

IN THE HIGH COURT OF JUDICATURE: ANDHRA PRADESH AT
HYDERABAD

(SPECIAL ORIGINAL JURISDICTION)

Wednesday, the Seventh day of April,
One thousand nine hundred and Ninety three

PRESENT

THE HON'BLE MR. JUSTICE RANGA REDDY
WRIT PETITION NO. 4262 OF 1992.

Between:

Bheemunipatnam co-operative Building Society Ltd., Bheemunipatnam,

Rep. by its President M. Arunachalam

..... Petitioner

AND

01.The State of Andhra Pradesh, Rep by the Secretary, Revenue Department
Govt. of A.P. Hyderabad.

02.The District Collector, Visakhapatnam

Visakhapatnam District.

..... Respondent

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein, the High Court will be pleased to issue a Writ, direction or order in the nature of Mandamus, directing the respondents to issue a formal order of assignment of land of an extent of Ac. 373.95 Cts in Sy. No. 118 of Nerellavalasa Village of Bheemunipatnam Taluq. Visakhapatnam District in favour of the petitioner society allotted and handed over to the Society as early as 1980 within a period to be specified by this Hon'ble Court.

For the Petitioner : Mr. P. Ramachandra Reddy, Advocate.

For the Respondents : The Government Pleader for Revenue.

The Court at this stage of Admission made the following ORDER:

The Petitioner has filed this Writ Petition to direct the respondents to issue a formal order of assignment of land of an extent of Acs. 373.95 cents in Survey Number, 118 of Nerellavalasa Village of Bheemunipatnam taluq in favour of the petitioner's Society within a period to be specified. The case of the petitioner as disclosed from the affidavit filed in support of it is brief as follows:

The Petitioner Society was formed in the year 1970 with the object of developing Bheemunipatnam by founding a township within the limits of Bheemili

and a number of persons including high officials have joined as members of the Society. The petitioner applied to the District Collector, Visakhapatnam for allotment of land by the Government for purpose of the development of a housing colony and succeeded in getting the land to an extent of 400 acres comprised in S.No. 118 of Nerellavalasa Village classified as Isakadibbala Poromboke by proceedings of the Collector, Visakhapatnam in R.C. No. 1082/79/B-3, dated 31-03-1979. The Tahsildar delivered possession of the land by proceedings dated 29-2-1980 to the Society describing it as the land allotted to the Society. The Collector by letter dated 20-8-1979 addressed to the Vice-Chairman, Visakhapatnam Urban Development Authority stated that the Government have already agreed to give the land to the Society and advising the VUDA to approve the plan and ask the Society to develop facilities as per the approved plan by the VUDA approved plan by the VUDA. The Collector also requested the VUDA to issue early orders to the Society to enable it to straight away start the development of the land. The Society got the land surveyed and found that the extent of land made available to the Society was only Acs 373-95 cents. The Collector directed the Society to pay consideration of Rs. 1,000/- per acre. Accordingly, a sum of Rs. 3,74,000/- was paid by the Society on 08-06-1984 towards the cost of the land. A certificate issued by the Mandal Revenue Officer, Bheemunipatnam clearly shows that the land is assigned to the Society and that the Society had paid the market value. Thus the District Collector representing the Government and the VUDA for recognizing the rights of the Society in respect of the said land.

The then President of the Society enrolled as many as 3605 members and started collecting money from them and the same was invested in developing the land and layout plan was submitted to the VUDA in 1986. The then Joint Collector, Visakhapatnam was functioning as the Chairman of the Society in the absence of elected body and he spent a huge sum of Rs. 70,00,000/- for leveling the land. The elected body took charge of the affairs of the Society on 01-11-1990 and got prepared a layout and submitted the same to VUDA for approval. The Society had applied originally for approval of layout in the year 1986 but the Society did not get any reply. Without the approval of the VUDA the Society cannot proceed with laying of roads etc. though the members contributed fairly huge amounts for the colony. The Society again applied for approval of layout on 03-04-1991 in consultation and occurrence of the District and also met the Vice-Chairman of VUDA and explained to him the true facts and circumstances. The District Collector had in his proceedings dated 21-9-1982 had directed the Society to proceed with the development of the land. Thus, it is clear that the petitioner Society has taken possession of the land and have expended huge amount for development of the land and it requires formal sanction of assignment of the site by the Government in favour of the Society.

The Mandal Revenue Officer in his proceedings dated 31-3-1991 had certified as follows:

Certified that an extent of Acs 373-95 cts covered in By No.118 of Nerellavalasa Village has been alienated in favour of the Bheemunipatnam Co-operative Building Society vide proceedings dated 21-9-1982 of the Collector, Visakhapatnam”.

The District Collector convened a meeting on 3-4-1991 of all the Directors of the Society along with the District Co-operative Officer to ascertain the actual position of the activities of the Society. At that meeting he wanted that the Colony development work should be completed within six months. The Society is very eager to develop the site as desired by the Collector and to develop the colony with the help of Financial Institutions, so that the Building activities can be taken up by the Society to avoid delay in the Construction of building by individual members. But surprisingly the VUDA gave a notice to the Society requiring it to immediately stop the work on the land for the reason that the Society is not having a valid title for the land and it refused to accept the explanation offered by the Society. The Society is not interested in violating any rule or regulation and it is forced to go ahead with the development of the land by expending huge amounts. If the development work is left in the mid way the works that have been carried on are likely to be damaged during the mon soon causing huge loss to the Society. The respondents are bound by the doctrine of Promissory Estoppel to complete the assignment made by them by issuing formal orders without further delay. The Society had spent more than Rs. 70 lakhs for leveling the land and making it fit for construction of houses. The Society had done so with implicit faith that the Government would assign the land on the recommendation of the District Collector. The respondents are bound under law to fulfill their legal obligation of passing an order of assignment in favour of the Society without which all further proceedings for development of the land have been stalled. On receipt of notice from VUDA requiring the Society to stop all the development work the Society filed W.P. No. 1147/92 and interim direction was issued that stating that the Society's possession shall not be disturbed by the Authorities subject to the condition that no regular construction of buildings should be undertaken by the pending disposal of the writ petition. The Society had made a representation to the District Collector on 03-01-1992 and again on 07-02-1992 setting out all the facts requesting for issue or orders of assignment but no action has been taken till now. Hence, the writ petition to direct the respondents to issue formal order to assign the land in favour of the Society within the period to be specified.

The respondents filed a counter stating that the allegations made in the petition did not disclose any valid or substantial grounds for grant of any relief under Article 226 of the Constitution of India. There was a request by the petitioner-Society for allotment of land for construction of housing colony. As the Collector was not competent to assign such a huge extent of land a report was sent to the Board of Revenue on 12-1-1970 to accord permission and handover possession of the land to the Society pending completion of other formalities. The India Navy have identified an extent of Acs. 655-00 including the land covered by

the proposals in favour of the Society. In G.O. Ms. No. 674 Rev. (P) Dept. dated 18-3-1983 while allotting the land in favour of Indian Navy for installation of Naval Project, the Government directed to identify alternative land to the building Society. The possession of the land was handover to the Society on 07-04-1980 itself as this land stands registered as sand Hill Poromboke, the Gram Panchayat was requested to send resolution and the same has not been received. Further, subsequently Indian Navy have established a sore Project adjacent to the land now applied for by the Society. In view of certain restrictions regarding construction of building adjacent this project, the proposals are being examined. According to the Environmental Protection Act, 1986 there is a restriction on building activity on costal regulation zone. This lands fall within the zone as such the allotment of land is also has to be examined with reference to these rules. Keeping in view of all these rules action is being taken to assign the land to the Society to the extent possible. Though the relief asked for is recovered by W.P. No. 1147/92 and in view of the fact that interim direction was also given in that writ petition, the petitioner has again filed this writ petition with an alterior motive to get a direction for assignment of land. The assignment made earlier is only tentative subject to approval of the Government and the formal possession was delivered to the Petitioner at its own request to develop the land within the stipulated period of three months and the cost was paid by the Society at Rs. 1,000/- per acre. The fixation of price is only tentative ad subject to approval by the Government.

It is true that the Society has submitted a layout plan to VUDA on 03-04-1991 and the same was returned to the Society as it did not have valid title to the land. Permission was accorded in the Proceedings dated 21-9-1992 to proceed with the development of the land. There is no material to show that the Society had spent any huge amounts for development of the land. The Society ought not to have spent any amount for developing the land without the approval of the plan by the VUDA. So the action taken by VUDA is legal and in accordance with Section 13 of the A.P. Urban Areas Development Act, 1975. The VUDA was justified in refusing to act upon the proposals submitted for layout as the Society is not the owner of the land. If the petitioner has incurred any expenditure. It was at its own risk with full knowledge and the fact that the Society has incurred heavy expenditure for of nearly 70 lakhs for leveling the land for construction of houses. The fact that the Society was put in possession of land and that it has developed the same is not disputed by the respondent. The District Collector has acted as an Agent of the Government and has desired that the land would be assigned to the Society and thereby induced the Society to incur the expenditure.

So, the respondents are bound by the doctrine of promissory Estoppel to complete the assignment by issuing formal orders of assignment. The respondents are bound under law to fulfill their legal obligation. It is clear that this land to the proposed to be assigned to the Society, only after the assignment of land to the Naval Authorities. So, having regard to the fact and circumstances of the case, I feel that it is a fit case where the Government should assign the land to the

Society. But, however, it is open to the Government to fix such terms and conditions as may be necessary in consultation with the Society. There is nothing to show that the value of the land was fixed finally at Rs. 1,000/- per acre, it is open to the Government to negotiate with the Society and fix a reasonable market value. The Society was put in possession of the land nearly 13 years back on payment of Rs. 3,74,000/- and the Society after taking possession of the land had incurred an expenditure of Rs. 70 lakhs for development of the land. So, I feel that the respondents are bound by the doctrine of Promissory Estoppel to complete the assignment within six months as any further delay in assignment is likely to cause great hardship to the members of the Society.

The Writ Petition is disposed of with the above direction. There shall be no order as to costs.

Sd/. x x x
S.V. SESHAMMA
Asst. Registrar

To

1. The Secretary, Revenue Department, Government of A.P. Secretariat, HYD.
2. The District Collector, Visakhapatnam Dist, Visakhapatnam.
3. C.C. to Mr. P. Ramachandra Reddy, Advocate.
4. C.D. Copy.

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