

(2000) 07 AP CK 0082

In the Andhra Pradesh High Court

Case No : Writ Petition No. 33342 of 1997

P. Prem Kumar

APPELLANT

Vs

Commissioner of Land Revenue and Others

RESPONDENT

Date of Decision : 12-07-2000

Acts Referred:

Andhra Pradesh (Telangana Area) Irrigation Act, 1357 — Section 38, 49
Andhra Pradesh Urban Areas (Development) Act, 1975 — Section 12(2)

Citation : (2000) 4 ALT 592

Hon'ble Judges : G. Bikshapathy, J

Bench : Single Bench

**Advocate : K. Raghuvier Reddy, for N. Subba Reddy, for the Appellant;
Government Pleader for Respondents 1 and 2 and T. Niranjan Reddy, for the
Respondent**

Final Decision : Allowed

Judgement

G. Bikshapathy, J.—The Writ Petition is filed seeking a Writ of Mandamus declaring the proceedings dated 27-8-97 passed by the third respondent-Hyderabad Urban Development Authority (for brevity "HUDA") as illegal and unconstitutional, and consequently for a direction to release the final layout submitted by the petitioner in respect of Sy. Nos. 67, 68, 69, 75 and 76 of Serlingampally village, Rangareddy District and direct the second respondent to implement the orders of the first respondent dated 19-6-97.

2. The relevant facts leading to the filing of the writ petition can be narrated in brief as follows: The petitioner, along with others, is the owner of land situated in Sy. Nos. 67, 68, 69, 75, and 76, of Serlingampally village over an extent of Ac. 101.24 guntas. The family members of the petitioner were the previous landowners in 1964. The owners approached the Tahsildar, Hyderabad for seeking permission to alienate the lands in favour of the third parties. Accordingly, the Tahsildar by an order dated 19-11-1962 granted permission as required under Sections 47 and 48 of Andhra Pradesh Tenancy Act to sell the

lands as requested by them. Accordingly, on 6-8-1964, four sale deeds were executed in favour of the petitioners. Since the area purchased by the petitioners was covered under the Master Plan as agricultural category and since they wanted to develop it into a residential zone and as it requires permission of the Government to convert the same from agricultural zone to residential zone. Accordingly, an application was made for conversion in accordance with the provisions of the A.P. Urban Areas Development Act, 1975.

3. The Government, after considering the matter and also after consulting HUDA, issued G.O. Ms. No. 918 dated 13-11-1987 converting the land into residential zone with certain conditions. After the conversion, the petitioner made an application to HUDA for sanction of layout in Sy. Nos. 67, 68, 69, 75 and 76 of Serlingampally village for an extent of Ac. 56 acres. The third respondent-HUDA by proceedings dated 4-6-93 released the draft lay-out with conditions attached in Appendix 1 and 2 thereto. It is also the case of the petitioner that after submitting the draft layout for Ac. 56 duly deleting an extent of Ac. 12.21 guntas covered by the tank, which was covered by tank area, net layout was fixed at Ac. 44.19 guntas. They also deposited development charges of Rs. 2,81,077/-. After laying the roads and complying with the conditions, they filed a letter on 1-6-94 duly enclosing the final layout plan and requested the third respondent to release the final layout.

4. But, meanwhile, some other incidents took place. The District Collector, Rangareddy issued show-cause notice on 13-7-95 purporting to be under Sections 49 and 50 of the A.P. (Telangana Area) Irrigation Act (for short "the Irrigation Act") stating that the petitioners breached the bund of Gopi Cheruvu and laid three pipes to let out the water without taking permission. Necessary reply was submitted in pursuance of show-cause notice issued by the Collector. But, the Collector, however, passed an order on 4-9-95 imposing a fine of Rs. 1,000/- and also directing the petitioner to pay damages of Rs. 40,000/- for making appropriate repairs. Taking the clue from this order, the third respondent issued show-cause notice on 15-9-95 calling upon the petitioner to show-cause why tentative lay-out should not be withdrawn on the ground that lands form part of Gopi Cheruvu bed and liable to interference with irrigation work attracting Section 38 and that under Sections 47 and 48 of the Irrigation Act, tank bed cannot be used for construction work, to which the explanation was submitted on 13-10-95. In the meanwhile, the petitioner filed an appeal before the Commissioner of Land Revenue, challenging the order passed by the Collector on 4-9-95. The Commissioner, after considering the matter and after giving opportunity to the parties, set aside the order of the Collector, and directed not to interfere with the developmental activities undertaken by the petitioner by an order dated 19-6-1997. The said order has become final.

5. Coming to the action on the part of HUDA that after submitting the explanation to the show-cause notice in October 95, the present impugned order is passed on 27-8-97 confirming the very same stand which was taken in the

show-cause notice and stating that it attracts Section 38 of the Irrigation Act, and the layout released earlier was cancelled and withdrawn. Aggrieved by the said order, the present writ petition has been filed. But, however, after the order is passed, the petitioner again brought to the notice of the HUDA that the Commissioner of Land Revenue has set aside the order of the Collector and to review the order. Again on 9-9-98, the said application was rejected stating that the site was submerged in the tank water.

6. In the counter filed by the HUDA, it is not disputed that the draft layout was issued to the petitioner stipulating various conditions in Annexures 1 and 2 of the order. It was also not disputed that the Government has converted the land from agricultural zone to residential zone after consulting the HUDA. It is further stated that the orders passed by the Commissioner of Land Revenue are not binding on the authority and more over they are also not parties to the proceedings. It is further averred that under the provisions of the Irrigation Act, no developmental activity can be taken up by any private person in the tank bed area and the entire land measuring Ac. 56 including the proposed land measuring Ac. 44 fell within the tank bed area and as such the petitioner cannot be permitted to carry on the developmental activities. Thus, they submitted that there is no illegality or irregularity in the order passed by HUDA.

7. Additional affidavit has been filed stating that on 7-9-95, communication was sent to the Government to withdraw the conversion order passed in G.O. Ms. No, 918 and since no orders are passed by the Government, the writ petition is premature and he cannot seek the sanction of final layout. It is also stated that HUDA issued notification on 4-5-2000 with a view to protect the lakes in the City. But, as already pointed out, the area occupied by the lake has already been deleted in the draft plan to the extent of over Ac. 15.00.

8. The Collector filed counter narrating the events which took place with regard to the imposition of fine and the order passed by the appellate authority namely the Commissioner of Land Revenue.

9. The only question that arises for consideration of this Court is whether the impugned order is sustainable in law.

10. Heard the learned senior Counsel, Mr. E. Manohar for the petitioner, the learned Government Pleader and the learned Counsel for HUDA, Mr. Niranjana Reddy.

11. The sequence of events need not be referred to once again. Suffice it to state that the Government converted the land in question from agricultural to residential zone in the notification issued in G.O. Ms. No. 918 permitting the change of land used subject to certain conditions. The conditions as set out in the notification are extracted below:

"In exercise of the powers conferred by sub-section (2) of Section 12 of the Andhra Pradesh Urban Areas (Development) Act 1975, (Act. I of 1975) the

Government hereby makes the following variations to the Master plan of non-Municipal area the same having been previously published in the extraordinary issue of Andhra Pradesh Gazette No. 591 Part... dated 3-10-1987 as required by sub-section (3) of the said section.

VARIATION

The site in S. Nos. 79 to 82, 67, 68, 69, 70, 75 and 76 of Serilingampally (v) which is earmarked as agricultural use zone and water zone and water body use as per the Zonal Development Plan for Ramachandrapuram is now designated as residential use zone subject to the following conditions.

1. The party should make all necessary arrangements to drive out the excess water coming into tank during rainy season.
2. The party should make arrangements for drainage to the satisfaction of Hyderabad Urban Development Authority to ensure that no residential area gets sub-merged, before the final lay-out is released.
3. The applicant should handover the area coming under the proposed 150 feet link road in S. Nos. 79 to 82 to Hyderabad Urban Development Authority and allow Hyderabad Urban Development Authority to raise a green belt of 40 feet on either side of the road.
4. The applicant should approach Hyderabad Urban Development Authority for sanction of layout and should pay the development charges as per rules in vogue.
5. In addition to the above conditions, the change of land use of land under reference will be agreed to only when the party conclusively proves that the land covered by the tank (with water sheet) belongs to him only and not to the Government.

SCHEDULE OF BOUNDARIES

North: Boundary line of Chandanagar Village.

South: Road

East: Sy. Nos. 72, 71, 74, 84, and 83 of Serilingampally (v)

West: Sy. Nos. 66, 77, 64/1 and 78 of Serilingampally (v)."

12. After the notification was issued, the draft layout was released by HUDA on 4-6-93 and developmental activities were taken up by the petitioner. It is the case of the petitioner that the land has been developed in accordance with the conditions imposed and after developmental work, letter was issued on 1-6-94 requesting the HUDA to release the final layout. But, the Collector initiated action against the petitioner on the ground that the petitioner has breached the natural course of the tank and therefore imposed fine of Rs. 1,000/- under Sections 49 and 50 of the Irrigation Act and also directed to pay an amount of Rs. 40,000/- towards damages to restore the bund to its original position. It is to be seen in

this regard that it is not the case of the Collector that the land belongs to the Government. It is only exercising the supervisory power over the tank situated in a private land in accordance with the provisions contained in the Irrigation Act. Aggrieved by the said order, the appeal was filed before the Commissioner of Land Revenue and the Commissioner has rendered following findings while setting aside the order of the Collector, and issued further directions which are extracted below:

"FINDINGS AND ORDER:

It is seen from the records, of Collector's office petitioner's affidavit and the oral statement that the relevant procedures required including gazette notification and order of the Govt. from Revenue Department and Municipal Admn. Department have been followed by the petitioner.

The Collector's order speaks only of the MRO's report requesting action against Prem Kumar, a report of Executive Engineer (PR) and the written explanation by Prem Kumar dt. 27-5-95. On the basis of these two the Collector came to a conclusion that petitioner did not take any permission from the competent authority and tried the breach of Gopicheruvu and laid the pipes to draw water and this was in violation of Sections 49 and 50 of A.P. (T.A.) Irrigation Act. The petitioner was fined Rs. 1,000/- and directed to pay Rs. 40,000/- towards damages to restore the bund to the original position. The MRO's report of 2-7-95 refers to the petitioner producing copy of G.O. Ms. No. 918, M.A. of 13-11-87 and Collector seems to have list sight of this.

In the case, it is seen from the Gazette Notification published on October 3, 1987 in the Draft Variation approved in G.O. Ms. No. 918, HMA Dept, of 13-11-87 the conditions imposed are:

1. The party should make all necessary arrangements to drive out the excess water coming into tank during rainy season.
2. The party should make arrangements for drainage to the satisfaction of HUDA to ensure that no residential area gets submerged, before the final layout is released.
3. The applicant should handover the area under the proposed 150 feet link road in Sy. Nos. 79 to 82 to HUDA and allow HUDA to raise a green belt of 40 feet on either side of the road.
4. The applicant should approach Hyd. Urban Development Authority for sanction of layout and should pay the Development charges as per rules in vogue.
5. In addition to the above conditions, the change of land use of land under reference will be agreed to only when the party conclusively proves that the land covered by the tank (with water sheet) belongs to him only and not to the Government.

Since the Mandal Revenue Officer had referred to the Govt. Order in her report, a

perusal of G.O. Ms. No. 918, H.M.A. Dept. dt. 13-11-87 would have shown that the petitioner was acting to fulfil the conditions imposed by the Government.

It is seen from the M.R.O.'s report dt. 2-7-95 available in the Collector's file that only 16 acres of land is under cultivation under this tank and nearly entire land is patta land. There should have been deeper enquiry by the Collector, and also an opportunity for the petitioner to produce his records, before concluding that he had no permission.

The Petitioner's submission is that out of 88 acres owned by him and his sister, only 44 acres have been covered by lay-out sanctioned by HUDA and there was water spread area of 13.22 acres and HUDA has left a gap of 30 acres between lay-out area and the water spread area. The Petitioner also contended that there is no ayacut below the tank as most of the land is converted into the house sites. Admittedly the area irrigated even according to MRO's report is 16 acres which would certainly not require water spread of over 100 acres.

Since the Mandal Revenue Officer had reported that the Irrigated extent is only 16 acres, the area needed for storage of required water to cultivate this extent will not be 88 acres. Water spread area of 13.22 acres and proper arrangements for sluices be maintained and surplus water to drain out excess water may be adequate.

In G.O. Rt. No. 440, Rev. Dept. dt. 21-4-82 the Govt. has categorically stated that

"After careful examination of the Revision with reference to the Report of the Collector, Ranga Reddy District, it is observed that there is no land classified as Tank in any of the survey Nos. mentioned above as per the relevant accounts of the village and that the stagnant water in the Patta lands and on the portion of the "gairon land" as well as "Kharij Khata" land is being referred to as Gopi Cheruvu. It is also seen that the Municipal Administration Dept. in its order had granted necessary permission stipulating certain conditions. These conditions have been and there was water spread area of 13.22 acres and HUDA has left a gap of 30 acres between lay-out area and the water spread area. The Petitioner also contended that there is no ayacut below the tank as most of the land is converted into the house sites. Admittedly the area irrigated even according to MRO's report is 16 acres which would certainly not require water spread of over 100 acres.

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"(a) After careful examination of the Revision with reference to the Report of the Collector, Ranga Reddy District, it is observed that there is no land classified as Tank in any of the survey Nos. mentioned above as per the relevant accounts of the village and that the stagnant water in the Patta lands and on the portion of the "gairon land" as well as "Kharij Khata" land is being referred to as Gopi Cheruvu.

(b) It is also seen that the Municipal Administration Dept. in its order had granted necessary permission stipulating certain conditions. These conditions have been permission from the Government in Municipal Administration Department, and after Gazette notification and sanction by HUDA for layout after following the prescribed procedure.

(c) Collector and other subordinate authorities, may, if irrigation of 16 acres, reported by Mandal Revenue Officer in the first report of 2-7-95, is to be protected, maintain the existing water spread area and make arrangement for maintenance of sluices. Executive Engineer Irrigation should see whether a surplus weir has been constructed and is in proper shape and if not, whether this should be constructed.

(d) In view of the incident of death of a school boy mentioned in the records, the Collector should ensure that arrangements like surplus weir are properly made.

Typed to dictation and corrected by me and delivered on this 19th day of June, 1997 at Hyderabad.

Sd/- V.K. Srinivasan SPL. Chief Secretary to Govt. and Commissioner of Land Revenue.

To

Sri P. Prem Kumar, S/O Rama Rao, H. No. 5-9-100, Public Gardens Road,
Hyderabad-500 001 (through Counsel Sri P.A. Chowdary, Advocate,
H. No. 4-6-217/A, Street No. 15,
Near Old MLA Quarters, Himayatnagar,
Hyderabad-500 029 by RPAD)

Copy to Collector, Ranga Reddy
District, Hyderabad.

Copy to File

//Attested// Sd/- Asst. Secretary (LR)

12-A. The HUDA issued Show Cause Notice dated 15-9-1995 after Collector had passed Order Dated 4-9-1995.

HYDERABAD URBAN DEVELOPMENT AUTHORITY 1-8-323, Paigah Palace, Police

Line, Secunderabad - 500 003.

SHOW CAUSE NOTICE

No. 6509/MP2/H Date 15-9-1995.

To

Sri Prem Kumar and others, 5-9-100, Public Garden Road, Hyderabad - 500 001.

Whereas a tentative/draft lay- out for undertaking residential development was issued by this office vide letter No. 16305/MP2/H/92, dated 4-6-1993 in Sy. Nos. 67, 68, 69, 75 and 76 of Serilingampally (V), Ranga Reddy District in view of the change of land use made by the Government vide G.O. Ms. No. 918, M.A. dated 13-11-1987.

Whereas the said Sy. Nos. form part of the Gopi Cheruvu bad and liable to interfere with the irrigation work thereby attracting provisions under Sec. 38 of the A.P. (Telangana Area) Irrigation Act, 1357 Fasli. This office had issued a letter to you dated 12-7-1994 that the layout development work is encroaching the water body and hence it was directed to immediately stop all development works in the site till the matter is reviewed.

Whereas under Sections 47 and 48 of the Andhra Pradesh (Telangana Areas) Irrigation Act, 1357 Fasli, it is immediate that no private person can undertake any Tank bed areas for construction or development activities.

You are therefore hereby required to Show-Cause as to why action should not be taken to withdraw the said tentative layout by this office. Your reply, if any, should reach this office on or before 15-10-1995.

Sd/- Vice-Chairman. /t.c.f.b.o./ Sd/- Planning Officer.

13. Obviously, the HUDA was not aware of the order passed by the Commissioner of Land Revenue and in the counter it only stated that the order passed by the Commissioner is not binding on HUDA. The Show-Cause Notice was issued to the petitioner on the ground that the provisions of Irrigation Act were attracted and therefore he was asked to show-cause why the draft layout should not be cancelled. Whether reference to Irrigation Act is a ground, which can be taken by the HUDA is a question to be considered.

14. Admittedly, the HUDA has to confine the developmental activities in accordance with the provisions of the Act for the proper development of the area and when once a draft layout was released, sufficient conditions were imposed on the petitioner for proper development, keeping in view the statutory provisions as contained in the Urban Area Development Act. Therefore, the HUDA has to only confine itself as to whether the developmental activities, as set out in the draft release order, have been complied with or not. But, to travel into the area occupied by the Irrigation Act is wholly without jurisdiction and unwarranted. It is not the responsibility or duty of the HUDA to see whether the

provisions of Irrigation Act have been violated by the petitioner. It has to only stretch its arms within the parameters of the conditions set out in the draft layout. It is also not the case of the HUDA that the development has not taken place. On the other hand when a letter was addressed by the petitioner on 1-6-1994 for release of final layout, the 3rd respondent HUDA never stated that the development of land was not done as per the conditions in the draft layout, but only that a portion of the land was covered by Gopicheruvu and they are awaiting report from the Chief Engineer, Minor Irrigation and Municipal Commissioner, Serilingampally. The entire proposed cancellation was initiated on the basis of the order passed by the Collector, which was under the provisions of the Irrigation Act. Reference to Section 49 or 38 of the Irrigation Act by the HUDA is wholly irrelevant and unwarranted under the circumstances of the case. If the petitioner has violated any of the provisions of the Irrigation Act, it is open for the appropriate authority under the Act to take action - against the petitioner, but so long as the third respondent-HUDA is concerned, it has to only verify whether the developmental activity, as set out in the draft layout, has been complied with or not. In fact, proceedings were initiated by the District Collector referred to above and they were set aside by the appellate authority. As seen from the order of the appellate authority, viz., Commissioner of Land Revenue, that the land was a private land and he referred to CO. Rt. No. 440, Revenue department, dated 21-4-1982, wherein it was stated that no land was classified as Tank in any of the Survey Numbers and that the stagnant water in patta land and a portion of the "gairon land" as well as "Karij Khata" land was being referred as Gopi Cheruvu. Therefore, it is only stagnated water and no tank was registered in revenue records. Further, the contention that the findings of the appellate authority are not binding on 3rd respondent is misconceived. It is a statutory order under Irrigation Act, and its findings have a binding force so long as the order did not encroach upon the powers of the HUDA under Urban Areas Development Act.

15. Learned Counsel for the HUDA, however, tried to make effort to convince the Court that the developmental activity has also not been complied with in accordance with the draft layout. He submits that under the draft lay-out dated 4-6-93 in para 4, the final layout plan will be approved and considered only after completing the works in draft lay-out. Since these conditions were not complied with, the layout has been cancelled. But a reading of the impugned order would indicate that that was not the ground on which it is cancelled, but only on the ground that it attracts Section 38 of the Irrigation Act. Section 38 as such is not irrelevant in this regard, which reads as follows:

"Section 38: Interference with canal or channel works: No person shall interfere with or obstruct the proper functioning of the various cross drainage works of irrigation works, namely culverts, water courses, superpassages, syphons, weirs and allied works constructed for the safety of the canal or channels, without the express written permission of the Irrigation Officer."

16. Therefore, there is no interference whatsoever at all to the alleged non-completion of the developmental works as set out in the draft lay-out. Even in the counter, it is not the case that developmental work has not been done. It is stated that the land has been submerged to a large extent, and therefore the layout cannot be released. In my considered opinion, that finding is not based on any material available on record. As can be seen from the impugned order, the HUDA has resorted to cancelling the draft lay-out only on the ground that the site under reference was situate on the Gopi Cheruvu tank bed attracting the provisions of Section 38 of the Act.

17. Under these circumstances, it has to be necessarily construed that the lay-out was rejected on irrelevant considerations, which are not germane for the proper disposal of the case. The learned senior. Counsel Mr. E. Manohar, rightly relied on the Judgment of Supreme Court in the case reported in Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, wherein it was held that 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 affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out.

18. Therefore, the ground which is now sought to be pressed into service, i.e., developmental activity has not been done, cannot be accepted as the very basis of cancellation is not on the ground that the developmental activity was not completed, but on the ground that it attracts the provisions of the Irrigation Act.

19. Learned Counsel for the HUDA submits that the HUDA has already written a letter to the Government on 7-9-95 recommending the cancellation of conversion granted in G.O. Ms. No. 918, and the matter is under active consideration, and the Government has called for remarks from HUDA on 5-7-2000. Therefore, it would not be possible to release the layout.

20. I am afraid, this attempt on the part of HUDA has to be deprecated. The Government has admittedly converted the land into residential zone only after consulting HUDA. The notification itself clearly states that the HUDA was consulted as it can be seen from Reference No. 1 in the G.O. Therefore, having been a party to the G.O., and having released the draft layout, it would be most inappropriate on the part of HUDA to recommend cancellation of the conversion granted in G.O. Ms. No. 918, and moreover, this letter appears to have been issued by the Government on 5-7-2000. It is not understood as to how the letter, which was sent on 7-9-95 by HUDA, could be received by the Government on 5-7-2000. I refrain from making any observation in this regard, else it would tell upon the administration.

21. For the foregoing reasons, I find the impugned proceedings are not sustainable in law. Accordingly, the writ petition is allowed setting aside the impugned order. Since the rejection was made not on the ground that

developmental activities have not been completed, a direction shall issue to the third respondent to release the final layout within a period of six weeks from the date of receipt of a copy of this order. No costs.