

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.10413 OF 2005

ORDER :

The writ petition is filed seeking writ of mandamus declaring i) that the 1st respondent has no power or authority to collect the development charges as demanded by the first respondent in its endorsement dated 21.02.2005 in respect of the buildings of the petitioner college which are constructed as per sanctioned plans after obtaining the permissions and on paying the required charges to the 2nd respondent local authority prior to the year 1988 when the 1st respondent-authority was constituted; ii) the action of the first respondent in collecting the land use conversion charges from the petitioner as per the rates prevailing as on the date of conversion instead of collecting the rates prevailing at the time of making the recommendation by the first respondent to the Government i.e., 31.10.1988 as illegal, arbitrary and contrary to the powers conferred on the first respondent under the Act of 1975 and the rules made there-under and consequently to direct the first respondent to refund the differential amounts in respect of the land use conversion charges paid by the petitioner to the petitioner.

2. Brief facts which are necessary for disposal of the writ petition are that the petitioner is an educational institution run by an educational agency viz., Koneru Lakshmaiah Educational Foundation, a Society registered under the Societies Registration Act, established in the year 1980-81 and completed the construction of buildings for running the college in question in the year 1985 itself. After 1988, the petitioner college applied to the first respondent for according necessary sanction for construction of Computer Block-II after payment of necessary fees by submitting building plans and that the first respondent desired that such application should be processed

through the second respondent-Vaddeswaram Gram Panchayat. Thereafter the first respondent started treating the constructions made by the petitioner college up to 1985 as unauthorized constructions and insisted for payment of compounding fee and fee for necessary sanctions irrespective of the payments already made and permissions obtained from the 2nd respondent.

3. It is the case of the petitioner that plans were submitted to the 2nd respondent-Gram Panchayat by paying fees as early as in the year 1983 and necessary sanctions were accorded for construction of building and that the constructions were completed in the year 1985 itself. In the year 1988, the petitioner college was informed that the change of land use proposals with reference to the college site from agricultural use to public and semi-public use was recommended to the government for necessary approval by the first respondent. Thus for more than 20 years the issue of obtaining approval from the government is pending resulting in lot of hardship for not having the approvals of the college buildings. Under those circumstances, petitioner made representation dated 01.04.2003 to the first respondent requesting to take appropriate steps to obtain the required approval from the government. The first respondent vide proceedings in Rc.NO.C3-4952/82, dated 25.04.2003 wrote a letter to the government requesting to issue necessary orders changing the land use from agricultural use to public and semi-public use for taking necessary action in the matter. The first respondent in Rc.No.C3-4952/82, dated 05.09.2003 made an endorsement and required the petitioner college to pay the conversion charges for the change of land use from agricultural use to public and semi-public use and also for payment of an amount of Rs.4,72,410/- which was paid by the petitioner college, though the petitioner was not liable to pay such fees as the recommendation was made by the first respondent to the Government

long years back. Therefore, the petitioner was not liable to pay at the rates prevailing in the year 2002-2003 and that the petitioner is liable to pay only Rs.60,000/- yet they have remitted the amount as demanded by the first respondent in order to avoid any further delay in obtaining necessary conversion orders for changing the land use. While so, notice under Section 43 (1) of A.P.Urban Areas (Development) Act, 1975 (for brevity 'the Act of 1975') in Rc.No.C3-4952/82, dated 29.10.2003, was issued to the petitioner requiring it to stop the entire civil engineering works, as no permission was accorded by the developmental authority under the Act. Thereafter, the petitioner college submitted letter dated 11.11.2003 to the Planning Officer of the first respondent requesting for taking action and to drop all further action in connection with the notice issued requiring the petitioner to stop construction. The first respondent in its proceedings in Rc.No.C3/4952/82, dated 23.12.2003 directed the petitioner to submit plans for all the unauthorized constructions/buildings along with detailed plans with clear site plan showing all structures with clear dimensions along with required development charges and application fee within 20 days. The first respondent issued endorsement in Rc.No.C3-4952/82, dated 15.03.2004 demanding the petitioner college for payment of Rs.26,04,106/- and also to take steps to excavate water harvesting pit and also to submit photograph of the pit. The petitioner college made representation dated 22.03.2004 to the first respondent requesting for exemption of the fee and also for fixation of the fee on non-commercial basis considering the petitioner college buildings as belonging to an educational institution run for a charitable purpose. The petitioner college also made another representation dated 07.04.2004 by way of a reminder requesting for approval of their plans for the constructions already made and also for approval of the plans in connection with the proposed construction of buildings. The petitioner paid an amount of Rs.2,21,776/- towards the conversion fee

for land use. While so, the first respondent by an endorsement dated 15.04.2004 required the petitioner college to pay Rs.25,04,106/- including Rs.2,21,776/- towards conversion charges. In spite of payment made on 06.04.2004 by way of challan towards conversion charges, a fresh demand dated 15.04.2004 was made without noticing the payment already made and without reducing the said amount.

4. The Chairman of the management of the petitioner college sent a representation dated 29.04.2004 to the Vice Chairman of the first respondent authority stating that the levy of development charges and compound fee which came into force after the date of construction are held illegal in view of the judgment of this Court and requested to consider the entire issue afresh and to give necessary approval of the plans for the constructions made and the proposed building plans in the light of the correspondence. While so, by another endorsement dated 15.05.2004, the first respondent demanded the petitioner college to pay an amount of Rs.22,82,330/- informing that their request for levying of residential development charges for the college buildings was rejected on the ground that it was not a residential building and that the entire construction was unauthorized. The management of petitioner college made another representation dated 01.06.2004 to the first respondent for necessary fee exemption or for fixation of fee considering the buildings as non-commercial nature. The petitioner college also made another representation on 20.12.2004 requesting to consider the entire matter fresh. The first respondent, by way of an endorsement dated 20.12.2004 demanded the petitioner college for payment of an amount of Rs.22,82,330/- and warned the petitioner management that action would be initiated on the unauthorized constructions as per the Act of 1975 in case the payment is not made within 10 days. Once again the petitioner college management made a comprehensive representation dated 27.12.2004 and in response thereto, the first respondent, by another endorsement dated

21.02.2005, demanded the petitioner college for payment of Rs.22,82,330/-. Aggrieved by the same, the present writ petition is filed.

5. Counter affidavit is filed by the first respondent denying the averments made in the affidavit filed in support of the writ petition stating that the first respondent authority was constituted under the provisions of A.P.Urban Areas (Development) Act, 1975 with effect from 09.11.1977 vide G.O.Ms.No.695, MA, dated 09.11.1977 and that the area of the petitioner college comes within the jurisdiction of the first respondent authority. It is stated that the petitioner college except orally contending that they have obtained permission from the 2nd respondent and paid the required fees and that the first respondent cannot demand the payment of development charges and compound fees etc., no proof is filed by the petitioner college evidencing the same. It is stated that the petitioner college is situated in D.No.92(P) 93(P), 94(P) and 95(P) of Vaddswaram Village, Guntur District in an extent of Acs.32-21 cents. The officials of this authority found that the petitioner herein unauthorizedly made constructions in the year 1982 itself. Therefore, this respondent directed the petitioner to submit plans to the 2nd respondent as the petitioner did not obtain the approved plans from this authority. The construction made by the petitioner college was unauthorized and for that reason, the petitioner college was asked to pay for the illegal constructions made by it. The 2nd respondent was not competent to sanction or approve the building permissions for colleges. The petitioner submitted plans to the first respondent on 27.09.1982 for construction of second floor electronics Block and hostel building. As per the Master Plan approved by the Government in G.O.Ms.No.144 MA, dated 03.03.1988, the site under reference is earmarked for the agricultural use. As per Section 15 of the Act, no other use is permissible in the said area. Even as per the

Zoning Regulations, the College buildings are not permissible in Agricultural use zone. Hence, the matter was placed before the Authority and the Board in its resolution No.1196, dated 24.09.1988 has resolved to recommend to the Government for the change of land use and the proposals were submitted to the Government on 28.10.1988. The Government in their letter No.4453/I(2)/88-I MA dated 21.04.1989 directed the authority to furnish certain information with regard to change of land use. The Authority furnished the information to the Government on 28.11.1989. However, the Government in their letter dated 11.12.1989 informed the petitioner college that the case was closed at the Government level. The petitioner college did not pursue the matter till April, 2003 and now blaming the Authority stating that the matter is now pending for the last 20 years. For illegal and unauthorized constructions made by petitioner, this Authority passed orders on 29.10.2003 for payment of development charges and compounding fees. Instead of paying the same, the petitioner addressed letter dated 24.01.2004 to exempt them from payment of Development Charges. Apart from that the petitioner submitted plans for regularization of the buildings as per G.O.Ms.No.419 MA, dated 30.07.1998 by paying an amount of Rs.1,00,000/- under Form-A but he has not submitted Form-B and other required documents. The petitioner college has also not paid the balance fees as required under the said G.O, as such, the proposal of petitioner was rejected. The authority again addressed a letter dated 15.03.2004 demanding the petitioner to pay an amount of Rs.26,04,106/- towards development charges etc.. The petitioner submitted representations dated 22.03.2004, 07.04.2004, 29.04.2004, 01.06.2004, 20.12.2004 and 27.12.2004 to exempt the petitioner college from payment of Development charges. The authority issued several demand notices dated 15.04.2004, 15.05.2004, 20.12.2004 and ultimate demand notice dated 21.02.2005 demanding payment of Rs.22,82,330/- after

considering his representation.

6. The Government issued draft notification in Memo No.8821/I, 2/2003 MA, dated 14.08.2003 proposing to change the land use from Agricultural use to Semi public use. The petitioner paid an amount of Rs.6,94,186/- towards Development Charges for the proposed change of land. The Government issued G.O.Ms.No.489 MA dated 24.10.2003, subject to payment of the amount. The petitioner did not pay the conversion charges at the time of submitting plans. That the conversion charges are payable at the rates prevailing at the time of approval of the proposal by the Government. Again the Authority issued notices under Sections 42 and 43 of the Act and after issuing such notices, the petitioner started making correspondence. The Authority rejected the request of the petitioner and directed him to pay the Development Charges applicable for commercial use since the petitioner is a college and that the said demand is in accordance with Section 28 of the Act read with Rule 15(6) of the Rules. The petitioner paid amount of Rs.2,21,776/- towards balance conversion charges but not paid the Development charges and compounding fee to the tune of Rs.22,82,330/-. That the development charges shall be paid at the rates prevailing on the date of consideration of plans and that unless the change of land use was finally considered by the Government, the question of sanctioning the petitioner's plans does not arise at all. The G.O.Ms.No.451 dated 26.08.1988 merely suspended the powers of the Gram Panchayat and it will not have any effect over the power or the jurisdiction of the Authority in sanctioning the plan and demanding the Development Charges. The Authority was constituted in the year 1977 but not in the year 1988 as alleged by the petitioner and sought for dismissal of the petition.

7. Reply to the counter affidavit filed by the first respondent is filed by the petitioner college stating that the first respondent has no power

to demand the payment of development charges by its endorsement dated 21.02.2005 in respect of the buildings of the petitioner college, which construction was complete as per sanctioned plans and on payment of the required charges to the local authority as early as in 1985 itself. The first respondent has no power or authority to make demand from the petitioner as per the rates prevailing as on the date of conversion, instead of collecting the rates prevailing at the time of making the recommendation by the first respondent to the Government i.e., 31.10.1988. The petitioner college was constrained to make payment to the first respondent towards the development charges and that such demand can be arrived at on the basis of the development that took place by 1985 and the then prevailing rates are only to be taken into account for the purpose of arriving at the amount that is liable to be paid by the petitioner towards the construction that was made. That the combined reading of all the provisions including the declaration of the Master Plan shows that the Gram Panchayat was having power and authority to accord sanction for construction of the buildings of the petitioner during the year 1982-88 and such construction was completed by 1985 itself.

8. Additional counter affidavit is filed by the 1st respondent reiterating the averments in the counter affidavit stating that the first respondent authority was constituted by virtue of G.O.Ms.No.695 M.A (Housing, Municipal Administration and Urban Development Department), dated 09.11.1977, Government of Andhra Pradesh, in exercise of the powers conferred by clause (O) of Section 2 of the Andhra Pradesh Urban Areas (Development) Act, 1975. The Governor of Andhra Pradesh having regard to the extent and the scope of the urbanization of the area covering the vicinity of Vijayawada, Guntur, Tenali, Mangalagiri Municipalities has accorded permission and consented for the said G.O and as per the same, about 153 villages

including 3 municipalities have formed as an Urban Area. As per Serial No.69 of the said G.O, Vaddeswaram Village of Guntur District, which is covered by Census Location Code No.42 has fallen under the limits of the first respondent. It is further stated that the first respondent served a demand notice dated 15.05.2004 to the petitioner for payment of 'development charges' for sanction of the plan submitted by them. The details of charges are mentioned hereunder:

Sl.No.	Head	Amount
i)	Built up area for 48,144 sq.mtrs @ Rs.25/- per sq.mtr	Rs.12,03,600/-
ii)	Open Space cost for 1,12,873 sq.mtrs @ Rs.10/- per sq.mtr	Rs.11,28,730/-
	Total	Rs.23,32,330/-

9. Heard Sri M.R.K.Chowdary, learned Senior Counsel appearing on behalf of Sri M.Sudheer Kumar, learned counsel for the petitioner and Smt. K. Mani Deepika, learned Standing Counsel for the first respondent- Authority.

10. Sri M.R.K.Chowdary, learned Senior Counsel mainly contends that the demand made by virtue of the impugned proceedings dated 21.02.2005 for payment of development charges along with compounding fee is not in accordance with the provisions of Sections 27 to 31 of the Act of 1975, which are enacted for the purpose of levying charges i.e., development charges and that the procedure envisaged under the Act of 1975 has not been followed by the first respondent while issuing the impugned proceedings. He would further contend that already conversion charges were paid by the petitioner college, as such, the petitioner college is not liable to pay the development charges. He also contends that necessary fee was paid

to the 2nd respondent and that the construction was made in the year 1985 itself, which was approved by the 2nd respondent Gram Panchayat. He would further contend that prior to 1988, the 2nd respondent Gram Panchayat is having power to grant building permissions, till the same was suspended by the Government by virtue of G.O.Ms.No.451 MA, Housing, Municipal Administration & Urban Development (I-1) Department, dated 26.08.1988. He also submits that the petitioner college is liable to pay conversion charges and development charges only at the rates when the recommendations were made by the first respondent to the Government. He also submits that the impugned demand is in violation of principles of natural justice as the same is not preceded by prior notice.

11. On the other hand, Smt. K.Mani Deepika, learned Standing Counsel for the first respondent submits that except stating that necessary fee was paid to the 2nd respondent Gram Panchayat, no proof evidencing the same has been filed by the petitioner college. First respondent authority was constituted in the year 1977 itself and any construction made after 1977, shall have to be made after obtaining permission from the first respondent authority under Section 14 of the Act of 1975 by paying necessary fee, and that if any construction is made without obtaining such permission under the aforesaid provision, said construction is deemed to be an unauthorized construction. It is also submitted that as per Section 57 of the Act, even if any permission is obtained under any other law, the same is not valid and it will not confer any right on the petitioner. It is also submitted that several notices have been issued to the petitioner college and that petitioner never contended that it is not liable to pay development charges, but they only sought exemption from payment of the same and also sought for levying the development charges for their illegal building constructions, by treating them as residential

buildings, which was rejected by the first respondent authority. It is also contended that all the representations of the petitioner college would go to show that they have requested for waiving of compounding fee and development charges, but they never denied the liability of the sum demanded in the impugned notice. It is also submitted that the petitioner's request for levying of charges under non commercial basis was also rejected by the first respondent. It is also submitted that the petitioner college themselves stated in their representations that the 2nd respondent has sent the plans to the first respondent for approval, as such, they are estopped from raising the present pleas. She also contends that the first respondent issued several demand notices as per Section 28 of the Act read with Rule 15 (6) of the Rules.

12. Lot of correspondence is made between the petitioner and the first respondent authority, which ultimately lead to issuance of impugned proceedings dated 21.02.2005 asking the petitioner college to pay an amount of Rs.22,82,330/- towards development charges. The petitioner college also made representation dated 27.12.2004 referring to several correspondence made by the petitioner and also by the first respondent authority stating that the buildings constructed by the petitioner college are not unauthorized since the plans were duly approved and approved plans were returned to them by the then Gram Panchayat, Vaddeswaram Village by collecting necessary fees under B.R. in Andhra Pradesh Gram Panchayat Act, 1964 and development charges under the Act of 1975 vide letter by Gram Panchayat dated 25.09.1982 and vide letter dated 16.09.1982 stating that all the plans were approved by Gram Panchayat up to 1989, as such, the petitioner college did not pay development charges to the first respondent and also there is no need to get fresh approval for the buildings which are existing from 1982-1989. It is also stated that the petitioner college is required to pay only for the Computer Block-2 building plan and the

construction of the remaining buildings had been completed before 1985 after getting the approval from Gram Panchayat by paying necessary fees to Gram Panchayat. However, to avoid confrontation the petitioner college offered to pay the fees under residential development charges for the college buildings as informed to the first respondent vide representation dated 29.04.2004, but the same was rejected by the first respondent authority as the construction of the building by the petitioner college is not a residential building. The petitioner college offered to pay the fees for the buildings constructed between 1982 to 1993 at commercial rates which were in force during that period, the buildings constructed between 1994- 1996, at commercial rates which were in force during that period and the buildings constructed after 1996 at commercial rates which were in force during that period. It is also stated that the petitioner also paid an amount of Rs.1,00,000/- to the Urban Development Authority and also Rs.41,846.70 to the Gram Panchayat on different dates from 1982 to 1997 and requested the first respondent authority to take into account while fixing the fee that has to be paid by the petitioner. In the letter dated 27.12.2004 addressed by the petitioner college to the first respondent Authority, though it is stated that they are not required to obtain any fresh approval for the buildings, which were in existence and constructed from 1982 to 1989, but as per Section 57 of the Act of 1975, if any permission is obtained under any other law, the same is not valid and it will not confer any right on the petitioner. Section 57 of the Act of 1975 reads as follows:

“57.Effect of other laws: (1).....

(2).....

(3).....

(a).....

(b) When permission for such development has not been obtained under this Act, such development shall not be deemed to lawfully undertaken or carried out by reason only of

the fact that permission, approval or sanction required under such other law for such development has been obtained.”

Admittedly, the first respondent authority was constituted under the provisions of A.P. Urban Areas (Development) Act, 1975 with effect from 09.11.1977 vide G.O.Ms.No.695 M.A, dated 09.11.1977 and that the area of the petitioner college comes within the jurisdiction of the first respondent authority. The petitioner also admitted the above fact through the reply to the counter affidavit of the first respondent.

13. It is pertinent to note that no proof is filed by the petitioner college in support of their contention that they have obtained permission from the 2nd respondent Gram Panchayat for construction of the buildings. Even if petitioner college obtained permission from the 2nd respondent Gram Panchayat, but as per Sub-Section (3) (b) of Section 57 of the Act of 1975, the development made by the petitioner college shall not be deemed to be lawfully undertaken, as they have not obtained permission under Section 14 of the Act of 1975. Moreover, the first respondent Authority came into force with effect from 09.11.1977. Though in the representation dated 27.12.2004, they referred to about the representation dated 29.04.2004 made to the first respondent authority seeking exemption from payment of fees, the petitioner college has not taken a plea that they are not liable to obtain prior approval of the plans for building constructions from the first respondent. It is the case of the petitioner that they are liable to be exempted from payment of development charges as the petitioner college is an educational institution engaged in imparting technical education in several disciplines both at under graduate and Post Graduate levels on no profit basis, which is charitable in nature and that even if the fee has to be levied, their case shall be considered under non-commercial category. It was never the case of the

petitioner that they are not liable to pay the development charges and that the approval is not required. It was their case in the representation dated 29.04.2004 that they are requesting for approval of their plans. Even in their representation dated 07.04.2004, the petitioner college requested to approve their plans for constructions made by them and also the proposed building plans. Even in the representation dated 22.03.2004, the petitioner college requested the first respondent authority to waive the compounding fees and also charge them on non-commercial rates and they sought to make distinction between the constructions made before 1985 and after 1985. In the representation dated 29.04.2004, the petitioner college requested the first respondent authority to exempt from paying property tax since they are running educational institution, as such, they are liable to be exempted from payment of development charges. Similarly, even in the representation, dated 11.11.2003, it is the case of the petitioner college that they have duly submitted plans to the Gram Panchayat by remitting required fees and in turn they were forwarded to the first respondent Authority for necessary approval. Even in the letter dated 01.04.2003, it is the case of the petitioner college that they have submitted plans of the college buildings in the year 1983 by paying required fees as per the Rules in force and at that time, the 2nd respondent Gram Panchayat has also forwarded the same to the first respondent for necessary technical approvals. It is also the case of the petitioner that they are submitting plans of different buildings since the year 1984 from time to time to the Gram Panchayat by paying the required fee, which were again forwarded to the first respondent.

14. The request of the petitioner college for exemption from payment of development charges was also rejected by the first respondent vide proceedings in Rc.No.C3/4952/82, dated 15.04.2004,

15.05.2004 and 20.12.2004 and also the request for levying of commercial development charges for the college buildings at prevailing rates at the time of construction of building is rejected as all buildings in the college premises are unauthorized as the first respondent has not obtained permission from the first respondent authority. As and when notices were issued by the first respondent Authority, the petitioner college went on seeking for exemption and levying of development charges on non commercial basis. By impugned proceedings, petitioner was asked to pay development charges which they have never paid.

15. Even in the reply filed by the petitioner to the counter affidavit, it is admitted the first respondent authority was constituted under the provisions of A.P. Urban Areas (Development) Act, 1975 with effect from 09.11.1977 vide G.O.Ms.No.695 M.A, dated 09.11.1977 and that the area of the petitioner college comes within the jurisdiction of the first respondent authority. After constitution of the first respondent Authority, one has to apply for permission under Section 14 of the Act of 1975 for making construction. Even though the petitioner college admitted that the first respondent Authority constituted in the year 1977, they state that they have obtained permission from the 2nd respondent Gram Panchayat, however, they have not filed any proof evidencing the same in respect of the constructions made by them.

16. The first respondent in their counter clearly stated that the petitioner applied for conversion of land use and though the file was closed at the government level vide proceedings dated 11.12.1989, they kept quiet for 15 years and made representation on 01.04.2003 and again they started the process. In the counter it is also stated that the petitioner filed several representations and the authority has considered the same and rejected the case of the petitioner and issued demand notices dated 05.04.2004, 15.05.2004, 20.12.2004 and

ultimately impugned demand notice dated 21.02.2005. Except making representations stating that they should be charged under non-commercial basis and development charge should be waived, no rule was also brought to my notice by the petitioner showing that they are entitled for exemption.

17. Rules 2 (c) and 2 (d) of the Urban Development Authority (V.G.T.M) Rules, 1980 reads as follows:

“2(c) ‘Commerce’ means carrying on any trade or business sale or exchange of goods of any type whatsoever, and includes the running, with a view to make profit, of hospitals, nursing homes, infirmaries and educational institutions, and running of eating houses and lodging houses, and sarais not attached to any educational institution, and the word ‘Commercial’ shall be construed accordingly.

2(d) ‘Commercial use’ in relation to land and building includes the use of such land or building or a part thereof for storage of goods, or as an office in connection with commerce and for other purposes of commerce;

In view of the above provisions, the petitioner college which is an educational institution, is to be treated under commercial category.

19. Another interesting aspect of the matter is that it was never the case of the petitioner that demand is not in accordance with Sections 27 to 31 of the Act of 1975. Only for the first time, the same is raised in reply affidavit and the arguments by the learned Senior Counsel for the petitioner. Initially, the petitioner sought exemption from payment of development charges and also sought for levying the charges under non-commercial category and now, the present writ petition is filed questioning the jurisdiction and power of the first respondent Authority in collecting the development charges, which is misconceived. The request made in the correspondence between petitioner college and first respondent is inconsistent with the prayer in the writ petition, as such, the prayer in the writ petition is misconceived. Similarly, the first respondent cannot be found fault for levying conversion charges as on the date of conversion.

In view of the above facts and circumstances, I do not find any merit in the writ petition and the same is accordingly dismissed. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any pending in the writ petition, shall stand dismissed.

A.RAJASHEKER REDDY, J

20.08.2014

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THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

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Date: 20.08.2015

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