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M. NAGA VENKATA LAKSHMI

v.

VISAKHAPATNAM MUNICIPAL CORPN. AND ANR.

SEPTEMBER 18, 2007

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[S.B. SINHA AND H.S. BEDI, JJ.]

Transfer of Property Act:

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Right of property—Sale-purchase of land/plot—Application for sanction of building plan dismissed by Municipal Corporation on ground that the plot fell on the reserved open space in the approved layout—Challenge to—Dismissed by Single Judge of High Court—Writ appeal dismissed by Division Bench of the High Court—On appeal, Held: Authority did not disclose to vendee about the fact of earmarking of the plot in question for the purpose of providing an open space to other land-owners—Prima facie, there is no provision in terms whereof the vendee could be deprived of her right of property without payment of any compensation—Hence, the impugned judgment set aside and the matter remitted to Single Judge of the High Court for consideration afresh.

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Appellant purchased a plot situate at Balayya Sastry's layout, Visakhapatnam by way of a sale deed. However, the layout was not an approved one. A revised plan was approved in the year 1989, but the plot belonging to the appellant was not regularized. Aggrieved, the appellant-vendee made a representation to Urban Development Authority but no response was received by her. Appellant then filed an application for sanction of the building plan before the Visakhapatnam Municipal Corporation. The application was dismissed by the Corporation on the premise that the proposed constructions fell on the reserved open space in the Layout. Appellant challenged the order of the Corporation by filing a writ petition in the High Court, which was dismissed by a Single Judge of the High Court. Writ Appeal filed thereagainst was dismissed by

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the Division Bench of the High Court. Hence the present appeal. A

Disposing of the appeal, the Court

HELD: 1.1. Neither the writ court nor the court of appeal dealt with the question as regards the right of the appellant to be heard in the matter. If the allegations made in the writ petition were correct, then why the fact that the land belonging to vendee had been earmarked for the purpose of providing an open space to the other owners of the said layout had not been disclosed to her. B

[Para 6] [15-H; 16-A-B] C

1.2. On what basis the layout plan had been drawn resulting in deprivation of a valuable right of the appellant, therefore, was required to be determined. Furthermore, if Visakhapatnam Urban Development Authority (VUDA) wanted to deprive the appellant from a valuable right of property, the question which should have been posed was as to whether therefor the authorities should have acquired the property or not. [Para 7] [16-B-C] D

Chairman, Indore Vikas Pradhikaran v. M/s. Pure Industrial Cock & Chem. Ltd. & Ors., (2007) 8 SCALE 110, relied on.

1.3. *Prima facie*, it appears that there is no provision in terms whereof the appellant could be deprived of her right of property without payment of any compensation. Hence the impugned judgments cannot be sustained which are set aside accordingly and the matter is remitted to the Single Judge of the High Court for consideration of the matter afresh. [Para 9] [16-E-F] E F

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4344 of 2007.

From the Judgment and Order dated 17.08.2004 of the High Court of Judicature, Andhra Pradesh at Hyderabad in Writ Appeal No. 1222 of 2004. G

G.V.R. Choudary, K. Shivraj Choudhuri and Abhishek Sarkar for the Appellant.

V. Mohana, P. Rao and Hari Priya for the Respondents. H

A The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Leave granted.

2. Appellant herein purchased about 167 sq. yard of vacant land in plot No. C/1&2, R.S. No. 52(P) situate at Balayya Sastry's layout, Sitammadhara, Alipuram Extension Ward, Visakhapatnam by reason of a deed of sale dated 8.07.1982. The said layout was not an approved one. The Competent Authority to approve the layout plan was the Visakhapatnam Urban Development Authority (VUDA) created under the Andhra Pradesh Urban Areas (Development) Act, 1975 (for short "the Act"). A revised plan was prepared in the year 1989. The name of locality was changed to Radha Krishna Nagar. Plots belonging to others had been regularized but the appellant's plot was not. A representation was made by her to VUDA but she did not receive any response thereto. Appellant also filed an application for sanction of a building plan before the Visakhapatnam Municipal Corporation. The said application was dismissed on the premise that the proposed constructions fell on the reserved open space in the Radha Krishna Nagar Layout.

3. Questioning the legality of the said purported order, a writ application was filed by her. The same was dismissed by a learned Single Judge of the Andhra Pradesh High Court by an order dated 22.01.2004 stating:

"The relief prayed for by the petitioner to direct the respondents to regularize the plot purchased by her in the unapproved layout, which is shown as reserved open space in the approved layout, cannot be granted. The petitioner knowing fully well that the Balayya Sastri layout is not approved, yet risked her monies to purchase a plot in the said layout. According to the own admission of the petitioner, she had purchased the plot in the unapproved layout known as Balayya Sastri, under a registered sale deed from her vendor. When, according to the own admission of the petitioner, she had purchased the plot in the unapproved layout, which was subsequently transformed into an approved layout known as Radha Krishna Nagar, it is not open for her to contend that respondent no. 1 ought not to have refused permission for construction of

building in the said plot on the ground that the plot purchased by the petitioner in the approved layout, is shown as reserved open space. It is required to be noted that reserved open space are normally earmarked for providing lung space to the inhabitants of a colony, and it would not be in the interest of general public to accord permission for construction of building therein contrary to the layout. The Apex Court as well as this Court have been consistently holding that reserved open spaces should be made use of for the purposes for which they have been earmarked, and no construction which is destined to defeat the very purpose of providing lung spaces, should be allowed to be made. Inasmuch as in the approved layout, the plot purchased by the petitioner was shown as reserved open space, respondent no. 1 had refused to grant permission to construct a building therein, and no exception can be taken thereto. Respondent no. 1 has no obligation, and for that matter, he cannot be directed to grant permission to the petitioner for construction of building in the plot, which admittedly in the approved layout is shown as reserved open space."

4. A writ appeal preferred thereagainst by the appellant has been dismissed by reason of the impugned judgment.

Appellant is, thus, before us.

5. The Act was enacted for the development of urban areas in the State of Andhra Pradesh according to plan and for matters connected therewith and ancillary thereto. Chapter II of the Act provides for constitution of the Urban Development Authority and their objects. Chapter III provides for preparation of Master Plan and Zonal Development Plan. Chapter IV provides for development of lands whereas Chapter V provides for acquisition and disposal of land.

6. The legality and/ or validity of the deed of sale executed by vendor in favour of the appellant is not in dispute. It is also not in dispute that no layout plan existed in the area in question where she had purchased the land. Before making the *Zonal Plan and the Master Plan*, the Authority was required to give an opportunity of hearing to the persons who may be affected thereby. Neither the writ court nor the court of

A appeal dealt with the question as regards the right of the appellant to be heard in the matter. If the allegations made in the writ petition were correct, we do not know why the fact that her land had been earmarked for the purpose of providing an open space to the other owners of the said layout had not been disclosed to her.

B 7. On what basis the layout plan had been drawn resulting in deprivation of a valuable right of the appellant, therefore, was required to be determined. Furthermore, if VUDA wanted to deprive the appellant from a valuable right of property, the question which should have been posed was as to whether therefor the authorities should have acquired the property or not.

C 8. We may notice that recently a Bench of this Court in *Chairman, Indore Vikas Pradhikaran v. M/s. Pure Industrial Cock & Chem. Ltd. & Ors.*, (2007) 8 SCALE 110, held:

D "58. Property, while ceasing to be a fundamental right would, however, be given express recognition as a legal right, provisions being made that no person shall be deprived of his property save in accordance with law."

E 9. *Prima facie*, it appears that there is no provision in terms whereof the appellant could be deprived of her right of property without payment of any compensation.

F 10. We, therefore, are of the opinion that the impugned judgments cannot be sustained which are set aside accordingly and the matter is remitted to the learned Single Judge of the High Court for consideration of the matter afresh.

G 11. Before us, VUDA has not appeared. We, therefore, direct to place all the relevant records before the High Court. Parties shall be entitled to file their additional affidavits and raise all contentions before it which may be considered on their own merit.

12. The appeal is disposed of with the aforementioned observations. No costs.