

Dr. A.L.N. Prasad and ors. Vs. State of A.P., Rep. by Prl. Secretary to Government, Municipal Administration and Urban Development (Ti) Department and ors.

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Court : Andhra Pradesh

Decided On : Apr-07-1997

Reported in : 1997(3)ALT516

Judge : P.S. Mishra, C.J. and ;D.H. Nasir, J.

Acts : Andhra Pradesh Urban Areas (Development) Act, 1975 - Sections 11 and 22; Urban Development Authority (Hyderabad) Rules, 1977 - Rule 13 and 13A; Andhra Pradesh Co-operative Societies Act - Sections 61

Appeal No. : Writ Appeal No. 1265 of 1994

Appellant : Dr. A.L.N. Prasad and ors.

Respondent : State of A.P., Rep. by Prl. Secretary to Government, Municipal Administration and Urban Development

Advocate for Def. : Government Pleader for Respondent No. 1 and ;K. Janardhana Rao, Standing Counsel for HUDA for Respondent No. 2, ;C.R. Pratap Reddy, Standing Counsel for MCH for Respondent No. 3, ;S.R. Ashok, Adv.

Advocate for Pet/Ap. : Nooty Ramamohan Rao, Adv.

Disposition : Appeal dismissed

Judgement :

P.S. Mishra, C.J.

1. Writ Petitioner-appellants have invoked this Court's jurisdiction under Clause 15 of the Letters Patent against a judgment in a petition under Article 226 of the Constitution of India. Facts which are relevant for consideration in the appeal are as follows:

The Government of the State has allotted by an order dated 31-1-1964 Ac. 1195.00 of land in Survey No. 403 of Shaikpet Village and Ac. 203.00 in Survey No. 102 of Hakimpet Village totalling Ac. 1398.00 to the Fourth respondent - Jubilee Hills Co-operative House Building Society Ltd., Jubilee Hills, Hyderabad. Out of the said extent of land, an extent of Ac. 218.22 gts. was allotted by the State Government to various other societies. On 24-2-1977, a lay-out for 272 plots was sanctioned by the third respondent-Municipal Corporation of Hyderabad. Another lay-out for 329 plots was sanctioned by the Corporation on January 11, 1982. On April 18, 1984, seven lay outs were sanctioned for 1734 plots. Thus in all nine lay outs were sanctioned covering the area approximately Ac. 1100.00, inclusive of the open area earmarked for parks, roads etc. Some time in 1987-88, the above layouts were consolidated in three phases called Phase-I Special Zone and Blocks (A & B); Phase-II Blocks C, C-1 & D; and Phase-III Blocks III, III-A & III-B. On February 8, 1988, the lay-out was approved by the Municipal Corporation of Hyderabad, but soon was revoked by the Corporation by exercising its powers Under Section 450 of the Municipal Corporations Act, 1956 (sic. 1955) on October 27, 1988 only to give a comprehensive approval of lay-outs on June 15, 1991. It is alleged, a new managing committee came into office on September 18, 1988 and some new members were admitted and plots were allotted, however, allegedly without any norms or bye-laws.

2. The Government of Andhra Pradesh issued G.O.Ms. No. 644, MA, dated December 24, 1991 wherein the Zonal Development Plan was modified and Ac. 20.00 was deleted allegedly from the recreational area and converted into area for

residential use. The said G.O. is questioned, without, however, entering into statements which appear to repeat the above, denying seriously the allegation that by deletion of Ac. 20.00 from the alleged recreational area and converting the same into residential area, there has been any violation of the law as respects creation of various zones and blocks for the colonies which society has sponsored. According to the petitioner-appellants, the Government Order in G.O.Ms. No. 644, MA, dated December 24, 1991 is illegal, without application of mind and without any justification. It is issued in utter violation of principles of natural justice. Petitioner-appellants, who intended to object to the modification of the scheme/plan, were not afforded reasonable opportunity and notice for the said purpose as contemplated under the Act has not been adequate. Rule 13-A of the Urban Development Authority (Hyderabad) Rules, 1977 is questioned as ultra vires Section 12 of the Act.

3. Learned single Judge has held:

(1) There is no provision specifying separate extents for parks and playgrounds and other civic amenities in the A.P. Urban Areas (Development) Act, 1975 or the Urban Development Authority (Hyderabad) Rules, 1977. The Rules contemplate that 40 per cent of the total area shall be reserved for open space and recreational area;

(2) conversion of the extent of Ac. 20.00 of land from the recreational area into residential area is in no manner affected by the rule aforementioned as the reserve for recreational purpose in accordance with the rules is more than 40 per cent;

(3) there is no violation of any rule, regulation or any other law as well as principles of natural justice in making the order by the State Government for modification aforementioned. It cannot be said that there is inadequate notice or that those who wanted to file objections were denied opportunity to object to the grant. Main thrust of the argument, however, of the learned counsel for the appellants is based on the provisions in Chapter 3 of the A.P. Urban Areas (Development) Act, 1975 which contemplates a master plan for development area and submissions are built around provisions Under Sections 11 and 12 of the Act as well as the Rules framed in this behalf. Our attention has been drawn to the provisions in Section 11

of the Act and Section 12 which says 'the Authority may make such modifications to the plan as it thinks fit, being modifications which, in its opinion, do not affect 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.' Sub-sections

(2) and

(3) of Section 12 provide as follows:

'(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.'

It is urged before us that corresponding Rules 12 (sic. 13) and 13-A provide different provisions for notices by the competent authority and the State Government for modification of the master plan. Rule 13 reads as follows:

'13. Modifications to the Master Plan:-In case the Authority desires to make any modification in the Land Use Map or Master Plan under subsection (1) of Section 12 of the Act, a public notice shall be issued in a prominent place in at least three local (Telugu, Urdu and English) newspapers by the Authority.'

13-A. Modifications to the Master Plan by the Government:- In case the Government desire to make any modification to the Master Plan under Sub-section (2) of Section 12 of the Act, a notification shall (after consultation with the authority) be published in the Andhra Pradesh Gazette in such form as the Government may deem fit inviting objections and suggestions from any person or local authority affected directly or indirectly with respect to the Master Plan proposed to be modified giving fifteen days time for the receipt of such objections

and suggestions.

(2) Soon after the objections and suggestions are received by the Government, the Government may, if necessary, have local enquiries conducted and give an opportunity to the persons affected to state the objections before the modifications are approved and published in the Andhra Pradesh Gazette.'

4. No grievance is made in the instant proceeding with respect to 15 days time for the objections and suggestions to be made in respect of the modifications to the master plan by the Government. It has been seriously suggested and contended, however, that whereas in the case of any modification by the authority, a public notice is required in a prominent place and in at least three local Telugu, Urdu and English newspapers and in the case of modification to the master plan by the Government, a notification is required for the said purpose to be published in the official Gazette inviting objections and suggestions from any person or local authority affected directly or indirectly with respect to the master plan proposed to be modified. The rule, according to the learned counsel for the appellants, gives arbitrary power to the State Government and in the case on hand modified notification has been issued in the Gazette, but since there is no warrant of issuing notice in prominent place, the same has not been done. To dispose first whether it is possible to find fault with Rule 13-A for not providing for public notice in prominent place and in newspapers and instead for providing for the publication of a notification in the A.P. Gazette, learned counsel for the appellants has pointed out that publication of the notification for intended modification in the master plan in the official Gazette when examined in the light of the scheme of public notice by the authority in Rule 13, is obviously inadequate and arbitrary. Learned Counsel has contended, it is common knowledge, gazette notifications are in variably not read except for the purpose of verification. Whether any other publication is authentic or not and implied, according to him, therein, is an obvious arbitrariness why the Government is not required to follow the same procedure as in the case of any modification by the authority under Rule 13 of the Rules. Even though publication in the Gazettes are not so common and are not comparable to public notice in prominent place and publication of the notice in the news papers, the Court cannot presume, as any such presumption will be contrary to the provisions

in the Evidence Act in this behalf that Gazette notifications are not at all read or that people who are concerned are not expected to read Gazette notifications. Learned Counsel for the appellants has relied upon a judgment of the Supreme Court in Pradesh Pong Bandh Visthapit Samiti v. Union of India, : AIR 1996 SC3445 and with regard to observations in respect of publication in the Rajasthan Gazette of notices in accordance with a rule in this behalf intended to be read by the persons who were natives of the State of Himachal Pradesh, the Supreme Court has said that it is manifestly absurd to think that a person who lived in Himachal Pradesh could read the Rajasthan Gazette and make a review application under the provisions of the Rules within 60 days of its publication. Such situation, however, cannot be said to arise in the case of members of a society in the city of Hyderabad when Gazette notification is available in the city. Yet there can be a genuine complaint by some one, who is in a position to object or to provide suggestions and in case the Authority has proposed modifications, is informed by a public notice in a prominent place and by publication in newspapers if a Gazette notification is made and modification is proposed by the Government of the State, there is some safeguard, however, because Rule 13-A has contemplated, consultation with the authority before the Government published in the Gazette with respect to the master plan proposed to be modified. How far the authority would be inclined, however, to carry the news of the intended modification to persons who are in a position to object or to give suggestions, is left vague and rule in this behalf, one may be inclined to agree with the learned Counsel for the appellants, is not adequate. The above, however, is of no avail to the petitioner-appellants and for the same, there are valid reasons. Modification in the plan is proposed by the society of which the petitioner-appellants are members. As members of the society, they cannot come forward to say that they had no information that there was a proposal to modify the master plan. In fact, much before the Gazette notification under Rule 13-A, petitioner-appellants are informed of the proposed modification, when the Society proposed the modification to the Government and the Government responded to it. No credit can be given to the case of the petitioner-appellants that although they are members of the society, they never had such information. It will just not lie in their mouth as members of the society. All acts of the society are for and on behalf of

the members of the society. Petitioner-appellants cannot take any exception on the ground of want of notice to what is done on their behalf by the society of which they are members. The Supreme Court in *Daman Singh v. State of Punjab*, : [1985]3SCR580 has spelled out the position of members vis-a-vis the society in these words:

'The next submission of the learned Counsel was that Section 13(8), (9) and (10) did not make express provision for the issue of notice to the members of the concerned Co-operative Societies and were, therefore, violative of the principles of natural justice. He argued that in the absence of any provision, the rules of natural justice may be read into the provisions and notice to the members of the affected societies was imperative. Otherwise, he argued, members of the society would be forced against their will and without being heard to associate themselves with members of another. We have no hesitation in rejecting this submission also. Once a person becomes a member of a co-operative society, he loses his individuality qua the society and he has no independent rights except those given to him by the statute and the bye-laws. He must speak through the society or rather, the society alone can act and speak for him qua rights or duties of the society as a body. So if the statute which authorises compulsory amalgamation of co-operative societies provides for notice to the societies concerned, the requirement of natural justice is fully satisfied. The notice to the society will be deemed as notice to all its members. That is why Section 13(9) (a) provides for the issue of notice to the societies and not to the individual members. Section 13(9)(b), however, provides the members also with an opportunity to be heard if they desire to be heard. Notice to individual members of a co-operative society, in our opinion, is opposed to the very status of a co-operative society as a body corporate and is, therefore, unnecessary. We do not consider it necessary to further elaborate the matter except to point out that a member who objects to the proposed amalgamation within the prescribed time is given, by Section 31(11), the option to walk-out, as it were, by withdrawing his share, deposits or loans as the case may be.'

The above observations of the Supreme Court are made in the case of amalgamation of Co-operative Societies. But the expressions are candid to apply

to all cases of association of individuals, who by such association, grant to the association called 'society' a juristic and /or legal status. A representative character of the society, of which the petitioner-appellants are members, must take into its fold the representation of the petitioners-appellants as well to the Government and the proposed amendment thus has to be taken to be one as proposed by the petitioner-appellants as well. The second reason for not accepting the above contention again lies in the nature of dispute which the petitioner-appellants are raising. Ostensibly, they questioned the modification of notification by the Government of the State, but in reality they questioned the act of the society of which they are members. It is nobody's case that Government had any reason other than the proposal of the society for modifying the scheme. Objections of the petitioner-appellants thus are directed towards the proposal of the society of which they are members and as we have noticed earlier, society's proposal must be deemed to be a proposal on behalf of its members. The dispute in the instant case thus is one between members of the society and the society and will be a matter for adjudication by way of arbitration Under Section 61 of the A.P. Co-operative Societies Act.

5. When we are taking the above view, however, we do not reject outright the concern of any person for preservation of colonies and provisions for parks etc, in respect of which the learned counsel for the appellants has agreed to leave. If we do not go into this, case to examine in detail whether there is any degradation of the green belt in the proposed colony and the society, the authority and the Government have acted rather callously in ignoring altogether the requirements of parks etc. which alone provide needed lung space for the residents in the developing cities and expanding and expanded colonies. There is some argument before us which in effect is repetition of the argument before the learned single Judge as to whether the Government in the name of modification of the master plan could modify the approved zonal plans by the competent authority. This, however, is an argument which, on the facts of the instant case, does not appear to be genuine. Figures which are made available to us and in respect of which specific findings are recorded by the learned single Judge do admit of sufficient lung space and conversion of the recreational area into residential area in itself is not a complete denudation of the parks and open spaces. Learned Counsel for the

appellants has taken us through the various rules in this behalf. Every residential area is necessarily to be provided with parks and other open spaces. The expansive expression 'recreational' in the scheme of the law, as has been demonstrated before us by the learned Counsel for the appellants himself, is not confined to parks or other open spaces made available for children etc. as playgrounds. It includes areas where entertainment mouses can be established. Thus all that is provided for recreational purposes is not really for an ecological purpose. The required ecological lung space, it is conceded, in the instant proceeding, is not at all justified by the change in the master plan.

6. For the reasons aforementioned, we are not inclined to interfere with the judgment of the learned single Judge.

7. There is no merit in the appeal. The appeal is dismissed, but on the facts and in the circumstances of the case, without costs.