

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE Ms. JUSTICE J. UMA DEVI

Writ Appeal Nos.1368 & 1381 of 2017

Common Judgment: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

These appeals are preferred against the common order passed by the learned Single Judge in W.P. Nos. 20100 and 20106 of 2017 dated 14.7.2017. The unofficial respondents in these two appeals claim to be the owners and the developers of the subject land, which the appellant claims to be the owner of. Pursuant to permission having been accorded by the Hyderabad Metropolitan Development Authority (HMDA), by proceedings date 6.2.2015, for development of a draft gated community layout with individual type design building plan, over an extent of 24000 square yards of land in Survey Nos. 190/P, 191/P, 192, 194/P of Manikonda Jagir Village, Rajendernagar Mandal, Ranga Reddy District, the appellant herein filed a petition, under Section 22 of the Hyderabad Metropolitan Development Authority Act, 2008 (hereinafter referred to as "the Act"), on 15.4.2017 seeking revocation of the permission granted earlier.

In the objection petition filed by them, dated 15.4.2017, the appellant referred to the earlier litigation including the order passed in W.P. No. 18266 of 2006 dated 18.9.2006; the order passed in W.A.No. 1123 of 2006 dated 30.10.2006; the order of the A.P. Wakf Tribunal in O.A. No. 10 of 2007 dated 22.7.2008; the order in W.P. No. 34389 of 2011 dated 2.12.2013 and S.L.P. No.13954 of 2012 and batch. They requested the HMDA to cancel the permission, granted earlier vide letter dated 6.2.2015, issued in favour of the unofficial respondents in these two appeals. They also sought a direction from the HMDA to stay further constructions in the meanwhile.

In the order, impugned before the learned Single Judge, dated 12.6.2017 the Metropolitan Commissioner, HMDA observed that, on a

verification of the title documents and pattadar passbooks, it was clearly in favour of the developer; as such permission was accorded, for development of draft gated community layout, vide letter dated 6.2.2015; however there was a serious title dispute between both the parties, in which a case was pending with the High Court; the High Court had granted interim stay in W.P. No. 3203 of 2017; and the approval, accorded in letter dated 6.2.2015, was to be kept in abeyance till the title was established in favour of the developer. The Executive Officer, Manikonda Gram Panchayat was requested to take necessary action.

In the order under appeal, the learned Single Judge observed that, having satisfied himself with the title of the respondents-writ petitioners over the subject land while granting layout and building permission dated 6.2.2015, and while passing the order impugned in the writ petition, the 2nd respondent had erred in keeping the layout and building permission in abeyance on the basis of the representation made by the 4th respondent. The order of the Commissioner, HMDA dated 12.6.2017 was set aside leaving it open to him to pass orders afresh, if he so desired, after issuing necessary notices to all the parties concerned, and after providing them an opportunity of hearing regarding the dispute between the parties.

Section 22 of the Act relates to revocation of permission and, thereunder, the Metropolitan Development Authority or the Government, as the case may be, may revoke any development permission issued under the 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 procedure as may be prescribed.

The claim of the appellant was that the permission granted to the unofficial respondents herein by the HMDA, by its proceedings dated 6.2.2015, was on the basis of false statements/misrepresentation /suppression of material facts. The Commissioner did not examine the objections put forth by the appellant herein and instead, after

considering the title documents presented by the unofficial respondents herein, he expressed his, *prima facie*, view that they had title over the subject lands. Having so held, there was no justification on the part of the Commissioner in keeping the permission, granted earlier vide proceedings dated 6.12.2015, in abeyance till the matter was decided by the High Court in W.P. No.3203 of 2017.

It is brought to our notice, by Sri Vedula Venkataramana, learned Senior Counsel appearing for the respondents-writ petitioners, that W.P. No. 3203 of 2017 was filed questioning the action of the State Government, in granting permission to the Wakf Board for establishing a Convention Centre, since the subject lands belong to the writ petitioners. As the writ petition is still pending adjudication, it would be wholly inappropriate for us to make any observations which may have a bearing on the said Writ Petition. Suffice it to observe that no title dispute arises for consideration in the Writ Petition, nor would this Court examine title disputes in proceedings under Article 226 of the Constitution of India. It is evident, therefore, that the Commissioner, HMDA has erred in holding that there was a serious title dispute between the parties in W.P. No. 3203 of 2017. The learned Single Judge, in such circumstances, cannot be faulted in setting aside the order passed by the Commissioner, HMDA. The fact, however, remains that, while setting aside the order impugned in the Writ Petition, the learned Single Judge has left it open, to the discretion of the Commissioner, HMDA, to pass orders afresh, if he so desired, after issuing notices to all the concerned parties, and after providing them an opportunity of being heard regarding the dispute.

Sri M.V.S.Suresh Kumar, learned Senior Counsel appearing on behalf of the appellant, would submit that, since the Commissioner, HMDA had kept the permission granted earlier by proceedings dated 6.2.2015 in abeyance, there was no necessity for the appellant to question the said order before this Court earlier, even though the objections raised by them, in their application under Section 22 of the

Act had not been considered, in as much as the relief sought for by the appellant is also that the earlier proceedings dated 6.2.2015 should not be given effect to. While fairly stating that the learned Single Judge may not have been wrong in setting aside the order impugned in the writ petition, as it suffered from contradictions (as the Commissioner had, on the one hand, held that, *prima-facie*, the unofficial respondents had title over the property, and on the other had held that there was a serious title dispute), Learned Senior Counsel would submit that the learned Single Judge had erred in leaving it to the discretion of the Commissioner, HMDA to consider the matter afresh; and, as a result, the Commissioner, HMDA has chosen not to consider the objections raised by the appellant in the application made under Section 22 of the Act.

We find considerable force in the submission of the learned Senior Counsel. It is evident from the order passed by the HMDA that the objections raised by the appellant, in the application made by them, under Section 22 of the Act dated 15.4.2017, has not been considered by the Commissioner.

Sri S. Niranjan Reddy, learned Senior Counsel, would contend that the power conferred on the Municipal Corporation, and on the HMDA, is only to examine *prima facie* whether the applicant, who seeks permission for approval of a layout or for construction of a building, has title over the property; it is not open to these authorities to examine or adjudicate on the title of the parties to the subject land; and, if this Court were to direct the Commissioner, HMDA to examine the application of the appellant afresh, it may well be construed by the Commissioner as his having been directed by this Court to adjudicate on questions of title, which is impermissible in law.

As we are satisfied that the Commissioner, HMDA has not even taken note of the objections raised by the appellant, in the application made by them under Section 22 of the Act, the learned Single Judge ought to have directed the Commissioner to consider the matter afresh,

and to pass orders on the application submitted by the appellants on 15.4.2017 under Section 22 of the Act.

The order under appeal is, therefore, set aside to the limited extent the learned Single Judge left it open to the Commissioner to consider the matter afresh. The Commissioner, HMDA shall, after giving the parties to these proceedings a further opportunity of filing their respective objections and an opportunity of being heard, pass orders afresh and in accordance with law at the earliest and, in any event, not later than four months from the date of receipt of a copy of this order. Suffice it to make it clear that all objections, including on the power of the Commissioner to adjudicate on questions of title, are left open to be considered by him in accordance with law.

Both the Writ Appeals are disposed of accordingly. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.



(RAMESH RANGANATHAN, ACJ)

(J. UMA DEVI, J)

18th September, 2017

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AND
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Date: 18.9.2017

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