(1998) 10 AP CK 0005

Andhra Pradesh High Court

Case No: Writ Petition No. 3261 of 1997

Mittakola Venkata Rama Rao		APPELLANT
	Vs	
Sarpanch, Grampanchayath, Mahaboobabad Post, Warangal Dist and others		RESPONDENT

Date of Decision: Oct. 9, 1998

Acts Referred:

- Constitution of India, 1950 - Article 21, 32, 48A, 51

Citation: (1998) 6 ALD 343 : (1998) 6 ALT 440

Hon'ble Judges: B.S. Raikote, J

Bench: Single Bench

Advocate: Party in Person, for the Appellant; Government Pleader for Panchayath Raj and Urban Development and Mr. P. Raghavender Reddy, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. Heard.

2. This writ petition is filed for a writ of mandamus or any other appropriate writ or direction declaring the action of the respondents regarding proposed construction of the commercial complex in Gandhi Park, situated at Mahaboobabad, Warangal District as illegal, void and pass such other orders as this Court may deem fit and proper in the circumstances of this case.

3. This is a public interest litigation. The petitioner is a practising advocate at Mahaboobabad. In the affidavit filed in support of the writ petition, he stated that Maliaboobabad is a revenue divisional centre in Warangal District, having Subordinate Court, Degree College and other educational institutions. The

population of Mahaboobabad is 31,184 as per 1990-91 population census. He further stated that it is the centre of Railway Station, having grain market and bus depot and there are nearly 10,000 floating population every day in the town for various purposes and the town has been expanding due to establishing of new colonies and there is also increase in the residents of the town. He further alleged that the erstwhile Nizam Government established the park called "the Jubilee Park", and now it is called Gandhi Park. It was established about 70 years back in between old and new part of the city, near the railway station, in the heart of the city and the said park was being used for gatherings and public meetings and for other social and political activity, since last several years. There is a community hall and also a Gandhi statue in the said park. But the Gram Panchayat authorities of Mahaboobabad town, which is a taluk headquarters, has now started constructing a big commercial complex in the above said Gandhi Park, within the compound wall, by investing about an amount of Rs.5,50,000/- and accordingly, the foundation ceremony was performed on 5-1-1997 by one of the Ministers of A.P. State. He stated that there is no other public park for better environmental purposes, except the one, in which now the impugned construction is proposed and if the construction of the commercial complex in this park is allowed, it would badly affect the interests of the public and it would also cause environmental problems to the citizens and it would also consequently affect the health and hygiene of the public and their livelihood. The petitioner appearing party-in-person contended that when the park was created for public purposes and when its existence is for the last 70 years, the same could not have been permitted for the commercial purpose, by putting up a commercial building by the Gram Panchayat. He also relied upon a number of judgments in support of his contentions stating that when park is earmarked for public purposes, the same should not have been permitted to be converted for a commercial purpose by the . Gram Panchayat.

4. A detailed counter is filed in the form of a vacate petition, seeking for vacation of the interim order of this Court. In the counter it is slated that it is true that in Mahaboobabad, there is an open land called Gandhi Park, which is very near to the railway station and there are also a community hall and a Gandhi Statue in the said premises. Whenever public meetings were conducted, the Gram Panchayat collects the rent for conducting such meetings. Now, the Gram Panchayat has proposed to construct the shopping complex under Jawahar Rojgar Scheme, and accordingly it started construction to some extent and the pillars also were raised. It is only at this stage, the petitioner has filed the present writ petition and obtained an interim direction staying the further construction of the commercial complex proposed. But the allegation made by the petitioner that the said land is meant for park purposes and the Gram Panchayat is using for shopping complex is not correct. It is further stated that the total area of open land is about 4,000 sq. yards, but the proposed construction is only about 60 sq. yards and the said proposed construction is on the western side of the open space and there is a drainage towards the proposed

construction. So far the southern side of the park area is concerned, Gram Panchayat is not constructing the shopping complex and it is meant for park purposes. It is further stated that about 15 years back, a compound wall was constructed in the open area, but the proposed construction is on the western side and it is out side the compound wall and it is not covered by the park land. Therefore, the allegations of the writ petitioner are not correct. It is further stated in the counter that Gram Panchayat has passed a resolution, vide resolution No.84 dated 24-12-1996 for the proposed construction of the shopping complex, at the cost of Rs.5,35,000/-. But without challenging the said resolution, the present writ petition could not have been filed. It is further stated in the counter that the main aim of the Gram Panchayat is to raise financial resources for the developmental works and there has been no objection from the public and the some of the local people requested Gram Panchayat for construction of the shopping complex. It is further stated that by the said construction, the petitioner is not affected and if the petitioner was aggrieved, he should have filed a suit instead of approaching this Court under Article 226 of the Constitution of India. In these circumstances, the interim order is liable to be vacated and the writ petition is also liable to be dismissed. The learned Counsel appearing for the respondents reiterated the same points urged in the counter affidavit.

5. I have considered the case very anxiously. From the reading of the counter it is clear that in Mahaboobabad town, there is an open land called Gandhi Park. In paragraph No.3 of the counter, it is stated as under:

"In reply to para 3 of the affidavit, I submit that it is true that in Mahaboobabad there is a open land called as Gandhi Park which is nearer to Railway Station and also there is a community hall in the said premises and also Mahatma Gandhi Statue is there. Whenever the public meetings are conducted, the Gram panchayat is being collecting the rent for conducting the meetings."

From the above statement in the counter it is clear mat the existence of a park for public purposes is admitted and it is further admitted that whenever public meetings are conducted, they arc conducted in the park, but the Gram Panchayat was collecting the rent for conducting such meetings and there is also Mahatma Gandhi statue in the said park. But the further contention of the respondents is that the said commercial complex is being constructed under Jawahar Rojgar Yojana Scheme, for raising financial resources of the Gram Panchayat and the proposed construction is in an area of about 60 sq. yards. Whatever it may be, the point for consideration would be whether the Gram Panchayat has power or authority to convert any part of the park for commercial purposes, by constructing the commercial complex in the said park. I find from the material papers submitted by the petitioner, that this is a park noted in the Social Service Directory, Hyderabad in the year 1953. These material papers also further reveal that this was a park created by the erstwhile Nizam State about 70 years back and there is a Gandlii Statue

existing in the said park. There is also a report of the Progress Committee, Mahaboobabad, of the year 1951, which reads as under:

"Brief History :--The Committee was founded in 1951 by Shri B.N. Gupta with a view to improve the conditions of Mahaboobabad Town i.e., lighting, roads, schools and libraries etc.

Activities :--(1) Celebration of National festivals, (2) To co-operate with the Municipal Authorities, (3) Rural construction including Gandhi Park and children''s recreation playgrounds, annual celebrations and libraries and school and educational conferences etc., concerned to taluka."

Even from this statement of the Progress Committee, of the year 1951, I find that the Gandhi park is one of the acknowledged parks in Mahaboobabad, among other recreational places like playgrounds, libraries etc. The petitioner also has filed an extract from Vignana Deepthi Special Edition of Manukota Margadarshini Book, showing that, on the completion of 25 years rule of H.E.H. Mahaboob Ali Khan, Sixth Nizam of Hyderabad Kingdom, in order to celebrate his Silver Jubilee Function in the year 1936, constructed this particular park, called the Silver Jubilee Park, later it was renamed as Gandhi Park. It also further stated that the first Congress Mahasabha was held in this park. From all these materials it is clear that this park is one of the historically recognised places in Mahaboobabad town. It is also shown as Gandhi Park in 1939 Master Plan and there were also attempts to develop this Gandhi Park, from the common fund raised from the public. Even the centenary celebrations of Dr. B.R. Ambedkar were held on 14-4-1993 in the said park. From the photographs produced along with the material papers at page Nos. 175 to 177,1 find that the foundation is dug, just infront of Gandhi Statue and it is within the compound gate of the park. However, the Counsel for the respondents submits that in the reply affidavit filed by the petitioner, at paragraph No.4, the petitioner had admitted that a part of the park was already been occupied by the Government buildings and there are also other constructions of the Government buildings and only 4000 sq.yards is left vacant for the purpose of the park. Therefore, the Counsel for the respondents contends that there arc other buildings already in the park and no prejudice would be caused to the petitioner arid the public, if the commercial complex also comes into existence. The learned Counsel for the respondents further contends that admittedly the construction is only in 60 sq.yards, therefore, the park would not be affected. From this submission, it is clear that there are some Government buildings in the open space, but outside the compound wall of the park. The said compound wall has been constructed at about 15 years back. Now the grievance of the petitioner is that in this left over place of 4000 sq.yards within the compound wall, at least there should not be any further construction for public purposes.

6. From the pleadings on both sides and arguments, I find that there is substance in the contention of the petitioner that there is a public park earmarked for public

purposes and clearly mentioned in the master plan and there is also a compound wall all around regarding the present public park, which is about 4000 sq.yards. If that is so, the public park could not be utilised for other purposes. In this view of the matter, the Grain Panchayat is not justified in proposing to put up the impugned commercial complex within the compound wall of the Gandhi Park. The only justification for putting up the said construction by the Gram Panchayat is that, it wants to raise its financial resources and the said construction is under Jawahar Rojgar Yogana Scheme. But in my humble opinion, the Gram Panchayat could put up such construction elsewhere under the said scheme for whatever purposes it wants to, but without affecting the public park, which is meant for public amenity. As it is submitted by both sides, it is in the heart of the town and only the lung space for the citizens of Mahaboobabad. In tliis view or the matter, the respondents could not have proceeded with the construction of the building within the Gandhi Park, nor any plan for construction of the building within the park could have been permitted by the concerned authorities. As per the law declared by the Supreme Court in Bangalore Medical Trust Vs. B.S. Muddappa and others, , conversion of public park into private nursing home was illegal. The Supreme Court also further ruled that the petitioner who had filed that public interest litigation had locus standi to maintain the said writ petition. In the said judgment, the Supreme Court negatived the contention of the respondents that even the construction of a private nursing home was for public purpose and, therefore, the public purpose was not affected. The Supreme Court further ruled as under in the said judgment:
"As stated earlier a private nursing home could neither be considered to be an amenity nor it could be considered improvement over necessity like a public park. The exercise of power, therefore, was contrary to die purpose for which it is conferred under the statute."

In anodier case reported in Sengunthar Trust v. Bangalore Development Authority, 1993 AIR SCW 566, the Hon''ble Supreme Court further held that the construction of a temple and Kalyan Mandapam in a plot earmarked for civil amenity, was illegal. In the decision reported in Dr. G.N. Khajuria and others Vs. Delhi Development Authority and others, , the Hon''ble Supreme Court directed for demolition of the school constructed in a public park. The Supreme Court also found fault with the plan that was approved for the construction of a school in a public park. Even this" Court in the decision reported in T. Damodhar Rao and Others Vs. The Special Officer, Municipal Corporation of Hyderabad and Others, , held that the land that was acquired for putting up a recreational park, could not be used for the construction of residential houses by the transferee for whom such acquisition was made. This Hon''ble Court further pointed out that the object of protecting such parks is to preserve the ecology and environmental conditions and permitting such conversion of parks and public amenities for other purposes would definitely affect not only the environment, but the fundamental rights guaranteed to the citizens under Article 21 of the Constitution. It is need less to say that Gram Panchayat

should have been a champion of protecting environment, instead of abusing the park for the purpose of commercial building. This Hon''ble Court has clearly pointed out in the said judgment as under:

"23. The objective of the environmental law is to preserve and protect the nature''s gifts to man and woman such as air, earth and atmosphere from pollution. Environmental law is based on the realisation of mankind of the dire physical necessity to preserve these invaluable and none too easily replenishable gifts of mother nature to man and his progeny from the reckless wastage and rapacious appropriation that common law permits. It is accepted that pollution "is a show agent of death and if it is continued the next 30 years as it has been for the last 30, it could become lethal". (See Krishna Iyer''s Pollution and Law). Stockholm declaration of United Nations on Human Environment evidences this human anxiety:

"The natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystem, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate ..... Nature conservation including wildlife must therefore receive importance in planning for economic development."

Similarly, the African Charter of human and People''s rights declares that "all peoples shall have the right to a general satisfactory environment favourable to their development." Judicially responding to this situation, Justice Douglas has suggested that environmental issues might be litigated in the name of "the inanimate object about to be.....deposited" with those who have an "intimate relation" with it recognised as its legitimate spokemen. Common law being basically blind to the future and working primarily for the alienated good of the individual and operating on the cynical theory that because posterity has proved its utter inadequacy to achieve the urgent task of preservation and protection of our ecology and environment. Roscoc Pound blamed the common law for its serious social short falls. He wrote:

"Men have changed their views as to the relative importance of the individual and of society; but the common law has not. Indeed, the common law knows individuals only..... It tries questions of the highest social import as mere private controversies between John Deo and Richard Deo. And this compels a narrow and one sided view.''''

Rejecting these individualistic legal theories of common law that are found to be incompatible with the basic needs and requirements of the modern collective life environmental laws all over the world lay down rules for the preservation of environment and prevention of pollution of our atmosphere, air, earth and water. Our Parliament has recently enacted the Environment (Protection) Act (Act No.29 of 1986) for the purpose of protecting and improving our environment. It widely distributed powers on all those who are traditionally classified as not aggrieved

persons to take environmental disputes to Courts. This is clearly in harmony with out Constitutional goals which not only mandate the State to protect and improve the environment and to safeguard the forests and wild-life of the Country (Article 48A); but which also hold it to be the duty of every one of our citizens to protect and improve the natural environment including forests, lakes, rivers and wild-life and to have compassion for living creatures (Article 51-A(g)).

24. From the above it is clear that protection of the environment is not only the duty of the citizen but it is also the obligation of the State and all other State organs including Courts. In that extent, environmental law has succeeded in unshackling man''s right to life and personal liberty from the clutches of common law theory of individual ownership. Examining the matter from the above constitutional point of view, it would be reasonable to hold that the enjoyment of life and its attainments and fulfilment guaranteed by Article 21 of the Constitution embraces the protection and preservation of nature''s gifts without which life cannot be enjoyed. There can be no reason why practice of violent extinguishment oflife alone should be regarded as violative of Article 21 of the Constitution. The slow poisoning by the polluted atmosphere caused by environmental pollution and spoilation should also be regarded as amounting to violation of Article 21 of the Constitution. In Rural Litigation and Entitlement Kendra, Dehradun and Others Vs. State of U.P. and Others, , the Supreme Court has entertained environmental complaints alleging that the operations of life-stone quarries in the Himalayan range of Mussoorie resulted in depredation of the environment affecting ecological balance. In Rural Litigation and Entitlement Kendra, Dehradun and Others Vs. State of U.P. and Others, , the Supreme Court in an application under Article 32 has ordered the closure of some of these quarries on the ground that their operations were upsetting ecological balance. Although Article 21 is not referred to in these judgments of the Supreme Court, those judgments can only be understood on the basis that the Supreme Court entertained those environmental complaints under Article 32 of the Constitution as involving violation of Article 21''s right to life.

25. It, therefore, becomes the legitimate duty of the Courts as the enforcing organs of Constitutional objectives to forbid all action of the State and the citizen from upsetting the environmental balance. In this case the very purpose of preparing and publishing the developmental plan is to maintain such an environmental balance. The object of reserving certain area as a recreational zone would be utterly defeated if private owners of the land in that area are permitted to build residential houses. It must, therefore, be held that the attempt of the Life Insurance Corporation of India and the Income Tax Department to build houses in this area is contrary to law and also contrary to Article 21 of the Constitution."

In view of the above consistent law declared not only the Supreme Court and also by this Court, I am of the opinion that the Gram Panchayat cannot convert a part of the public park into a commercial complex and such construction would definitely have

the effect of polluting the environment and ecology of the park and the town. As I have stated above, this park which has been in existence for more than 70 years has also historical importance and this importance has got to be preserved not only by the Gram Panchayat, but by every citizen of Mahaboobabad and in feet they should be proud of such a park and if necessary it is their duty to develop the park into a beautiful park, so that the people of the area, including the children may go and relax during their off time.

7. For the above reasons, I pass the order as under:

The writ petition is allowed. The respondents are directed not to proceed with the proposed construction of the commercial complex in Gandhi Park situated in Mahaboobabad town and if they have already put up some foundation or pillars, the same shall be demolished within a period of one month from today. The Gram Panchayat shall pay an amount of Rs.3,000/- as costs to the petitioner.