
(2021) 01 TEL CK 0002
In the Telangana High Court
Case No : Writ Petition No. 6914 Of 2019

Vijaya Educational Society Chintal

APPELLANT

Vs

State Of Telangana

RESPONDENT

Date of Decision : 04-01-2021

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2021) 01 TEL CK 0002

Hon'ble Judges : Challa Kodanda Ram, J

Bench : Single Bench

Advocate : V. Narasimha Goud, G. Narender Reddy

Final Decision : Allowed

Judgement

Challa Kodanda Ram, J

Challenging the action of the respondents and their men in interfering with the peaceful possession and enjoyment of the petitioner over plot area of

2400 square yards, Sector-B in Survey Nos. 255, 261, 262 Part, 263 Part, 264 Part in the lay out plan of Laxminagar Colony situated in Aushapur

Village, Ghatkesar Mandal, Medchal-Malkajgiri District, this Writ Petition is filed.

The petitioner is a Society registered under the Societies Registration Act, with Registration No. 511/2016, with the object of running educational

institutions. It purchased the subject land in the lay out in the name and style - Lakshmi Nagar Colony approved by the gram panchayat on 06.06.1979

with modifications approved on 06.09.1993, from M/s Amal Ceramics Limited through its Registered General Power of Attorney Holder Sri K. Linga

Reddy through the registered sale deed No. 2912 of 2016, dated 16.05.2016. The property is bounded with North: 30' wide road; South -25'??

wide road; East - Plot Nos. 104 and 105, and West-30' wide road. Though the property was converted into non-agricultural land, much prior to the enactment of the Telangana Agricultural Land (Conversion for Non-Agricultural Purposes) Act, 2006, to avoid future controversy, the petitioner approached the competent authority to convert the subject land into non-agricultural purposes by paying requisite fee and the same was granted vide proceedings No. B2/1754/2017, dated 05.02.2018. While things stood thus, the officers of Respondents 2 and 3 started harassing the petitioner to hand over physical possession of the land, else threatened to initiate proceedings against them. Though, initially, the petitioner ignored the same, on account of constant pestering of the authorities for extraneous reasons, it was constrained to approach this Court by invoking the jurisdiction under Article 226 of the Constitution of India.

A counter-affidavit was filed by the 3rd respondent denying the allegation of any of his officials interfering with the petitioner's property. The assertion of the petitioner that total extent of Acs.65.14 guntas of the land in subject survey numbers was converted into residential plots and a lay out came to be approved in 1979 by the gram panchayat which was subsequently modified on 06.09.1993 is denied as no such Resolutions are available with the gram panchayat. It is stated that even as per the petitioner, the subject land was earmarked for construction of a school and playground which is a public purpose, however, the open spaces left in a lay out, for whatever purpose it is, automatically vest with the gram panchayat and the land owner has no manner of right to deal with the same and thus, the ownership claimed by the petitioner is not tenable. It is also stated that the entire area analysis shown in the lay out filed by the petitioner would show the extent of plotted area, roads area and public purpose area except those no other area was shown as private area to claim by the owner who made the lay out and that the open spaces shown in the lay out other than plotted area and roads area would fall under the public purpose area and thus, the claim of the petitioner that the area is a private area is not correct.

According to the counter, the petitioner had failed to file any other proof with respect to their possession except the sale deed, that as per the lay out copy available with the gram panchayat records, the area is shown as park and there is every reason to believe that the lay outs are fabricated. It is

further stated that the competent authority to regularize the unauthorized lay outs being HMDA, the petitioner ought to have made HMDA as party

respondent. It is alleged that the petitioner is only trying to grab the land which is vested with the gram panchayat, hence, prayed for dismissal of the

Writ Petition.

The petitioner filed I.A. No. 3 of 2019 to place on record certain documents annexed thereto. Since unopposed, the Application is allowed and the documents are made part of the record.

Sri V. Narsimha Goud, learned counsel for the petitioner, while reiterating the factual aspects pleaded in the affidavit and making reference to the

copy of the lay out, would assert that the original lay out approved in 1979 was modified on 06.08.1993 and had become final, wherein the subject area

was shown as area meant for construction / utilization of school and playground. Placing reliance on the judgment of this Court in Lakshmi Nagar

Colony Residents Association, R.R. District v. Hyderabad Urban Development Authority (2015) 3 ALD 53,3 he would contend that the land

earmarked in a lay out for a public purpose ie. for open / lung spaces and amenities are distinct and the land earmarked for amenities does not belong

to / vest with the local authorities and the owner of the land in an approved lay out is not divested with the title and ownership over the property. The

learned counsel refers to G.O.Ms.No. 67, dated 26.02.2002 as amended by G.O.Ms.No. 274, dated 12.06.2007 and asserts that even the Rules do not

provide for automatic vesting of the area earmarked for amenities with the local bodies and thus, the claim of the respondents is untenable.

Sri G. Narender Reddy, learned Standing Counsel for the respondent gram panchayat would contend that the property left for the school in the lay out

would be the property of the local body and at any rate, there being no record with the gram panchayat, the Writ Petition is liable to be dismissed. He

further contends that construction of school building is the issue required to be dealt with by the HMDA and in the absence of it being a party

respondent, this Writ Petition is not maintainable.

Perused the record and considered the submissions of the learned counsel on both sides.

It is not in dispute that the petitioner acquired the subject property through the registered sale deed executed for and on behalf of the rightful owners

of the property. While the respondents, on the one hand, denied the very existence of the lay out, contradicting the same, in the counter-affidavit, it

was stated that a copy of the lay out is available with the gram panchayat records as per which, the subject area was shown as "park area".

However, the respondents had failed to place the same on record. In the light of the authenticated copy produced by the petitioner, this Court does not

see any reason to disbelieve the same. There is yet another reason for accepting the copy of the lay out produced by the petitioners; in the additional

documents filed by way of I.A.No. 3 of 2020, the sale deed (document No. 12880 of 2003) executed by the owners of the property on 18.10.2003 in

favour of one Sri Vallakati Yadagiri, S/o Sri Babayya in relation to plot No. 104 of Sector-B over 300 square yards is placed. In the said sale deed,

towards West it was shown as school and its play ground. Likewise, in the sale deed executed on 18.10.2003 under document No. 12881 of 2003, the

western boundary was shown as school and play ground. It may be noted that the boundaries mentioned in the petitioner's documents, towards

Eastern side, it was shown as plot Nos. 104 and 105. While the eastern boundary of the petitioner's plot being Plot Nos. 104 and 105, Western

boundary of the plot Owners of 104 and 105 is the school. These two documents are of the year 2003 and there is no dispute with respect to them.

Further, in exercise of the power conferred in terms of G.O.Ms.No.151, MA & UD (M1) Department, dated 02.11.2015, the HMDA authorities had

regularized Plot Nos. 105 and 104 vide proceedings dated 23.01.2018 and 29.01.2018. In the face of this material placed before this Court, and there

being no challenge to its authenticity, the contention of the learned Sanding Counsel for the 3rd respondent that there exists no lay out and the land

claimed by the petitioner is earmarked as "park area" is false and contrary to the record. It may also be noted that the 3rd respondent, in one

paragraph of the counter-affidavit, totally denied the existence of lay out and in another paragraph, had taken a contra stand that copy of the lay out is

available with the gram panchayat records which prima facie go to show that the sworn affidavit filed on behalf of the 3rd respondent is not truthful

and that he is liable to be prosecuted for perjury.

The judgment of this Court cited by the learned counsel for the petitioner is squarely on this point and the learned Single Judge, while rejecting various

contentions, held that 1) the authorities has power to modify a lay out even after the same is released, however, subject to the condition of giving

notice to the residents of the colony and the gram panchayat (in the said case, the challenge was to the lay out modification granted by the HMDA);

2) the amenities areas in the approved lay out plan continue to belong to the owner / profounder of the lay out , in the absence of any transfer of their

right in favour of the residents society / local authority ; 3) there is no statutory provision transferring the rights of the area earmarked for amenities

other than the areas transferred in favour of the local bodies for public purpose and there is no automatic vesting of rights in local bodies with respect

to such lands; 4) there are no rules existing to execute any gift deed in favour of the local authorities in respect of "amenities area", unlike in

respect of open areas and road areas. This Court is in respectful agreement with the analysis, reasoning and the conclusions arrived at by the learned

Single Judge.

In the light of the above, the Writ Petition is allowed holding that the claim of the gram panchayat that the land vests with the gram panchayat and as

such they had right to interfere with the possession and enjoyment of the petitioner as untenable. No costs.