

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.25622 of 2017

ORDER:

Heard Sri A.Satya Prasad, learned Senior Counsel representing the learned counsel for the petitioner, and Sri P.Jagadish Chandra Prasad, learned Standing Counsel for the second respondent.

A letter bearing Rc.No.5598/08/Plg/L5, dated 12.04.2017 of the second respondent, to the extent of demanding a sum of Rs.5,71,896/- towards balance Open Space Cost and 20% Surcharge, is under challenge in the present Writ Petition.

According to the petitioner, he purchased an extent of 311 sq.yards bearing plot No.2 in the layout prepared by Sri Krishna Mutually Aided Cooperative House Building Society Limited covered by Sy.Nos.44/3A, 44/3B, 44/3C, 44/3D, 44/A to 44/4H of Vadapalem, H/o Rushikonda, Chinaadili Mandal, Visakhapatnam District falling within the limits of GVMC. Petitioner herein submitted an application for regularization under the Land Regularization Scheme introduced by the State Government. By way of the letter under challenge, the office of the second respondent, while asking the petitioner to furnish a detailed layout plan in 3 days, also requested to pay a sum of Rs.5,71,896/- towards the balance Open Space Cost and 20% Surcharge.

According to the learned Senior Counsel, the said letter, to the extent of demanding the said amount, is contrary to the orders of the State Government issued vide G.O.Ms.No.902 Municipal Administration & Urban Development (M1) Department, dated 31.12.2007 and G.O.Ms.No.113 Municipal Administration & Urban Development (M1) Department, dated 31.01.2008. It is the further submission of the learned Senior Counsel that there is absolutely no basis for the second respondent herein to demand such an exorbitant amount contrary to the above instructions of the Government.

In this connection, it may be appropriate to refer to Rule 8 of the A.P. Regularization of Unapproved and Illegal Layout Rules, 2007 (for brevity, 'Rules'), notified vide G.O.Ms.No.902 Municipal Administration & Urban Development (M1) Department, dated 31.12.2007, which reads as under:

"Rule 8: Payment of Penalisation charges:

- (i) The applicant shall pay the fees and charges as detailed below:
 (a) Pro-rata charges which are inclusive of betterment charges, development charges and layout scrutiny charges, penalty and other charges, at the following rates:

S.No.	Location of Site in	Pro-rata Charge at Rs.per sq.mt (of individual plot/layout plotted area)
1	2	3
A	Greater Hyderabad Municipal Corporation, Greater Visakhapatnam Municipal Corporation, Vijayawada Municipal Corporation limits.	600
B	Other Municipal Corporations	400
C	Panchayats falling in UDA area	250
D	Municipalities and Gram Panchayats falling in Master plan limits (other than UDA areas)	200

- a) Pro-rata open space charges as prescribed in Rule 9(b) of the Rules.
 b) Conversion charges as prescribed in Rule 7 of the Rules.

(ii) The above fees, charges shallbe remitted in full by way of a Demand Draft in favour of the Competent Authority.

Subsequently, the State Government substituted the said Rule by way of an amendment notified vide G.O.Ms.No.113 Municipal Administration & Urban Development (M1) Department, dated 31.01.2008. The said amended rule reads as under:

“Rule 8 (i) (a) shall be substituted with the following, namely:

“Basic penalization charges on pro-rata basis, which are inclusive of betterment charges, development charges and layout scrutiny charges, penalty and other charges, at the following rates:

TABLE 1
BASIC PENALISATION CHARGES

Plot Area in Sq.mts	Basic Pro-rata Penalization Charges in Rs.per Sq.mt
Less than 100	200
101 to 300	300
301 to 500	400
Above 500	500

TABLE-II

PENALISATION CHARGES WITH REFERENCE TO LAND VALUE

Market value of the land as on 01.01.2008 (sub-registrar value) in Rs.per Sq.yard	Penalization Charges (% of basic penalization charges)
Above 25000	100% of Basic Penalization charges
20001 to 25000	90% -do-
15001 to 20000	80% -do-
10001 to 15000	70% -do-
8001 to 10000	60% -do-
5001 to 8000	50% -do-
3001 to 5000	45% -do-
2001 to 3000	40% -do-
1001 to 2000	35% -do-
501 to 1000	30% -do-
Upto 500	25% -do-

While referring to the above said Rule, it is the submission of the learned Senior Counsel that the market value of the property, as shown in the document executed in favour of the petitioner herein, is Rs.8,09,000/- only and the plot area is 311 sq.yards and as per the amended Rule, the amount, which needs to be paid by the petitioner herein towards penalization charges, is only 25% of the market value as on 01.01.2008.

A perusal of the impugned letter clearly shows that the second respondent referred to a Government Memo, dated 29.11.2016, and, according to the learned Standing Counsel, strictly following the instructions in the said Memo, the second respondent arrived at a figure indicated in the impugned letter and that there is no illegality in the impugned action.

It is the further submission of the learned Senior Counsel that the respondents are required to act strictly in accordance with the Rules and the executive instructions, if any, issued cannot override the statutory rules made by the State Government. A reading of the impugned letter also does not indicate the basis for arriving at the amount of Rs.5,71,896/-.

For the aforesaid reasons, this Writ Petition is allowed, setting aside the letter bearing Rc.No.5598/08/Plg/L5, dated 12.04.2017, of the second respondent and the matter is remitted to the second respondent for fresh consideration of

the issue, strictly in accordance with the Government Orders issued vide G.O.Ms.No.902 Municipal Administration & Urban Development (M1) Department, dated 31.12.2007 and G.O.Ms.No.113 Municipal Administration & Urban Development (M1) Department, dated 31.01.2008 and also other instructions, if any, issued by the Government and to pass an order afresh after giving opportunity of hearing to the petitioner herein. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the Writ Petition, shall stand closed.

A.V.SESHA SAI, J

10th October, 2017.
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