

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD  
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

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**W.P.No.9890 of 2008**

Between:

M/s.Hiranmayi Educational System Private Limited

... Petitioners/Appellant (s)

And

The Director of Town and Country Planning  
and 7 others

... Respondent (s)

DATE OF JUDGMENT PRONOUNCED: 05.08.2015

**SUBMITTED FOR APPROVAL:**

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

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|---|-------------------------------------------------------------------------------|--------|
| 1 | Whether Reporters of Local newspapers<br>may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be<br>marked to Law Reports/Journals       | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to see<br>the fair copy of the Judgment? | Yes/No |

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

**WRIT PETITION No.9890 OF 2008**

## **ORDER**

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The case of the petitioner is that it has purchased the open plot admeasuring 954 sq.yards equivalent to 797.48 sq.yards in Sy.No.1287/B and 1288/B situated at Jyothinagar, Karimnagar town by virtue of registered sale deed dated 13.12.2004. The said plot is originally part and parcel of Sy.No.1287/B and 1288/B land belonging to Church of South India Trust Association, Karimnagar, which is registered under the Indian Companies Act, 1913 vide its Certificate No.122 dated 26.09.1947. While so, when the respondents tried to interfere with the said land, the Church of South India Trust Association filed O.S.No.531/1978, against the 2<sup>nd</sup> respondent and another, on the file of the District Munsif Court at Karimnagar seeking perpetual injunction restraining the defendants permanently from interfering with the possession and enjoyment of land to an extent of 1 acre 3 guntas in Sy.No.1287/B and 1288/B. The said suit was decreed on 14.07.1987 restraining the defendants therein from constructing the park in the suit schedule area. Against the said judgment and decree, the 2<sup>nd</sup> respondent preferred an appeal along with the petition to condone the delay of 6275 days in preferring the appeal vide I.A.No.539/2005 and the same dismissed on 17.09.2005 and the said judgment has become final. The petitioner made an application to the respondents on 30.08.2006 seeking permission to construct staff quarters i.e., ground + 3 floor with stilt floor for parking in the land admeasuring 954 sq.yards in Sy.No.1287/B and 1288/B. But the 2<sup>nd</sup> respondent rejected the same on the ground that the land in question is earmarked for park as per the sanctioned plan i.e., P.T/11/70. While so, one Smt Sheka Saleha and 2 others filed suit against respondent No.2 vide O.S.No.284 of 1996 and the trial Court dismissed the said suit. Against the said judgment A.S.No.38/2002 was filed which was allowed with costs on 16.08.2003 holding that T.P.11/70 is not sanctioned by the State Government in

accordance with Section 14(5) (6) of the A.P.Town Planning Act,1920. Aggrieved by the proceedings in Lr.No.1856/2007/W dated 13.03.2007, the present writ petition is filed.

Counter is filed by the respondent Corporation stating that earlier the petitioner has filed W.P.No.13864/2007 and later the said writ petition was withdrawn by the petitioner after filing counter, as such the writ petition is liable to be dismissed on the sole ground. It is also stated that purchasing of open plot by the petitioner in Sy.No.1287/B and 1288/B is not permissible under law as the same is earmarked for the purpose of public park and recreation as per the revised layout No.117/1962. Further, it is stated that, the Church of South India Trust Association, which is the owner of the land in Sy.No.1287/B to an extent of Ac.7-27 guntas and land in Sy.No.1288/B to an extent of Ac.2-14 guntas has sold out the said land to the purchasers leaving the land in dispute as open space. It is admitted that the vendors of the petitioner filed O.S.No.531/1978 seeking perpetual injunction claiming that they are the owners of the said open land. Since the plaintiff therein adduced in the evidence admitting that the land in question was shown as open land in their town plan, the claim of the petitioner or his vendors as owners of the said land does not arise. The 2<sup>nd</sup> respondent further states that the land in which the petitioner is seeking building permission is specifically marked for public park and recreation as per the revised layout No.117/62, as such the question of granting permission for construction to the petitioner is contrary to the Town Planning rules as well as layout prepared by the 1<sup>st</sup> respondent. It is further stated that though in pursuance of judgment in O.S.No.284/1996 and A.S.No.38/2002, the then Municipal Council accepted and sanctioned permission, the same was strongly objected by the general public and the said land was left over as open space even as on today.

Sri S. Balchand, learned counsel for the petitioner submits that this Court granted injunction in O.S.No.531/1978 in favour of the

vendors of the petitioner restraining the 2<sup>nd</sup> respondent from constructing the park in the subject land and the judgment has become final. Therefore, the respondents once again cannot reject the application of the petitioner for construction on the same ground. He also submits that though the impugned order is passed on the ground that the appeal is pending, but as on today no appeal is pending. Even though Second Appeal No.1155/2003 is filed against A.S.No.38/2002, the same is dismissed on 08.11.2002 and the decree and judgment in O.S.No.531/1978 has become final, as such the application cannot be rejected on the same ground.

Sri V.Satyam Reddy, learned Standing counsel for the 2<sup>nd</sup> respondent submits that the petitioner has filed writ petition earlier and has withdrawn the same and the land for which the petitioner is seeking permission is used as open space, as such, permission cannot be granted.

Heard Sri Y.Rama Rao, learned counsel for the respondents 3 to 8 who reiterated and supported the contentions of the learned counsel for the petitioner.

A perusal of the impugned order does not show the rejection of the application of the petitioner and it is only communication between the 1<sup>st</sup> respondent and the 2<sup>nd</sup> respondent seeking clarification on certain aspects. Even in the counter, it is not stated that petitioner's application for building permission is rejected or disposed of in any manner. As on today, there is no rejection of application filed by the petitioner and the petitioner cannot challenge the communication between the officials, the relief in the writ petition basing on the impugned proceedings does not arise. Therefore, without going into the merits of the case, since the application filed by the petitioner for building permission is not disposed of as on today, the 2<sup>nd</sup> respondent is directed to consider and dispose of the same within a period of six (6) weeks from the date of receipt of copy of this order in accordance

with law, after giving notice to the petitioner and it is open for the petitioner to place all the facts pleaded in the writ petition with necessary documents and respondent shall consider the same while disposing of the application for building permission.

With the above direction, the writ petition is disposed of. No costs. As a sequel, miscellaneous petitions pending if any, shall stand closed.

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**A.RAJASHEKER REDDY,J**

Date: 05.08.2015

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