

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.20785 OF 2016

ORDER:

The case of the petitioners is that they made an application on 09.05.2016 to the 3rd respondent, for grant of final approval layout in respect of Ac.30.00 gts. in Sy.No.327/1paiki (old) corresponding to Sy.Nos.602 and 605 (new) correlated to T.S.No.1 to 4 in Block C and T.S.No.10 in Block G of ward No.13 situated at Shaikpet Village, Hyderabad District, but no action has been taken so far. Meanwhile, the 2nd respondent addressed a letter dated 28.10.2014 to the 3rd respondent not to issue final approval lay out. Aggrieved by the same, the present Writ Petition is filed.

Heard the learned counsel for the petitioners, the learned Assistant Government Pleader for Revenue(Telangana) for respondents 1 and 2 and Sri P.Kesava Rao, learned Standing Counsel for the 3rd respondent.

Learned counsel for the petitioners submits that the 2nd respondent cannot give a direction to the 3rd respondent not to issue any final approval layout, as the statute does not provide the issuance of any such directions. He further submits that it is for the 3rd respondent to consider the application of the petitioners for grant of layout approval and he also relied on the order of this Court in W.P.No.4920 of 1984 and batch dated 26.10.1984, wherein, in the similar circumstances, this Court set aside the directions of not to grant layout.

Learned Government Pleader for Revenue submits that the 2nd respondent only issued the impugned letter to bring to the notice of the 3rd respondent its objections and the Government has every right to file objections.

The Division Bench of this Court in W.P.No.4920 of 1984 and batch, vide order dated 26.10.1984 at paras 5, 6 and 7 held as follows:

“5. Now, the Collector’s letter dt.5.3.1982 cannot be put on a higher footing than that of a general objection to grant of permission for construction/approvals of layouts, in Banjara Hills area (Shaikpet Village). The letter is not written in pursuance of any statutory power, nor can the Municipal Corporation treat the said letter as a binding directive. Mr.K.Janardhana Rao, the learned Standing Counsel for the Corporation, contended that, under Chapter XX of the H.M.C. Act, the Government exercises a good amount of control over the Corporation, which is said to be evident from Ss.675 to 679. It is, however, unnecessary for us to examine this contention, for the simple reason that the Collector is not ‘Government’ within the meaning of that expression in Chap.XXI, and her letter cannot be treated as, or equated to a binding directive or order of the Government. The Corporation, therefore, was in error in issuing the Circular dt.27.3.1982. The said Circular is ultra vires the powers of the Chief City Planner of the Corporation, as also the powers of the Corporation. The Corporation has to act within the four corners of the H.M.C.Act and any other statutory provisions governing it and cannot act beyond them. As we have demonstrated above, the

several provisions of law levied upon by the corporation, did not warrant or justify the said Circular. It is, accordingly, quashed.

6. The quashing of the said Circular does not, however, mean that the Corporation has no power to take cognizance of the letter of the Collector, or her objection. The Corporation shall keep in mind the said general objection while sanctioning the layouts with respect to lands in Banjara Hills area (Shaikpet village) including the plan referred to in the Collector's letter, if and when communicated and in each such case, satisfy itself that the applicant for sanction of layout is the owner of the land, as contemplated by the Layout rules and the Zoning Regulations; it shall sanction the layout only if it is satisfied in that behalf, after making such enquiry as it thinks appropriate. The Corporation shall also have the power, in such a situation, to call upon the Collector to submit his specific objections, if any, and any other documents which the Collector may wish to produce in support of his objection. It is, however, for the corporation, or the appropriate authority of the Corporation, as the case may be (authority competent to sanction the layout under the Layout Rules and the Zoning Regulations), to look into the matter and determine whether the applicant is the owner of the land, or not. Any finding or conclusion arrived at by the authority in this behalf shall, of course, be subject to the decision of a Court. It is reiterated that the determination of the authority on the above aspect shall be valid only for the purpose of the sanction of layout, and nothing more.

7. The writ petitions are, accordingly, allowed and the Circular issued by the Chief City Planner. (Town Planning Section), Municipal Corporation of Hyderabad, being Circular Memo No.692/TP/A2/82, dt. 27-3-1982, is quashed herewith. The applications (notices) submitted by the petitioners for sanction of layout, shall be considered by the appropriate authority of the Corporation, in accordance with law, and in the light of the observations contained in this judgment. There shall be no order as to costs. Advocate fee rs.200/- in each.

8. Writ Petitions allowed.”

It is no doubt true that any party having objection for grant of layout can file such objections before the 3rd respondent and 3rd respondent has to take into account the same, while granting approval of layout. Similarly, it is open for the 2nd respondent to file objections but the impugned letter issued by the 2nd respondent to 3rd respondent is not traceable to any statute. Hence, the 2nd respondent cannot direct the 3rd respondent not to issue final approval to the revised layout submitted by the petitioners.

In view of the same, the impugned letter cannot be treated as direction by the 2nd respondent, since it is not traceable under any law. However, the 3rd respondent can consider the same as objections while granting final approval to the petitioners.

In view of the facts and circumstances, the 3rd respondent is directed to consider the application of the petitioners for grant of final approval layout by treating the impugned letter as objection but not as a direction by the 2nd respondent to the 3rd respondent.

With the above direction, the Writ Petition is disposed of.

As a sequel, the miscellaneous petitions, if any, pending shall stand closed.

A.RAJASHEKER REDDY,J

Date: 29-07-2016

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