

HON'BLE SRI JUSTICE S.V.BHATT

W.P.Nos.34940, 35787 AND 41187 OF 2015

COMMON ORDER:

Heard Mr. SNiranjan Reddy for writ petitioners, Mr.Y.Rama Rao for 1st respondent, Government Pleader for Revenue for respondents 2 to 4 and Mr.C.V. Mohan Reddy for respondent No.5.

The petitioner in W.P. No.34940 of 2015 and 1st petitioner in W.P. No.35787 of 2015 is common. Petitioner in W.P. No.41187 of 2015 is a Mutually Aided Cooperative House Building Society and claims to have purchased independent houses in the layout developed by petitioner in W.P. No.34940 of 2015. The respondents are same in these three writ petitions. The writ petitions challenge proceedings No.101299/LO/Plg./HMDA/2013 dated 29.08.2015 and consequential steps/action of HMDA/respondent No.1 resulting in violation of petitioner's proprietary and constitutional rights. The writ petitions hence are heard together and disposed of by this common order:

The prayers in these three writ petitions read as follows:

W.P.No.34940 of 2015:

“...Writ of "Mandamus" declaring the action of 1st Respondent in issuing proceedings No.101299/LO/Plg/HMDA/2013 dt.29.08.2015 cancelling the lay out permission granted to the petitioner in respect of schedule property, as arbitrary, illegal, unconstitutional and beyond the powers conferred under The Hyderabad Metropolitan Development Authority Act 2008, and set aside the same with respect to property admeasuring

Ac.88.26 gts in Sy.No. 191/P and Sy.No.30/P, Kollur and Osman nagar Villages respectively, Rainachandrapuram Mandal, Medak District..”

W.P.No.41187 of 2015:

“...Writ of Mandamus declaring the action of 1st Respondent in issuing proceedings No.101299/LO/Plg/HMDA/2013 dt.29.08.2015 cancelling the lay out permission earlier granted in respect of petitioner's land as arbitrary, illegal, unconstitutional & in violation of principles of Natural justice and beyond the powers conferred under The Hyderabad Metropolitan Development Authority Act 2008, and set aside the same with respect to property admeasuring Ac.88.26 gts in Sy.No.191/P and Sy.No.30/P, Kollur and Osman Nagar Villages respectively, Ramachandrapuram Mandal, Medak District..”

W.P.No.35787 of 2015:

“....Writ of "Mandamus" declaring the action of the 2nd respondent in conducting various actions violating the petitioner's property and constitutional rights in excess of powers granted under HMDA Act as illegal, arbitrary, unconstitutional and as a sequitur to such declaration: (i) declare the action of conducting of punchanaman on 30.08.2015 by the officials of the 1st respondent in property admeasuring Ac 88.26 gts situated in Sy.Nos 30/P i.e. 30/1, 30/16 to 18, 20, 33 to 38, 50 to 54. 56, 58, 65 to 70, 73, 74 & 75 of Osmannagar village and 191/P i.e. 191/1, 12. 13. 16 to 20, 31,32,33,35,36,41,42,46,47 & 55 of Kollur village, Ramachndrapuram Mandal, Medak District as illegal and unconstitutional; (ii) declare the action of the 2nd respondent in issuing letter Lr.No.B/291/HMDA.12015 dated 01.09.2015 to the 4th respondent as illegal, arbitrary, unconstitutional and strike down the same ...”

The learned counsel appearing for both parties have submitted by referring to the averments in W.P. No. 34940 of 2015 and suggested to treat this writ petition as the lead case and have further stated that the outcome of W.P. No.34949 of 2015 decides the outcome of the other two writ petitions as well.

The averments in the affidavit are stated thus:

The petitioner is a company registered under the Indian Companies Act, 1956. The petitioner claims to be engaged in real estate, development and construction of houses and apartments. The petitioner claims to be the owner and in exclusive possession of an extent of Acs.92-39 gts. in Survey No.191 (part), Kollur Village and Survey No.30(part), Osmannagar Village, Ramchandrapuram Mandal, Medak District. The petitioner entered into development agreement with BHEL Employees Mutually Aided Cooperative Society (petitioner in W.P. No.41187 of 2015) for developing the land into a gated community of independent houses. On 03.04.2013, the petitioner applied for layout approval from 1st respondent under Sections 19 and 20 of the Hyderabad Metropolitan Development Authority Act, 2008 (for short 'the Act'). On the request of 1st respondent, on 25.01.2014, the 4th respondent sent report on the land covered by application dated 03.04.2013. The petitioner refers to and relies on letter dated 12.02.2014, addressed by the District Collector to 1st respondent on the title status of the subject land in the revenue records. The petitioner also relies on the report of the Revenue Department primarily for the purpose of demonstrating

that 1st respondent to the extent required has called for reports from Revenue Department on title verification or authenticity and on being satisfied with the title and possession of petitioner to the subject matter of application dated 03.04.2013, processed the application for grant of layout approval in accordance with the Act. The 1st respondent through letter No.101299/LO/Plg./HMDA/2013 dated 26.04.2014, on being satisfied with the compliant status of layout application, approved draft layout with housing as gated community development in Survey No.30(part) of Osmannagar Village and Survey No.191 (part) of Kollur Village, Ramachandrapuram Mandal, Ranga Reddy District for an extent of Acs.88-26 gts. as against the request of petitioner for granting layout approval for an extent of Acs.92-39gts. It is remarked that for any reason the 1st respondent to stay clear from the thicket of controversy on title or possession of land under consideration granted approval for a lesser extent than applied. At appropriate stage of the discussion reference to record of 1st respondent would be made. The petitioner was called upon to deposit a sum of Rs.3,74,94,285/- towards ancillary and incidental charges by 1st respondent. The conditions incorporated in the draft layout on which much emphasis is made by both the parties are stated thus:

“10. The applicant shall submit the undertaking on Rs.100/-Non-judicial Stamp Paper that they will be held responsible for any litigation and discrepancy on the tile of the land/ boundary and any court case is pending in

court of law on ownership and on Agricultural Ceiling aspects etc.

11. The applicant shall comply the conditions as laid down in the EIA clearance vide order No.SEIAA/AP/MDK-57/2013-2530, dt.15.07.2013.

12. The applicant is solely responsible for title/ownership aspects and HMDA cannot be made a party in any Court of Law.”

The petitioner alleges that it deposited development charges and executed mortgage deed for due compliance of conditions incorporated in the approval dated 26.04.2014. Thus, the petitioner claims that the development under the Act could be taken up. The petitioner later on applied for building permissions from Gram Panchayat and on 12.12.2014, the Gram Panchayat after receiving the building plan etc., granted permissions for independent houses proposed to be constructed. The petitioner in all is constructing several hundreds of houses in the draft layout approval dated 26.04.2014 covered by Survey Nos.30 (part) and 191(part). The petitioner places on record copies of photos evidencing execution of substantial civil works in the land under development.

Adverting to the genesis for issuing the proceedings impugned in the writ petition, the petitioner states that the 5th respondent by claiming right, title and possession of Acs.3-00 of land in Survey No.191/30 of Kollur Village filed complaint petition before 1st respondent for cancelling the permission dated 26.04.2014. According to petitioner, the title of 5th respondent in Survey No.191/30 is different and distinct from petitioner's land and the

source of right and title acquired by petitioner to land is approved for development. The case of petitioner is that Survey No.191/30 i.e. land claimed by 5th respondent does not form part of draft layout approval dated 26.04.2014 and Survey No.191/30 is a separate and distinct property. Notwithstanding the fact that the proceedings dated 26.04.2014 do not cover Survey No.191/30, still 5th respondent had complained to 1st respondent that development in Survey No.191/30 is undertaken. The 1st respondent without issuing notice or providing opportunity of hearing to petitioner proceeded to enquire into various aspects touching upon title to the land claimed by the petitioner and the 5th respondent, the location of Survey No.191/30 etc. It is further averred that the petitioner in apprehension of haste decision or order by 1st respondent, on 17.06.2015, addressed a letter to the Commissioner, HMDA stating that the complaint filed by 5th respondent may not be entertained, much less without giving opportunity to the petitioner. The 1st respondent through letter No.101299/LO/Plg./HMDA/2013 dated 29.08.2015 issued proceedings cancelling the layout approval granted through proceedings dated 26.04.2014. The petitioner challenges each one of the sentences in the impugned communication dated 29.08.2015 on several legal and factual objections.

The petitioner takes serious objection to the interference by the enforcement officials of 1st respondent namely Mr.K.Manmohan, Deputy Superintendent of Police, Enforcement Cell, Tarnaka M.R.O., Estate Department, HMDA etc. particularly in

the company of 5th respondent in construction activity being undertaken by petitioner at subject site. A few of the averments on the jurisdiction of 1st respondent to conduct survey, localisation etc. are set out in W.P.No.35787 of 2015 and these averments are not adverted to, for the prayer and allegation in W.P.No.34940 of 2015 are substantial. Hence the writ petitions.

The petitioner contends that communication dated 29.08.2015 cancelling layout approval dated 26.04.2014 is ex facie illegal; amounts to arbitrary exercise of power and the findings recorded in the communication dated 29.08.2015 are completely without jurisdiction. The impugned communication is violative of principles of natural justice. The 1st respondent ought not to have entertained the complaint of 5th respondent, for the 5th respondent filed O.S. No.344 of 2012 on the file of Junior Civil Judge, Medak at Sangareddy and the interest of 5th respondent, if any, in respect of Survey No.191/30 is protected by temporary injunction granted by the trial Court. The 1st respondent is a creature under the Act, the statement of objects and reasons, the preamble, the definitions, scope, functions and duties of 1st respondent are clearly delineated by the Act and according to petitioner, the 1st respondent is concerned with development of layouts, development of buildings and development of zones etc. in its territorial jurisdiction, but not to decide disputes either on the title or on the location of property between rival claimants. The findings recorded by 1st respondent go that far, to resemble adjudication by competent Court on issues

of title framed etc. and such conclusions are far beyond the duties, functions and responsibilities undertaken by 1st respondent in implementing the master plan. It is further stated that the 1st respondent strayed into the areas not familiar to it and in the process with illegal and impermissible reasons passed the communication dated 29.08.2015. The petitioner relies on the decisions in T.Rameshwar v. Commissioner, Municipal Corporation of Hyderabad¹ and K.Pavan Raj v. Municipal Corporation of Hyderabad² on the power and jurisdiction of a local body to decide question of title or location and draws comparable analogy to developing authority to take up and decide disputed questions of title by authorities constituted under the Hyderabad Municipal Corporation Act. It is contended that the Commissioner of HMDA exceeded its jurisdiction. The petitioner prays for setting aside the communication impugned in the writ petition.

Mr.K.Purshotham Reddy, Director filed counter affidavit on behalf of 1st respondent. The counter affidavit does not dispute the grant of approval dated 26.04.2014 and the pre-decisional verification undertaken by respondent No.1. On the genesis for issuing the communication impugned in the writ petition, the reply of 1st respondent is that on 02.06.2015, 5th respondent complained to the 1st respondent that the petitioner by including an extent of Acs.3-00 in Survey No.191/30 obtained approval for draft layout and petitioner also encroached in to Survey No.191/30. The 5th

¹ 2006 (5) ALT582

² 2008 (1) ALD 792

respondent along with the complaint appended the orders in I.A.No.1426 of 2012 in O.S. No.344 of 2012 dated 20.12.2012. Reference to findings recorded by the Civil Court is made by the 1st respondent for initiating action resulting in proceeding dated 29.08.2015. The 1st respondent admits receipt of protest letters dated 17.06.2015 and 20.06.2015 from petitioner when the matter was under enquiry by the 1st respondent. The deponent further states that on superimposing the approved draft gated community layout plan on the Kollur Village map, survey No.191/30 is found falling within the layout area. The counter affidavit refers to the orders of Metropolitan Commissioner and inspection said to have been carried on 30.08.2015 and that Survey No.191/30 has also been demarcated as per Kollur Village map. As regards jurisdiction and authority of 1st respondent for undertaking such exercise, it is stated as follows:

“As per the Metropolitan Commissioner orders and under the provision of sub-section (d) (g) of section 51 of HMDA Act No.8 of 2008 HMDA officials along with 5th respondent4s have entered in to the draft gated community lay-out site on 17.06.2015 and observed that the entire lay-out and damarked the Sy.No.191/30 of Kollur Village. Further the draft gated community lay-out plan was superimposed on the village map available in the HMDA Planning Record Section and found that the Sy.No.191/30 of Kollur Village is falling within the boundaries of layout area..”

This Court directed learned standing counsel Mr.Y.Rama Rao to place before the Court all the files maintained by 1st respondent

in the layout approval and cancellation of layout approval for inspection. The files are produced for inspection and at appropriate stage in this order, the Court would excerpt the file notings on the grounds urged by the petitioner.

The 1st respondent though filed counter affidavit and tried to justify its action, the learned standing counsel on instructions at the time of hearing has fairly stated that the impugned communication cannot and could not have been issued without notice and opportunity to petitioner and that the 1st respondent cannot at the instance of a rival claimant undertake either survey or identification of respective properties. The jurisdiction of 1st respondent to decide disputed questions of title or identity is not seriously canvassed for consideration by this Court.

Mr.C.V.Mohan Reddy appearing for 5th respondent relies on the sale deed dated 01.12.2006 in favour of 5th respondent, the mutation of 5th respondent's name in revenue records, grant of pattadar passbooks and title deeds/pahanis in support of the claim and assertion of 5th respondent for an extent of Acs.3-00 in Survey No.191/30. He relies on the order of trial Court in I.A. No.1426 of 2012 and sub-division of Survey No.191/30 and superimposition of Survey No.191/30 in Kollur Village map and correlates the same with the layout sanctioned in favour of petitioner. The learned counsel has stated that the petitioner is not claiming right or title in Survey No.191/30 and likewise 5th respondent has nothing to do with the survey numbers claimed by petitioner, but the controversy between

parties is on the location of property claimed by 5th respondent and is included in the layout approved by 1st respondent. Hence, the sanction of draft layout to petitioner is adversely affecting the proprietary right of 5th respondent. The 5th respondent, therefore, was justified in filing a protest petition before the 1st respondent and the 1st respondent on being satisfied with the complaint has rightly recalled the draft layout approval dated 26.04.2014. It is noted that the learned senior counsel having regard to the objects, and scope of Sections 19 and 20 of the Act, contends that the role of 1st respondent primarily relates to development of area as per master plan, but to the extent of misuse by developer/applicant, necessary orders could be passed by 1st respondent.

I have perused the original files produced by 1st respondent, taken note of the pleadings and also the contentions urged by the learned counsel appearing for the parties.

Now the points for consideration are:

Whether the communication No.101299/ LO/ plg/ HMDA/ 2013 dated 29.08.2015 is legal, conforms to the principles of natural justice and Section 22 of the Act and whether the 1st respondent has jurisdiction to decide title or identity of property and record findings thereon?

For convenience, the points are examined first by pre-phasing the scheme of Act, jurisdiction of 1st respondent and whether the impugned communication is legal or violative of principles of natural justice.

The case of petitioner is that the 1st respondent is created under Section 4 of the Act. According to the statement of objects and reasons, the HMDA Act has been brought into existence to get over the limitations noticed in the stature powers and functions of HUDA which was a body constituted under the Andhra Pradesh Urban Areas Development Act, 1975. The 1st respondent authority is created as a separate and special apex planning and development body with appropriate powers, functions and responsibilities to address the complex planning, development and coordination issues of Hyderabad Metropolitan area. Among other features, the salient features of the proposed legislation to the extent required are as under:

“iii. It undertakes preparation of Metropolitan Development and Investment Plan; prioritize the implementation of the said Plan; undertake execution of projects and schemes through Action Plans for any sector or area of the Metropolitan Region; and other incidental activities.

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v. It shall be responsible for undertaking preparation of Metropolitan Development Plan and Investment Plan and an Infrastructure Development Plan; undertake or promote townships development, land pooling schemes and development schemes; encourage Private Public Partnership for various development projects; undertake development of circulation network, transportation facilities, area level social and other amenities and facilities and other planning and development matters.”

The petitioner to emphasise the structure or composition of HMDA, its powers and functions relies on Section 6 of the Act, which reads thus:

“Section 6: Powers and Functions of the Metropolitan Development Authority:-

Subject to the provisions of this Act, the functions of the Metropolitan Development Authority shall be,

- (1) to undertake preparation of Metropolitan Development and Investment Plan, revision of the said Plan and prioritize the implementation of the said Plan;
- (2) to undertake execution of projects and schemes as per the said Plan and/or through action plans for any sector or area of the metropolitan region;
- (3) an apex body for coordination, execution of the projects or schemes for the planned development of the development areas and undertake such other measures in the metropolitan region;
- (4) to co-ordinate the development activities of the Municipal Corporation, Municipalities and other local authorities, the Hyderabad Metropolitan Water Supply and Sewerage Board, the Andhra Pradesh Transmission Corporation, the Andhra Pradesh Industrial Infrastructure Corporation, the Andhra Pradesh State Road Transport Corporation and such other bodies as are connected with development activities in the Hyderabad Metropolitan Region,
- (5) to monitor, supervise or ensure adequate supervision over the execution of any project or scheme, the expenses of which in whole or in part are to be met from the Metropolitan Development Fund:
- (6) to prepare and undertake implementation of schemes for providing alternative areas for rehabilitation of persons displaced by projects and schemes which provide for such requirements;
- (7) to maintain and manage the Hyderabad Metropolitan Development Fund and allocate finances based on the plans and programmes of the local bodies for undertaking development of amenities and infrastructure facilities and to monitor and exercise financial control over the budgetary allocations concerning development works

made through it to the various public agencies, local bodies and other agencies;

- (8) to undertake by itself or through any agency, the implementation of the area level plans, execution of works relating to infrastructure development, public amenities and conservation of the environment;
- (9) to create and manage the Hyderabad Metropolitan Land Development Bank and take up land acquisition every year as may be necessary for various public uses, township development, infrastructure development, etc., allocation of lands to local bodies and public agencies upon such terms and conditions for undertaking development of amenities and infrastructure facilities;
- (10) to approve the land acquisition programmes/proposals of the local authorities, other Department and functional agencies in the metropolitan region;
- (11) to enter into contracts, agreements or arrangements with any person, body or organization as the Committee may deem necessary for the performance of its functions;
- (12) to acquire any movable or immovable property by purchase, exchange, gift, lease, mortgage, negotiated settlement, or by any other means permissible under any law;
- (13) to perform any other function or exercise powers as are supplemental, incidental or consequential to any of the foregoing duties and powers and/or take up such matters as the Government may direct in this regard."

The petitioner contends that the 1st respondent by any rule of interpretation cannot be said to have jurisdiction to get into disputed questions of title, much less identity of property. According to petitioner, the petitioner is under obligation to take permission for layout development under Sections 19 and 20 of the Act. In the case on hand, the permission has been obtained.

Thereafter, if at all the circumstances warrant for revoking permission, the same shall be after following such procedure as the case may be, for the reasons available in this behalf under Section 22 of the Act. The 1st respondent could not bring to the notice of the Court the procedure, if any, prescribed under Section 22 of the Act at least to test the impugned communication from such prescription. The admitted stance of 1st respondent is that the petitioner was not heard before the impugned communication was passed.

Further, the entire scheme of the Act lays emphasis on development of land, development of buildings and development of residential, commercial and industrial zones as per the master plan. The power and jurisdiction of 1st respondent vis-à-vis sanction of layout approval or building permission are akin to the approval or permission granted under the HMC Act, 1956. The view of this Court in the cases referred to above on the jurisdiction and power of Municipal Corporation in deciding the disputed questions of title is as follows:

In T.Rameshwar's case (1 supra):

"9. In an unreported judgment of this Court in [V. Jaya Prakash v. The Commissioner of Municipality, Kapra Municipality, \(W.P. No. 3979 of 2003 dated 24.11.2003\)](#), I have considered the question as to whether it is competent for the Commissioner of a Municipality to reject building permission on the ground that there is a title dispute with regard to the site on which a building is proposed to be considered. Having regard to Section 215

of the A.P. Municipalities Act, 1965 (the Act, for short), I have held as under:

[The Municipalities Act](#) is an Act inter alia providing for disciplined and planned growth of the municipal area. The power vested in various authorities should be exercised for public good. By exercising power in a manner which would result in dispute, cannot be appreciated. The common law principle of absolute individual right is replaced by the principle of community welfare. Therefore, while passing orders under [Section 213](#) read with [Section 215](#), it is always open to the Commissioner to postpone the decision if there is a dispute between two rival claimants to the property in question. Indeed, when the dispute is sub judice, it shall be the duty of the Commissioner to postpone the permission, for the public authority must respect the Court's decision and implement it and/or aid in implementing the same. In this context, a reference may be made to [Article 144](#) of the Constitution of India which is to the effect that all authorities, civil and judicial in the territory of India shall act in aid of the Supreme Court.

10. Therefore, the law as interpreted by this Court with reference to HMC Act and the Act, which requires the Commissioner to consider the objections, as and when they are raised, for grant of permission on the ground of title in a pragmatic manner taking into consideration only prima facie factors. While doing so, the Commissioner cannot assume the role of an adjudicator or arbitrator and decide the title inter se between the applicant for building permission and the objector of such building permission. If the applicant is able to show that prima facie such applicant has a right to proceed with the construction notwithstanding the pendency of any litigation by way of a suit or other proceeding subject to the applicant applying the certain conditions, the Commissioner may either grant permission or postpone the grant of permission.

11. A reading of the impugned letter dated 19.7.2005 would show that the same came to be issued by the Chief City Planner, MCH, after considering the complaint petition filed by the fourth respondent, without giving any notice to IOCL or its dealer, the third respondent. This would certainly cause prejudice to the petitioner. Therefore, this Court is of considered opinion that the matter should be considered afresh by the first respondent keeping in view the background of the case to which a brief reference is made in this judgment. Needless to mention that while doing so, the Commissioner of MCH shall issue notice to the petitioner, the third respondent and fourth respondent, and pass appropriate orders keeping in view the decisions of this Court referred to hereinabove. This exercise may be completed within a period of two weeks from the date of receipt of a copy of this order. “

In K.Pavan Raj's case (2 supra):

“20. A careful reading of the provisions of the Act and the Bye-laws does not indicate that the Commissioner is empowered to entertain a title dispute and adjudicate the same before disposing of the application for grant of building permission. Indeed, both the provisions of Sections 428 and 429 and Clause (v) of Bye-law 4.2 envisage filing of copies of title deeds and there is no provision under which the Commissioner can reject grant of building permit on the ground of title dispute. As held in HYDERABAD POTTERIES (1 supra), if any objection regarding title is received, the Commissioner is required to be prima facie satisfied about the applicant's title to the property and his lawful possession of the same and he cannot decide title dispute because that is neither one of the duties assigned to him nor he is provided with such an adjudicatory mechanism. A person setting up a rival claim of title, is free to approach the court of competent jurisdiction and seek appropriate relief in that regard. If the applications for building permissions are rejected merely on the ground of third parties raising disputes of

title, that may result in serious hardship to the owners of the properties where frivolous, speculative and vexatious claims may be made by third parties by setting up title. Therefore, wherever the Commissioner is, prima facie, satisfied about the legal title of the applicant and his lawful possession, he is bound to consider the application for building permission on merits, leaving the objector free to approach an appropriate court of law.

21.. In the instant case, this Court in Second Appeal No.108 of 2001, filed by the father of the petitioner, gave a categorical finding that the petitioner's father was in possession of the property and in the process the learned Judge found fault with the findings of the trial Court that title deeds of the petitioner's father contained several defects. The learned Judge also observed that the trial Court, having recorded a finding that respondent No.4 failed to make out any case of its own, dismissed the suit. These observations in the judgment in the Second Appeal, prima facie, go to show that respondent No.4 failed to convince this Court that they have lawful title over the property. In any event, since Writ Petition No.27566 of 2005 is pending, the issue relating to the title could be decided therein. As the scope of objection raised by respondents 1 and 2 based on title to the property falls outside the purview of Bye-law No.6.2, respondent No.1 ought not to have given credence to the objections raised by respondents 3 and 4.

22. It is worthwhile to notice that neither in the objections filed by respondents 3 and 4, nor in the impugned order of rejection, any objection based on the technical grounds, such as causing of obstruction or hindrance for proper and convenient utility of Railway property by the proposed building has not been raised. Therefore, the objections, which were raised by the Railways, based on title, fall outside the scope of Bye-law No.6.2 and rejection of building permission on the basis of those objections is not sustainable in law.

23. The judgment of the Supreme Court in City and Industrial Development Corporation of Maharashtra and another. v. Ekta Mahila Mandal and Anr. 2007(6) Supreme 551, relied upon by the learned Standing Counsel for respondents 3 and 4 has no relevance, whatsoever, to the facts of the present case.

24. For the aforementioned reasons, the Writ Petition is allowed. Order dated 28/29-6-2007 passed by 2nd respondent is set aside. Respondents 1 and 2 are directed to consider the application of the petitioner for grant of building permission afresh within a period of four (4) weeks without reference to the objections filed by respondents 3 and 4. It is, however, made clear that granting of building permission to and construction of the building by the petitioner shall be subject to the outcome of Writ Petition No.27566 of 2005.”

Let me revert to the averments in the case on hand.

The 5th respondent has complained to 1st respondent a grievance on the title to a portion of the land now developed by 1st respondent as part of layout approval dated 26.04.2014. The allegation of 5th respondent against petitioner is that the draft layout approved includes Survey No.191/30. The 1st respondent examined the representation of 5th respondent that the layout is wrongly applied or taken by developer/petitioner and further held that the draft layout order dated 26.04.2014 is obtained by suppressing facts and misrepresentation.

The findings recorded by the 1st respondent are excerpted hereunder:

“In view of the condition No.19, the developer/applicant has not brought to the notice of cases pending before the court of law in spite of the party

to litigation at the time of obtaining the draft layout. Therefore by invoking the condition No.19 the draft layout shall liable to be withdrawn and cancelled even without prior notice.

The condition No.20 specifically contemplates that the litigation/dispute regarding the ownership of land, schedule of boundary etc., the applicant/developer alone is the responsible for settlement and the applicant and developer through a party to litigation, fraudulently obtained the draft layout by suppressing the factual issue. Hence HMDA is responsible for any omission or commission on the part of the developer.

Therefore, using fraudulent means he got included the land of the applicant to an extent of Ac.3-00 gts. Accordingly, the draft layout permission accorded with housing under Gated Community Development in Sy.Nos.30/1, 16,17,18,20,33 to 38, 50 to 54, 56,58,65 to 70, 73,74 & 75 situated at Osman Nagar village & Sy.Nos.191/1,12,13,16 to 20, 31,32,33,35,36, 41,42,46,47 & 55 situated at Kollur village, Ramachandrapuram Mandal, Medak District to an extent of Acres 88-26 gts. in favour of M/s.SSPDL Limited & others vide reference 4th cited is hereby "Cancelled" and "Withdrawn" with immediate effect.

The Executive Authority, Osman Nagar Gram Paanchayat and Kollur Gram Panchayat of Ramachandrapuram Mandal, medak District are directed to take necessary action accordingly and ensure that no developmental works on the ground shall be undertaken by the developer and report compliance.

The Joint Sub-Registrar-1, Sanga Reddy (R.O.), Medak District is also requested to see that no transactions is made by the developer in favour of public in the above said layout hereinafter."

From the above, it is clearly demonstrated that the 1st respondent decided on title, boundaries, including overlapping/surrounding of land etc. The 1st respondent refers to

condition Nos.19 and 20 and concludes that the petitioner by using fraudulent means got included the land of 5th respondent in an extent of Acs.3.00, and therefore, the draft layout permission granted through communication dated 26.04.2014 is cancelled and withdrawn.

This Court having examined the files and the findings on title, location, entitlement, and before recording a finding in this behalf, the following excerpt from the files produced by 1st respondent are excerpted:

“37) Kindly peruse the request for cancellation of the draft layout by the petitioner Sri.Vaidyanath Reddy submitted a petition while enclosing the documents and requested to cancel OR stay the layout map and to delete his land from the layout area which is developing along with his land in Sy.No.191/30 extent Ac.3-00 gts situated at Kollur village by M/s.SSPDL Ventures Pvt. Ltd.,

38) In this case, it is submitted that M/s.SSPDL Ventures Pvt. Ltd. had applied for approval of Gated Community Layout in Sy.Nos.30/1, 16,17,18, 20, 33 to 38, 50 to 54, 56, 58, 65 to 70, 73,74 & 75 situated at Osman Nagar village and Sy.Nos.191/1, 12, 13, 16 to 20, 31, 32, 33, 35, 36, 41,42, 46,47 & 55 situated at Kollur village to an extent of Ac.88-26 gts. and the same is examined and this office release the technical approval of draft Gated Community layout along with type design buildings, amenities block 1 & 2, LIG/EWS total 4 blocks through the Executive Authorities of Osman Nagar GP & Kollur GP vide this office letter No.101299/LO/Plg/HMDA/2013, dated 03.07.2014. (emphasis added)

39) Please see the detailed noting of E.O., HMDA at para 1 to 11 regarding ownership aspects as follows:

i. Earlier part 'B' file has been examined by the estate section in the layout file, the detailed survey No. with extent in Sy.Nos.30/1, 30/16, 30/17, 30/34, 30/34, 3, 4, 30/35, 30/52, 30/36, 30/68, 30/69, 30/70. 30/18, 36/66, 30/33,30/37,30/54,30/53,30/73,30/67,30/74,30/75,30/65, 30/56,30/50,30/38,30/58,30/51, to an extent of Ac.57.05 gts. of Osman Sagar village and Sy.Nos.191/1,191/16, 191/17, 191/31, 191/36, 191/55/3, 191/55/4, 191/55, 191/42, 191/20, 191/20, 191/12, 191/12/3, 191/14, 191/19, 191/19/5, 191/19/3, 191/18, 191/13/3, 191/13/2,. 191/13, 191/47, 191/46, 191/33, 191/35, 191/32 to an extent of Ac.35-33 gts. of Kollur village, grand total extent of layout is Ac.92.38gts. at para 3.

ii. There is objection petition filed by Mr.Sunkara Venkateshwara Rao regarding ownership in Sy.No.30/P of Osman Nagar village & Sy.No.191 of Kollur village and as per the In-House legal opinion, it was decided that the disputed land to an extent of Ac.5-09 gts. in Sy.No.30/P and 191/P and for the remaining extent Ac.88-26 gts. title is clear for M/s.SSPDL and 3 others at para 4.

40) In view of the above, the Sy.No.191/30 is not mentioned in the layout plan and title verification. (emphasis added).

41) Please see the detailed noting of Member (Estates)/ Secretary at para 13 to 21 at page No.8 to 11 NF. As per the para 13, the Sy.No.191/30 is not belongs to the M/s.SSPDL as per the ownership documents filed by them.

42) As per the Dist. Collector letter No.E1/19/2014, dt.12.02.2014 the title of land covering an extent of Ac.5-09 gts. in Sy.No.30/P, Osmanagar & Sy.No.191/P, Kollur is under dispute & covered under litigation and title in respect of Ac.88-26 gts. in Sy.No.30/P & Sy.No.191/P is dispute free.

43) Please see the M.C.madam orders that “ find out why variation in HMDA records, give public notice that the layout is only for Ac.88-26 gts. & put up a D.O. Letter to Collector, copy to petitioner.”

44) Please see the detailed noting of APO (KV)/Dir.-II i/c. at para 23 to 36 at page 13 & 14 NF, wherein para 24 to 28

there is different court cases filed in the Hon'ble Courts and all the above cases, the judgement given in favour of Sri Vaidyanath Reddy in Sy.No.191/30 of Kollur (v), R.C.Puram (M) Medak Dist.

45) There is court case filed by Sri K.Srinivas Rao against the Principal Secretary, Revenue Dept., State of Telangana & (4) others, wherein the HMDA is not the respondent vide W.P. No.7631 of 2015.

46) The Hon'ble High Court has passed the orders in W.P.No.7631 of 2015 on dt. 24.03.2015, the orders as follows:

“ The question as to whether a private party can seek survey of land to settle boundary dispute with another private party is under consideration of this Court in a batch of cases. This court, in similar circumstances, granted interim stay of conducting survey at the instance of private parties.

Hence, there shall be interim stay of conducting survey.

The petitioner shall obtain information with respect to the party who made the application for survey, and implead the said party as a party-respondent”.

47) As per the Secretary orders para 21 NF, the Sy.No.191/30 Kollur village were superimposed on the extract of base map of Kollur village and in the layout plan and after superimposing of Sy.No.191/30 is falling within the layout area by affecting the plots, roads & amenities.

48) Hence, in view of the above, as per the Secretary orders at para 21 NF, the above Sy.No.191/30 Kollur village may be fixed on the ground by taking the help of Revenue of staff of HMDA & Enforcement and Planning Dept. and also we may request the Collector to vacate the interim directions in W.P. No.7631 of 2015 and fix up the date for the demarcation of the above said survey No. on the ground.

49) Submitted for order.

50) The layout is wrongly taken by applicant using fraudulent means. Therefore, it is cancelled with

immediate effect give notification on this. Establish 191/30 & hand it over to its owner. Tomorrow 30/01/15. Write D.O.letter to Collector, Madak for resolving the issue of establishing RS Nos. belonging to SSPDCL. Issue memo to APO for abnormally delaying the file hurting the public justice.

Sd/-

PO (GN)/Dir.I i/c.

Sd/-“

The word 'title' or 'right' in the context of immovable property connotes ownership or possession of property with right. The quality or the basis of ownership is determined by a body of facts, circumstances and events. The Commissioner of HMDA is certainly in great rush to reach findings on title, location etc. though the notings in paras 37 to 40 (excerpted supra) do not warrant interference at that stage of consideration. Likewise, legal title or right connotes title or right determined or recognised as constituting formal or valid ownership by virtue of an instrument etc.

Now, for the limited purpose of discussing the grievance of 5th respondent, it is noted that 5th respondent complains that Survey No.191/30 claimed by him is illegally included in the layout sanctioned by 1st respondent. Therefore, he prays for cancellation of the draft layout dated 26.04.2014. The petitioner neither claims Acs.3-00 in Survey No.191/30 nor admits its inclusion in draft sanctioned plan. The flow of title is distinct to the property claimed by petitioner and 5th respondent. Therefore, the dispute substantially is in the realm of identity of properties claimed by petitioner and 5th respondent. A dispute on identity means to establish the identity of a particular thing or its existence with reference to particular claim

and documents. The enquiry and investigation into such a dispute in the considered view of this Court is not conferred by the Act on the 1st respondent. The conditions incorporated in the draft approval layout recognises this position of disclaimer that the 1st respondent on being satisfied with the prima facie right, title and possession, sanctioned the draft layout. The approval neither confers title nor erases the title between rival claimants. In the case on hand, the 5th respondent has filed O.S.No.344 of 2012 for perpetual injunction against petitioner. In the suit filed by the 5th respondent on the well established principles of law namely prima facie case, balance of convenience and irreparable injury are considered and examined by the trial Court. The file produced by the 1st respondent further shows that the decision to cancel the draft layout approved on 26.04.2014 is taken basing on the note order of the Metropolitan Commissioner on 29.08.2015. The contents of note file are already excerpted and what causes a deep infirmity in the decision making process of 1st respondent is that the care and caution exhibited while verifying the application of petitioner whereby draft layout approval was granted, is not exhibited while cancelling the approval. Further, contrary to the contents of office note dated 29.08.2015 and note orders dated 02.07.2014, a decision is taken and direction issued.

In the considered view of this Court, a dispute on identity or title ought not to have been entertained and decided by 1st respondent. This Court is persuaded to apply the principles of law

enumerated in cases referred above to the case on hand as 1st respondent discharges assigned functions and powers and from the reading of Act, deciding title or identity is not one of the functions or powers of 1st respondent. Therefore, the decision of 1st respondent dated 29.08.2015 is illegal and beyond jurisdiction and untenable.

The 1st respondent ought to have realised that an area falling within the jurisdiction of Metropolitan Development Authority, development can be undertaken only with the sanction from the 1st respondent. In the case on hand, sanction has been granted and through the communication impugned in the writ petition, sanction is cancelled, and therefore, the entire development undertaken that far is by a stroke of Commissioner rendered illegal and development exposed to all penal actions. Having discussed one side of jurisdiction of 1st respondent, this Court hastens to add that the findings recorded above ought not to be understood as the 1st respondent has no power to cancel the permission granted under the Act. Section 22 deals with revoking permission and reads thus:

“The Metropolitan Development Authority or the Government, as the case may be, may revoke any Development Permission issued under this Act whenever it is found that it was obtained by making any false statement or misinterpretation or suppression of any material fact or rule, by following such procedures as may be prescribed.”

From a bare reading of Section 22, it discloses that HMDA or Government may revoke any development permission issued under the Act, for if such permission is obtained by a false statement,

misinterpretation or suppression of a material fact. The revocation can, however, be by following procedure prescribed. It is not the case of 1st respondent that procedure is prescribed under the Act and it was followed while revoking the permission. In the absence of prescribed procedure, the decision which results in serious financial and penal consequences ought to have been taken at least by following the principles of natural justice and fair play. The impugned proceedings and the files do not satisfy this requirement and hence for this reason as well, the decision dated 29.08.2015 and the impugned proceedings are vitiated and are liable to be set aside. The 1st respondent or Government in a given case while considering to revoke permission granted, examines the false statement or misinterpretation or suppression in the context of permission already granted and a decision as is amenable could be taken to revoke the permission granted under the Act. This power is exercised to suggest that the findings recorded by 1st respondent or Government are in the context of permission granted and the alleged false statement or misinterpretation. The condition imposed in the permission granted grants sufficient protection to 1st respondent and a third party's right or title is not adversely affected by the grant of permission by 1st respondent. The parties to such dispute will have to independently establish their right, title and possession before a Court of competent jurisdiction.

The impugned proceedings, on the grounds of violative of principles of natural justice, contrary to the material available on record and beyond the jurisdiction, are set aside.

Mr.C.V.Mohan Reddy has alternatively contended that this Court if is persuaded by the argument of petitioner against proceedings dated 29.08.2015, he requests for protecting the interest of 5th respondent by directing the petitioner not to undertake any development activity in Survey No.191/30 till a decision is taken by 1st respondent and communicated to parties. Mr.SNiranjan Reddy opposes the above argument by contending that the petitioner is not undertaking any development in the land claimed by 5th respondent. The 5th respondent is already protected by temporary injunction, for the schedule of property is shown in O.S.No.344 of 2012. The 5th respondent, if so advised, can establish before trial Court that notwithstanding the injunction granted by the Court, development is undertaken by the petitioner and prays for orders. The remedy of 5th respondent, according to Mr.SNiranjan Reddy is before the competent Court and not in the present writ petition. He finally replies to the submission of Mr.C.V.Mohan Reddy that this Court while considering the legality of impugned proceedings dated 29.08.2015 has considered the jurisdiction of 1st respondent in deciding a disputed question of title or identity. Once it is held that the 1st respondent does not have jurisdiction to decide a disputed question of title or identity of property in the writ petition filed by a person aggrieved by such decision, this Court expressing

a view or restricting petitioner from development would indirectly expand the scope of writ petition. He fairly states that the findings in the present writ petition are always limited to the legalities or otherwise against the communication dated 29.08.2015. Further, O.S. No.344 of 2012 is pending and the disputed questions on title, possession and identity are independently worked out by parties.

After taking note of the submissions of parties, this Court is not persuaded to consider the submission of Mr.C.V.Mohan Reddy and accordingly reject the same. However, to avoid misinterpretation of findings by either parties, it is made clear that this Court while disposing of these writ petitions is concerned with the procedure followed by 1st respondent and the jurisdiction of 1st respondent to decide disputed questions of title and identity. The findings recorded in the present writ petitions are limited to that extent and the rival claims on either title or identity between petitioner and 5th respondent are to be independently considered in the suit pending between the parties.

Writ petition Nos.34940 of 2015 and 41187 of 2015 are ordered and the impugned proceedings dated 29.08.2015 are set aside.

The prayer in W.P.No.35787 of 2015, as already noted, is consequential to the decision taken by the 1st respondent and communicated through letter dated 29.08.2015. The 1st respondent by referring to the provisions of the Act could not satisfy the Court on its jurisdiction and authority either for surveying the land claimed

by petitioner and the land claimed by 5th respondent superimposing the disputed property with village map or undertaking physical inspection for survey. To the extent of survey, demarcation and interference by respondents 1 to 4, in view of the orders passed in W.P. Nos.34940 and 41187 of 2015, they are unsustainable and the writ petition is ordered accordingly. It is made clear the 1st respondent has power and jurisdiction to supervise the development undertaken by a developer within the metropolitan development area. Therefore, to that extent, HMDA can inspect and supervise the development and whether the conditions imposed for development are followed or not. These are matters of verification and inspection by 1st respondent and for the purpose of ensuring development as per and under the Act, the 1st respondent is free to exercise its jurisdiction by following the procedure under the Act.

The writ petitions are ordered accordingly. No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

S.V.BHATT,J

Date:22.09.2017
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