

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.40341 OF 2016

DATED : 30.11.2016

Between :

M/s.Subhagruha Projects (India) Pvt. Ltd.,
Rep., by its Director J.Srinivas,
4th floor, Lumbini Jewel Mall,
Road No.2, Banjara Hills, Hyderabad –500 034

.. Petitioner

And

State of Telangana,
Rep., by its Principal Secretary,
Municipal Administration & Urban Development Department,
Secretariat, Hyderabad – 500 022 & another.

.. Respondents



This court made the following :

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ORDER :

Petitioner is a developer. He submitted an application in the year 2014 seeking permission for conversion of land use from conservation use zone to residential use zone to an extent of Ac.39.29 guntas of Rachaloor village, Kandukuru Mandal, Ranga Reddy District. The application submitted by the petitioner was processed and having been satisfied with the claim made by the petitioner for such conversion, Government by order dated 05.07.2014 directed the Commissioner to collect the development charges/conversion charges, from the applicant in respect of draft variation for the proposed change of land use and to inform the same to the Government to take further course of action in the matter. The amount as required was demanded by the Hyderabad Metropolitan Development Authority (HMDA) and petitioner has paid the said amount. The factum of payment of amount was also intimated to the Government by the HMDA vide its letter dated 09.12.2014. Thereafter no further steps were taken by the Government and the sanction as requested by the petitioner was not accorded. While so, by letter dated 26.10.2016, the HMDA directed the petitioner to pay the differential amount for undertaking the process as originally envisaged. The petitioner challenges the same in this writ petition.

2. Learned counsel for the petitioner submits that petitioner has complied all the requisite formalities and matter was pending with the Government only at the stage of passing of final orders.

Having kept quiet on the issue for such a long time, the additional amount could not have been demanded, as demanded in the impugned proceedings. He would further submit that the authority to grant permission is only Government and matter is pending with the Government. Therefore, the HMDA has no competence to demand additional amount. If at all, the additional amount be demanded, it is only by the Government and not HMDA. He would therefore, submit that HMDA is wholly incompetent to make such a demand.

3. When the matter was taken up for consideration learned Government Pleader as well as learned Counsel representing HMDA places before this Court, the order of the Government issued in G.O.Ms.No.223, Municipal Administration & Urban Development Department dated 30.08.2016.

4. The attention of this Court is drawn to para No.4 of the said G.O., which reads as under :

“Government, after careful consideration of the matter and in exercise of the powers conferred under Section 56(2)(x) of Hyderabad Metropolitan Development Authority (HMDA) Act 2008 read with Section 45 (1) of the said Act, have approved the proposal sent by Metropolitan Commissioner, Hyderabad Metropolitan Development Authority and hereby specify the rates of development charges to be levied in Hyderabad Metropolitan Development Authority Area. These rates of development charges are applicable to (i) all pending cases where the final orders have not been issued by the State Government in respect of cases pertaining to change of land use and (ii) in respect of development permissions where amount of development charges payable has not been communicated by HMDA/GHMC/Municipality/Grampanchayath as on the date of issue of these orders. Further orders issued in G.O.Ms.No.275, dated 12.07.2012 to levy 75% of the development charges in extended area of erstwhile Hyderabad Urban Development Authority (HUDA)/Hyderabad Airport

Development Authority (HADA) jurisdiction are hereby withdrawn for the reasons that these areas were added in Hyderabad Metropolitan Development Authority (HMDA) jurisdiction several years ago.”

5. It is clear from reading of the above para that there is revision of rates for processing various applications and this revision is made applicable to all pending applications, even though the applications were fully processed, but no final orders are passed. What is demanded by HMDA is in terms of the said orders of the Government. This G.O., is not under challenge. In terms of this G.O., when admittedly, no final orders are passed by the Government, petitioner is required to pay the additional amount for processing of applications and for grant of permissions.

6. Under the Hyderabad Metropolitan Development Authority Act, (for short ‘the HMDA Act’) HMDA Act, the Hyderabad Metropolitan Development Authority is an agency which regulates all issues concerning the development activity within the territorial jurisdiction of the authority. Even the decision of the Government to grant permission or not to grant permission is also regulated by the provisions of the HMDA Act. Hence, it cannot be said that the demand made by the HMDA, impugned in the writ petition is without jurisdiction or competence.

7. However, even according to learned counsel for the petitioner, the competent authority to grant permission is only Government. Even though demand is made by the HMDA, and petitioner alleges that HMDA is not competent, no complaint is made to Government. Petitioner could have gone before the Government requesting to grant permission as per the application

submitted by him and process the same and pass orders without having regard to the revision made in G.O.Ms.No.223 and the demand made by the HMDA.

8. I am not convinced to hold that the demand made by HMDA is without jurisdiction. Hence, I see no merit in the contentions raised by the petitioner and the Writ Petition is liable to be dismissed.

9. Accordingly, the Writ Petition is dismissed. However, this order does not preclude the petitioner in approaching the Government praying to grant appropriate orders including consideration of his original application without having regard to the revision of rates as per G.O.Ms.No.223 and notwithstanding the demand made by the HMDA, if the same is permissible under G.O.Ms.No.223 and in accordance with the provisions of the HMDA Act. It is also open to the petitioner to avail other remedies as available in law, if so advised, aggrieved by the order of Government in G.O.Ms.No.223 dated 30.08.2016. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

30th November, 2016
Rds

P.NAVEEN RAO,J