

**HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE
AND
THE HON'BLE SRI JUSTICE S.V. BHATT**

W.P.No.10063 of 1997

PC: (Per Hon'ble Sri Justice S.V.Bhatt)

Heard Sri M.R.K.Chowdary, learned Senior Counsel for petitioners, Sri C.Nageswara Rao, and Y.Rama Rao, learned counsel for respondents.

The petitioner prays for Mandamus declaring G.O.Rt.No.1017 M.A-Municipal Administration and Urban Development (M-1) Department dated 08.11.1996 as arbitrary, violative of principles of natural justice and contrary to the Bhagyanagar Urban Development Authority Zoning Regulations, 1981 and the A.P. Apartments (Promotion of Construction and Ownership) Act, 1987 and the Rules made thereunder. The petitioner also prays for a declaration that Regulation 12 of the Bhagyanagar Urban Development Authority Zoning Regulations, 1981 is violative of Article 14 of the Constitution of India and confers unguided power on the Government and direct respondents 1 to 6 to dismantle and demolish 14 shops constructed by respondent Nos.4 to 6 in the stilt area of property covered by Door Nos.8-3-948(p), 8-3-949(p), 8-3-949/1/1/A, 8-3-949/1/1/B, 8-3-949/1/1/C, Srinagar Colony Road, Ameerpet, Hyderabad.

At the time of hearing, learned Senior Counsel, representing the petitioners, for the present, does not press the prayer viz., declaring Regulation 12 of the Bhagyanagar Urban Development Authority Zoning Regulations, 1981, as illegal but is satisfied if the objections of petitioners in issuing G.O.Rt.No.1017 dated 08.11.1996 are considered and decided by this Court.

The facts relevant for the disposal of the point urged by the parties are briefly stated.

The petitioner claims to be the association of members of flat owners at Sanali Heavens, a multistoried residential complex with 135 flats at premises bearing Door Nos.8-3-948(p), 8-3-949(p), 8-3-949/1/1/A, 8-3-949/1/1/B, 8-3-949/1/1/C, Srinagar Colony Road, Ameerpet, Hyderabad. The respondent issued GO relaxing zonal regulation and enabled respondents 4 to 6 to convert alleged surplus parking space into shop rooms. Therefore, the petitioner challenges G.O.Rt.1017 M.A-Municipal Administration and Urban Development (M-1) Department dated 08.11.1996 on various legal and factual grounds. The G.O reads as follows:

“In continuation of the Government Order 1st read above, Government hereby relax the Zonal Regulations to the extent indicated below in favour of Mrs.Shaheen Johan Begum for the construction of 14 shops (5111.50 sq.ft) in the excess parking space in the stilt floor (over and above the required parking space) in the permitted residential complex in Pr.No.8-3-949(P), 949(P), 949/1/1/A, B & C etc., of Sreenagar Colony Road, Ameerpet, Hyderabad, since the applicant has paid Rs.44,860/- towards developmental charges and Rs.4,500/- towards processing charges to the Vice Chairman, Hyderabad, Urban Development Authority.

1. Land : Relaxation of Z, Rs.6-1 (from H.D.M residential (ZA S6-1-2) (R1) use zone to local commercial use) for following the (1.1) shops with an area of 5111.50 sq. ft in the excess parking space in stilt floor.
2. Height of floor To an extent of 0.25 M.s as to allow a floor height of 2.50 M against the required floor height of 2.75 mtrs
3. The Commissioner & Special Officer, Municipal Corporation of Hyderabad is requested to take further action.”

The case of petitioner is that on 09.10.1992, the 2nd respondent granted building permission for development of the property covered by premises bearing Door Nos.8-3-948 (p), 8-3-949(p), 8-3-949/1/1/A, 8-3-949/1/1/B, 8-3-949/1/1/C. The members of petitioner association have, through registered deeds, purchased flats and claim to be in possession and enjoyment of the respective flats together with undivided share in the land. The 1st respondent through G.O relaxed zonal regulations for construction of 14 shops and received from respondents 4 to 6 a sum of Rs.44,860/- towards development charges and Rs.4,500/- towards processing charges. The relaxation of regulation is granted on the premise that there is surplus parking space in the stilt floor and the request of respondents 4 to 6 for construction of shop rooms in the alleged surplus parking space can be considered. The request, as already noted, has been favourably accepted and the impugned GO was issued.

Learned counsel for the petitioner submits that the construction of residential complex was undertaken in accordance with municipal sanction plan No.385/TPS/92 dated 09.10.1992. The members of petitioner association are owners of residential flats and also undivided share in the extent covered by door numbers referred above. The 1st respondent cannot, on the representation of respondents 4 to 6, who do not have exclusive or independent interest in the subject premises, sanction plan etc., take up relaxation of regulation, much less grant exemption to respondents 4 to 6 for conversion of alleged surplus parking space into shop rooms. The further submission of learned counsel for the petitioner is that respondents 1 to 3 cannot, in law, ignore the commonality of interest of owners of residential complex, the effect of sanction plan dated 09.10.1992 and arbitrarily grant conversion of stilt for commercial activity. Any request of respondents 4 and 5 firstly cannot be considered within the four corners of law and secondly if respondents 1 to 3 consider the request for relaxation, the same shall not be without notice to the petitioner association or individual flat owners. On the short ground that the impugned GO is illegal and violative of principles of natural justice, the learned counsel prays for setting aside the same.

Sri C.Nageswara Rao, learned counsel representing respondents 4 to 6, however, contends that the petitioner association is not the association which is supervising and administering the residential complex but another association was representing the flat owners and that association has given no objection for conversion of excess parking space into shop rooms. The learned counsel further submits that the request for relaxation of regulation is warranted as respondents 4 to 6 either being the owners of land or developers desire to use the available parking space to their best gain, however, by following the procedure stipulated by law. He contends that no exception to the GO can be taken by the petitioner.

The undisputed and admitted fact situation of the case is that the members of petitioner association are owners of residential flats at Sanali Heavens. The members of petitioner association are aggrieved by relaxation granted under Regulation 12 of the Bhagyanagar Urban Development Authority Zoning Regulations, 1981. Respondents 4 to 6 are also not disputing that the place for which relaxation is sought for is in the stilt floor and that at the first instance the space was earmarked for parking. That being the case, it is difficult to accept that at the request of respondents 4 to 6 alone, respondents 1 to 3 can consider change of sanction plan or grant relaxation to construct shop rooms by granting exemption. The petitioner association in the

considered view of this Court should be heard before the request of respondents 4 to 6 is taken up for consideration, objections are taken note and appropriate orders are passed in accordance with law. Therefore, the relaxation impugned is illegal as no notice to flat owners/petitioner was issued.

On the question whether the petitioner association was issued notice or given opportunity of hearing before relaxation of regulation is granted can be examined from G.O.Rt.No.1017 dated 08.11.1996 or from the stand of respondents 1 to 3. The impugned GO is silent on this aspect.

Respondents 1 to 3 have not filed counter stating the circumstances leading to issuance of impugned GO. For the above reasons, this Court is constrained to accept the objection of petitioners insofar as it related to violation of principles of natural justice and, accordingly, the impugned GO is set aside and the matter is remanded to respondents 1 to 3 for fresh consideration in accordance with law.

Sri C.Nageswara Rao, learned counsel appearing for respondents 4 to 6, submits as the matter is remanded to

1st respondent and since the shops constructed are in possession of third parties, there is possibility of respondents 1 to 3 taking action for demolition of the subject shops. To allay the fears of Sri C.Nageswara Rao, it is made clear that till a final decision is taken by respondents 1 to 3 on the request of relaxation of regulation for conversion of parking space into shop rooms, the parties are directed to maintain *status quo* as regards construction and possession. The 1st respondent is directed to dispose of the matter within a period of three months from the date of receipt of a copy of this order.

Writ petition is allowed. The impugned GO is set aside. The matter is remitted to respondents 1 to 3 for consideration of request for relaxation of regulation in accordance with law.

Consequently, miscellaneous petitions, if any pending, also stand disposed of.

DILIP B. BHOSALE, ACJ

S.V.BHATT, J

Date: 17.06.2015
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