the respective parties have, however, submitted that at huge cost A.P. Social Welfare Building is constructed which is in possession of A.P. Scheduled Castes Welfare Association and the same is being used as coaching centre to train the unemployed youth belonging to SC, ST, and BC, categories for competitive examinations. After excluding the land, which is occupied by the building with the area which is left over is 1250 Sq.yards. All the learned Counsel would submit that they have no objection even atleast now the land admeasuring 1250 Sq.yards is developed as park for convenience and passive recreation of the residents of NGOs. Colony. The learned Standing Counsel for the respondent-Municipality to that effect has filed a Memo on behalf of the Municipality. The same is taken on record and made part of the record.

8. The Memo inter alia states that there are 55 house plots in the layout, that a compound wall was constructed covering 2281 Sq. yards and on the North-West of the site a building was constructed and leaving the building there is an extent of 1254 Sq.yards as open land which can be developed into park with the co-operation of the residents of NGOs., Colony. Sri Vinay Kumar has readily agreed with this and on behalf of NGOs., Colony he also submitted that NGOs., Colony residents would contribute Rs.25,000/-(Rupees twenty five thousand only) for development of the park. He requires four weeks time for depositing the amount with the Municipality in accordance with Section 40 the Act and A.P. Municipalities (Transactions Relating to Deposits etc.) Rules, 1970.

9. Having regard to the peculiar facts and circumstances of the case, while

recording the displeasure of this Court on the action taken by the revenue authorities in interfering with the municipal property, the Writ Petitions are disposed of directing the Municipality without waiting for any proceedings by any of the revenue officials to take over the vacant land admeasuring 1254 Sq.yards forthwith and develop the same into park for passive recreation of residents of NGOs Colony and for general public of Machilipatnam Town. The petitioner in Writ Petition No.6301 of 1994, namely, NGOs. Colony Development Committee shall donate an amount of Rs.25,000/- (rupees twenty five thousand only) within a period of six weeks from today to the Machilipatnam Municipality which shall realise the said amount only for the development of park in NGOs. Colony covered by lay out in TP No.72/1953. The Municipality shall complete the project of development of the park in the land covered by TP No. 72/1953 within a period of six months from today.

10. The writ petitions are accordingly disposed of in terms of above directions with costs. The petitioner in WP No.6301 of 1994 shall be entitled for costs quantified at Rs.5,000/- (rupees five thousand only) to be paid by the District Collector, Krishna District.