
(2002) 03 AP CK 0008
In the Andhra Pradesh High Court
Case No : Writ Petition No. 2912 of 2000

Vishnu Mor

APPELLANT

Vs

Visakhapatnam Urban Development Authority and Others

RESPONDENT

Date of Decision : 28-03-2002

Acts Referred:

Andhra Pradesh Urban Areas (Development) Act, 1975 — Section 41(1), 42(1), 8(2)
Constitution of India, 1950 — Article 14, 21, 48A
Environment (Protection) Act, 1986 — Section 3
Environment (Protection) Rules, 1986 — Rule 5

Citation : (2002) 4 ALT 746

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

Bench : Single Bench

Advocate : T. Veerabhadraiah, T.S. Anand and Y. Srinivas Murthy, for the Appellant; Sumalini Reddy, SC for Respondent Nos. 1 and 2, M. Gangaram, Addl. SC for CG for Respondent No. 3, Asst. GP for the GP for Revenue for Respondent Nos. 4 to 6, D. Srinivas, SC for Gram Panchayat and V. Venkateswara Rao, for the Respondent

Final Decision : Dismissed

Judgement

V.V.S. Rao, J.

INTRODUCTION:

1. This writ petition is filed seeking a writ of mandamus declaring the notices issued by the first respondent bearing Rc.No. 143/ 99-G3 dt. 9-02-1999 and 13-12-1999 as illegal, arbitrary and contrary to the orders of this Court. The petitioner seeks a consequential direction not to interfere with petitioner's peaceful possession and enjoyment of the land in an extent of Acs. 1.05 in S.No. 292/1, 292/3, 292/4 and 294/7C. By the impugned notices the petitioner was requested by the first respondent to stop unauthorised construction immediately and obtain approval from the Shore Area Development Authority, the third respondent, (hereinafter called, SADA).

BACKGROUND FACTS-PLEADINGS:

2. The brief facts leading to filing of the writ petition be noted as follows. Mother of the petitioner purchased the property in question in 1987 under five registered sale deed"s. The property is situated outside the Visakhapatnam Municipal Corporation limits, approximately 25 Kms. away from Visakhapatnam city. It is abutting Visakhapatnam-Bheemili Beach Road. The mother of the petitioner so as to construct a residential building obtained building permission from Gram Panchayat of Kapuluppada, the seventh respondent herein on 20-01-1988. At that juncture the first respondent by public notice dated 3-04-1988 called objections from the aggrieved parties in connection with preparation of Draft Zone Development Plan of Rushikonda area under Sub-section (2) of Section 8 of Andhra Pradesh Urban Area Development Act, 1975 (for short, Development Act). The land falls within the area covered by Zonal Development Plan. The petitioner"s mother submitted her objections on 23-04-1988. According to the petitioner even before any orders could be passed by the first respondent thereon, the competent authority, the second respondent herein, issued a show-cause notice dated 21-04-1988 under Sections 41 (1) and 42 (1) of the Development Act alleging that the petitioner made constructions without obtaining permission from the first respondent. The petitioner was also directed to stop construction. The petitioner submitted a representation informing that his mother already obtained permission from the seventh respondent. Therefore, by another communication dt. 7-06-1988 the petitioner was asked to submit building plans for approval by the first respondent. The petitioner, it is alleged, submitted building plans for approval. By proceedings Rc.No. 1847-A/88/H-1 issued in July 1988 the first respondent refused permission for construction on the ground that residential building is not permissible in the zone reserved for Green Belt Area. In 1989 the petitioner"s mother died and when the first respondent with the aid of police demolished the walls of the building, the petitioner made a representation on 15-6-1989 in vain.

3. The petitioner filed a writ petition, being W.P.No. 10194 of 1989 before this Court. By judgment dt. 17-4-1997 this Court disposed of the writ petition observing that the permission granted by the Gram Panchayat much prior to the notification of Zonal Development Plan earmarking the land for Green Belt, Area the same would prevail and the petitioner is entitled to go ahead with the construction in accordance with the permission granted by the Gram Panchayat. Again in 1999, the first respondent issued impugned orders in February and December. The petitioner submitted a representation whereupon he was asked to obtain approval from SADA in terms of Coastal Regulation Zone (CRZ) Rules issued vide notification dt. 19-02-1991 by the Ministry of Environment and Forests, New Delhi. According to the petitioner, the powers of the SADA are delegated to the first respondent and therefore the first respondent ought to have approved the constructions made by the petitioner. This Court while admitting the writ petition on 23-02-2000 issued interim orders in W.P.M.P.No. 3769 of 2000 directing that status quo shall be maintained for a period of two

weeks. The interim order was later extended until further orders on 22-03-2000. The first respondent filed an application, being W.V.M.P.No. 1789 of 2001. As the fifth respondent, namely, Revenue Divisional Officer, also filed counter-affidavit, the matter was heard finally when interlocutory applications are listed, with the consent of the learned counsel for the parties and is being disposed of.

4. The first respondent in the counter-affidavit states that the petitioner started construction of building in S.Nos. 292 and 293 of Kapuluppada Village without obtaining any permission from Visakhapatnam Urban Development Authority (VUDA), on the eastern side of the beach road earmarked for open recreation and Green Belt Zone as per the sanctioned Master Plan for Visakhapatnam Metropolitan Region and Zonal Development Plan of the area and that as per the CRZ Rules of the Government of India, the petitioner's land falls in "No Development Zone" as it is categorized as CRZ-III. Therefore, VUDA issued a notice 9-02-1999 requesting the petitioner to stop construction. The petitioner's representation dt. 11-03-1999 was considered and by another notice dt. 13-12-1999 he was asked to stop construction and obtain permission from SADA in terms of CRZ Rules as subject-land falls in CRZ-III and falls in "No Development Zone". The petitioner did not stop construction, but requested VUDA to close the issue as constructions were done in accordance with the judgment of this Court. It is also stated that under CRZ Rules no buildings are permissible in the area i.e., the land between High Tide Line (HTL) and 200 mts. from HTL and petitioner's land falls within 200 metres of HTL and therefore attract CRZ Rules. The first respondent in the counter-affidavit categorically states that the petitioner has commenced construction in 1999 after this Court passed orders in W.P.No. 10194 of 1989 and therefore, as VUDA felt that constructions should be in accordance with CRZ Rules, the petitioner was requested to adhere to CRZ Rules by approaching SADA.

5. The Revenue Divisional Officer (RDO), Visakhapatnam, the fifth respondent, has filed counter-affidavit. It is not necessary to give a summary of the counter in detail as it is on the same lines as that of the counter-affidavit filed by the first respondent. Suffice to mention that it is averred "by fifth respondent that the petitioner started construction in 1999 and he did not stop construction in spite of receiving notice from the first respondent requesting him to obtain approval from SADA. Therefore, the RDO also issued a show-cause notice on 15-02-2000 calling upon the petitioner to stop construction because the construction falls in the prohibited area as per the Government of India notification.

6. The petitioner has filed rejoinder to the counter-affidavit filed by the fifth respondent. The petitioner states that he made constructions validly which are upheld by this Court and after disposal of the writ petition the petitioner has not made any construction. He also states in the reply affidavit that CRZ Rules of Government of India have come into force from 1999. He also complains that the HTL was fixed at 500 mts. and the same was brought down to 200 mts. by the Ministry of Environment and Forests in Government of India and that the law is

not applied uniformly in all parts of country, particularly in Visakhapatnam. This, according to the petitioner violates fundamental rights under Article 14 of the Constitution of India. The CRZ Rules issued on 19-02-1991 are prospective in nature and they apply only to the constructions proposed and, they do not apply for the constructions already made pursuant to valid approval.

7. Learned counsel for the petitioner, learned Standing Counsel for the first respondent, learned Additional Central Government Standing Counsel for SADA and learned Assistant Government Pleader for Revenue for fifth respondent have reiterated the submissions made in their respective pleadings.

8. The short question that falls for consideration is whether the petitioner is entitled for any relief at the stage of notice issued by the first respondent requiring him to stop construction and obtain approval from SADA for constructing house.

SALIENT FEATURES OF CRZ:

9. Before considering the question the salient features of CRZ may be considered. The Government of India, Ministry of Environment and Forests issued notification in exercise of their powers conferred by Clause (d) of Sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986 as well as Section 3 of the Environment (Protection) Act, 1986 declaring the coastal stretches of seas, bays estuaries, creeks, rivers and backwaters etc., which are influenced by tidal action (in the land ward side) upto 500 mts. from the High Tide Line (HTL) and the land between the Low Tide Line (LTL) and the HTL as Coastal Regulation Zone. The Government of India vide Notification S.O.114 (E) dt. 19-02-1991 imposed with effect from the date of the notification restrictions enumerated in the Notification on setting up and expansion of industries, operations or processes etc., in the CRZ. Paragraph 2 of the said Notification inter alia declares certain activities as prohibited within CRZ. Clause (xii) of paragraph 2 prohibits any construction activity between LTL and HTL except facilities for carrying treated effluents and waste water discharges into the sea and similar pipelines and facilities essential for activities permitted under the Notification. There are many activities whose constructions are prohibited under CRZ, but it is not necessary to refer to them in this case. As per sub-paragraph (iii) of Paragraph 3 of the Notification all the developmental activities within CRZ shall be regulated by the State Government or the local authority as the case may be in accordance with guidelines given in Annexures I and II of the Notification. Annexure I contains Coastal Area Classification and Development Regulation. According to this, coastal stretches within 500 mts. of HTL of landward side are classified into four categories, namely CRZ I, CRZ II and CRZ III and CRZ IV.

10. The areas that are ecologically sensitive and important, such as national parks/marine parks, sanctuaries, reserve forests, wildlife, habitats, mangroves, corals/coral reefs, areas close to breeding and spawning grounds of fish and marine life, areas of outstanding natural beauty/ historically/heritage areas, areas

rich in genetic diversity, areas likely to be inundated due to rise in sea level consequent upon global warming as well as area between LTL and HTL are classified as CRZ I, CRZ II consists of those already developed upto or close to the shoreline within the municipal limits or other designated urban areas which are already substantially built up and which have been provided with drainage and approach roads and other infrastructural facilities. Category III which consists of CRZ III includes areas that are relatively undisturbed and those which do not belong to either Category I or Category II and coastal zone in the rural areas (developed and undeveloped) and also areas within municipal limits or in other legally designated urban areas which are not substantially built up. The coastal stretches in Andaman and Nicobar, Lakshadweep and small islands except those designated as CRZ I, CRZ II or CRZ III from part of Category IV.

11. Be it noted that there is no dispute that the area in question in this case falls in CRZ III. According to paragraph 6 (2) CRZ III the areas upto 200 mts. from HTL is to be earmarked as "No Development Zone" and no construction shall be permitted within the zone except for repairs of existing authorised structures not exceeding existing Floor Space Index (FSI), existing plinth area and existing density. Certain activities are however permitted like development of vacant plots between 200 and 500 mts. of HTL in designated areas of CRZ with prior approval of Ministry of Environment and Forests for construction/ reconstruction of dwelling units upto 200 and 500 mts. of HTL so long as it is within the ambit of traditional rights and customary uses such as existing fishing villages and goathans. Be it also noted that CRZ was amended by Notification being S.O. 494 (E) dt. 9-7-1997 to the above effect. We are not concerned with other aspects of CRZ Notification in this case.

WHEN CONSTRUCTION WAS MADE

12. When the petitioner completed construction of the building in question? As there is a serious dispute on this question, at the outset it is necessary to advert to this aspect of the matter. Sri Y. Srinivasa Murthy, learned counsel for the petitioner, submits that even by the time this Court disposed of the writ petition, being W.P.No. 10194 of 1989 by order dt. 07-04-1997, the construction was completed in accordance with the building permission granted by Gram Panchayat of Kapuluppada and therefore the same is not covered by CRZ Notification. This is strongly refuted by the learned Standing Counsel for VUDA as well as learned Assistant Government Pleader for Revenue. They placed reliance on the affidavit filed by the petitioner in support of W.P.No. 10194 of 1989.

13. In the earlier writ petition the question was not whether the petitioner completed the construction. The point for consideration before the Division Bench was whether Gram Panchayat was competent to issue permission enabling to make construction. It was observed that much before declaring the village as part of Zonal Development Plan under the provisions of the Development Act, permission was granted by the Gram Panchayat on 20-01-1988 and as such permission granted by the Gram Panchayat would prevail and should be acted

upon. It was also observed that subsequent notification entrusting powers to VUDA will not result in divesting Gram Panchayat of its powers to grant building permission. Thereafter, the Division Bench declared as under:

.....the permission accorded by the Gram Panchayat prevails and that should be acted upon and any subsequent notification entrusting the powers to VUDA will not have effect of divesting the Gram Panchayat of its powers so far as the permission, in the instant case, is concerned. Therefore, the petitioners shall be entitled to go ahead with the constructions in accordance with the permission granted by the Gram Panchayat on 20-01-1988. If the constructions were already completed, then it shall be deemed that they are valid under law.

14. A reading of the order which is relied on by the learned counsel for the petitioner Sri Y. Srinivasa Murthy would belie the contention that construction was already completed. In the affidavit accompanying the present writ petition also nowhere it is stated that the construction was already completed by the time the earlier writ petition was filed before this Court. Indeed, in paragraph 8 of the affidavit accompanying the writ petition the petitioner on oath states that after disposal of the writ petition on 07-04-1997 he proceeded with the construction and completed the same and only minor internal works were left over. Further, in paragraph 8 of affidavit accompanying the writ petition No. 10194 of 1989 on which reliance is placed by the learned counsel for the respondents the petitioner stated as under:

... While so the officials of the first respondent herein with the aid of police demolished the side walls of the building leaving the concrete pillars. I respectfully submit that the action taken by the VUDA in resorting to the demolition of construction in the circumstances of the instant case is ex facie illegal, arbitrary and without jurisdiction.

Again in ground (v) the petitioner stated as under:

The respondents 1 to 3 ought to have seen that late Manika Mor obtained permission from the concerned Gram Panchayat for construction of the building and commenced and completed the construction upto roof level before the proposed reservation was notified and as such the subsequent proposal cannot be made the basis for the respondents 1 to 3 to initiate the action under the Provisions of Act 1 of 1975.

15. The petitioner in paragraph 12 also prayed for interim relief to the effect that respondents 1 to 3 therein be restrained from interfering with their completion of the construction of the building in the land situated in S.Nos. 292/1, 292/3 and 4 and 249/7C of Kapuluppadu Village, Visakhapatnam District.

16. These pleadings clinchingly support the submission of the learned Standing Counsel for VUDA and the learned Assistant Government Pleader for Revenue that the petitioner, did not construct the house before filing earlier writ petition, but he partly completed construction only after disposal of the writ petition.

17. In the reply affidavit filed by the petitioner to the counter-affidavit filed by the fifth respondent in these proceedings also the petitioner takes a plea that the construction was commenced prior to the date of CRZ Notification dt. 19-02-1991. Therefore, the pleadings clinchingly show that the petitioner did not make any construction of residential building till 7-04-1997 and he only commenced construction of building after that date. The photographs produced by the learned counsel for the petitioner Sri Y. Srinivasa Murthy before this Court would also show that it is a new construction of recent origin. What is the effect of CRZ Notification on the construction in question which admittedly falls in CRZ III category. This question has to be necessarily considered by SADA from which the petitioner was advised to get approval by VUDA. However, the effect of the judgment of the Division Bench on the construction has to be noticed.

EARLIER JUDGMENT AND LAW DECLARED BY APEX COURT:

18. This Court in W.P.No. 10914 of 1993 has declared that if any constructions were already completed the same would be valid under law on the premise that building permission granted by Gram Panchayat on 20-01-1988 is a valid permission. Two things would emerge from the observations of the Division Bench. First, the permission is valid permission and that if any construction had already been completed it would be valid. If any construction was not already completed it would not be valid and it violates any other law. It is reasonable to draw such inference. There is presumption in law that this Court could not have issued a Mandamus directing the authorities to ignore the law or could not have issued a Mandamus which is contrary to law. The order of the Division Bench in a case like this, must be interpreted having regard to the CRZ Notification and judgment of the Supreme Court directly on the subject.

19. Article 48-A of the Constitution of India requires that the State shall endeavour to protect and improve the environment. This Court is one of three organs of the State and therefore it is also under constitutional duty to protect the environment and as held by the Supreme Court in catena of decisions ensuring clean and healthy environment and quality of life is a penumbral right under Article 21 of the Constitution of India. (See *Chhetriya Pardushan Mukti Sangharsh Samiti Vs. State of U.P. and others*, , AIR 1991 420 (SC) , *Virender Gaur and Others Vs. State of Haryana and Others*, , *Dr. Ashok Vs. Union of India and others*, and *M.C. Mehta v. Union of India*, (1998) 6 SCC 260). In *T. Damodhar Rao and Others Vs. The Special Officer, Municipal Corporation of Hyderabad and Others*, this Court (Hon"ble Justice P.A. Choudary, J.) held that "protection of environment is not only the duty of the citizen but is also the obligation of the State and all other State organs including Courts and that it becomes the legitimate duty of the Courts as the enforcing organs of Constitutional objectives to forbid all action of the State and citizen from upsetting the environmental balance." His Lordship also observed that the influence of collectivist environmental jurisprudence to protect earth atmosphere from pollution on the common law doctrine of ownership and proprietary right,

cannot be ignored.

20. In *Indian Council for Environment-Legal Action Vs. Union of India (UOI) and Others*, three-Judge Bench of the Supreme Court expressed similar views. In the said case the petitioner complained the Apex Court that CRZ Notification dt. 9-02-1991 has not been implemented or enforced which leads to continued degradation of ecology in the coastal areas. The Supreme Court observed that the primary effort of the Court while dealing with environmental related issues is to see that environmental agencies whether it be State or any other authority, take effective steps for enforcement of laws. The Courts act as guardian of the people's fundamental rights and that not being fully equipped with technical matters it is the function of the Court to see that day-to-day enforcement of the law is carried on effectively by the executive and other agencies. The Court is, therefore, entitled to pass orders directing enforcement agencies to implement the law for the protection of fundamental rights and such orders passed in discharge of judicial functions must not permit wrong or inaction on the part of the State to continue. The following observations are apt and demand excerption.

Enactment of a law, but tolerating its infringement, is worse than not enacting a law at all. The continued infringement of law, over a period of time, is made possible by adoption of such means which are best known to the violators of law. Continued tolerance of such violations of law not only renders legal provisions nugatory but such tolerance by the enforcement authorities encourages lawlessness and adoption of means which cannot, or ought not to be tolerated in any civilized society. Law should not only be meant for the law-abiding but is meant to be obeyed by all for whom it has been enacted. A law is usually enacted because the Legislature feels that it is necessary. It is with a view to protect and preserve the environment and save it for, the future generations and to ensure good quality of life that Parliament enacted the anti-pollution laws, namely, the Water Act, Air Act and the Environment (Protection) Act, 1986. These Acts and Rules framed and notification issued thereunder contain provisions which prohibit and/or regulate certain activities with a view to protect and preserve the environment. When a law is enacted containing some provisions which prohibit certain types of activities, then, it is of utmost importance that such legal provisions are effectively enforced. If a law is enacted but is not being voluntarily obeyed, then it has to be enforced. Otherwise, infringement of law, which is actively or passively condoned for personal gain, will be encouraged which will in turn lead to a lawless society. Violation of antipollution laws not only adversely affects the existing quality of life but the non-enforcement of the legal provisions often results in ecological imbalance and degradation of environment, the adverse effect of which will have to be borne by the future generations.

21. The Supreme Court in paragraph 44 of the judgment also observed that it is the responsibility of the coastal States and Union Territories to comply with CRZ Notification and prepare and get approval of the management plans before

taking up development in accordance with the plan and that till the preparation and approval of the said plans by virtue of the provisions of the main Notification, no development in the coastal areas within the NDZ (No Development Zone) can take place. Therefore, in view of the binding principles of law laid down by the Supreme Court in Indian Council for Enviro-Legal Action case (7 supra) the petitioner could not have legally and validly taken up construction.

22. In this context a reference may also be made to U.P. Pollution Control Board Vs. M/s. Mohan Meaking Ltd. and Others, wherein the Apex Court noticed the gravity of the situation resulting in environmental pollution and ecological degradation and observed that "Courts cannot afford to lightly deal with cases involving pollution of air and water, and the Courts will share the Parliamentary concern on the escalating pollution level of our environment and that Court has no justification for ignoring the seriousness of the subject....."

RELIEF TO BE GIVEN:

23. By the impugned order the petitioner was advised to obtain approval from SADA, the third respondent herein. Sri Y. Srinivasa Murthy has submitted that the petitioner has submitted such representation/petition to the first respondent herein in December 1999 and that though the powers of SADA are delegated to the first respondent, no action is taken. The learned counsel placed reliance on the proceedings bearing Rc.No. 7202/96 J1, dt. 8-12-1996 issued by the District Collector, Visakhapatnam in support of the submission that powers are delegated to the first respondent. On a plain reading of the said proceedings this Court cannot agree with the submission that there is delegation of SADA's power to VUDA. Further, the District Collector, could not have delegated the powers of SADA to VUDA. Admittedly the petitioner has made representation to the first respondent on 11-03-1999 and also in December 1999 to VUDA. But, he has not submitted any requisition/representation to SADA seeking such approval for the construction. In view of this, it is not proper for this Court to advert to this aspect of the matter. It would be in the interest of justice if the petitioner now makes representation to the third respondent, SADA, whereupon the same may be considered by them in accordance with CRZ Notification, Supreme Court judgment in Indian Council for Enviro-Legal Action case (7 supra) as well as the observations of this Court hereinabove within a period of four weeks from the date of submission of such representation by the petitioner after affording an opportunity to the petitioner. There shall be no development including any construction till SADA decides the matter.

24. The writ petition is accordingly disposed of with the above observations directions.