

In the High Court of Judicature of Andhra Pradesh at Hyderabad

C.S.Prakash and others.

v.

The HUDA

Writ Petition No. 5319 of 2001

21.06.2001 dd.

Sri. S.B. Sinha CJ. & Sri V.V.S. Rao J.

JUDGMENT : (per the Hon'ble the Chief Justice Sri S.B.Sinha)

1. In this public interest litigation, the petitioners, who are eight in number, have prayed for the following relief:

"...to issue appropriate writ or direction or order, more so in the nature of Writ of Mandamus declaring the inaction in not taking action against the respondents 3 and 4 as illegal, arbitrary and violative of the Andhra Pradesh Urban Areas (Development) Act and the rules made thereunder and Articles 14 and 21 of the Constitution of India and consequently to direct the respondents 1 and 2 to removal illegal structures situated in H.No. 2-2-12/3C, Durgabai Deshmukh, colony Hyderabad for any purpose other than the residential purpose."

FACTS:

2. The petitioners are the residents of Durgabai Deshmukh colony, which is a residential area, situated beside Osmania University campus. The third respondent, who is the owner of 2200 yards of land in the said colony, and the fourth respondent have made constructions on the said plot for the purpose of running a corporate hospital. The petitioners contend that hospital, being a medical institution, cannot be termed as a residence and setting up of a big corporate hospital in the middle of residential locality is not legal. Further, in relation thereto it should have obtained prior permission from the fifth respondent for disposal of bio-medical waste. The grievance of the petitioners is that the construction of hospital is creating nuisance in the locality inasmuch the roads in the colony are not wide enough to bear the traffic load. Though the petitioners have made representations to the first and second respondents on 22-1-2001 and 22-2-2002,

allegedly no action had been taken in the matter.

QUESTION:

3. The short question that arises for consideration in this writ petition is as to whether a multi-storied hospital should be allowed to come up in a residential area.

CONTENTIONS:

Mr. K.S. Murthy, learned Counsel appearing on behalf of the petitioners, would urge that the area in question having been declared to be a residential area, multi-speciality hospital should not be allowed to come up. The learned counsel further submitted that it is not a case where an irregular construction should be directed to be regularised.

Mr. Ganta Rama Rao, learned counsel appearing on behalf of the Hyderabad Municipal Corporation, on the other hand, submitted that permission has been granted for construction only for residential purpose. The learned counsel has placed before us relevant provisions of the Hyderabad Municipal Corporation Act, 1955 (for short "1955 Act") and the Bhagyanagar Urban Development Authority Zoning Regulations, 1981 (for short "1981 Zoning Regulations") and urged that in terms of the Appendix-C thereto, the nature of the building which could be constructed in a residential area has been laid down. The learned counsel would contend that permission had been granted for construction of the building up to three floors only, but another floor has been built up unauthorisedly wherefor an application for regularisation had been filed which is pending.

4. Mrs. Bhaskara Lakshmi, learned counsel appearing on behalf of the unofficial respondents, on the other hand, would submit that the hospital has already started functioning. The learned counsel would contend that no law can be laid down to the effect that the hospital cannot be run in a residential area and in fact all hospitals are situated in such localities only. If hospitals are to be situated outside the residential areas, the learned counsel would contend, the same would cause immense difficulties to the patients.

PROVISIONS OF THE ACT:

5. Section 419 of 1955 Act, which deals with erection of buildings, reads thus:
"(1) The Commissioner may with the approval of the Standing Committee, require by written order the corner of any building which has already been erected or which is to be newly erected or which is to be re-erected or repaired and which is situated at the junction of two or more streets to be rounded or splayed off to such height and in such manner as he may determine and may also in such order impose such conditions as he deems necessary as to the construction of a compound wall or fence or hedge or any other structure whatsoever or the planning or retention of any tree on the premises appurtenant to such building.

(2) Compensation shall be paid by the Commissioner for any loss or damage caused by the issue of an order under sub-section (1)."

Section 428 (1) of 1955 Act provides for giving of notice to the Commissioner for the purpose of erecting a building and it reads thus:

"(1) Every person who intends to erect a building shall give notice to the Commissioner of his said intention in a form, obtained for this purpose under Section 435, specifying the position of the building intended to be erected, the description of building, the purpose for which it is intended, its dimensions and the name of the person whom he intends to employ to supervise its erection.

6. The Hyderabad Urban Development Authority, with the previous approval of the Government, in exercise of the powers conferred by sub-section (1) of Section 59 of the Andhra Pradesh Urban Areas (Development) Act, 1975 (for short "1975 Act"), has made the Zoning Regulations, 1981. In terms of Regulation 6, the land use zones have been classified as residential, commercial, industrial, recreational, agricultural and special reservation. Regulation 6.1.2 says that the various buildings and occupancy uses to be permitted in these zones are as given in Appendix C. Regulation 6.2 says that no building or occupancy shall be changed to an use not in conformity with the permitted uses of Regulation 6.1.2.

FINDINGS:

Durgabai Deshmukh colony wherein the building in question is situate is admittedly a residential zone. Regulations 6.1.2 deals with the land use permissions for construction of hospitals in the residential zone. The respondents herein had, however, sought for construction of the building only for the residential purpose.

7. It is also not in dispute that respondent No.3 had converted the said building for non-residential purpose. In terms of G.O.Ms.No. 419, Municipal Administration & Urban Development (MI) (M.A.), dated 30-7-1998, regularisation of unauthorised constructions in certain situations is permissible. Such exemption has been granted by way of one-time measure. Time for regularisation of unauthorised constructions had been extended by the State and we are informed at the Bar that the time fixed therefor has lapsed on 31-7-1999. In the event, the State Government had not issued any further Government Order extending the said time, the question of considering the application for regularisation by respondent No. 3 in terms of aforementioned G.O.Ms.No. 419, dated 30-7-1998, would not arise.

8. Respondent No.3 also appears to have converted the user of the building from residential purpose to non-residential purpose. Respondent No.2 herein must, therefore, take appropriate action upon disposal of Respondent No.3's application for regularisation in terms of G.O.Ms.No. 419, dated 30-7-1998. It is now trite that only irregularities can be regularised, illegalities cannot. What can be regularised is deviation or alternation in construction, which would not be violative of the mandatory provisions of the building rules. Floor area ratio also cannot be allowed to be changed.

9. It may be that hospitals can be constructed in a residential area in terms of Regulation 6.1.2 of the 1981 Zoning Regulations and Appendix-C made in terms of the provisions of 1955 Act. There cannot further be any doubt that before construction of a big hospital is permitted not only care has to be taken about the convenience of the residents of the locality but also as to whether the permission from the competent authority had been taken for disposal of bio-medical wastage. Prevention of ecology and health of the populace come within the purview of Article 21 of the Constitution of India. The A.P. Pollution Control Board must, therefore, strictly apply the laws governing the field, including the rules, regulations and norms issued by it as well as by the Central Pollution Control Board in this behalf.

10. It may be true, as has been submitted by Mrs. Bhaskara Lakshmi, that as a matter of rule all the hospitals cannot be directed to be situate outside the municipal limits or the residential zone. It is for the competent authority to consider the efficacy of grant of such permission in that regard. But while doing so, it must also be borne in mind that by construction of such big hospitals further health hazards may not be caused. Adequate protection for disposal of bio-medical waste be taken in terms of the Bio-Medical Wastage (Management of Handling) Rules, 1998.

11. This Court in *M. VIJAYA v. SINGARENI COLLIERIES CO. LTD.*¹ has issued several directions while considering the question relating to preventive and remedial measures to be taken in relation to AIDS tests of HIV patients. All the concerned authorities must, therefore, also take into consideration the relevant directions issued in the aforementioned judgment before granting any permission.

With the aforementioned directions, this writ petition is disposed of. No order as to costs.