
(2002) 02 AP CK 0009
In the Andhra Pradesh High Court
Case No : SA No. 144 of 1994

Visakhapatnam Urban Development Authority, Visakhapatnam	APPELLANT
Vs	
Bharathi R. Darayani and Another	RESPONDENT

Date of Decision : 21-02-2002

Acts Referred:

Andhra Pradesh Urban Areas (Development) Act, 1975 — Section 43
Hyderabad Municipal Corporation Act, 1955 — Section 427

Citation : (2002) 3 ALD 84 : (2002) 3 ALT 272

Hon'ble Judges : G. Yethirajulu, J

Bench : Single Bench

Advocate : Sumalini Reddy, SC, for the Appellant; C. Subba Rao, for the Respondent

Final Decision : Allowed

Judgement

1. The appellant is the 1st defendant in OS No. 1238 of 1985 on the file of the III Additional District Munsif, Visakhapatnam. The 1st respondent herein is the plaintiff and the 2nd respondent is the 2nd defendant in the said suit.
2. The plaintiff filed the suit for declaration that the notices issued by the 1st defendant on 14-5-1985, in June, 1985 and August, 1985 and a notice dated 18-5-1985 issued by the 1st defendant are illegal, invalid, arbitrary and untenable under law and for a consequential permanent injunction restraining the defendants and their officers and men from interfering with the peaceful possession, use and enjoyment of the building owned by her.
3. The plaintiff averred that she is the owner of the building constructed in Plot No. 14 under MS No. 76, Block No. 9 of Waltair. The 2nd defendant granted permission for construction of the said building on an application made by her. She constructed the building as per the building rules as applicable to Visakhapatnam Municipal Corporation. After completion of the construction, the plaintiff leased out the said building to Karachiwala Departmental Stores, and they are running the Stores since May, 1985. while the matter stood thus, on

14-5-1985, the 1st defendant issued a notice u/s 13(A&B), Section 41(1), Section 43(1) and Section 57(3)(b) of the Andhra Pradesh Urban Areas (Development) Act, 1975 (hereinafter referred to as "the Act"). The building is situated in Siripuram area where office and commercial complex of Visakhapatnam Urban Development Authority (VUDA) are situated and it is not purely a residential area. After the receipt of the notice, the plaintiff submitted an explanation on 21-5-1985 requesting for exemption. The 2nd defendant issued a notice on 18-5-1985 asking the plaintiff to remove the commercial activity and on the same date the 2nd defendant assessed the building for non-residential purpose and collected tax for the same on 5-8-1985. Subsequently, on the advice of the Town Planning Officials of the 2nd defendant, the plaintiff filed second application with a fresh plan for approval in respect of the construction of the building as a commercial building. u/s 437 of the Hyderabad Municipal Corporation Act, if the plan is not either returned or refused within 30 days of the submission of the plan, it is deemed to have been approved and the applicant is entitled to proceed with the construction of the building or proceed with the work. As the plan submitted by the plaintiff on 10-6-1985 was not returned or rejected it is deemed under law to have been approved. When once the plan is deemed to have been approved, neither of the departments have any right to interfere with the same. The permission of the 1st defendant is not required and there is no difference between the building rules of the Hyderabad Municipal Corporation and Visakhapatnam Municipal Corporation. The plaintiff deposited the development charges for the building to be used as a commercial area on 9-10-1985 to the 1st defendant. After paying the said development charges, the plaintiff was expecting orders from the 1st defendant, but suddenly on 3-11-1985, during the absence of the plaintiff and her representatives, when the shop was closed, at about 5.00 p.m., the officers of the first defendant began demolishing the building of the plaintiff and when she approached the Vice-chairman and the Chief Town Planning Officer of the 1st defendant requesting to stop the demolition, they obtained an undertaking on a stamp paper, under the threat of demolition and it is not valid. The 1st defendant with a mala fide intention demolished a portion of the building. Hence, the suit.

4. The 1st defendant through its written statement contended that the payment of development charges made by the plaintiff for conversion of residential area into commercial area do not confer any right on the plaintiff and it can be done only on the modification of the master plan by the State Government as contemplated u/s 12 of the Act. The averment of the plaintiff that the permission is deemed to have been granted u/s 437 of the Hyderabad Municipal Corporation Act is misconceived as such permission is required to be sought from the Government under the Act and not under the Hyderabad Municipal Corporation Act. As per the master plan, the area where the building of the plaintiff is situated is in residential zone and the triangular area as shown in Ex.B8 master plan in blue colour is in commercial zone designated for commercial and community facility purposes. The plaintiffs building is in the residential zone. The

plaintiff obtained permission for construction of a residential house. The ground floor is intended for garage, servant quarters, stores and pump house. But the plaintiff is allowing commercial activity to be carried on therein resulting in change of use of the land for residential purpose to commercial purpose which is not permissible without necessary sanction from the Government and modification of the master plan and zonal plans u/s 12 of the Act. The mere fact that the development charges have been paid does not confer any right on the plaintiff. Having realized this, the plaintiff also applied for permission and undertake to remove the departmental stores will be removed. The 1st defendant, is therefore, within its rights in ordering demolition of the building in question since the plaintiff failed to stop the offending activity despite ample opportunity. The building of the plaintiff is located at Siripuram junction which is a very important traffic junction and all the people coming from airport and the railway station have to pass through this junction to go to the town and it is creating confusion and conflicting point for traffic accidents. There is no cause of action for the plaintiff to file the suit against the defendants and the suit is not maintainable under law. It is, therefore, liable to be dismissed with exemplary costs.

5. The plaintiff in support of her case examined PWs.1 and 2 and marked Exs.A1 to A94. The 1st defendant examined DW1 and marked Ex.B1 to B8.

6. The 2nd defendant - Municipal Corporation of Visakhapatnam after filing of the written statement did not participate in further proceedings.

7. The trial Court after considering the oral and documentary evidence and the relevant provisions of the Act held that the plaintiff is entitled for a declaration and permanent injunction as prayed for through its judgment dated 16-8-1991. The 1st defendant being aggrieved by the judgment and decree of the trial Court preferred AS No. 152 of 1991 on the file of the District Judge, Visakhapatnam, the learned District Judge after referring to all the provisions of the Act, the evidence adduced by both parties and the evidence of the trial Court, came to the conclusion that there are no grounds to interfere with the findings of the trial Court and accordingly dismissed the appeal through its judgment dated 30-4-1992.

8. The 1st defendant having lost its case before both the lower Courts preferred this appeal challenging the validity and legality of the judgment and decree of the first appellate Court. In the memorandum of appeal, the appellant mentioned that there are two substantial questions of law. They are:

"1. Whether the jurisdiction of the civil Court in entertaining the suit is barred on account of a statutory appeal provided under A.P. Urban Areas (Development) Act;

2. Whether the Urban Development Authority has ample power to give notice and to take appropriate steps when the master plan or zonal regulations are violated"

9. It is an undisputed fact that the plaintiff permitted the residential building being used to run "Karachiwala Departmental Stores" the Act empowers the Urban Development Authority to take certain action in case of violation of the rules regarding construction of the buildings or the modifications that are being carried out by the respective owners of the buildings.

10. The plaintiff has been contending that the 1st defendant has no power to issue the impugned notices and has no power to demolish the building or a portion of the building. It is further pleaded that the notices issued by the Urban Development Authority are illegal and the plaintiff is entitled for the relief of declaration and the consequential relief of permanent injunction. The Courts below have made a peculiar approach to the issue by observing that when certain commercial activities by others are allowed to be carried out in residential areas, the Urban Development Authority cannot discriminate the plaintiff and point out that the building which was constructed for residential purpose cannot be used for commercial purpose, there is no modification in the structure of the building. In the light of the observations made by both the Courts below and in view of the contentions of the respective parties, I am of the view that the following are the substantial questions of law for consideration before this Court:

(1) Whether the Urban Development Authority has power to invoke the provisions of the A.P. Urban Areas (Development) Act, 1975 in the event of violation of any regulations relating to master plan or zonal plan?;

(2) Whether the findings of the first appellate Court are on the basis of the evidence available on record and the provisions of the Act and whether the findings of the first appellate Court are tainted with perversity?

11. The plaintiff admits that she obtained permission for construction of the building as a residential house. As per Ex.B8 master plan, the house of the plaintiff is located in yellow marked area, which is shown as a residential zone, of the master plan. The plaintiff obtained permission Ex.A1 from the concerned authorities to utilise the ground floor for parking, vehicles servant quarters and for pump house etc. It is an undisputed fact that a departmental stores known as "Karachiwala Departmental Store" is located since May, 1985. The plaintiff admits that it is a commercial activity in a residential building. The 1st defendant contends that certain modifications have been made internally to make the ground floor useful for running the departmental store, which cannot be undertaken without prior permission from the Government. The learned Counsel for the appellant drew the attention of this Court to certain provisions of the A.P. Urban Areas (Development) Act, 1975.

Section 2(b) defines development and it reads as under:

"development" with its grammatical variation means the carrying out of all or any of the works contemplated in a master plan or zonal development plan referred to in this Act, and the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in

any building or land and includes redevelopment".

The learned Counsel for the appellant submits that since the house of the plaintiff is located in the development area, it is governed by the regulations under the Act.

Section 12(6) of the Act reads as follows:

"If any question arises whether the modifications proposed to be made by the Authority are modifications which effect important alterations in the character of the plan or whether they relate to the extent of land-uses or the standards of population density, it shall be referred to the Government whose decision thereon shall be final".

12. From a reading of the above section it is clear that any modification can be made if the authority is of the opinion that it does not effect important alterations in the character of the plan and which do not relate to the extent of the land use or the standards of the population density, whenever the modifications are proposed to be made by the authority it shall refer to the Government whose decision shall be final. Therefore, if any owner of the house wants to change the residential building into a commercial one which is situated in a residential zone, he has to make an application to the Urban Development Authority for permission accompanied by plan regarding the modification and the development charges and the said authority in turn has to forward the same to the Government for its approval and on the approval made by the Government, necessary modifications can be ordered by sanctioning permission to the revised plan to make the premises to be used for commercial purpose. It is asserted by the learned Counsel for the appellant that by virtue of the powers vested u/s 13 of the Act, the Government issued necessary notifications declaring the development areas including the area covered by the house of the plaintiff. Sub-rule (5) of Rule 15 of the Urban Development Authority (Hyderabad) Rules, 1977 (hereinafter referred to as the "Rules") reads as under:

"Rule 15(5):

Any person who intends to develop or change any use of any land or building under the provisions of the Act shall, along with the application for permission on a prescribed form, pay the development charges levied at the rates specified in the Table under Sub-rule (6) of this rule to the Authority, or to the local authority if powers have been delegated to the latter by the Authority u/s 56 of the Act.

Provided that such development charges shall be levied only with effect from such date as the Government may by notification specify in, that behalf."

13. This sub-rule indicates the procedure to be followed by the persons who proposes to change the use of the building. It is contended by the learned Counsel for the appellant that subsequent to two show-cause notices issued by the Urban Development Authority, the plaintiff remitted development charges and submitted plans without submitting any application for change of the use of

the premises and in the absence of such an application, it will not be possible for the concerned authority to process the case and to forward the same to the Government for appropriate orders. Though the learned Counsel for the respondent drew the attention of this Court to the contents of Ex.BI, it is only a reply given to Ex.A2 show-cause notice and it is not an application made by the plaintiff. According to the procedure prescribed under Rule 15(5) of the Rules, the plaintiff without making any application leased the premises for running departmental stores. It is a residential zone where the commercial activity is not supposed to be undertaken without the permission from the Government. The plaintiff ought to have made an application for change of the use of the premises to the concerned authority and after obtaining permission she ought to have permitted the lessee to run the departmental stores. The averments of the plaint disclose that she gained an impression that since she paid the development charges by submitting plans, she will be granted permission automatically. Her further impression is that if the permission is not accorded within 30 days, it would be deemed that the permission has been accorded. Therefore, she asserts that as per Section 427 of the Hyderabad Municipal Corporation Act, she can avail the deemed provision and can have the benefit of running the departmental store treating that the permission has been accorded.

14. Even according to Section 427 of the Hyderabad Municipal Corporation Act, if a owner of a land makes an application seeking permission for construction of a building by complying all the requirements and when it is legally permissible to construct such a building or making such a modification, then, only the deeming provision comes into operation, but not in each and every case where the applications are made in violation of the building rules or the relevant rules under the Act.

15. The 1st defendant issued notices under Sections 41(1), 43(1) and 57(3)(b) of the Act mentioning that the plaintiff was undertaking unauthorized development of commercial structures in a residential area. Section 41 relates to penalties authorizing the concerned authority to impose fine upto Rs.10,000/- if any person undertakes or carries out development in his land in contravention of the master plan or zonal development plan or without permission of the appropriate authority. u/s 43, the Urban Development Authority is authorized to stop unauthorized development made in contravention of Section 13 or without permission or approval in relation to the development area. The relevant portion of Section 43 reads as under:

"Section 43: Power to stop unauthorized development:--(1) Where any development in any area has been commenced in contravention of the provisions of Section 13 or without the permission, approval or sanction referred to in that section or in contravention of any condition subject to which such permission, approval or sanction has been granted:-

(i) in relation to development, the Authority or any officer of the authority empowered by it in this behalf;

(ii) in relation to any other area specified in Sub-section (7) of Section 13 within the local limits of a local authority, the competent authority thereof, may in addition to any prosecution that may be instituted under this Act, make an order requiring the development to be discontinued on and from the date of the service of the order, and such order shall be complied with accordingly.

(3) If any development in an area specified in Sub-section (7) of Section 13 has been commenced in contravention of the Master Plan or Zonal development plan or without the permission, approval or sanction referred to in Section 13 or in contravention of any condition subject to which such permission, approval or sanction has been granted and the competent authority has failed to make an order under Sub-section (1) or, as the case may be, a requisition under Sub-section (2) within the time that may be specified in this behalf by the Director of Town Planning, the Director may, after observing such procedure as may be prescribed, direct any officer to make the order or requisition as the case may be, and that officer shall be bound to carry out such direction, and the order or direction made by him in pursuance of the direction shall be complied with accordingly.

(6) No compensation shall be claimed by any person for any damage which he may sustain in consequence of the removal of any development u/s 42 or other discontinuance of the development under this section.

(7) The provisions of this section shall be in addition to, and not in derogation of any other provisions relating to stoppage of building operations contained in any other law for the time being in force."

16. This section authorizes the concerned authority to issue any direction including removal of structure made in contravention of the provisions of the Act and the owner of such premises is not entitled for compensation for demolition made by invoking the provisions covered by Section 42 of the Act. The learned Counsel for the appellant submitted that Section 57 of the Act has over riding effect over any other law, therefore the provisions covered by the Act will prevail over the provisions of other Acts.

17. Except saying that the notices issued by the appellant are illegal, the plaintiff could not place on record as to how those notices are illegal and what are the relevant provisions under which the concerned authorities are supposed to take action. The learned Counsel for the respondent submitted that since DW1 during the cross-examination expressed her inability to give the particulars relating to residential zones, commercial zones, details regarding the existence of shops, commercial complexes in the residential zones and as the appellant failed to produce the relevant records including the plans relating to the zonal areas, it cannot be said that the appellant is authorized to proceed against the plaintiff on the ground that the commercial activity cannot be continued in the premises.

18. The object of the Act is to regulate the construction activities in urban areas by grouping certain activities confining them to certain areas so that there will be

a systematic development of urban areas. The violation of the provisions of the act intended for the benefit of the general public will lead to chaos and unplanned development of the urban areas. It is clear from the provisions referred to above that the urban development authority is competent to take necessary steps to regulate the development of the areas covered by the master plan or zonal plans and in the event of any modifications to be made to such areas, the Government is vested with the power to accord such permission to the concerned authority to change the zones on the basis of the local requirements and on satisfying with the individual cases that they can make such changes in such areas. The plaintiff on one hand says that he is entitled to continue the commercial activity in the building since it is being carried out without making any changes to the structure of the building and on the other hand makes the payment and submits plans for permission to make necessary changes. If the Urban Development Authority fails to follow the procedure prescribed under the Act or Rules, the legality of such procedure can be questioned and in the event of violation of such Rules, the aggrieved party may approach the concerned authority or the Court seeking protection from implementation of such illegal orders. But, in the case on hand the plaintiff halfheartedly concedes that she is carrying on commercial activity through his lessee by running a departmental store in a residential house which is against the provisions of the Act. He is not entitled to say that the appellant has no authority to take appropriate steps to prevent such activity. I am, therefore, convinced that the appellant has every power to take necessary steps by invoking the provisions of the Act and by following the procedure prescribed under the Rules to prevent violation of any of the rules covered by the Act. This point is accordingly answered in favour of the appellant.

POINT No. 2:

19. The trial Court granted the relief of declaration by holding that the notices issued by the appellant are illegal and that the plaintiff is entitled to injunction restraining the Urban Development Authority from taking necessary steps authorized under the Act. In support of those findings, the trial Court observed that as per the evidence of DW1, there are shops, and hotels situated in the residential areas and there are petty shops opposite to circuit house. The trial Court further observed that as per the evidence of DW1 a responsible officer of the 1st defendant, it is apparent that the 1st defendant has been exercising its powers with discrimination by ordering and demolishing the suit schedule building alone while allowing other commercial complexes in the residential area to continue. The trial Judge in support of his findings further observed that the Urban Development Authority failed to produce the papers relating to sanction of Town Planning Scheme in VUDA and booklet showing the particulars of the areas covered by commercial, residential and recreational zones. It is further observed by the trial Judge that the 1st defendant has to show that the suit buildings is in residential area and that the triangle area where the office building of the 1st defendant is located is designated for commercial and community facility

purposes and that the master plan was sanctioned by the Government as per G.O. Ms. No. 708, MA, dated 29-8-1970 while the zonal plans were sanctioned as per G.O. Ms. No. 87, M.A, dated 9-2-1984. Since the 1st defendant did not produce the zonal plan and approved booklet showing the particulars of zone in Waltair Ward (Ward No. 46). The allegation of the 1st defendant that the suit schedule building falls within the residential area and the 1st defendant's office and commercial complex and other commercial shops fall within the commercial area cannot be believed. At another part of the judgment, the trial Court observed that the 1st defendant cannot exercise its powers with discrimination and if the provisions of the Act are mandatory it shall apply the provisions to all commercial complexes in the said area without any discrimination and since the notices covered by Exs.A2, A9 and A10 and demolition of the suit schedule building on the public holiday subsequent to the receipt of the development charges under Ex.A8 are without taking any action on the application dated 21-5-1985 covered by Ex.B1 and allowing other commercial complexes and business shops to run in the same locality would show that the 1st defendant is using its powers with discrimination by not observing the provisions under the Act.

20. It is the specific plea of the 1st defendant that the building of the plaintiff is situated in residential zone. Ex.A1 approval also discloses that the approval was given for construction of a residential house. The 1st defendant produced Ex.B8 extract of the master plan to indicate the areas, which are classified as residential zones. It is also indicated in the said plan that the building of the plaintiff is located in the residential zone. The grievance of the plaintiff is that since that VUDA complex with commercial and recreational activities is situated at a short distance from the plaintiffs building, separated by 100 feet road, the plaintiff contends that in order to protect its interest for the development of its complex, it made the plaintiff a target. The plaintiff mainly harps upon the replies given by DW1 and pleads that since the records pertaining to the development areas are not produced, to clarify that the building of the plaintiff is situated in the residential area exclusively and the VUDA complex is situated in commercial area, it shall be held that there is no illegality in using the premises for commercial purpose. Whenever there are two zones, generally they will be adjacent to each other. There is every possibility of one zone being declared as a residential zone and the other as a commercial zone. The area located within the commercial zone can be utilized for the commercial purpose and all commercial activities can be taken up after obtaining necessary permissions from the concerned authorities and since the residential zone is meant to locate residential houses to keep them away from all kinds of pollutions, it cannot be said that since the residential zone is abetting commercial zone, the people in the residential zone shall be allowed to undertake commercial activities as they like. It is not the case of the 1st defendant that the plaintiff shall be permanently prevented from utilizing the building for commercial activities. It is its specific plea that in the event the plaintiff decides to use the entire or part of the building

for commercial purpose, the plaintiff has to follow the procedure prescribed under law and after obtaining necessary permission for such changes, the plaintiff is entitled to undertake such activity. Until then, the Urban Development Authority is entitled and empowered to take steps to prevent such commercial activity in the residential zone.

21. Whenever an issue is brought before a Court of law for adjudication, the Court is supposed to adjudicate that issue on the basis of law in force, the legal position and the factual matrix and arrive at a conclusion supported by reasons. The issue before the trial Court as well as the first appellate Court is whether the plaintiff is allowing the lessee to run a departmental store in violation of the provisions under the Act and whether the Urban Development Authority is empowered to take appropriate action to prevent such activity. But, unfortunately both the Courts below with one voice started commenting that the Urban Development Authority discriminated the plaintiff by initiating action against her while leaving others who violated the rules and who are undertaking similar activities in the residential zones. The 1st appellate Court while joining chorus with the trial Court further observed that since the modifications made by the plaintiff are minor in nature and within the structure of the residential building, it cannot be treated as violation of the provisions of the Act. The first appellate Court consciously knowing that the ground floor of the building was meant for garage, servant quarters and pump house started legalizing the running of the departmental store which was established after taking certain modifications in the ground floor by making the observation that it is only a minor violation. It is the further observation of the first appellate Court that since the plaintiff made an application by paying the development fee and submitting the plans and as the concerned authority did not pass any order on the said application, the plaintiff is entitled to continue the said activity. I have already observed that the facility of deemed permission can be invoked only when the application for making any construction or alteration is in accordance with rules. If the activity is already commenced in violation of the rules, such activity cannot be treated as a legal act and the concept of deemed permission will not come to the rescue of the plaintiff. According to the plaintiff Ex.B1 is an application. After a careful reading of the said exhibit, it is made to understand that it is a reply sent to the notice covering Ex.A2 given by the 1st defendant and it is not an application as required under Rule 15(5) of the Rules.

22. The learned Counsel for the respondent submitted that the vindictive attitude of the 1st defendant is evident since there was no complaint from any people of the locality that the running of the departmental stores is causing any kind of nuisance or inconvenience to them. The Urban Development Authority is meant to watch the development of the urban area and detect the violations and take necessary steps to prevent them from resorting to such violations. Since it is the duty of the Authority to enforce the provisions of the Act, it need not necessarily be prompted by somebody that a particular violation is going on. If people come forward voluntarily, it is well and good and in the absence of such

representations or complaints, the Urban Development Authority is not precluded from exercising its power conferred under the Act. Except repeatedly observing that the 1st defendant discriminated the plaintiff while allowing many others to continue their commercial activities in the residential areas, both the Courts below did not give specific findings on the powers of the Urban Development Authority on the procedure followed by the Authority.

23. After going through the judgments of both the Courts below, I am of the view that both the Courts have gone out of track which led to perversity in coming to the findings touching upon the issues involved in the matter and I am constrained to ransack the evidence and the judgments of both the Courts below and interfere with the findings of both the Courts.

24. In the light of the above discussion, I am of the view that the judgments of both the Courts below do not stand for legal scrutiny and they are liable to be reversed.

25. It is an undisputed fact that the plaintiff allowed the lessee to run the departmental stores since May, 1985. It is also an undisputed fact that the plaintiff paid development charges for the purpose of conversion for change of land use. It is also undisputed fact that he submitted certain plans. The learned Counsel for the appellant submitted that since the plaintiff did not make any application along with the plans and development charges, it could not be processed. The plaintiff contends that application has been submitted and the 1st defendant contends that no such application has been received. No doubt, the 1st defendant is empowered to take appropriate steps in this type of cases, but since they slept over the matter without taking any action on receiving the development fee and plans, it may be proper to direct the plaintiff to submit a fresh application in the prescribed form by making necessary payment as per the existing rates within a period of 15 days from the date of receipt of a copy of this judgment and the 1st defendant shall take necessary steps by processing the application and forwarding the same to Government of A.P. for necessary orders. The concerned department of Government of Andhra Pradesh shall dispose of the said application by passing appropriate orders within three months from the date of receipt of a copy of the application. Pending consideration of the application, the 1st defendant is directed to defer further action in the matter.

26. In the result, the appeal is allowed by setting aside the judgments and decrees of both the Courts below. But, under the circumstances without costs.