

HONOURABLE SRI JUSTICE RAJA ELANGO

WRIT PETITION No.12426 OF 2012

ORDER:

1. This writ petition is filed by the petitioner challenging the endorsement issued by the respondent in Roc.No.209/2011/G1, dated 15.2.2012, and seeking a direction to the respondent to permit the petitioner to proceed with the construction of the compound wall.

2. The case of the petitioner in this writ petition is as follows:

The petitioner is the owner of the land to the extent of Ac.5.48 cents in Chilakaluripet. The petitioner is also the owner of an existing residential building, which is being used for the purpose of stay of its Senior Managers. In order to protect the property from illegal encroachments, the petitioner proposed to construct a compound wall around the said property and accordingly, made an application on 18.7.2011 seeking permission of the respondent to construct a compound wall to protect its property. On 25.8.2011 the respondent rejected the application of the petitioner on the following grounds:

- (1) The plan did not contain the signature of a licensed surveyor;
- (2) There was some discrepancy between the extent of the land shown in the document/title deed and what was shown in the plan; and
- (3) A 60 feet road was not earmarked in the plan as proposed in the Master plan.

The petitioner re-submitted its application with the revised plan. The said application was rejected again vide the endorsement impugned in this writ petition. Hence, the petitioner filed this writ petition.

3. In the counter filed by the respondent, it is stated that the Master Plan for Chilakaluripet Municipality is sanctioned by Government of A.P.

vide G.O.Ms.No.576 MA dated 6.11.1996 and it is gazetted along with zoning regulations and this Master plan is sanctioned under Section 14(3) of the A.P. Town Planning Act, 1920. The Master Plan is in force for 20 years from the date of the scheme. It is further stated that as per Zoning Regulations of Master Plan, the responsible authority is the Commissioner of Municipality for the purpose of the scheme and shall function in consultation with the Head of the Town Planning Section for a period of 20 years from the date of the scheme unless the Government orders otherwise. It is also stated that as per Section 18 of Andhra Pradesh Town Planning Act, 1920, the owners of the land and buildings in the area affected by the scheme and the persons/firms who proposes to construct or reconstruct or in any way alter or add to buildings shall conform in every particular with the requirements of such scheme and no building shall be constructed or reconstructed in any area in which building is expressly forbidden in the scheme for any purpose incompatible with the building. The Commissioner may execute the scheme within 20 years from the date of the scheme. It is further stated that as per Section 33 of the A.P. Town Planning Act, immovable property required for the purpose of a Town Planning Scheme shall be deemed to be land needed for a public purpose within the meaning of the Land Acquisition Act. It is further stated that the Government has not cancelled this General Town Planning scheme and it is in force at present. In view of the same, the respondent rejected the application of the petitioner. The petitioner has to comply with the GTP scheme norms by earmarking 60 feet master plan road in the proposed plan for getting permission. In the reply affidavit also, the respondent took similar stand that was taken in the earlier counter-affidavit.

4. The learned Counsel for the petitioner submitted that one of the grounds for rejection of the application is G.O.Ms.No.576 MA dated 6.11.1996 of Municipal Administration and Urban Development (H) Department, and as per the proviso to Section 34 of the Act, any town planning scheme after being gazetted has to be implemented within three years from the date of the notification and that the notification with respect to the Town Planning of Chilakaluripet was published vide G.O.Ms.No.576 MA dated 6.11.1996 and as the Municipality did not take any action within three years from the date of the said Notification, the Town Planning as per the said Notification cannot be implemented at this length of time.

5. Further, it is contended by the learned Counsel for the petitioner that the respondent relying upon G.O.Ms.No.576 MA dated 6.11.1996 issued under Section 14(3) of the A.P. Town Planning Act, rejected the application of the petitioner on the ground that the petitioner has to comply with the GTP scheme norms by earmarking 60 feet master plan road in its plan. But the said scheme shall cease to have effect as it was not implemented within three years, whereas it is the case of the respondent that the said scheme shall be in force for a period of 20 years from the date of such notification.

6. The learned Counsel for the petitioner relies on the provisions of Section 34 of the Town Planning Act, whereas the learned Counsel for the respondent relies on the gazette notification with respect to the Town Planning of Chilakaluripet issued vide G.O.Ms.No.576 MA, dated 6.11.1996.

7. The fact remains undisputed is that the Town planning of Chilakaluripet was undertaken in the year 1996 and the same was published in the gazette in the year by way of G.O.M.No.576 MA, dated 6.11.1996. Before going to examine as to whether any validity can be attached to the gazette that was published in the year 1996, at this length of time, it has to be made clear that the proviso to Section 34 of the Act makes it obvious that if the land is not acquired within three years from the date of notification, it shall cease to have effect as a declaration under Section 6 of the Land Acquisition Act, 1894.

8. Admittedly, the petitioner made application on 18.7.2011 seeking permission of the respondent to construct a compound wall to protect its property, whereas the respondent rejected the same on the following grounds:

- i) The plan did not contain the signature of a licensed surveyor;
- ii) There was some discrepancy between the extent of the land shown in the document/title deed and what was shown in the plan; and
- (ii) A 60 feet road was not earmarked in the plan as proposed in the Master plan.

On re-presentation of the application, the respondent rejected the same again vide endorsement impugned herein. The main objection of the respondent is that there is a failure to earmark 60 feet road in the plan as proposed in the master plan.

9. As already stated above, the master plan was prepared and published in the gazette notification by virtue of G.O.Ms.576 MA, dated 6.11.1996. The objection raised by the respondent can be construed as tenable one, in case the notification had been implemented within 3 years as envisaged under the proviso to Section 34 of the Act. Therefore, there is no justification in raising such an objection basing on the master plan that was undertaken in the year 1996, inasmuch as the proviso to Section 34 of

the Act does not endow such powers to implement the master plan after lapse of 3 years from the date of notification.

10. For the reasons stated above, this Court is of the view that the action of the respondent in rejecting the application of the petitioner is illegal and arbitrary and contrary to the proviso to Section 34 of the Act, and thereby the endorsement made by the respondent is liable to be set aside.

11. Accordingly, the Writ Petition is allowed and the respondent is directed to consider the application of the petitioner and permit it to proceed with the construction of the compound wall. No costs. Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE RAJA ELANGO

Dated:14th March, 2017
Nn.

HONOURABLE SRI JUSTICE RAJA ELANGO

WRIT PETITION No.12426 OF 2012



14.3.2017

Nn.