

CASE NO.:
Appeal (civil) 6156-6157 of 2002

PETITIONER:
A.P. HOUSING BOARD

RESPONDENT:
ADARSHA WELFARE ASSOCIATION & ANR

DATE OF JUDGMENT: 13/04/2007

BENCH:
C.K. THAKKER & LOKESHWAR SINGH PANTA

JUDGMENT:
J U D G M E N T
C.K. THAKKER, J.

These appeals are filed by the Andhra Pradesh Housing Board against the judgment dated October 3, 2001 in Writ Petition Nos. 18755 and 19215 of 2001. The above petitions were filed by the petitioners Adarsha Welfare Association and Vengal Rao Nagar (Housing Board Colony), Allottees and Residents Association in Public Interest Litigation (PIL). A writ of mandamus was sought against the Housing Board making available open space in Vengal Rao Nagar Housing Board Colony at Hyderabad by restraining it from making any construction in the 'lung space' area earmarked for 'park' contrary to the provisions of the Andhra Pradesh Housing Board Act, 1956 (hereinafter referred to as 'the Act').

The facts leading to the present controversy have been set out by us extensively in Civil Appeal No. 3942 of 2002 and companion matters decided by us today and it is not necessary to repeat them in this case. Suffice it to say that the Housing Board had acquired forty-five acres of land for public purpose, viz. for construction of dwelling units for its employees (Vengal Rao Nagar Housing Board Colony). The Housing Board, however, could get possession only of forty-three acres of land and the possession of land admeasuring two acres could not be obtained because of encroachment over the land by hutment dwellers. Construction was to be made as per the layout which was approved by the Town Planning Authorities of Municipal Corporation of Hyderabad (MCH) in accordance with the provisions of the Act. Spaces were also earmarked for Parks, Commercial Community Centres as also for Green Area. The Housing Board could not allot a portion of land earmarked for park area since it was encroached by hutment dwellers. The grievance of the petitioners before the High Court was that since the land earmarked for park was not available, Commercial Zone under the plan should not be permitted to be used for that purpose by the Housing Board unless the 'green area' is made available. Till then the said area must be ordered to be kept open.

In the affidavit in reply filed by the Board, it was stated that the area which was earmarked for Commercial Zone under the Development Plan under the Act was sought to be utilized for the said purpose. Such use could not be said to be contrary to law and prayer of the petitioners could not be granted. Commercial

complex is also a public purpose and when the area is sought to be used for the purpose for which it was reserved and administrative sanction has been accorded by the Government as well as by Municipal Corporation of Hyderabad (MCH), no objection could be raised against such legal project. It was, therefore, submitted that the petitions deserve to be dismissed.

The High Court, considering the relevant provisions of the Act, observed that the Housing Board was right in submitting that Commercial Zone was in accordance with layout for which sanction was granted by the Authorities under the Act. But relying on the decisions of this Court in *M.C. Mehta v. Union of India & Ors.*, (2001) 4 SCC 577 : JT 2001 (3) SC 207, *Bangalore Medical Trust v. B.S. Muddappa & Ors.*, AIR 1991 SC 1901 : JT 1991 (3) SC 172 and *M.I. Builders Pvt. Ltd. v. Radheshyam Sahu & Ors.*, JT 1999 (5) SC 42, the High Court held that ecology must be given primacy and since there was unauthorized encroachment of land earmarked for public park, till such encroachment is removed, commercial activities cannot be permitted to be undertaken at the site as per layout till sufficient land is made available for public park. According to the High Court 'lung space' must be available for the residents of the locality. The High Court concluded; "Once the requisite 'lung space' is provided to the residents of the area, the State may proceed to make constructions in the proposed shopping complex area." The petition was accordingly allowed and necessary directions were issued to the Housing Board. The Housing Board has challenged the said decision.

It was submitted by the learned counsel for the appellant-Board that the High Court committed an error of law in issuing the above directions, particularly after recording a finding that construction of Commercial Zone was in accordance with layout and after obtaining sanction from the competent authorities under the Act. It was also submitted that reliance on the decisions referred to by the High Court, in the facts and circumstances of the case, was not proper.

In our opinion, the submission is well founded and deserves to be upheld. When the provisions of the Act have been followed and the land which is required to be used as per layout has been used strictly in consonance with such layout, it cannot be said that by doing so, the Housing Board has committed any illegality. Once the High Court had recorded the finding that the land in question was earmarked for commercial purpose, it must be held that the Board had power to construct shopping complex as per the requisite sanction granted by the authorities. No objection can be taken against such a course and the High Court was not justified in interfering with the lawful action of the Board.

For the foregoing reasons, in our opinion, the appeals deserve to be allowed and are accordingly allowed by setting aside the order passed by the High Court. In the facts and circumstances of the case, however, there shall be no order as to costs.