
(2003) 09 AP CK 0089

In the Andhra Pradesh High Court

Case No : WA No"s. 746, 748 and 848 of 2003

Sri Shirdi Sai Samaj

APPELLANT

Vs

Bhagyanagar Colony Welfare Association and Others

RESPONDENT

Date of Decision : 11-09-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 5 ALD 771 : (2003) 6 ALT 429

Hon'ble Judges : Devinder Gupta, C.J.;C.V. Ramulu, J

Bench : Division Bench

Advocate : N. Subba Reddy, for K. Shankaraiah, in WA No. 746 of 2003, K. Shankaraiah, in WA No. 748 of 2003 and Shiva Sankara Chowdary, in WA No. 848 of 2003, for the Appellant; K. Venkat Reddy, for Respondent Nos. 1 to 5 in WA No. 748 of 2003, V.S.R. Anjaneyulu, in WA No. 746 of 2003, Government Pleader for Revenue for Respondent Nos. 2 and 3 in WA No. 746 of 2003 and for Respondent Nos. 6, 8 and 10 in WA No. 748 of 2003, R. Thimma Reddy, SC for Municipality for Respondent No. 4 in WA Nos. 746 and 848 of 2003 and for Respondent No. 7 in WA No. 748 of 2003, B. Viswanath Reddy, SC for HUDA for Respondent No. 9 in WA No. 748 of 2003 and Government Pleader for Municipal Administration for Respondent Nos. 2 and 3 in WA No. 848 of 2003, for the Respondent

Final Decision : Dismissed

Judgement

Devinder Gupta, C.J.—These three appeals arise out of a common order passed on 24.4.2003 by a learned single Judge of this Court disposing of Writ Petition Nos. 1354 of 1998 and 5902 of 2003 (wrongly shown as W.P.5902 of 1998). By the impugned order, the learned Single Judge disposed of the writ petitions with certain directions to the District Collector, Ranga Reddy and the Commissioner, Kukatpally Municipality directing them to take immediate action for demolition and dismantling of certain structures which have come up in the open area admeasuring 2897 square yards in the layout plan approved by the Hyderabad Urban Development Authority (HUDA) said to have been earmarked for development of parkin Bhagayanagar Colony, Kukatpally. The dispute centres

round the area alleged to be in illegal occupation of Sri Shirdi Sai Samaj, Bhagyanagar Colony and claimed to be earmarked for development of park. The Samaj got constructed Shri Shirdi Sai Baba Temple and other structures without the consent of the residents of the Colony. While directing demolishing and dismantling of the structures, which have come, up in the park area occupied by the Shri Shirdi Sai Samaj, learned Judge, however directed that the actual area occupied by Shri Sai Baba Temple be excluded and other structures, whether it be temporary or permanent, be dismantled and removed forthwith. It was specifically made clear by the learned Single Judge that the area of about 2,597 square yards, after excluding 300 square yards occupied by temple be developed as a park and directed that compliance thereof be filed within a period of three months by the Municipality. The Municipality was also directed to commence the work of development of park forthwith and Byagyanagar Colony Welfare Association was asked to deposit an amount of Rs. 50,000/- towards development of park within one month.

2. In order to appreciate the respective submissions made by the parties it will be necessary to briefly refer to certain facts necessary for the disposal of these appeals: Bhagyanagar Co-operative Housing Society Ltd., purchased an extent of Ac.27.13 gts. in S.Nos. 162, 163, 165 and 167 to 170 situated at Kukatpally Village, Balanagar Mandal, R.R. District. Layout plan was obtained and after formation of Kukatpally Municipality, by resolution-dated 29.12.1988 the Municipality approved the plan and HUDA also approved the same by proceedings dated 5.2.1990. It is admitted fact that as per layout plan 193 plots were carved out and an area of 2878 square yards was earmarked for park. Majority of the plot holders have already constructed apartments/complexes and are residing in the Colony known as Bhagyanagar Colony. On 30.12.1997 Writ Petition No. 1354 of 1997 was filed by five petitioners viz., Bhagyanagar Residents Welfare Association; Bhagynagar Colony Development Association; Bhagyanagar Colony Consumer Association; Bhagyanagar Mahila (all Societies registered under the Societies Registration Act) and Forum for Peoples Thought impleading the Government of Andhra Pradesh and District Collector, R.R. District as Respondents 1 and 2, Municipal Commissioner, Kukatpally Municipality as Respondent No. 3, Mandal Revenue Officer, Balangar as Respondent No. 4, HUDA represented by its Chairman as Respondent No. 5 and Sri Shirdi Sai Samaj represented by its Secretary as Respondent No. 6. The petitioners alleged that Colony had a population of about 8,000 and in the layout plan 2878 square yards was set apart for the purpose of development of a park, but in the years 1995-96 Shri Shirdi Sai Samaj, Bhagyanagar Colony constructed temple in an extent of 300 square yards out of 2878 square yards park area. It was alleged that Respondent No. 6 without obtaining the consent of the petitioners or the consent of the residents of the Colony got constructed the temple. The petitioners maintained that they have no objection for continuing the temple in an area of 300 square yards, but alleged that Respondent No. 6 taking advantage of the religious feelings of the occupants of the locality was trying to usurp the

remaining part of the area reserved for development of park by constructing a big complex in the name of Shri Sai Baba. Petitioners alleged that a reading room at one corner in the west and south of the colony measuring 30" x 15" (450 sq. ft.) had been constructed by them for the benefit of the colony and the Municipality had also approved it. Petitioners further alleged that since the residents of the colony had no objection for the temple being continued in a part of the park area to the extent of 300 square yards out of 2878 square yards, the petitioners want that the remaining area out of the park area should not be utilised for any other purpose other than the park. Therefore, in order to safeguard the interest of the members of the locality, direction was sought against Respondents 1 to 5 to protect the area of 2578 square yards and restraining Respondent No. 6 and others from raising any construction in the said remaining area.

3. In the aforesaid writ petition Municipality as well as HUDA filed counters. The Municipality in its counter-affidavit took a stand that no permission had been granted for raising any construction in the park area and that the said area reserved for park will vest in the Municipality and therefore the Municipality had stopped further construction of temple or any other construction in the open space of the society by issuing encroachment notice dated 18.11.1997 u/s 192 of A.P. Municipalities Act, 1965 informing Shri Shirdi Sai Samaj to remove the encroachments made in the open park space. All necessary steps had been taken by the Municipality to ensure that all encroachments are removed. On receipt of notice, the Secretary of Shri Shirdi Sai Samaj filed civil suit being O.S. No. 626 of 1997 and also filed I.A. No. 1778 of 1997 and prayed for an order of restraint against the Municipality from proceeding ahead to take action for demolition. Though the other respondents in the writ petition were served, they did not choose to contest the writ petition and no counter was filed even by Respondent No. 6 though duly served and duly represented by Counsel.

4. Another writ petition being W.P. No. 6524 of 2002 was filed by the Senior Citizens Council impleading the Municipality and Bhagynagar Residents Welfare Association as respondents seeking to challenge the action of the respondents in allowing the third parties to construct the structures in the park area admeasuring 2878 square yards. This writ petition was disposed on 11.4.2002 on the statement made by learned Counsel for the Municipality that the Municipality had taken all necessary steps to stop illegal construction and that the Municipality was not going to allow any construction in the park area. Learned Counsel for the petitioner represented that the Municipality had been approached for developing the park and to provide plants therein but no action had been taken, therefore, a direction was issued to the Municipality to consider the representation of the petitioner and to develop the park.

5. Bhagyanagar Residents Welfare Association filed another Writ Petition No. 22218 of 2002 impleading the District Collector and the Commissioner of Kukatpally Municipality as respondents and seeking directions to declare the

proceedings issued by the District Collector dated 1.11.2002 as violative of the provisions of Section 70 of the Municipalities Act and other relevant provisions of law.

6. It appears that after filing of W.P. No. 6524 of 2002 some differences arose amongst the residents of the colony. Some of them were in favour of having more area in possession of temple and to continue with the reading room and the other constructions, which had already come up in the park area. Others appeared to be opposed to this view. A notice had been issued by the Collector and at that stage the above Writ Petition No. 22218 of 2002 was filed, which was disposed by learned Single Judge on 8.11.2002 with the observation that the notice had been issued only for removal of illegal structures; therefore, no exception can be taken to the impugned notice. It was directed that in pursuance of the impugned notice the feasibility or otherwise of retaining any of the structure shall be considered, clarifying that no individual shall be entitled to have any proprietary or preferential rights as regards the possession or maintenance of the said public property.

7. Another Writ Petition No. 5902 of 2002 was filed by Bhagyanagar Colony Welfare Association impleading the Government of A.P. District Collector, Ranga Reddy District and the Municipality seeking direction to remove the constructions made in the area earmarked for park besides declaring the proceedings dated 5.3.2003 issued by the Collector, Ranga Reddy District to be illegal and ultra vires. By the said proceedings the Collector, R.R. District had ordered as follows:

In compliance with the orders of the Hon'ble High Court of Andhra Pradesh that no exception can be taken to impugned notice and directed that while taking further steps in pursuance to the impugned notice the feasibility or otherwise retaining to any of the structures shall be considered and also clarified that no individual shall be entitled to have any property or preferential rights as regard the possession or maintenance of public property under the suit.

In view of the above, it is ordered that the open space existing in S.No. 168 of Kukatpally Village be vested with the Municipality only. The structures which has been built be retained as reading room for the benefit of all others, but the ownership would vest with Municipality only, but under supervision of Bhagyanagar Residents Welfare Association.

8. Writ Petition Nos. 1354 of 1998 and W.P. No. 5902 of 2003 were heard together and were disposed by a common order, which is under challenge in these appeals.

9. By the impugned order, the learned Single Judge placing reliance on the decisions of the Supreme Court in Bangalore Medical Trust Vs. B.S. Muddappa and others, , M.I. Builders Pvt. Ltd. Vs. Radhey Shyam Sahu and Others, , observed that once a layout is approved showing an open space meant for a park or for a recreational purpose, under no circumstance, any authority be it the Government, the District Collector or the Municipal Body, is entitled to utilise the

land for any other purpose. It was held that the power of judicial review also extends in protecting the larger interests of the people and when it comes to ensuring constitutional governance by Rule of Law, equities have no place. Notwithstanding the fact that Shri Shirdi Sai Baba Temple had come up, it was held that the same would not totally subserve public purpose of all people. Considering the fact that the Welfare Association of the residents had no objection in continuing the temple in an area of 300 square yards, the aforementioned directions were issued. This order is under challenge in three separate writ appeals. Shri Shirdi Sai Samaj has filed W.A. Nos. 746 and 748 of 2003 and Bhagyanagar Colony Residents Association has filed WA No. 848 of 2003.

10. Learned Counsel appearing for Shri Shirdi Sai Samaj submitted that learned Single Judge in the impugned order has observed that the actual area occupied by Shri Shirdi Sai Samaj shall be excluded and the other structures whether temporary or permanent shall be dismantled and removed forthwith and the area shall be developed as park, therefore, it is the actual area occupied by Shri Shirdi Sai Baba Temple which has to be excluded from being developed as a park. It was contended that the temple was in an area of 1347 square yards and not in 300 square yards. Therefore, the impugned order deserves to be modified by holding that the actual area in occupation of the temple be not developed as park and be continued to be kept with the temple for which he prayed that a Local Commissioner be appointed to measure the exact extent of the area in occupation of the temple.

11. We have given our careful consideration to the submissions made by the parties and have gone through the material on record.

12. At the outset, we may state that there is no right vested in Shri Shirdi Sai Samaj to continue in occupation of the area reserved exclusively for development of park. It was the categorical version of the writ petitioners in W.P.No. 1354 of 1998 in which Shri Shirdi Sai Samaj was impleaded as Respondent No. 6 that the temple had been constructed in an area of 300 square yards only. No objection was taken at that stage or thereafter in the said proceedings indicating that the Sai Samaj was in occupation of an area more than 300 square yards. As such, for the first time in this appeal Shri Shirdi Sai Samaj cannot be permitted now to urge that since it is in occupation of more than 300 square yards of land, therefore, the entire area in its occupation be protected. Needless to add that Shri Shirdi Sai Samaj had filed O.S.No. 626 of 1997, which was also dismissed. No part of the park could have been given or handed over to Shri Shirdi Sai Samaj or to any other person for any purpose except development of the park. In the light of the facts brought on record, no exception can be taken to the view of the learned Single Judge, which is a settled view in law that once lay out is approved showing an open space meant for a park or for a recreational purpose, under no circumstance, the same can be allowed to be utilised for any other purpose. Layout plan has not so far been modified or changed; it continues to

remain as it is. Learned Single Judge proceeded to exercise his judicial discretion considering the facts and circumstances of the case that since temple was already constructed in an area of 300 square yards, therefore, the said construction in the shape of temple be not dismantled further enjoining upon the authorities to develop the remaining area as park. In case Shri Shirdi Sai Samaj or the persons managing the affairs of the temple have at any time encroached upon further area than 300 square yards, in our considered opinion, there is no equity in favour of the Samaj or any other person to continue to hold the said excess area claiming that since more area is in occupation of the temple, the same be allowed to be retained by it. We find no force in the submission of the learned Counsel for the Samaj that even the learned Single Judge was of the view that the actual area occupied by the temple shall stand excluded from the park area. There is nothing in the order or even suggest to give such an impression. In the latter part of the second direction contained in the impugned order, the learned Single Judge specifically made it clear that the area of about 2,597 square yards, after excluding 300 square yards of extent occupied by temple be developed as a park. We are also not impressed with the submission made by the learned Counsel appearing for the Samaj that filing of writ petition is the handiwork of few individuals who are managing the affairs of the petitioner's association and, therefore, it will be not in the interest of the residents of the colony that any construction which has come up as temple even beyond 300 yards i.e., to the extent of 1347 square yards be dismantled.

13. Be it noted that the writ petition was filed for the welfare of the residents of the colony by five different associations projecting a common grievance alleging that the temple had come up in an area of 300 square yards, therefore, they had no objection if the temple is allowed to continue in the said area but what they wanted was that no part of the remaining area, earmarked for park should be permitted to be developed for any other purpose other than park. We were shown certain photographs of the temple area, to substantiate the claim that the temple was in occupation of more than 300 square yards. Temple admittedly was in an area of 300 square yards. In case the appellant got a plan prepared for further development of temple to make it a larger complex, in the open space meant for the park, the same cannot by itself confer any right on the Samaj now to urge that it's possession extends over a large extent of area and same be protected. As observed above, the Samaj or Temple has no title over the property and cannot claim any protection beyond 300 square yards of area.

14. We do not find any force in the appeals, which are accordingly dismissed.

15. The parties are directed to bear their respective costs.