

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

WRIT PETITION NO.31395 OF 2016

ORDER:

This writ petition is filed under Article 226 of the Constitution of India seeking to issue writ of mandamus declaring the action of the 3rd respondent in returning the draft layout plan submitted by the petitioners as illegal and arbitrary.

2. Heard learned counsel for the petitioners, learned Government Pleader for Panchayat Raj, representing respondents 1 and 2 and the learned standing counsel for Panchayat Raj, representing 3rd respondent.

3. The 1st petitioner claims that he is the absolute owner of an extent of Ac.0.49 cents of land and the 2nd petitioner claims that she is the absolute owner of an extent of Ac.1.18 cents of land in R.S.No.33/2 situated in Morampudi Revenue village of Hukumpeta Gram Panchayat, Rajahmundry Rural Mandal, East Godavari District. The petitioners herein submitted draft layout plan to the 3rd respondent with a request to transmit the same to the 2nd respondent. The 3rd respondent returned the application of the petitioners on 30-08-2016 on the ground that the 1st petitioner has not obtained permission from the competent authority for conversion of agriculture land into non-agriculture land.

4. Learned counsel for the petitioners submitted that the 3rd respondent has no right of whatsoever to return the layout plan submitted by the petitioners. He further submitted that role of the 3rd respondent is to forward the layout plan to the 2nd respondent. To substantiate the arguments, the learned counsel for the petitioners has drawn attention of this Court to G.O.Ms.No.67, Panchayat Raj and Rural Development (Pts.IV) Department, dated 26-02-2002.

5. In order to appreciate rival contentions, it is not out of place to extract sub-clause (1) and (2) of Clause 11 of G.O.Ms.No.67, dated 26-02-2002, which reads thus:

“11. Prior Technical Approval from Director of Town and Country Planning is necessary for certain permissions:

(1) The Competent Authority for the Technical Approval-

- a) The District Town and Country Planning Officer is the Competent Authority to accord technical approval for the layouts.
 - (i) in the villages with 10,000 or more population
 - (ii) in the Urban Centers to be notified separately by the Director of Town and Country Planning.
 - (iii) In all the mandal headquarters irrespective of the population of the village.

b) The Gram Panchayat of villages with less than 10,000 populations are competent to accord sanction for the layouts, in their respective villages, wherever the **Indicative Land Use Plan** is prepared for the village by the Town and Country Planning Department, the layouts sanctioned prepared will be in conformity with them.

- i) in respect of the villages with more than 5,000 and less than 10,000 population, the District Town and Country Planning Officer shall prepare **Indicative Land Use plans** and keep them available with the respective Gram Panchayats.
- ii) In respect of the villages with less than 5,000 population, the District Town and Country Planning Officer shall get the **Indicative Land Use plans** by engaging the qualified personnel and approve them and keep them available with the respective Gram Panchayat.

(2) On receipt of the application for layout approval, the Executive Authority may call for further particulars, if required and necessary. The applicant shall furnish the required particulars within ten days from the date of receipt of the notice by him. The Executive Authority shall thereafter forward the proposals to the District Town and Country Planning Officer wherever necessary, with the layout plan and full particulars within a period of ten days from the date of receipt of particulars from the applicant wherever required. The District Town and Country Planning Officer shall within thirty (3) days after furnishing of all the particulars to them, forward tentatively approved layout to the Executive Officer, Gram Panchayat concerned. The Executive Officer of the Gram Panchayat may submit a report within fifteen days after laying the Water Bound Macadam (WBM) roads by the applicant as per the specifications appended at Annexure-B of these rules. The concerned District Town and Country Planning Department shall inspect the site and approve the layout within fifteen (15) days, if the demarcated tentative layout is in accordance with the tentatively approved layout and in accordance with these rules; and shall communicate the technical clearance for final approval of the layout to the Gram

Panchayat concerned for all those falling within above sub-rule (1) (a).”

A perusal of the above clause clearly demonstrates that the 3rd respondent has no right of whatsoever to return the layout plan submitted by the petitioners. The role of the 3rd respondent is to transmit the applications received by him to the 2nd respondent. As per G.O.Ms.No.67, dated 26-02-2002, the 2nd respondent alone is the competent authority for the technical approval.

6. Having regard to the facts and circumstances of the case and G.O.Ms.No.67, dated 26-02-2002, the order, dated 30-08-2016 passed by the 3rd respondent is set aside. However, the petitioners are at liberty to re-submit the layout plan to the 3rd respondent. If the petitioners re-submit the layout plan, the 3rd respondent is hereby directed to forward the same to the 2nd respondent.

7. Accordingly, the Writ Petition is allowed. No order as to costs. Miscellaneous petitions, if any pending, in this Writ Petition shall stand closed.

T.SUNIL CHOWDARY, J

DATED: 23-09-2016.

Hsd