

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION Nos.27557, 18505 & 7799 OF 2011

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COMMON ORDER:

Since common question of law is raised in these writ petitions, they are heard together and being disposed of by this common order.

Facts in WP No.27557 of 2011:

2. Petitioners are owners of 1781 ½ square yards of land bearing Door No.7-1-22/5, Ward No.9, Block No.1, TS No.20/6 & 20/14, Jayaprakashnagar, Tenali, having purchased the same under registered sale deeds on various dates. Petitioners 1 to 3 executed Development Agreement-cum-GPA dated 27-04-2011 in favour of 4th petitioner for development of said property into residential apartment with stilt, ground floor and four upper floors. It is the case of the petitioners that the area in which the subject plot is situate is well developed with surrounding residential houses and the area also have amenities. With the intention to commence construction work, 4th petitioner made an application dated 02-05-2011 to Tenali Municipality-4th respondent for sanction of building permission to construct residential apartment. The application made by the 4th petitioner was forwarded to the 3rd respondent-VGTMUDA for approval and it is stated that the 3rd respondent granted approval vide proceedings dated 23-06-2011 subject to payment of 10% open space charges and the decision thereof was informed to the 4th petitioner by the 4th respondent vide endorsement BA No.135/2011/G1, dated 22-08-2011.

Facts in WP No.18505 of 2011:

3. Petitioner is owner of 1480-55 square yards of land bearing Door No.31-7-5, TS No.130/1, 131/1,2 & 133/3C, Thilak Road, Sulthanabad, Tenali, having purchased the same under registered sale deed dated 6-10-2008. It is the case of the petitioner that the area in which the subject plot is situate is well developed with surrounding residential houses and the area also have

amenities. With the intention to commence construction work, the petitioner made an application dated 15-07-2010 to Tenali Municipality-4th respondent for sanction of building permission to construct residential apartment. The application made by the petitioner was forwarded to the 3rd respondent-VGTMUDA for approval and it is stated that the 3rd respondent granted approval vide proceedings dated 9-05-2011 subject to payment of 10% open space charges and the decision thereof was informed to the petitioner by the 4th respondent vide endorsement BA No.206/2010/G1, dated 28-05-2011.

Facts in WP No.7799 of 2011:-

4. Petitioner is owner of 1080 square yards of land bearing Door No.4-17-33, TS No.476/1&2, Ward No.12, Block No.8, Ithanagar, Tenali. It is the case of the petitioner that the area in which the subject plot is situate is well developed with surrounding residential houses and the area also have amenities. With the intention to commence construction work, the petitioner made an application dated 22-07-2010 to Tenali Municipality-1st respondent for sanction of building permission to construct residential apartment. The application made by the petitioner was forwarded to the 2nd respondent-VGTMUDA for approval and it is stated that the 2nd respondent granted approval vide proceedings dated 13-12-2010 subject to payment of 10% open space charges and the decision thereof was informed to the petitioner by the 1st respondent vide endorsement BA No.272/2010/G1, dated 10-02-2011.

5. The petitioners, in all these writ petitions, are challenging said action of respondents in requiring them to make payment of 10% open space charges for release of building permission plan to construct residential apartment.

6. Counter affidavits are filed by the respondents in these petitions on the same lines justifying their action in insisting the petitioners to pay the 10% open space charges. It is stated by 3rd respondent-Tenali Municipality (1st respondent in WP No.7799 of 2011) that as per the endorsement of 4th respondent-Vijayawada, Guntur, Tenali, Mangalagiri Urban Development Authority, Vijayawada, (VGTMUDA), (2nd respondent in WP No.7799 of 2011) the petitioners have to pay 10% open space charges as the subject site is not

covered by approved layout and minimum civic amenities like CC roads, drainage, storm water drain facilities are not available to these sites and the surrounding area is also undeveloped. That the Municipality will spend the 10% open space charges to develop the locality with roads, drains, electricity. That the subject sites do not come under the Circular Memos Roc.No.3029/2005/R1, dated 14-07-2005 and Memo No.15929/M1/2005-1, dated 24-06-2006 as the sites are not situate in an approved layout and the area is un-developed and amenities are yet to be provided. It is further stated that the Circular memos referred by the petitioners are applicable only for approved buildings when applied for re-construction of the old buildings and where the sites are situate in an area where the area is developed and provided with minimum civic amenities. It is stated that the Municipality is authorized to collect 10% open space charges in view of amendment to Rule 10 (b) in GO Ms.No.902, MA & UD Department, dated 31-12-2007, through GO Ms.No.113, dated 31-01-2008. It is also stated that the mandatory 10% of layout area was also not left for public purpose and, therefore, the petitioners are required to pay 10% open space charges. The allegation of the petitioners that the Municipality has not collected 10% open space charges for release of other building plans in the area and that the petitioners alone are singled out for such preferential treatment is denied.

7. Heard Sri Sreenivasa Rao Velivela, Sri S. Srinivas Reddy, learned counsel for the petitioners and learned Assistant Government Pleader for respondents 1 and 2, Smt. K. Mani Deepika, learned Standing Counsel for respondent no.3 and Sri Venkateswarlu Nimmagadda, learned Standing Counsel for respondent no.4.

8. Learned counsel for the petitioners submit that the revised Building Rules issued in GO Ms.No.678, dated 07-09-2007 framed invoking powers under Section 585 of the Hyderabad Municipal Corporations Act, 1955, does not empower the respondents to collect 10% open space charges. It is also contended that under Circular Memo Roc.No.3029/2005/R1, dated 14-07-2005, the 2nd respondent-Director of Town & Country Planning has clarified that once when permission is issued, it brings the site into planning net of development permit and in such cases it may not be necessary to insist 10% open space charges and under Memo No.15929/M1/2005-1, dated 24-06-2006 it is clarified

that 10% open space charges may not be levied in existing built up areas where the applicants come forward for re-development/reconstruction and where all amenities are provided by the Municipality. Learned counsel further contended that Sub-Section 2 of Section 184 of AP Municipalities Act, 1965, has no application inasmuch as the sites in question are abutting public streets. Learned counsel also relied on the decisions of this Court in WP No9746 of 2012 and WP Nos.13135 of 2006 & 20787 of 2009 in support of his contentions.

9. On the other hand, learned counsel appearing for the respondents contended that by virtue of amendment to Rule 10 (b) vide GO Ms.No.113, dated 31-10-2008, the respondents are entitled to collect 10% open space charges in respect of existing buildings in unapproved layouts and in case of open plots, option is given to the plot owner to pay the same at the time of regulation of plot or at the time of applying for building permission. Learned counsel further submitted that the decisions of this Court cited by the learned counsel for the petitioners are not of much help to their case, since the effect of amendment to Rule 10 (b) of the Rules did not fall for consideration in those decisions and the effect of amended provision was not taken into consideration. Learned counsel also submits that the Circulars cited by the petitioners are of no help as the subject sites are not provided with any amenities and it is not covered by approved layout. They also placed reliance on Sub-section 2 of Section 184 of the AP Municipalities Act, 1965 in support of their contentions.

10. No doubt, the Rules contained in revised Building Rules issued in GO Ms.No.678, dated 07-09-2007, which are governing the field for grant of building permission does not provide for collection of 10% open space charges, as pointed out by the learned counsel for the petitioners, but in the light of the amended *proviso* brought in vide GO Ms.No.113, dated 31-10-2008, respondents can levy 10% open space charges either at the time of regulation of the plot or at the time of applying for building permission. Amendment to Rule 10 (b) in GO Ms.No.902, MA & UD Department, dated 31-12-2007, vide GO Ms.No.113, dated 31-01-2008 reads thus:

10 (b) "10% open space contribution charges to be insisted or reserve equivalent land within their site by readjusting the plots. Where such open space is not provided in such unapproved layout sites, pro-rate open space charges shall be paid as given below:

- i. xxx
- ii. in case of open plots, option is given to the plot owner to pay the same at the time of regulation of plot as per the market value prevailing as on 1.1.2008 OR at the time of applying for building permission as per the rate prevailing as on the date of application for building permission.”

11. A reading of the above Rule makes it is clear that in case of open plots, option is given to owner of the plot to pay the same at the time regularisation of the plot as per the market value prevailing as on 1-1-2008 or at the time of applying for building permission as per the rate prevailing as on the date of application for building permission. The amended provision enables the respondents to collect the 10% open space charges.

12. Rules issued in GO Ms.No.902, dated 31-12-2007 are meant for regulation of unapproved and illegal layouts and the same are issued in exercise of powers vested in Section 58 of the AP Urban Areas (Development) Act, 1975, Section 585 of the Hyderabad Municipal Corporation Act, 1975, Section 44 (2) (v) of the AP Town Planning Act, 1920, and Section 326 (1) of the AP Municipalities Act, 1965, and the said Rules are made applicable to the all Urban Development Authorities, Municipal Corporations, Municipalities and Gram Panchayat falling in the Master Plan limits.

13. The object in introducing the amended Rule 10 (b) serves a public cause at large and promote planned development of urban areas which protects hygiene and environment so as to bring in a better quality of life for the citizens. Hence, insistence to pay 10% open space charges to develop the locality with roads, drains, electricity cannot be said to be illegal muchless violative of any rights guaranteed under the Constitution. The Circular Memo Roc.No.3029/2005/R1, dated 14-07-2005 and Memo No.15929/M1/2005-1, dated 24-06-2006 are not applicable to the facts of the case as the sites are not situate in an approved layout and the area is an un-developed area and amenities are yet to be provided. The Circular memos are applicable when applied for re-construction

of the old buildings or where the site is situate in an area where the area is developed and provided with minimum civic amenities.

14. Sub-Section 2 of Section 184 of AP Municipalities Act, 1965, reads as follows:-

“(2) The owner of any land shall, before he utilises, sells, leases, or otherwise disposes of such land or any portion thereof, as sites for construction of buildings-

(a) make a layout and form a street or road giving access to sites and connecting them with an existing public or private street except in the cases where the sites abut on an existing public or private street;

(b) set apart in the layout adequate area of land on such a scale as may be prescribed for a play-ground, a park, an educational institution or for any other public purpose.”

15. The above provision of law stipulates that the owner of the land shall before he utilizes, leases, sells or otherwise dispose of such land or any portion thereof, shall make a layout and form a street or road giving access to sites and connecting them with an existing public or private street except in the cases where the sites abutting on an existing public or private street. Provision should also be made for play-ground, park, and other public purposes. In the case on hand, it is categorically stated by the respondents in the counter affidavit that the subject sites are not having civic amenities and area is also not developed. Though the petitioners have denied this averment, no documentary proof is filed to show that the subject land is having civic amenities and it is a fully developed area. Even otherwise, sites of the petitioners are not situate in approved layouts.

16. The decisions of this Court in WP No9746 of 2012 and WP Nos.13135 of 2006 & 20787 of 2009 relied on by the learned counsel for the petitioners are of no help to the petitioners, as presumably, the amended *provision* brought in through GO Ms.No.113, dated 31-01-2008 amending Rule 10 (b) of the Rules was not brought to the notice of the Court and, therefore, there was no occasion to consider the correctness or otherwise of the said amended

provision in the said decisions. The learned Judge while disposing of those cases, at para 17 held as follows:-

“17. These cases are being disposed of on the basis of peculiar facts of the cases. This order should not be construed as barring the respondents absolutely from collecting shortfall in open space charges and betterment charges in respect of plots in unauthorised lay outs. In appropriate cases, the resolutions of the respective Municipal Corporations can be implemented.”

17. Basing on the facts of that case, the learned Judge also observed that no statutory provision was shown for levy of 10% open space charges. But Rule 10 (b) of the Rules provide for levy and collection of open space charges. Hence, the above judgment which is rendered in the facts and circumstances of that case has no application to the facts of this case. In view of the above facts and circumstances, I do not see any merit in the writ petitions. The writ petitions are accordingly dismissed. Miscellaneous petitions, if any, pending in these writ petitions, shall stand closed.

18. This Court at the time of admission of the writ petitions, directed the respondents to release the plans for construction of buildings, subject to condition that in the event, the Court holds that the amount demanded by the respondents is payable, the petitioners shall pay such amounts with reasonable interest. Inasmuch as, now this Court upheld the condition imposed by the respondents for releasing plans for construction of apartment buildings on subject site, the petitioners in the writ petitions are liable to pay the amounts payable by the them as per Sub-rule (ii) of Rule 10 (b) of the Rules i.e. 10% open space charges as per the rate prevailing as on the date of application for building permission to the respondents within three months from the date of receipt of a copy of this order, with interest @ 6% per annum from the date of granting building permission.

A.RAJASHEKER REDDY, J

30th September, 2015

Nrg

Note : LR copy to be marked.

(b/o)

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HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION Nos.27557, 18505 & 7799 OF 2011

30th September, 2015

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*** THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY**

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+ WRIT PETITION No.27557 of 2011 & Batch

% Dated 30.09.2015

Thotakura Subba Rao and others

... PETITIONERS

VERSUS

\$ The Government of Andhra Pradesh represented by its

Principal Secretary, MAUD, Hyderabad and others

...RESPONDENTS

! Counsel for the Petitioners: Sri Sreenivasa Rao Velivela

Sri S. Srinivas Reddy

^ Counsel for the Respondents: learned GP for

Municipal Administration

for R-1 & R-2,

Smt. K. Mani Deepika,

learned SC for R-3,

**Sri Venkateswarlu Nimmagadda
learned SC for R-4**

>HEAD NOTE:

? Cases referred

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD

For the State of Telangana and the State of Andhra Pradesh

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

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WRIT PETITION Nos.27557, 18505 & 7799 OF 2011

Writ Petition No.27557 OF 2011

Between:

Thotakura Subba Rao and others

... PETITIONERS

VERSUS

The Government of Andhra Pradesh represented by its

Principal Secretary, MAUD, Hyderabad and others

...RESPONDENTS

Date of Judgment pronounced: 30.09.2015

Submitted for Approval:

The Hon'ble Sri Justice A.Rajasheker Reddy

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1. Whether Reporters of Local newspapers
May be allowed to see the Judgments? Yes/No
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals Yes/No
3. Whether His Lordship wish to see the fair
Copy of the Judgment? Yes/No

