In the High Court of Judicature of Andhra Pradesh at Hyderabad

M.V.P. Social Workers Association, Visakhapatnam

v.

V.U.D.A. Visakhapatnam and others

Writ Petition No. 26085 of 2001

23-01-2002 dd.

Dr. Arlakshmanan C.J. & V.V.S. Rao J.

JUDGMENT :

1. The Petitioner-association, claiming to be a registered Social Workers Association, MVP Colony, Viskahapatnam, formed in the year 1993 with the object of doing social service and to strive for better standards of life, filed this Writ Petition as a Public Interest Litigation challenging the action of the 1st respondent in permitting the 4th respondent to make a permanent construction near VUDA Park at Visakhapatnam beach line to establish an electronic and video games complex (amusement park), on the ground that it affects the environment of the Coastal Zone of Visakhapatnam city and violative of the provisions of Environment (Protection) Act, 1986.

2. The petitioner has sought for a mandamus declaring the action of the 1st and 4th respondents in making constructions in the name of MGM Dizzy World or in any other name, scheme or plans within the area of 200 metres from the High Tide Line (HTL) of the sea in Visakhapatnam and for any commercial purpose as arbitrary, illegal, ultra vires and violative of the various provisions of the Environment (Protection) Act, 1986 (for short 'the Act') and the rules made thereunder and to direct the respondents not to proceed with any type of construction within the area of 200 metres from HTL near VUDA park and to remove all constructions that have already been made in the area.

3. According to Sri Sarva Bhouma Rao, learned counsel appearing for the petitioner, the 1st respondent - authority located a park known as VUDA Park in 1982 on the Visakapatnam beach line and created many facilities therein such as lawns, ska ting rink, swimming pool, children play ground, boat club and musical fountains

etc. and even for such developments, the 1st respondent did not make any permane nt construction at any time. The park is within the area of 200 metres from HTL of the sea. Since only a park is developed without any permanent structures, there had been no dispute of any violation of any provisions of law, particularly, the provisions of the Act and the rules made thereunder. However, the 4th respondent started digging fountains in the place earmarked as children play ground in the said park for construction of a building in a big way and when the petitioner enquired regarding the nature of the said building, they came to know that the 4th respondent is making a big construction in the park on a permanent basis to locate electronic and video games complex at the instance of the 1st respondent and that the said building is raised to the level of slab with concrete columns and beams and that the approximate plinth area of the said construction could be around 2000 sq. ft. It is further submitted that the 4th respondent also dug a bore well in the said site and has been drawing water from it and even according to the plan prepared by the 1st respondent the said structure and the bore well are within 150 metres from HTL of the sea. The petitioners came to learn that the proposed construction is being made purely for commercial purpose of locating electronic and video games complex for the use of which it is proposed to collect heavy entry fees from the public and thereby to have commercial benefit out of it. It is further submitted that the 1st respondent had laid a permanent roofing and completed the whole building and making all the arrangements to install electronic and other equipment in it to commence the commercial usage of the said building. Thus, according to the learned counsel, the playground has been illegally and unauthorisedly converted into a commercial establishment for which no permission was obtained from the 2nd respondent-Municipal Corporation by the 4th respondent. According to the petitioner, respondents 1 and 4 did not obtain any permission from the 2nd respondent - Municipal Corporation and there are no approved plans.

4. The learned counsel further submitted that the said structure is being erected within the area prohibited under the provisions of the Act. Our attention was drawn to certain provisions of the Act and in particular Section 3(1) and Section 3(2)(v) and Rule 5(3)(d) of the rules made thereunder declaring the coastal stretches as Coastal Regulations Zone and regulating activities in such zones. Our attention was also drawn to the notification issued by the Ministry of Environment, Forests and Wild Life dated 9.2.1991 with reference to the above sections and the rules declaring the coastal stretches as Coastal Regulation Zone (CRZ) and regulating the activities in such zones. It is submitted that the said notification was issued by duly observing the legal formalities such as inviting objections, if any, against the proposed declaration of the coastal stretches. In the notification the coastal stretches have been divided into four categories. According to the petitioners, the present area in which the disputed construction is made falls in Category-III of the said notification. According to the provisions of Annexure I of the notification, in relation to the third category, namely, Coastal Regulation Zone III (CRZ-III), the area up to 200 metres from HTL is to be earmarked as 'no development zone' and no construction shall be permitted within the said zone. The said provisions, however, permits agricultural, horticultural, gardens, pastures, parks, play fields, forestry and salt manufactures only. The disputed construction is not in the permitted sphere under the said notification since it is a permanent structure with more than 2,000 sq. ft in plinth

area. Thus, the learned counsel for the petitioner submits that the disputed construction is violative of the provisions of the Act and the notification issued thereunder.

5. The learned counsel for the petitioner has also invited our attention to Annexure-II of the aforesaid notification, which provides for guidelines for development of beach resorts/hotels in designated area of CRZ-III. Even if any temporary construction is made for temporary occupation of tourists or visitors, such constructions have to be made with the prior approval of the Ministry of Environment and Forests. Further, Para 7(1) of Annexure-2 of the notification clearly prohibits any construction including temporary constructions and fencing or other barriers within 200 metres from HTL towards the landward side and within the area between the low tide and high tide line. Further Para 7(v) prohibits tapping of ground water within 200 metres of HTL. Thus the bore-well dug by the 1st and 4th respondents, which is within 200 metres from HTL, is violative of the provisions of law. It is further submitted that the 1st and 4th respondents were making the construction in utter violation of not only municipal laws and building regulations but also the provisions of the Environment Act and without obtaining permission from the Municipal Corporation. Learned counsel further submitted that the 4th respondent is proposing to make further construction in the said park within 200 metres from HTL and if such constructions are allowed to be carried out, the same would result in an unprecedented pollution of the coastal line. It is also submitted that the conversion of the usage of the land is equally not authorised or approved by any competent authority. The 1st respondent cannot contend that since the VUDA itself has undertaken the construction, there is no necessity of obtaining permission for such conversion and such permission has to be necessarily given by the State Government on the proposals of the Corporation and Urban Development authority after calling for objections from the public for such conversion.

6. Learned counsel appearing for the 1st respondent Smt. Sumalini Reddy at the time of hearing, placed before us the deed of licence dated 9.8.2000 executed between Visakhapatnam Urban Development Authority represented by its Vice Chairman as the licensor and the 4th respondent M/s M.G.M. Diamond Beach Resorts Pvt. Ltd. as the licensee. A copy of the deed of licence was also supplied to the learned counsel appearing for the petitioner at the time of hearing.

7. We have carefully perused the said deed of licence. It is seen from the said deed of licence that the 4th respondent has applied for licence to the 2nd respondent - VUDA for the land measuring Ac.8.00 abutting VUDA park in Viskahapatnam as mentioned and described in the schedule of the licence to enable the licensee for setting up an amusement park. After all the procedural formalities were gone through and after examination of the scheme, the licensor, namely, VUDA had agreed to grant a licence in favour of the licensee for a period of nine years commencing with effect from three months after the date of conclusion of agreement. The deed of licence was signed by the Secretary, Urban Development Authority, Visakhpantam and authorised signatory for MGM Diamond Beach Resorts (P) Ltd., - 4th respondent herein.

8. From a perusal of the terms and conditions of the deed of licence it is seen that (a) in

consideration of the licence fee offered and subject to the normal terms and conditions of grant of licence under Government and VUDA Rules, the licensor granted licence of the demised land to the licensee to hold the same for nine years and three months; (b) the licensee should keep the demised land clean and free from all sorts of nuisance, garbage and shall not allow heavy accumulation of water on it; (c) the licensee shall not make any excavation in the demised land except in the requirement for setting up of an amusement park and related activities for which the land is demised with the prior written permission of the licensor; (d) the licensee itself has to make necessary arrangements for electrification and procuring water as well as drain way the waste waster; (e) the land offered in VUDA park is inclusive of the swimming pool and its adjoining structures; (f) the licensee has to comply with all the statutory requirements and no sub-letting in part or full of the land licensed is permitted; (g) the licensee has to make necessary arrangements for toilets and other amenities within their allotted land; (h) if any permanent structure is proposed to be constructed in VUDA park, prior written permission of VUDA and the competent authorities i.e. SADA/CRZ clearance has to be compulsorily obtained. It was also mentioned that the licence shall not extend to raising any permanent structure; (i) the licensee shall take adequate precautions against causing public nuisance in the premises; (j) the licensee is solely responsible for any law and order problem and any litigation arising due to his activity and the licensor in no way be responsible on this count.

9. It is also useful at this stage to notice Clauses 3(a) and 3(b) of deed of licence which reads thus:

3(a) The annual compensation to be paid is Rs.18.00 lakhs (Rupees Eighteen lakhs only) per annum for the first three years. The annual compensation should be paid in advance every year on or before 8th November starting with 8th November 2000. In case of default, interest at 24% per annum shall be charged and in case of continued default for a period of 30 days the licensor shall have the right to determine the licensee duly forfeiting the security deposit.

(b) The compensation shall be increased at 33% for every 3 years or part thereof during the currency of the agreement i.e after 3 years the compensation rent is enhanced by 33%. Accordingly the schedule of payment is as follows.

1) On or before only 8.11.2000 Rs.18,00,000/-

2)	8.11.2001	Rs.18,00,000/-
3)	8.11.2002	Rs.18,00,000/-
4)	8.11.2003	Rs.23,94,000/-
5)	8.11.2004	Rs.23,94,000/-
6)	8.11.2005	Rs.23,94,000/-
7)	8.11.2006	Rs.31,84,020/-

8)	8.11.2007	Rs.31,84,020/-
9)	8.11.2008	Rs.31,84,020/-

10. After completion of 9 years 3 months from the date of conclusion of agreement i.e. by 8.11.2009 this licence will automatically cease and the land vested back to the licensor.

11. The conditions of the licence further provide that all the activities proposed should strictly comply with the statutory conditions and safety norms of the competent authorities and rules formulated by VUDA; the licensee shall not remove any earth from the demised land except as required for setting up of an amusement park and its related activities or carry on or allow to be carried on in the land any unlawful/illegal or immoral activities or activities which may be considered offensive or a source of any annoyance, inconvenience or nuisance to the area surrounding the demised land; the licensee shall observe, perform and comply with the requisitions as may from time to time to make by (Licensor) or any other authority in respect of the demised land buildings thereon; the licensor should prominently display the tariff/other charges and should not cause any public inconvenience and adhere to all statutory and local rules. It also provides that if the project is not commenced and open to the public within five months after conclusion of agreement, penal conditions will be additionally imposed at Rs.1000/- per day till commencement of the project for a period of three months. The deed of licence also provides that if there is any breach of any of the terms and conditions and covenants on the part of the licensee, the licensor shall have the right to re-enter into the possession of the demised land or any part thereof in the name of the whole and thereupon the demise shall forthwith stand determined.

12. Referring to the above clauses and terms and conditions of the deed of licence, the learned counsel appearing for the respondents would submit that the VUDA authorities after consideration of the scheme for setting up of an amusement park and after observing all the procedural formalities granted licence in favour of the licensee for a period of nine years. The licence entered into between the parties is subject to the normal terms and conditions of grant of licence under Government and VUDA Rules.

13. A perusal of the aforesaid terms and conditions of licence would clearly show that the VUDA has taken all the necessary precautions and measures to safeguard their interests and the interest of the public at large including the effect of pollution and environmental aspects of the matter. There is a clear condition in the licence that the licensee shall not make any excavation in the demised land except in the requirement for setting up of an amusement park and related activities. As per the licence, the licensee was under an obligation to comply with all the statutory requirements to safeguard the environment. It has been made specifically clear in the deed of licence that the licensee shall not extend to raising any permanent structure which is the grievance voiced by the petitioner in this writ petition. By leasing out the property to the 4th respondent, 1st respondent is regularly getting annual compensation of Rs.18.00 lakhs for the first three years and that the compensation should be paid in advance every year on or before 8th of

November and in default interest at 24% shall be charged. Conditions of licence also provide that the compensation shall be increased by 33% for every three years or part thereof during the currency of the agreement. Accordingly, schedule of payment has been fixed as per Clause 3(b) in the deed of licence. Under the deed of licence, the 4th respondent was required to make minimum investment of Rs.5.00 crores in the project. The licensee has to adhere to the progress and minimum investment as stipulated in Clause 5(a) and 5(b) and the licensee has also agreed to pay penalty for the short fall on the target at 2% per annum.

14. We have also perused the plans submitted by the parties. In our opinion, there is no violation of the terms and conditions of the licence and the notification issued under section 3(1) and section 3(2)(v) of the Act and the rules made thereunder. The 4th respondent has not been permitted or authorised to carry on any prohibited activities as mentioned in the notification. The prohibited activities are: setting up of new industries, manufacture or handling or storage or disposal of hazardous substances, setting up and expansion of fish processing units, setting up and expansion of units/mechanisms for disposal of waste and effluents, discharge of untreated wastes and effluents from industries, cities or towns and other human settlements, dumping of city or town wastes for the purposes of land filling up or otherwise, dumping of ash or any wastes from thermal power stations, land reclamation, bundling or disturbing the natural course of sea water, mining of sands, rocks and other substrata materials, harvesting or drawal of ground water and construction of mechanisms therefor within 200 metres of HTL, construction activities in ecologically sensitive areas as specified in Annexure-I of the notification, any construction activity between the Low Tide Live and High Tide Line except facilities for carrying treated effluents and waste water discharges into the sea etc. and dressing or altering of sand dunes, hills etc.

15. From a perusal of the terms and condition of the deed of licence, it is seen that none of the above-prohibited activities has been permitted to be undertaken by the 4th respondent nor it is the case of the petitioner that the 4th respondent has undertaken such activities. Clause 3 of the notification deals with permissible activities. Sub-clause (3)(i) of Clause (3) provides that the coastal States and Union Territory and Administrations shall prepare coastal management plans identifying and classifying the CRZ areas within their respective territories in accordance with the guidelines given in Annexures-I and II of the notification and obtain approval of the Central Government in the Ministry of Environment and Forest. Sub-clause 3(ii) of Clause 3 says that within the framework of such approved plans, all development activities within the CRZ other than those covered in para 2 and para 3(2) shall be regulated by the State Government, Union Territory Administration or the local authority, as the case may be, in accordance with the guidelines given in Annexures I and II of the notification. Annexure-I deals with coastal area classification and development regulations.

16. The grievance of the petitioners is that the area wherein the disputed construc tion is alleged to be made falls in Category-III of the said notification. Cate gory III (CRZ-III) will include coastal zone in the rural areas (developed and u ndeveloped) and also areas within municipal limits or in other legally designate

d urban areas which are substantially built up. Annexure-II provides for guideli nes for development of beach resorts/hotels in the designated areas of CRZ-I II for temporary occupation of tourists/visitors with prior approval of the Ministry of environment and Forests. Guideline 7(1) provides that construction of beach resorts/hotels with prior approval of MEF in the designated areas of CRZ-III for temporary occupation of tourists/visitors shall be subject to the conditions mentioned therein. Guideline 7(1)(i) of Annexure II of the notification clearly prohibits any construction (including temporary constructions and fencing or such other barriers within 200 metres in the landward side) from the High Tide Line and within the area between the Low Tide and High Tide Line. The conditions provide that the total plot size shall not be less than 0.4 hectares and that the construction shall be consistent with the surrounding landscape. The overall height of construction up to the highest ridge of the roof shall not exceed nine metres and the construction shall not be more than two floors. The ground water shall not be tapped within 200 metres of the HTL and within the 200 metre-500 metre zone; it can be tapped only with the concurrence of the Central/State Ground Water Board. The other conditions deal with the quality of treated effluents, extraction of sand, levelling or digging of sandy stretches and arrangements for the treatment of the effluents and solid wastes. As already noticed, conditions mentioned in Annexure-II, in our opinion, have been strictly adhered to in the instant case and that necessary arrangements for the treatment of the effluents and other directions mentioned therein have been duly incorporated in the deed of licence. The 1st respondent, in our considered opinion, has taken all the necessary precautionary measures essential for protecting and safeguarding the sensitive area in question before granting the licence in favour of the 4th respondent. In our opinion, the authorities have not wrongly exercised their power of jurisdiction in favour of the 4th respondent. In our view, the 1st respondent and other authorities have not allowed any activities which would ultimately lead to unscientific and unsustainable development and ecological destruction.

17. For the reasons aforesaid, we find no merit in the writ petition and it is accordingly dismissed. There shall be no order as to costs.