



HIGH COURT OF ANDHRA PRADESH

FRIDAY ,THE FIRST DAY OF MAY

TWO THOUSAND AND TWENTY

PRESENT

THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

WRIT PETITION NO: 1093 OF 2020

Between:

1. Telecom Colony Residents Welfare Association, Regd. No.9/2003,
Having its Office at D.No.19-42,
Telecom Colony, Gollapudi, Krishna District, Rep. by its Secretary Anguri
Sridhar,
S/o Siva Ramakrishnayya, aged 52 years, R/o D.No.19-49, Telecom
Colony, Gollapudi, Krishna District, Andhra Pradesh.
2. Boyapati Venkateswara Rao S/o Narasimhaiah,
Aged about 56 years, President.,
Telecom Colony Residents Welfare Association,
Rio D.No.19-59, Telecom Colony, Gollapudi,
Krishna District, Andhra Pradesh.

...PETITIONER(S)

AND:

1. The State of Andhra Pradesh, Panchayat Raj Department,
Secretariat Buildings, Velagapudi, Amaravathi, Guntur District, Rep. by its
Principal Secretary.
3. The District Collector, Krishna District at Machilipatnam, Andhra Pradesh.
4. The District Panchayat Officer, Krishna District at Vijayawada.
5. The Executive Officer, Gollapudi Grampanchayat, Gollapudi,
Krishna District, Andhra Pradesh.

...RESPONDENTS

Counsel for the Petitioner(s): P A SESHU

**Counsel for the Respondents: GP FOR PANCHAYAT RAJ RURAL DEV
(AP)**

The Court made the following: ORDER

**HON'BLE SRI JUSTICE U. DURGA PRASAD RAO****Writ Petition No.1093 of 2020****ORDER:**

The petitioners implore for writ of *mandamus* declaring action of respondents in highhandedly attempting to construct the Grama Sachivalayam (Village Secretariat) building in the land in an extent of 750 sq. yards earmarked for the purpose of Park/Community Hall/Play Ground of the 1st petitioner's Association, bearing S.No.506/1, Layout Permit No.2776, C.No.12056/76-05 situated in Telecom Colony Welfare Association, Gollapudi, Krishna District in spite of availability of various other lands belonging to the respondents herein, as illegal, arbitrary and violative of Articles 14, 21, 19 and 300-A of the Constitution of India and contrary to Layout Rules and for a consequential direction to the respondents not to construct any structures including Grama Sachivalayam Building in the aforesaid land.

2. The petitioners' case is thus:

(a) The 1st petitioner is the Secretary and 2nd petitioner is the President of Telecom Colony Residents Welfare Association, Gollapudi. 1st petitioner society is a registered society. It entered into an Agreement of Sale in respect of Ac.5.3453 of land in R.S.No.506/1 situated at Gollapudi with its original owners and developed it into a residential colony. The 1st petitioner applied for layout permission to the Director of Town & Country Planning, Government of Andhra Pradesh and same was sanctioned under Layout Permit No.27/76



(C.No.12056/76-D5) in R.S.No.506/1 for the total extent of Ac.5.3453 of Gollapudi Village.

(b) As per the approved layout plan, there were 39 plots with a total extent of 13307 sq. yards out of total extent of land. While applying for layout approval, the original land owners have filed a declaration in favour of authorities leaving certain extent of land for roads and for common utility purpose i.e., for Road No.1-1513 $1/3$ sq. yards; Road No.2 – 979 sq. yards; Road No.3 – 2511 $2/3$ sq. yards; Road No.4 – 1056 sq. yards; Road No.5 – 1193 $4/9$ sq. yards; Road No.6 – 1571 sq. yards and Common Plot area of 1300 sq. yards totalling 10124 $4/9$ sq. yards out of total extent of Ac.5.3453. The open space is meant for parks and other community purposes.

(c) After layout approval, the members of the Society who purchased plots have constructed houses. They filled the earth in the low lying reserved site of 1300 sq. yards and some part of the said land was left for road and in an extent of 450 to 500 sq. yards, they have constructed Vijayaganapathi Temple with their funds. The present open space is used for playing by the children, walking by the elders, conducting functions and also as a park etc. The 1st petitioner left an extent of 750 sq. yards for the purpose of constructing a Community Hall/Park/Playground/Temple for the benefit of the residents of the colony. The 1st petitioner's Association has been requesting the authorities to release funds for construction of



Community Hall in the reserved site from Vijayawada Rural Mandal funds. However, till date no action has been taken by the authorities in that regard.

(d) While so, on 02.01.2020 the staff of 4th respondent came with JCB and workers to the layout open site of the 1st petitioner's Association and when enquired, they said that they are going to construct Grama Sachivayalam building on the reserved site. The residents of the colony objected and questioned the authority of 4th respondent to make construction highhandedly. With much persuasion, the authorities left the spot saying that Government have granted them permission to construct Village Secretariat building over the said land. As per law, the earmarked site cannot be used for any other purpose except for the benefit of the colony people. Various Government lands are available in the vicinity for construction of Village Secretariat building for instance, (1) Ac.0.70 cents of land is available at Moula Nagar, opposite to NH-9, (2) a Two Storied building with a community hall and a vacant parking space and DWCARA room is available at Ambedkar Nagar situated by the side of Telecom Colony, (3) Ac.0.20 cents of land and Ac.0.08 cents of land are available at Venkateswarapuram Colony Bypass Road, (4) open lands are available in Surayapalem, Ramanjaneya Nagar and Moula Nagar and all the aforesaid lands belong to the Government/Local body which are suitable for the construction of Grama Sachivalayam. The respondents instead of utilizing those



lands, are trying to highhandedly grab the layout open space of the 1st petitioner's colony. The proposed action of the respondents is impermissible and condemnable in the eye of law. The layout open space is meant for the benefit of the plot owners. The respondents highhandedly dug the land and took measurements for the proposed construction of Grama Sachivalayam without any right or authority.

Hence the writ petition.

3. Learned Government Pleader for Panchayatraj & Rural Development took notice for the respondent Nos.1 & 3, learned Government Pleader for Revenue took notice for respondent No.2, and Sri I. Koti Reddy, Standing Counsel took notice for respondent No.4.

No counters are filed by the respondents.

4. Heard Sri P. Ananda Seshu, learned counsel for petitioners, learned Government Pleader for Panchayatraj & Rural Development for the respondents 1 & 3, learned Government Pleader for Revenue for 2nd respondent, and Sri I.Koti Reddy, Standing Counsel for 4th respondent.

5. Severely criticizing the proposed acts of the respondents, particularly respondent No.4 to construct the Grama Sachivalayam in the disputed site, learned counsel for petitioners would contend that the open space of 1300 sq. yards was handed over by the original owners to 4th respondent Gram Panchayat for community purpose



while layouts were made. They have also earmarked certain extent of the land for laying the roads in the layout area. He would submit that 39 plots were laid out which were purchased by the members of the 1st petitioner's Association and constructed houses. In that view, the 4th respondent which has taken over the vacant open space is duty bound to utilize the same for the purpose for which the open space was transferred to it. Therefore, it is obligated to develop a park or a community hall or an educational institution etc., in the open space for the hygienic and peaceful living of the residents of the colony. Referring to Sub-rule (2) of Rule 13 of the **A.P Land Development (Layout and Sub-division) Rules, 2017** (for short, "**the A.P Land Development Rules, 2017**") learned counsel would strenuously argue that as per the said provision, the open spaces which were earmarked for public purposes as parks, playgrounds etc., will be automatically transferred and vested with the concerned Gram Panchayat and it being a trustee of the public property, shall maintain all such open spaces for the purpose for which they have been earmarked. Therefore, the Gram Panchayat is not vested with the authority or power to convert the open spaces into any other use under the garb of public purpose. He vehemently argued that such a deviation is highly reprehensible. Learned counsel further argued that the open spaces which were carved out by the developers at the time of making layouts were transferred in favour of Gram Panchayat as per the A.P Land Development Rules, 2017 for an avowed purpose of providing



amenities to the community of residents residing in the developed area. Hence, such pockets of open spaces are meant for providing lung space to them which cannot be defiled by the concerned authorities by altering their purpose and utility. He placed reliance on decisions in **Bangalore Medical Trust v. B.S. Muddappa¹**, **Sri Balaji Park Residents Welfare v. Vice-Chairman, Visakhapatnam²**, and order in Civil Appeal No.11258 of 2017 of Supreme Court of India in **Municipal Corporation of Greater Mumbai v. Hiranman Sitaram Deorukhar**. He thus, prayed to allow the writ petition.

6. *Per contra*, Sri I. Koti Reddy, Standing Counsel for respondent No.4 would argue that the land in question was not earmarked by the original owners for any specific purpose viz., Park, Playground, Community Hall or the like but they have handed over the site to Gram Panchayat for public purpose. Construction of Village Secretariat (Grama Sachivalayam) is also being one of the public purposes, there is nothing wrong on the part of the respondent authorities and Gram Panchayat to propose to construct the Village Secretariat. He thus prayed to dismiss the writ petition. Learned Government Pleaders also argued in similar lines.

7. The point for consideration is whether the respondents are within their power and authority to construct Grama Sachivalayam

¹ MANU/SC/0426/1991 = (1991) 4 SCC 54.

² 2001 (6) ALD 325



(Village Secretariat) in the open space earmarked by the original owners at the time of making layout?

8. POINT:

Admittedly, the land in an extent of Ac.5.3453 in R.S.No.506/1 of Gollapudi Village was owned by (1) Vadlamudi Janaiah, S/o. late V.Bheemaih (2) Vadlamudi Rammohan Rao, S/o. Janaiah (3) Vadlamudi Bojjeswara Rao, S/o. Janaiah (4) Vadlamudi Vijayakumar, S/o. Janaiah (5) Vadlamudi Durga Ramakrishna Prasad, S/o. Seetharamaswamy and (6) Vadlamudi Ramachandra Prasad, S/o. Seetaramaswamy. The 1st petitioner's Association seems to have entered into an Agreement of Sale with the original owners and later the 1st petitioner's Association applied for layout permission to the Director of Town & Country Planning, Government of Andhra Pradesh, Hyderabad and accordingly, Layout Permit No.27/76 (C.No.12056/76-D5) in R.S.No.506/1 was granted for the total extent. It appears 39 plots were purchased by the members in an extent of 13,307 square yards out of total extent of land. It is further admitted that the original owners have filed a declaration leaving certain extent of the land for the purpose of roads and open space for community development. For instance they earmarked 1513 $\frac{1}{3}$ sq. yards for Road No.1; 979 sq. yards for Road No.2; 2511 $\frac{2}{3}$ sq. yards for Road No.3; 1056 sq. yards for Road No.4; 1193 $\frac{4}{9}$ sq. yards for Road No.5 and 1571 sq. yards for Road No.6. That apart, they left 1300 sq. yards



for public purpose. Hence, the question is, whether the respondent authorities, particularly 4th respondent, have right to construct Village Secretariat (Grama Sachivalayam) in the open space transferred by the original owners in favour of 4th respondent on the pretext that construction of Village Secretariat will fulfil the object of public purpose.

9. It should be noted, generally the **A.P. Gram Panchayat Land Development (Layout and Building) Rules, 2002** (for short, ‘**the Rules, 2002**’) will apply to the layouts made by the concerned owners of the land within the limits of the Gram Panchayat in Andhra Pradesh.

(a) As per Rule 3 of the Rules 2002, every person or a corporate body or the Government or a private corporate body who intends to undertake or carry out layout or development work shall be required to apply in writing to the Executive authority of such intention in the form prescribed in Annexure-A appended to the Rules by accompanying the documents mentioned in Sub-rule (3).

(b) As per Rule 4, the layout proposal shall conform to certain requirements mentioned in the said Rule. One of such requirements mentioned in clause (c) of Rule 4 is that minimum open space @10% of total site area shall be set apart in the proposed layout for playground/park/educational institution or for any other public purpose. Then Rule 11 of the Rules, 2002 discloses that if the



population of Gram Panchayat is less than 10,000, the Gram Panchayat is competent to accord sanction for the layouts and if population exceeds 10,000, the District Town & Country Planning Officer is the competent authority to accord technical approval for the layouts. Sub-Rule (7) of Rule 11 lays down that all the roads and open spaces such as parks and playgrounds earmarked in accordance with these Rules in a layout, which is approved by the Gram Panchayat shall automatically stand transferred free of cost and vest with the Gram Panchayat free from all encumbrances. After such vesting, the Gram Panchayat shall maintain all such open spaces for the purpose for which they have been earmarked.

(c) The above are some of the important Rules relating to the layouts proposed to be made by the concerned owners of the lands situated within the limits of the Gram Panchayat. However, it should be noted that the A.P. Gram Panchayat Land Development (Layout and Building) Rules, 2002 though apply to the lands and vacant sites falling within the limits of Gram Panchayat, however, certain lands and areas are exempted from the application of the Rules, 2002. Rule 1(3) provides for such exemptions. It reads thus:

1. (3). These rules extend to all Gram Panchayat Areas of Andhra Pradesh except the areas falling in-

(a) Urban Development Authority areas and Special Development Authority areas as notified by the Government under the provisions of the Andhra Pradesh Urban Areas (Development) Act, 1975;



(b) Draft/Sanctioned General Town Planning Scheme/ Master Plan areas of Municipal Corporations/Municipalities notified under the provisions of Andhra Pradesh Town Planning Act, 1920;

(c) Andhra Pradesh Industrial Infrastructure Corporation (APIIC) Layout areas and other Notified Industrial areas;

(d) Any area notified accordingly by the Government from time to time.

(d) For the above exempted lands and areas, the Rules issued by the Municipal Administration & Urban Development Department shall apply. Sub-Rule (4) of Rule 1 prescribes the same. It lays down as under:

1. (4). The rules issued by the Municipal Administration and Urban Development Department of the Government are deemed to be applicable for the areas mentioned in sub-rule (3) above.

10. Coming to the instant case, the copy of the approved plan filed by the petitioners, which is not disputed by the respondents, would show that the land proposed for making layout for 39 plots by the 1st petitioner's Association falls within the sanctioned Master Plan of Vijayawada Town which comes under the Vijayawada-Guntur-Tenali-Mangalagiri (VGTM) Urban Development Authority, Vijayawada. In that view, the layout was approved by the Director of Town Planning, Government of A.P, Hyderabad. Hence, as stated supra, the Rules, 2002 have no application to the aforesaid layout area. Instead, as submitted by learned counsel for petitioner, the A.P Land Development Rules, 2017 are applicable to the subject layout area. These Rules were notified as per G.O.Ms.No.275 of Municipal Administration & Urban Development (H) Department dated



18.07.2017 wherein it was mentioned that in the past, under several GOs, each of the Urban Development authorities and Municipal Corporations and Gram Panchayats have formulated different layout Rules and there were no clear provisions with respect to affordable housing, environmental clearance and amenities to be provided in the layout areas and therefore, need was felt to revise the existing layout Rules and issue a common and comprehensive layout Rules for all the urban development authorities and urban local bodies in the State. Accordingly, the A.P Land Development Rules, 2017 were brought forth.

11. As per Rule 1(5)(f), these Rules are applicable to Gram Panchayat areas covered in Master Plans/General Town Planning Schemes notified under A.P. Town Planning Act, 1920. Since the layout plan in the instant case was approved by the Director of Town Planning under the A.P. Town Planning Act, 1920 vide T.P.No.27/76 dated 20.04.2007, this Court agrees with the submission of learned counsel for petitioners that the A.P Land Development Rules, 2017 are applicable to the case on hand. Further, Rule 1(6) lays down that all existing rules, regulations, byelaws, orders that are in conflict or inconsistent with these Rules shall stand modified to the extent of the provisions of the A.P Land Development Rules, 2017. On that count also, it can be said that the Rules of 2017 are applicable to the case on hand.



12. When these Rules are perused, Rule 7 speaks about the procedure for obtaining land/layout development permission. It says that no person or a corporate body of the Government or a private corporate body shall carry out any land development or redevelopment or carry out layout etc., without obtaining approval from the Executive/Competent Authority for the land/layout development plan. The owner of any land shall, before he utilizes, sells, leases or otherwise disposes of such land or any portion thereof, as sites for construction of any type of building or for taking up any development activity, shall obtain the land/layout development permission from the Executive/Competent Authority. Rule 7(3)(c)(viii) states that a layout plan drawn to a scale shall, among other things, contain a statement indicating the total area of the site, area utilized under roads, open spaces for parks, playgrounds, recreation places and development plan reservations, schools, shopping and other public places along with their percentage with reference to the total area of the site proposed to be sub-divided.

13. Rule 13 is an important provision. It speaks about the reservation of land for various purposes in the layout development. Among other reservations, Rule 13(c) says that 10% of the layout area shall be reserved for public open space. Then Rule 13(2) and (10) read thus:

13.(2) The area reserved for **Public Open Space** shall be handed over to the Local Authority free of cost through a



registered gift deed. This area shall be used only for Parks, Playgrounds, Gardens, Nursery, Recreational Open space etc, and shall not be utilized for any purpose other than the purpose for which it is transferred. The Applicant shall construct a compound wall as per the design prescribed for this site and handover to the Local Authority.

13.(10) Government/Development Authority/Local Authority/ Developer/Owner/Applicant have no jurisdiction to convert the site reserved for public purpose such as park or playground, utilities, amenities affordable housing and for some other purpose.

14. Thus, a scrutiny of Rule 13 makes it clear that the public open space which is earmarked for Parks, Playgrounds, Gardens, Nursery, Recreation etc. shall not be utilized for any purpose other than the purpose for which it is transferred in favour of the Local Authority and neither the Government nor the Local Authority or any other Development Authority or the Owner have the power to convert the site reserved for public purpose such as park or playground, utilities, amenities for some other purpose.

15. Having regard to the above statutory provision, the open space which is transferred and vested in the Local Authority i.e., 4th respondent in the instant case, cannot be converted to any other purpose other than establishing park, playground, walking place, community hall etc.

16. In this context, the argument of Sri I.Koti Reddy, Standing Counsel for 4th respondent to the effect that the open space was transferred by the original owners in favour of 4th respondent for public purpose, but not for creating any specific amenity or utility and



since establishment of Village Secretariat is also a public purpose, the petitioners cannot object the same cannot be countenanced. It is true that the original owners and 1st petitioner's Association have left some space for laying roads and transferred 1300 sq yards of site for public purpose. The term "public purpose" needs a purposive construction in the context of providing hygienic social life to the inhabitants of the locality by developing Parks, Playgrounds, Gardens, Nursery, Community Halls, Libraries etc. Then only the expansive meaning given to the term "Life" under Article 21 of the Constitution of India can be said to be fulfilled. In **State of M.P. v. Kedia Leather & Liquor Ltd.**³ the Apex Court observed that environmental, ecological air and water pollution amount to violation of right to life assured by Article 21 of the Constitution of India. Hygienic environment is an integral facet of healthy life. Right to live with human dignity becomes illusory in the absence of humane and healthy environment. Towing the line, Rule 13(2) pellucidly stated that the area reserved for public open space shall be handed over to the Local Authority and it shall be used only for Parks, Playgrounds, Gardens, Nursery, Recreational open space etc. and not for any other purpose. Though establishment of Village Secretariat is also a public purpose in general, but in the context of providing healthy, hygienic, calm, serene and aesthetic life it is not a match. Social service may be its motto, but providing pollutant free life is not its objective. That is the reason

³ AIR 2003 SCC 3236



why Rule 13(10) mandated that no Authority have any jurisdiction to convert the site reserved for public purpose such as Park or Playground, utilities or amenities for some other purpose.

17. It should be noted that the Apex Court and several High Courts have vividly delineated that the open spaces which were earmarked during the formation of layouts shall be used for providing lung space to the residents and other occupants in the vicinity and such open spaces cannot be used for any purposes other than the purposes for which such open spaces were earmarked. In **Bangalore Medical Trust's** case (supra 1), when the Bangalore Development Authority (BDA) allotted the open space which was originally reserved for public park and playground under Bangalore Improvement Act, 1945, for construction of hospital to a Medical Trust, the same was challenged by the petitioners therein who were the residents of the locality. The learned single Judge of Karnataka High Court dismissed the writ petition holding that allotment of the site by the BDA in favour of the Medical Trust for construction of a hospital is for a civic amenity. However, the Division Bench held that the area having been already reserved in the sanctioned scheme for a public park, its diversion from that object and allotment in favour of a private body was not permissible under the Act even if the object of allotment was for construction of a hospital and for providing the civic amenity. The allotment was accordingly set aside by allowing the writ petition. Hence, the Medical Trust filed appeal before the Apex Court. The



Apex Court after considering the various provisions of the Bangalore Development Act, 1976 has held that the new provision i.e., Section 38A clarifies that it shall not be open to the BDA to dispose of any area reserved for public parks and playgrounds and civic amenities and any such site cannot be diverted to any other purpose and any action in violation of this provision is null and void. It was further held that free and healthy air in beautiful surroundings was a privilege of few. But now it is a gift from people to themselves. Its importance has been multiplied with emphasis on environment and pollution. In modern planning and development it occupies an important place in social ecology. In comparison a private nursing home is essentially a commercial venture, a profit oriented industry. Service may be its motto, but earning is the objective. Hence, a private nursing home cannot be a substitute for public park. The appeal was ultimately dismissed.

18. In **Balaji Park Residents Welfare's** case (Supra 2) the Division Bench of High Court of Andhra Pradesh observed that a park provides for some lung space. It is well settled that community need hospitals, sports and recreational activities. Parks and wetlands are meant for maintaining the ecological balance. The park and community centre in question were handed over to 2nd respondent and it being a Local Authority was duty bound to maintain the same property. The Division Bench during the course of its judgment referred the treatise "Environmental law and policy: Nature, law and



Society” by Plater Abrams Goldfarb (American Casebook Series–1992) wherein the Doctrine of Public Trust was discussed and held that the Government is a Trust for public properties such as shorelands and parks etc. The Division Bench observed that the public trust doctrine in our country appeared to have grown from Article 21 of the Constitution.

19. In **Municipal Corporation of Greater Mumbai’s** case (Supra 3), the Apex Court was dealing with the case of selling of the property which was earmarked for Garden in the development plan under the provisions of Maharashtra Regional & Town Planning Act, 1966. Reviewing several of its earlier cases, the Apex Court observed as follows:

“This court has laid down that public interest requires some areas to be preserved by means of open spaces of parks and play grounds, and that there cannot be any change or action contrary to legislative intent, as that would be an abuse of statutory powers vested in the authorities. Once the area had been reserved, authorities are bound to take steps to preserve it in that method and manner only. These spaces are meant for the common man, and there is a duty cast upon the authorities to preserve such spaces. Such matters are of great public concern and vital interest to be taken care of in the development scheme. The public interest requires not only reservation but also preservation of such parks and open spaces. In our opinion, such spaces cannot be permitted, by an action or inaction or otherwise, to be converted for some other purpose, and no development contrary to plan can be permitted.

The importance of open spaces for parks and play grounds is of universal recognition, and reservation for such places in development scheme is a legitimate exercise of statutory power, with the rationale of protection of the environment and of reducing ill effects of urbanisation. It is in the public interest to avoid unnecessary conversion of ‘open spaces land’ to strictly urban uses, for gardens provide fresh air, thereby protecting against the resultant impacts of urbanization, such as pollution etc. Once such a scheme had been prepared in accordance with the provisions of the MRTP Act, by inaction legislative intent could not be



permitted to become a statutory mockery. Government authorities and officers were bound to preserve it and to take all steps envisaged for protection.”

20. Thus, a conspectus of the statutory provisions and judicial pronouncements would expound that the open spaces vested in the Local Authorities while making layouts are held by them under Public Trust and thereby obligated to utilize such open spaces exclusively for the purpose for which they were earmarked. Any deviation, for however different laudable object, will not subserve the interest of public. Therefore, the proposed construction of Village Secretariat (Grama Sachivalayam) by the respondents cannot be given a stamp of approval.

21. In the result, this Writ Petition is allowed and the respondents are directed not to make any attempts to construct Grama Sachivalayam (Village Secretariat building) in the open space in an extent of 750 sq. yards which was earmarked for the purpose of providing Park/Community Hall/Playground etc. to the public in general and the residents of 1st petitioner Welfare Association in specific. No costs.

As a sequel, interlocutory applications, if any pending, shall stand closed.

U. DURGA PRASAD RAO, J

01.05.2020
MS/MVA