

THE HONOURABLE SRI JUSTICE RAJA ELANGO

WRIT PETITION Nos.20100 AND 20106 of 2017

COMMON ORDER:

1. Since the issue involved in both the writ petitions is one and the same, they are heard together and being disposed of by this common order.

2. Writ Petition No.20100 of 2017 is filed by owners of subject-land and Writ Petition No.20106 of 2017 is filed by their developer, both seeking a writ of mandamus declaring the orders of 2nd respondent in proceedings No.105420/LO/CDA/Plg./ HMDA/2013 dated 12.06.2017 keeping in abeyance the lay-out and building permission granted in respect of petitioners' property vide Lr.No. 105420/LO/CDA/Plg./HMDA/2013, dated 06.02.2015 to an extent of 24000 sq.yds in Sy.No.190/P, 191/P, 192 and 194/P at Manikonda village, Ranga Reddy District, as arbitrary, illegal and beyond the powers conferred under the Hyderabad Metropolitan Development Authority Act, 2008 (for short 'the Act'), and consequently, set aside the same.

3. Hereinafter the petitioners in W.P.No.20100 of 2017 are referred to as 'petitioners' and the petitioners in W.P.No.20106 of 2017 are referred to as 'builder' for the purpose of convenience.

4. The facts, in brief, are that the petitioners are jointly absolute owners and possessors of the land admeasuring Ac.6.00 gts., in Sy.No.190, 191, 192 and 194, at Manikonda Village, Ranga Reddy District. On 14.02.2014 the petitioners 1 to 5 approached M/s.Staywell Apartments LLP and its partners i.e. the builder and entered into a development agreement-cum-general power of attorney for developing and constructing premier villas on the subject-land. Though the

petitioners mentioned various chequered events regarding their acquiring the title and relevant disputes, this Court is not inclined to delve into the same since it is not required for the purpose of deciding the issue in the writ petition. Pursuant to the application of the petitioners seeking approval of proposed gated community layout, the 2nd respondent-HMDA granted permission vide proceedings dated 06.02.2015 and builder commenced the construction of villas as per the development agreement entered with the petitioners. While so, the 4th respondent filed an objection petition dated 15.04.2017 with the 2nd respondent seeking cancellation of layout and building permission granted in favour of petitioners' builder dated 06.02.2015 *inter alia* contending that the petitioners do not have title over the subject-land and that the subject-land is a wakf property and is attached to the Dargah and the same land was notified as "wakf property" pursuant to an Errata notification dated 13.03.2006. Basing on that, the 2nd respondent issued a memo dated 1.5.2017 to the petitioners' builder seeking explanation and the builder submitted an explanation dated 29.5.2017 denying all the allegations made in the objection petition filed by the 4th respondent. However, the 2nd respondent passed the impugned order keeping in abeyance the layout and building permission granted in respect of the subject-land. Hence, the above writ petitions.

The learned counsel for the petitioners raised the following points for consideration:

(1) after granting layout and building permissions on 06.02.2015, the impugned order is passed in the year 2017 on the basis of the objection petition filed by the 4th respondent without taking into consideration of the explanation offered by the petitioners' builder;

(2) the impugned order passed by the 2nd respondent informing the petitioners' builder that the layout and building permissions are kept in

abeyance, is beyond the jurisdiction of the 2nd respondent, since the 2nd respondent has no power to keep the order in abeyance.

(3) the impugned order of 2nd respondent is not inconsonance with Section 22 of the Hyderabad Metropolitan Development Authority Act, 2008 and no opportunity of personal hearing is provided to the petitioners in W.P.No.20100 of 2017.

(4) since the 2nd respondent granted permission after duly satisfying with the title of the petitioners over the subject-land, the present impugned order is liable to be set aside.

Per contra, the learned standing counsel for 2nd respondent filed a counter affidavit contending that the impugned order is passed after due verification of all documents and after hearing all the parties concerned. It is contended that considering the serious dispute pending between the petitioners and the 4th respondent, this respondent has kept the layout sanction and the building permissions in abeyance.

The 4th respondent filed a counter affidavit mainly disputing the title of the petitioners over the subject-land and referring the pendency of various disputes between the petitioners and 4th respondent and supported the impugned order passed by the 2nd respondent. Further, the learned counsel appearing on behalf of 4th respondent submitted that in the impugned order, the 2nd respondent failed to record some important facts for such a decision taken by the authorities concerned.

The learned counsel representing the 3rd respondent adopted the arguments submitted by the 4th respondent.

Heard the counsel on either side at length and perused the material available on record.

The learned counsel for the petitioners as well as the learned counsel for 4th respondent argued at length to establish their respective title over the subject-land. But as far as the question of title over the subject-land is concerned, this Court is of the view that the same cannot be adjudicated by this Court at this stage since it will cause prejudice to the either party. Now, the only point for consideration before this Court is whether the 2nd respondent passed the impugned order after satisfying itself regarding the prima facie title of the petitioners over the subject-land in accordance with law?

The relevant portion of the impugned order passed by the 2nd respondent runs as under:

“On verification of the title documents & PPBs, title is clear in favour of M/s Shanta Sriram Constructions Pvt. Ltd., as such permission accorded for development of Draft Gated Community layout with individual type design building in survey No.190/P,191/P,192,194/P, total admeasuring 24000 sq.yds. of Manikonda Jagir (V) Rajendranagar (M) RR district in favour of M/s Shanta Sriram Constructions Pvt., Ltd, vide Lr.No.105420/LO/CDA/Plg./HMDA/2013, dated 06.02.2015. However, there is a serious title dispute between both parties in which case is pending in the Hon’ble High Court.”

Considering all the above facts and circumstances of the case, this Court is of the view that having satisfied with the title of the petitioners over the subject-land while granting layout and building permissions on 6.2.2015 and also while passing the impugned order having observed as “On verification of the title documents & PPBs, title is clear in favour of M/s Shanta Sriram Constructions Pvt. Ltd.”, the order of 2nd respondent keeping the layout and building permissions in abeyance on the basis of the representation made by the 4th respondent is liable to be set aside. Hence, the impugned order is liable to be set aside.

Accordingly, the impugned order of 2nd respondent dated 12.06.2017 is hereby set aside. However, it is left open to the 2nd

respondent to pass orders afresh if it so desires, after issuing necessary notices to all the parties concerned and after providing them the opportunity of hearing regarding the dispute between the parties.

The writ petitions are allowed as indicated above. No costs.

Pending Miscellaneous Petitions, if any, shall stand closed.

RAJA ELANGO,J

14.07.2017
Tsr



