

HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.13842 of 2013

Date: 14.10.2015

Between:

Nandagiri Hills HUDA Layout Residents Association,
(Registered No.495/2011), Jubilee Hills, Hyderabad,
rep. by its Secretary K.Pardhasarathi s/o. K.Chidambara
Rao, Aged about 55 years, Occu:Business, r/o.Plot No.13,
Babdaguru Gukksm Road No.69, Jubilee Hills, Hyderabad.

.. Petitioner

AND

The Government of Andhra Pradesh, Municipal Administration
Department, Secretariat, Hyderabad, rep.by its Secretary
and others.

.. Respondents

The Court made the following:

HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.13842 of 2013

ORDER:

Petitioner is residents association of Nandagiri Hills HUDA Layout. Petitioner is

aggrieved by the building permission granted in favour of the 4th respondent by respondents 2 and 3 on plot No.40 of Nandagiri Hills Layout.

2. This Court by order dated 30.04.2013 granted interim direction as prayed for. Praying to vacate the interim direction, W.V.M.P.No.1573 of 2013 is filed. With the consent of the learned counsels appearing for the parties, this Writ Petition is finally disposed of by this order.

3. Heard Sri O.Manohar Reddy, learned counsel for the petitioner, learned Government Pleader for Municipal Administration, Sri Y.Rama Rao, standing counsel for HMDA, Sri P.Keshava Rao, standing counsel for GHMC and Sri K.Vivek Reddy, counsel for respondent No.4.

4. Facts in brief are as under. After formation of layouts by HMDA i.e., HUDA layout and Nandagiri layout, HMDA conducted public auction and sold housing plot units. After initial sale conducted by the HUDA, there were some left over plots. Plot No.40 of Nandagiri Hills is one such left over plot. Initially the size of plot No.40 was shown as 410 square yards. As there were no bidders for such plot, in February, 2006, HUDA issued fresh notification to sell plot no.40 and the size of the plot was increased to 664.49 square yards. In the public auction conducted by HMDA, the 4th respondent stood as highest bidder. He was issued final allotment letter dated 25.10.2008 and sale deed was executed on 17.12.2008.

5. Based on the sale deed executed in his favour, when 4th respondent applied for building permission, building permission was not granted pointing out the differences in dimensions in the layout plan and the sale deed. The HMDA had to execute rectification deed to rectify the physical dimensions of the plot. After clarification issued by the HMDA on the road width on western side of the plot, the GHMC has granted building permission for construction of multi storied building. The controversy is only with reference to the road width on the western side.

6. Learned counsel for the petitioner contended that the Hyderabad Metropolitan

Development Authority (HMDA, earlier known as 'HUDA') formed two adjacent layouts in Jubilee Hills, one is known as HUDA Layout and another as Nandagiri Hills layout. The HUDA layout was formed in the year 2001 and Nandagiri hills Layout was formed in the year 2003. The Plot No.40 of Nandagiri Hills layout is touching the border of Nandagiri layout adjacent to the existing road that leads into Road No.70 and opposite of HUDA Layout plot Nos.56 and 57. The layout was formed in hilly area and it takes a steep gradient at particular place. Having realized that plot No.40 is on corner of the steep road, Engineering Department of HMDA created a splay of 5 meters width. On account of the impugned action removing this splay and reflecting the road width as 12 meters, granting permission to the 4th respondent to construct multi storied building might lead to severe problem while negotiating the motor vehicles coming from Nandagiri Hills and there is every likelihood of motor vehicles involving in accidents on account of poor visibility if the road width is small and there is no splay.

7. According to the learned counsel, there are about 101 plots in HUDA Enclave layout and most of the plot owners have constructed multi storied buildings. There are 150 residential apartments in addition to the individual houses and there are about 200 more apartments likely to be completed in the near future. Each family owns at least one Car; there will be movement of more than 300 Cars on every day on this stretch of road. Without regard to the safety norms, building permission is granted and grave prejudice would be caused to the members of the petitioner association and the persons who use the subject road, if building as planned is constructed on plot no.40 of Nandagiri Hills.

8. Learned counsel for petitioner contended that after formation of layout, drainage system was laid and also planted trees adjoining the road. The drainage system is now forming part of the revised boundaries shown in favour of the 4th respondent. If the plot size is what is now given to the 4th respondent then the plot boundary ought to have been after the drainage system and the public drainage system cannot form part of private plots. Thus, original HUDA layout coupled with construction of drainage system and plantation of trees would show that 4th respondent is encroaching into the road. Thus, there was no justification to change the alignment

of plot, reflect the road width as 12 meters contrary to the original layout, grant building permission which is not in public interest.

9. According to the learned counsel, even assuming that 4th respondent is a *bona fide* purchaser and is entitled to undertake construction of the building within the plot sold to him, he has to work out his remedies with HMDA, but he cannot seek to encroach on the public road on the premise that plot size as given to him tallies with the specifications on ground.

10. Learned counsel further submits that the action of the respondent authorities in placing reliance on the revised master plan to contend that road width is 12 meters only and, therefore, 4th respondent is entitled to undertake construction treating the road width as 12 meters as valid is *ex facie* illegal. According to learned counsel, Revised Master Plan cannot alter the existing road which is already formed and full fledged residential colony has already come up.

11. Even if the authorities intend to change the road width, they have to follow due process; call for objections of the residents of the locality and only after considering such objections, revised layout changing the alignment of the road can be made, whereas no such procedure was followed. Even otherwise, the revised master plan cannot alter the width of the road already formed. Learned counsel submits that there is no justification to reduce the road width once road width was shown as 15 meters having regard to the nature and topography of the land and gradation of the road on this particular stretch. This is also clear from the reading of the original layout. The road width elsewhere was shown as 12 meters, but on this particular stretch road, it was shown as 15 meters. Therefore, by no stretch of imagination the road width on this road can be reduced.

12. Learned counsel therefore contended that the action of respondent authorities in granting building permission is *ex facie* illegal.

13. Sri K.Vivek Reddy counsel for 4th respondent contended that 4th respondent has

purchased the house plot in the open auction conducted by the HMDA. As per the auction conducted, he is entitled to occupy the plot of size as sold to him i.e., 664.49 square yards. The plot no.40 is on the boundary of Nandagiri Hills. The road which petitioner association is emphasizing is formed as part of HUDA layout. According to learned counsel, 4th respondent is no way concerned, with the size of the road forming part of HUDA layout. Whether it is 15 meters or 12 meters makes no difference insofar as the petitioner is concerned. According to him, admittedly, his plot stands on the boundary of Nandagiri hills and he has not encroached into HUDA Layout.

14. There was some discrepancy in the description of the size of the plot and after long correspondence rectification deeds are executed, which correctly reflected the size of the plot. If drainage system was wrong laid or the trees were not properly planted, 4th respondent cannot be deprived of the extent of land validly purchased by him.

15. According to the learned counsel, the petitioner association never challenged the auction conducted to plot no.40 even after the revised size of the plot was shown. Therefore, he cannot contend that 4th respondent cannot undertake construction of the building. According to the learned counsel, 4th respondent has commenced the construction by duly observing required norms of the setbacks and only because of the interim order passed by this Court, work is stopped causing huge financial loss to him.

16. According to the learned counsel, the physical features of the road do not support the contention of the petitioner association. The road width even though shown in the layout as 15 meters, on ground road width is not uniform. According to the learned counsel, it is possible that the plot owners of the HUDA layout have encroached into the road and consequently, road width has shrunk. Learned counsel, therefore, contended that petitioner lacks *bona fides* in prosecuting the litigation.

17. According to learned counsel for 4th respondent, even assuming that as per the

original layout road width is 15 meters, by the time petitioner has applied for permission to construct building, according to master plan notified in the year 2010, the road width is only 12 meters and, therefore, the 4th respondent is entitled to undertake construction as approved by the GHMC.

18. In support of his contention that the master plan shall prevail over any other plan including the layout, learned counsel placed reliance on the decision of the Division Bench of this Court in W.A.No.414 of 2012 and W.P.No.532 of 2012, dated 27.11.2014, decision of the Supreme Court in **Bhag Singh and others v. State of Punjab and others** and decision of Supreme Court in **Greater Kailash Part II Welfare Association and others v. DLF Universal Ltd. And others**.

19. The learned standing counsel appearing for HMDA contended that when a HUDA layout was formed, the road width was shown as 15 meters. However, the road width of 15 meters is not maintained uniformly. At the entry point of Nandagiri Hills, the road width is 15 meters, but as it goes up, road width shrinks to 12 meters and that the road width as 15 meters could not be maintained uniformly because of the topography of the area. The further stand of the HMDA is, in the year 2010 Revised Development Plan (Master Plan) was drawn up and the same was approved by the Government vide G.O.Ms.No.363 Municipal Administration and Urban Development (I) Department, dated 21.08.2010. According to the revised master plan, the subject road width is reflected as 12 meters and the main road towards HUDA enclave is shown as 18 meters. By the time the 4th respondent applied for building permission, as Master Plan reflected the road width as 12 meters, the same was intimated to the GHMC and GHMC accordingly granted building permission.

20. The learned standing counsel appearing for GHMC submitted that even though initially objection was raised for grant of building permission as road width was shown as 15 meters and there were some differences in measurements of the plot, on clarification issued by the HMDA treating the road width as 12 meters, the building permission was granted.

21. The learned standing counsel appearing for GHMC and HMDA defended the decision to grant building permission in favour of the 4th respondent.

22. The short point that arises for consideration is whether the building permission granted in favour of the 4th respondent is valid?

23. Petitioner's primary contention is the road width of the subject road as per approved layout is 15 meters, whereas the road width is shown as 12 meters while granting building permission to the 4th respondent and, therefore, the building permission is illegally granted. If road width is taken as 15 meters, the 4th respondent has to leave 3 more meters from the existing boundary and in such an event the building permission granted needs to be revised. It is further contended that the alignment of the plot as stands now and if building is permitted to be constructed, may have severe consequences for the road users as it is a blind turn at the end of subject road, which merges into the road No.70 and may result in accidents.

24. Admittedly, the plot of the 4th respondent belongs to Nandagiri hills layout. As seen from the material on record, though there were some discrepancies regarding the size of the plot and dimensions, but the fact that the plot is abutting the existing road is not in dispute. Petitioner association did not contest when plot boundaries were marked and no splay was formed. They did not protest against wrong formation of road. As per the Nandagiri hills layout, plot no.40 is abutting the subject road of HUDA layout. This particular property was subjected to auction on several occasions. If the petitioner association had a grievance on location/alignment of the plot, it ought to have raised objection in right earnest before the plot was subjected to sale. Petitioner association allowed the sale to be finalised. The 4th respondent purchased the plot in open auction conducted by the HUDA, which formed both the layouts. It is not the case of the petitioner that the 4th respondent is in illegal or unauthorized occupation of the land in excess of land sold to him.

25. The material on record would disclose that though the road originally envisaged as 15 meters, 15 meters width is never maintained uniformly and as it meanders along it goes down to 12 meters at some points. The HMDA justifies the same on the ground that the layout was formed on hilly area and therefore width of the road could not be maintained uniformly. The petitioner association have not raised objection when road width was not maintained uniformly. The material on record does not justify reason for shrinking of the road width to 12 meters.

26. Further, in the revised master plan of 2010, the subject road width is shown as 12 meters. This revised master plan is not under challenge. It is settled principle of law that master plan in force shall prevail over any other plan or a layout.

27. Therefore, the subject matter of the writ petition is only concerning the correctness of the decision of the competent authority in granting building permission to the 4th respondent.

28. On a building permission application made by a person, GHMC is required to verify the existence of *prima facie* title of the property in favour of applicant, the nature of construction, area of construction proposed, the extent of construction permissible in terms of zoning regulations and whether it is in compliance with layout of the area. In the instant case, petitioner plot is part of Nandagiri Hills layout, whereas subject road is part of HMDA layout. It is nobody's case that building permission is violating Nandagiri layout. The extent of floor area sanctioned is permissible and 4th respondent building plan is in compliance to the set back norms. Furthermore, whether road width is 15 meters or 12 meters, the parameters of construction is same. Furthermore, the material filed by 4th respondent also shows that building permission was granted on this stretch of the road to other owners treating the road width as 12 meters.

29. The material on record discloses that initially the GHMC raised objection in granting permission to the 4th respondent on the ground that there was discrepancy on road width. HMDA clarified that subject road is only 12 meters. It also refers to the revised master plan of 2010. Thus, the competent authority of GHMC has assessed

the eligibility of the 4th respondent for grant of building permission and on taking note of the opinion furnished to the competent authority by HMDA, the building permission was granted. Section 428 or any other provision of GHMC Act do not enable the GHMC to dwell deep into the nature of title and other particulars of the property except *prima facie* satisfaction about the ownership and fulfilment of parameters in accordance with the zonal regulations to undertake construction of multi storied building. It is not in dispute that the 4th respondent fulfilled all the parameters and building permission was validly granted.

30. Thus, grant of building permission cannot be said as illegal or one made in arbitrary exercise of power and authority warranting interference by this Court. By granting building permission to the 4th respondent, no provision of law is violated necessitating interference by this Court in exercise of power of judicial review under Article 226 of the Constitution of India.

31. As noted above, road width though originally envisaged as 15 meters but this is not observed while forming the road. It appears that road was already formed before the plot was purchased by the 4th respondent. According to 4th respondent alignment of his plot is in line with the neighbours' plots on the same side of the road forming part of Nandagiri Hills layout. Neighbours have constructed houses with the same alignment. The material on record discloses that measurements of the plot were taken from the edge of the subject road. It thus appear that, at the time of purchase by the 4th respondent itself, the plot boundary starts from the edge of the existing road.

32. Thus, looking from any angle, it cannot be said that the building permission granted to 4th respondent is vitiated on account of grave illegality committed by GHMC warranting interference by this Court. The Writ Petition deserves no consideration and it is accordingly dismissed. No costs. Miscellaneous petitions, if any pending, shall stand closed.

_____**JUSTICE P.NAVEEN RAO**

Date : 14.10.2015

kkm

HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.13842 of 2013

Date: 14.10.2015

kkm