SUPREME COURT OF INDIA

Machavarapu Srinivasa Rao & Anr.

Vs.

Vijayawada,Mangalagiri Urban

C.A.No.7935 of 2011

(G.S.Singhvi and H.L.Dattu,JJ.,)

19.09.2011

JUDGMENT

G.S.Singhvi,J.,

SLP (Civil) No.757 of 2011

1. Leave granted.

2. The questions which arise for consideration in this appeal are whether respondent No.1 - the Vijayawada, Guntur, Tenali, Mangalagiri Urban Development Authority had the jurisdiction to grant permission to respondent No.3- Sri Venkateswara Swamivari Alaya Nirmana Committee for construction of temple at the site of which land use was shown as recreational in the Zonal Development Plan approved by the State Government and whether the Division Bench of the High Court of Andhra Pradesh was justified in refusing to nullify the decision taken by respondent No.1 by assuming that it was only a case of allotment of site.

3. Respondent No.1 was constituted under Section 3(1) of the Andhra Pradesh Urban Areas (Development) Act, 1975 (for short, `the Act') to promote and secure the development of different parts of the four towns, namely, Vijayawada, Guntur, Tenali and Mangalagiri. In 1978, respondent No.1 acquired 91 acres land at Chenchupet, Tenali and prepared a layout plan for development. As per the approved plan, 10 sites were earmarked for parks. These included an area of 75 cents comprised in Town Survey No.2/3, Block No.1, Ward No.1, Chenchupet.

4. The Master Plan of Tenali town was approved by the State Government vide G.O.Ms. No.969 dated 21.11.1978 and the Master Plan of the urban area of respondent No.1 was approved vide G.O. Ms. No.144 dated 3.3.1988. After about 15 years, the State Government decided that the Master Plans be replaced by a comprehensive Zonal Development Plan. For this purpose, the Vice Chairman of respondent No.1 was authorized to take necessary steps. Thereafter, the area covered by the urban region of respondent No.1 was divided into 23

planning zones and it was decided that Zonal Development Plans be prepared on priority basis in respect of 15 zones including Tenali zone. The draft Zonal Development Plan of Tenali was published in the local newspapers and objections/suggestions were invited from the public. In the final Zonal Development Plan of Tenali town, which was approved by the State Government vide G.O. Ms. No.689 dated 30.12.2006, land use was divided into the following 9 (main) categories:

> "1. Residential use Zone
> 2. Mixed Residential use Zone.
> 3. Commercial use Zone [Local, Central and General Commercial use].
> 4. Industrial use Zone
> 5. Public and Semi public use Zone
> 6. Recreational use Zone.
> 7. Transportation and Communication use Zone (Roads, Railways, Airports, Bus Depots and Truck Terminals)
> 8. Agricultural use zone.
> 9.Water Bodies."

5. Respondent No.3, which was registered as a society in March, 2009 under the Andhra Pradesh Societies Registration Act, 2001, submitted an application dated 28.5.2009 to respondent No.1 for grant of permission to construct a temple at the site which formed part of Town Survey No.2/3. After considering the objections received from the public, respondent No.1 passed resolution dated 4.2.2010 for grant permission to the Residents Welfare Association to construct Sri Venkateswara Swamy Vari Temple. In furtherance of that decision, Vice- Chairman of respondent No.1 issued order dated 30.3.2010, the relevant portions of which, as contained in Annexure P-4 of the SLP paper book, are extracted below:

> "Therefore the `Residential Welfare Association' is permitted to construct Sri Venkateswara Swamy Vari Temple in the earmarked site and orders are issued accordingly.
>
> The said `Residential Welfare Association' Alaya Committee is directed to follow the following conditions:
>
> 1. The said Association has no ownership rights on the site earmarked for Religious center in the IDSMT Scheme. The said Association has right to construct the temple only. The complete rights on the site and building shall rest with the UDA only.
>
> 3. The Association should not make use of allotted site for other purposes except for the construction of temple.
>
> 4. Temple should be constructed within three years from the date of issue of this order. Or else the UDA is having every right to take over the site along with the incomplete building.

5. In the said site activities pertaining to Temple alone should be conducted and it should not be used for commercial and business purposes.

6. The meetings and activities of Alaya Committee should be conducted as per laws.

7. The conditions made by the Government/VGTM UDA from time to time shall be in force.

8. If the conditions are violated the said site along with the building shall be taken over."

After about one month and ten days, the Vice Chairman of respondent No.1 issued amended order dated 10.5.2010 in the name of respondent No.3 because by mistake permission for construction of temple was issued in favour of the Residents Welfare Association, which had not even submitted application.

6. Having succeeded in convincing respondent No.1 to grant permission for construction of temple at the site, which did not even belong to it, respondent No.3 approached the State Government for change of land use from recreational (park) to public/semi public. Simultaneously, the Vice Chairman of respondent No.1 addressed letter dated 15.6.2010 to the Principal Secretary to Government, Municipal Administration and Urban Development Department for change of land use. He pointed out that in the Integrated Development of Small and Medium Towns Scheme, 1981 (for short, `the 1981 Scheme') 15 cents land comprised in Town Survey No.2/3 was reserved for religious center but, by mistake the same was shown as earmarked for recreational use in the Zonal Development Plan.

7. While respondent Nos. 1 and 3 were making efforts for securing an order from the State Government for change of land use, the appellants filed writ petition by way of public interest litigation questioning the decision of respondent No.1 to sanction construction of temple. They pleaded that the Zonal Development Plan prepared by respondent No.1 and approved by the State Government is statutory in character and land covered by the Zonal Development Plan cannot be used for a purpose other than the one specified in the Plan and respondent No.1 did not have the jurisdiction to sanction construction of temple at the site of which land use was shown as recreational (park). In the counter affidavit filed on behalf of respondent No.1, it was pleaded that mere allotment of land for construction of temple did not give any cause to the writ petitioners to challenge order dated 30.3.2010 and as and when an application is made for construction of temple, respondent No.1 will consider whether land can be used for a purpose other than the one specified in the Zonal Development Plan. In the affidavit filed on behalf of respondent No.3, it was pleaded that as per the Zonal Development Plan, land coming under the Residential Use Zone can be utilized for construction of Kalyana Mandapams without creating any noise pollution, function halls/public assembly halls, religious center etc. and in the absence of any

bar in the Zonal Development Plan, no exception can be taken to the permission granted by respondent No.1 for construction of temple.

8. The Division Bench of the High Court noticed that as per the approved Zonal Development Plan, Town Survey No.2/3 is earmarked for recreational use (park) and held that unless the State Government relaxes the use of land, respondent No.1 cannot grant permission for construction of temple. However, the appellants' prayer for quashing order dated 30.3.2010 was declined by making the following observations:

"Once the land was earmarked for the parks/recreational use in the modification of the Master Plan of Tenali Town as approved in G.O.Ms.No.689, dated 30.12.2006, unless the Government relaxes the use of the land for any other purpose than the one notified, the first respondent cannot grant permission for construction of temple if it is prohibited under G.O.Ms.No.689, dated 30.12.2006. Mere allotment of the land for construction of temple will not give rise any cause of action unless permission for construction of temple is accorded by the first respondent on submitting the plans. As and when the plans are submitted with specific proposal for construction of temple, the first respondent is under obligation to consider the prohibition contained under the modified Master Plan issued in G.O.Ms.No.689, dated 30.12.2006. It is under obligation to invite the objections from the residents of the locality including the petitioners and consider the said objections before granting permission. If such construction of temple is prohibited, it is also open for the third respondent to move the Government by filing an application seeking relaxation of the land use and if any relaxation is granted by the Government, it can make its application to the first respondent."

(emphasis supplied)

9. Learned counsel for the appellants argued that the impugned order is liable to be set aside because the High Court disposed of the writ petition by erroneously assuming that order dated 30.3.2010 was only for allotment of land to respondent No.3. Learned counsel emphasized that in the approved Zonal Development Plan, land use of Town Survey No.2/3 has been shown as recreational (park) and argued that respondent No.1 committed a jurisdictional error by sanctioning construction of temple at the site without even making an effort to find out whether the site belongs to respondent No.3.

10. Learned counsel for the respondents supported the impugned order and argued that the permission granted by respondent No. 1 cannot be faulted merely because land use of the site has not been changed by the State Government. Learned counsel for respondent No.1 submitted that while preparing the Zonal Development Plan the competent authority had overlooked the fact that in the 1981 Scheme 15 cents land forming part of Town Survey No.2/3 was reserved for religious center and this is the reason why the Vice Chairman of respondent No.1 had written to the State Government to rectify the mistake. He then argued that the appellants do not have the locus to question resolution dated 4.2.2010 and order dated 30.3.2010 because they did not file objection against the proposed construction of

temple at the site of which land use has been shown in the Zonal Development Plan as recreational.

11. We shall first consider whether the High Court was justified in declining relief to the appellants on the premise that respondent No.1 had merely allotted land to respondent No.3. In this context, it is apposite to observe that none of the documents produced before the High Court and this Court show that respondent No.3 had applied for allotment of land for construction of temple and respondent No.1 had allotted the site after following some procedure consistent with the doctrine of equality enshrined in Article 14 of the Constitution. Not only this, a bare reading of order dated 30.3.2010 leaves no manner of doubt that respondent No.1 had granted permission to respondent No.3 for construction of temple at the site in question. There is nothing in the language of that order or the conditions enshrined therein from which it can be inferred that respondent No.1 had allotted land to respondent No.3. Therefore, the High Court was clearly in error in deciding the writ petition by assuming that it was only a case of allotment of land.

12. The next question, which merits consideration is whether respondent No.1 had the jurisdiction to allow construction of temple at the site which was reserved for recreational use in the Zonal Development Plan. Section 2(e) which contains the definition of term "development" and Sections 7, 12(1), (2), (3) and (4) and 15 of the Act, which have bearing on the decision of this question read as under:

> "2(e) `development' with its grammatical variations 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. Provided that for the purposes of this Act, the following operations or uses of land shall not be deemed to involve development of the land that is to say-
>
> (i) the carrying out of any temporary works for the maintenance, improvement or other alteration of any building, being works which do not materially affect the external appearance of the building:
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> (ii) the carrying out by a local authority of any temporary works required for the maintenance or improvement of a road, or works carried out on land within the boundaries of the road;
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> (iii) the carrying out by a local authority or statutory undertaking of any temporary works for the purpose of inspecting, repairing or renewing any sewers, mains, pipes, cables or other apparatus, including the breaking open of any street or other land for that purpose:

(iv) the use of any building or other land within the cartilage purpose incidental to the enjoyment of the dwelling house as such; and

(v) the use of any land for the purpose of agriculture, gardening or forestry (including afforestation) and the use for any purpose specified in this clause of any building occupied together with the land so used;

7. Zonal development plans: - (1) Simultaneously with the preparation of Master Plan or as soon as may be thereafter the Authority shall proceed with the preparation of zonal development plan for each of the zones into which the development area may be divided.

(2) A zonal development plan may,-

(a) contain a site plan and land use plan for the development of the zone and show the approximate locations and extents of land uses proposed in the zones for such purposes as roads, housing, schools, recreation, hospitals, industry, business, markets, public works and utilities, public buildings, public and private open spaces and other categories of public and private uses;

(b) xxx xxx xxx

(c) xxx xxx xxx

(d) in particular, contain provisions regarding all or any of the following matters, namely--

(i) xxx xxx xxx

(ii) the allotment or reservation of lands for roads, open spaces, gardens, recreation grounds, schools, markets and other public purposes;

(iii) to (xii) xxx xxx xxx

12. Modifications to plan: - (1) The Authority may make such modifications to the plan as it thinks fit, being modifications which, in its opinion, do not effect important alterations in the character of the plan and which do not relate to the extent of land uses or the standards of population density.

(2) The Government may suo motu or on a reference from the Authority make any modifications to the plan, whether such modifications are of the nature specified in sub-section (1) or otherwise.

(3) Before making any modifications to the plan, the Authority or, as the case may be, the Government shall publish a notice in such form and manner as may be prescribed inviting objections and suggestions from any person with respect to the proposed modifications before such date as may be specified in the notice and shall consider all objections and suggestions that may be received by the Authority or the Government.

(4) Every modification made under the provisions of this section shall be published in such manner as the Authority or the Government, as the case may be, may specify and the modifications shall come into operation either on the date of the publication or on such other date as the Authority or the Government may fix.

15. Use of the land and buildings in contravention of plans: - After the coming into operation of any of the plans in a zone, no person shall use or permit to be used any land or building in that zone otherwise than in conformity with such plan:

Provided that it shall be lawful to continue to use upon such terms and conditions as may be determined by regulations made in this behalf, any land or building for the purpose for which, and to the extent to which, it is being used on the date on which such plan comes into force."

13. The definition of the "development" is comprehensive. It takes within its fold the carrying out of all or any of the works contemplated in a Master Plan or Zonal Development Plan 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 the existing building or land. Redevelopment is also included within the ambit of the term "development". The proviso to the definition excludes certain works, which are of temporary nature. Section 13 of the Act empowers the Government to declare an urban area or group of urban areas to be a development area for proper development of such area or areas. Once an urban area or a group of urban areas is declared to be a development area, the Government is obliged to constitute an Urban Development Authority under Section 3(1). The Development Authority is enjoined with the task of promoting and ensuring development of all or any of the areas comprised in the development area according to the sanctioned plan and for that purpose, the Authority has the power to acquire, by way of purchase or otherwise, hold, manage, plan, develop and mortgage or otherwise dispose of land and other property, to carry out by or on its behalf building, engineering, mining and other operations, to execute works in connection with supply of water and electricity, disposal of sewerage and control of pollution, other services and amenities [Section 5(1)]. Chapter III of the Act contains provisions for preparation of Master Plan and Zonal Development Plan. Section 7(1) provides for preparation of Zonal Development Plan for each of the zones into which the development area may be divided. Section 7(2) enumerates the matter, which may be specified in the Zonal Development Plan. Clause (a) thereof speaks among other things of land use plan for the development of the zone and the approximate locations and extents of land uses proposed in the zones for purposes like roads, housing, schools, recreation, hospitals, industry, business, markets, public works and utilities, public buildings, public and private open spaces and other categories of public and private uses. Sections 8 and 9 lay down the

procedure for preparation and approval of the Master Plan/Zonal Development Plan. Section 10 lays down that immediately after approval of Plan by the State Government, the authority shall publish a notice evidencing such approval and from the date of first publication of notice the Plan shall come into operation. Section 12(1) empowers the Development Authority to make appropriate modifications in the plan which do not effect important alterations in the character of the plan and which do not relate to the extent of land uses or the standards of population density. Section 12(2) empowers the State Government to make any modification in the plan either on its own or on a reference made by the Development Authority. Section 12(3) and (4) lays down the procedure for making modification of plan which is substantially similar to the procedure prescribed for preparation of the plan. Section 15 prohibits the use of land otherwise than in conformity with the plan.

14. An analysis of the above noted provisions shows that once the Master Plan or the Zonal Development Plan is approved by the State Government, no one including the State Government/Development Authority can use land for any purpose other than the one specified therein. There is no provision in the Act under which the Development Authority can sanction construction of a building etc. or use of land for a purpose other than the one specified in the Master Plan/Zonal Development Plan. The power vested in the Development Authority to make modification in the development plan is also not unlimited. It cannot make important alterations in the character of the plan. Such modification can be made only by the State Government and that too after following the procedure prescribed under Section 12(3).

15. In the pleadings filed before the High Court, the respondents had not controverted the assertion made by the appellants that in the approved Zonal Development Plan, land comprised in Town Survey No.2/3 was earmarked for recreational use. Therefore, in the absence of change of land use which could have been sanctioned only by the State Government, respondent No.1 had no jurisdiction to grant permission to respondent No.3 to construct temple at the site. Respondent No.1 was very much alive to this legal position and this is the reason why its Vice Chairman had written letter dated 15.6.2010 to the Principal Secretary to the Government for change of land use by stating that a mistake had been committed at the time of preparation of Zonal Development Plan. It is a different thing that the State Government has not sanctioned change of land use by modifying the zonal development plan in accordance with the procedure prescribed under Section 12(3) and (4). In this scenario, there is no escape from the conclusion that respondent No.1 could not have entertained the application made by respondent No.3 and granted permission for construction of temple at the site reserved for recreational use and that too by ignoring that the same had not been allotted to respondent No.3 by any public authority. As a corollary, it must be held that the High Court committed serious error by refusing to quash order dated 30.3.2010 by assuming that it was merely a case of allotment of land.

16. The view taken by us on the legality of order dated 30.3.2010 finds support from the judgment of this Court in Bangalore Medical Trust v. B.S. Muddappa (1991) 4 SCC 54. In that case, allotment of land, which was shown as open space in the sanctioned development plan, for construction of a nursing home was challenged on the ground that the State Government and the Bangalore Development Authority did not have the jurisdiction to make

such allotment. The learned Single Judge negatived the challenge but the Division Bench allowed the appeal and quashed the allotment. The judgment of the Division Bench was approved by this Court. R.M. Sahai, J., who delivered the main judgment highlighted the importance of reservation of land for the public park in a development plan and adversely commented upon use thereof for construction of nursing home in the following words:

> "Public park as a place reserved for beauty and recreation was developed in 19th and 20th century and is associated with growth of the concept of equality and recognition of importance of common man. Earlier it was a prerogative of the aristocracy and the affluent either as a result of royal grant or as a place reserved for private pleasure. Free and healthy air in beautiful surroundings was privilege of few. But now it is a, `gift from people to themselves'. Its importance has multiplied with emphasis on environment and pollution. In modern planning and development it occupies an important place in social ecology. A private nursing home on the other hand is essentially a commercial venture, a profit oriented industry. Service may be its motto but earning is the objective. Its utility may not be undermined but a park is a necessity not a mere amenity. A private nursing home cannot be a substitute for a public park. No town planner would prepare a blueprint without reserving space for it. Emphasis on open air and greenery has multiplied and the city or town planning or development Acts of different States require even private house owners to leave open space in front and back for lawn and fresh air. In 1984 the B.D. Act itself provided for reservation of not less than 15 per cent of the total area of the layout in a development scheme for public parks and playgrounds the sale and disposition of which is prohibited under Section 38-A of the Act. Absence of open space and public park, in present day when urbanisation is on increase, rural exodus is on large scale and congested areas are coming up rapidly, may give rise to health hazard. May be that it may be taken care of by a nursing home. But it is axiomatic that prevention is better than cure. What is lost by removal of a park cannot be gained by establishment of a nursing home. To say, therefore, that by conversion of a site reserved for low lying park into a private nursing home social welfare was being promoted was being oblivious of true character of the two and their utility."

T.K. Thommen, J., who agreed with R.M. Sahai, J. referred to the provisions of the Bangalore Development Authority Act, 1976 and observed:

> "The scheme is meant for the reasonable accomplishment of the statutory object which is to promote the orderly development of the city of Bangalore and adjoining areas and to preserve open spaces by reserving public parks and playgrounds with a view to protecting the residents from the ill-effects of urbanisation. It meant for the development of the city in a way that maximum space is provided for the benefit of the public at large for recreation, enjoyment, `ventilation' and fresh air. This is clear from the Act itself as it originally stood. The amendments inserting Section 16(1)(d), 38-A and other provisions are clarificatory of this object. The very purpose of the BDA, as a statutory authority, is to promote the healthy growth and development of the city of Bangalore and the areas adjacent thereto. The legislative intent has always

been the promotion and enhancement of the quality of life by preservation of the character and desirable aesthetic features of the city. The subsequent amendments are not a deviation from or alteration of the original legislative intent, but only an elucidation or affirmation of the same. Protection of the environment, open spaces for recreation and fresh air, playgrounds for children, promenade for the residents, and other conveniences or amenities are matters of great public concern and of vital interest to be taken care of in a development scheme. It is that public interest which is sought to be promoted by the Act by establishing the BDA. The public interest in the reservation and preservation of open spaces for parks and playgrounds cannot be sacrificed by leasing or selling such sites to private persons for conversion to some other user. Any such act would be contrary to the legislative intent and inconsistent with the statutory requirements. Furthermore, it would be in direct conflict with the constitutional mandate to ensure that any State action is inspired by the basic values of individual freedom and dignity and addressed to the attainment of a quality of life which makes the guaranteed rights a reality for all the citizens."

17. The matter deserves to be considered from another angle. It is neither the pleaded case of respondent No.3 nor any document was produced before the High Court and none has been produced before this Court to show that 15 cents land forming part of Town Survey No. 2/3 was allotted to it by any public authority after following a recognized mode of disposal of public property. It has surprised us that even though respondent No.3 was not an owner of the site, it made an application for grant of permission to construct the temple and functionaries of respondent No.1 accepted the same without making any inquiry about the title of respondent No.3. Thus, the illegality committed by respondent No.1 in issuing order dated 30.3.2010 is writ large on the face of the record.

18. In the result, the appeal is allowed and the impugned order is set aside. As a corollary, the writ petition filed by the appellants is also allowed and order dated 30.3.2010 as also amended order dated 10.5.2010 issued by respondent No.1 are quashed. The parties are left to bear their own costs.

19. Since we have allowed the main appeal, the contempt petition filed by the appellants is disposed of as in fructuous.