

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

W.P.No.5499 of 2017

ORDER:

The case of the petitioners is that they purchased land admeasuring 1208.99 square yards in Sy.Nos 477, 477/25 and 477/A in Block-23, Ward-13 of Sri Sri Nagar, Chennur Road, situated at Garmilla Village, Mancherial Municipality, Adilabad District under registered sale deed dated 18-05-2014 vide document No.5208/2014 of Joint Sub-Registrar, Mancherial and subsequent to the purchase, the petitioners made application and got their names mutated in revenue records by way of proceedings No.ROR/GARMILLA/81, dated 01-07-2014 and they proposed to construct commercial building over the schedule property and accordingly submitted application along with necessary documents and plans in the office of the 5th respondent on 16-05-2015 for grant of permission for construction of commercial building over the schedule property comprising of stilt, ground and three upper floors and also paid permit fee of Rs.10,000/- on the same day. Subsequently, the petitioners made application under G.O.Ms.No.151, dated 02-11-2015 for regularization of unapproved plot and also sought for conversion of residential area to commercial area. Accordingly, proceedings dated 15-02-2016 were issued by the 5th respondent and the petitioners paid an amount of Rs.3,20,268/- towards charges there for as demanded by the

office of the 5th respondent and the same was forwarded to the 4th respondent for technical clearance. The 4th respondent directed the 5th respondent vide letter No.542/2016/WRO/W, dated 18-06-2016 to send revised proposal by correcting the plan in conformity with the stipulated land use zoning regulations of the approved Master Plan, Mancherial on the ground that the site was partly covered for commercial use and partly residential. The 5th respondent replied to the 4th respondent on 20-07-2016 by making it clear that already the land use was changed and the entire schedule property was converted into commercial use as per the regularization and commercial permission already approved. Again the 4th respondent addressed a letter to the 3rd respondent on 05-08-2016 for clarification as to whether LRS approved by the 5th respondent as per rule 7 of Layout Regularization Scheme, 2015 may be considered and whether the 4th respondent can issue technical approval on its basis, though such procedure was not in vogue. Thereafter the matter was pending for considerably long period but the 4th respondent got clarification from the 3rd respondent and returned the application of the petitioners unapproved by proceedings in Lr.Roc.No.542/2016/WRO/W, dated 24-12-2016. He also stated that approval was not in conformity with building Rules as per G.O.Ms.No.168, dated 07-04-2017. Aggrieved by the same, the present writ petition is filed.

Counter affidavit is filed by the 3rd and 4th respondent with almost similar averments, wherein it is stated that subject site in the writ petition falls partly in commercial use partly in residential use as per the sanctioned Master Plan of Mancherial Town. As such, the change of land use of the site under reference from residential land use to commercial land use sanction from the government is required for granting permission for construction of commercial building. Further Layout Regularization Scheme (LRS) does not empower the competent authority to effect change of use of land from one use to other use especially from residential to other use. As per rule 9(d) of Telangana Regularization of unapproved and illegal layout Rules, 2015 (for short "Rules"), competent authority is empowered to regularize the individual plots, which does not affect any change of land use. In the present case, Municipal Commissioner, Mancherial has regularized the site under reference vide proceedings No.1812, dated 15-02-2016 duly collecting penal charges and open space charges only, not the conversion charges. As such, said regularization order does not affect the change of land use of the site under reference from residential use to commercial use. The site under reference is falling partly in commercial land and partly in residential land use as per the sanctioned master plan of Mancherial town and as such, the total site is not eligible as commercial use without approval of the Government for variation of land use in the sanctioned

master plan of Mancherial Town under Section 14 of Town Planning Act, 1920.

It is stated that other than residential use under LRS by collecting change of land use/conversion charges and not from residential to other use. As such, the competent authority has power to regularize the site contrary to land use specified in master plan by levying the conversion charges from other use to residential use only, after obtaining technical approval of Director of Town and Country Planning as specified in Rule 9(c) of Rules. The clarification was sought and basing on the clarification, the approval was returned and sought for dismissal of writ petition.

Learned counsel for the petitioner submits that when clarification was sought by the 4th respondent from the 5th respondent, the competent authority has clarified the same by stating that part of residential land was also converted into commercial. When the clarification sought by the 4th respondent from the 5th respondent, the 5th respondent vide letter dated 20-07-2016 stated that the 5th respondent already regularized the plot under rule 7 of LRS scheme by converting the land use to commercial use and not satisfied with that the 4th respondent again sought clarification from the 3rd respondent. But the 3rd respondent without any basis clarified that residential use cannot be changed to any other use. Even the Table No.III given in G.O.Ms.No.151, dated 02-11-2015 issued by Municipal Administration &

Urban Development (M1) Department, dated 02-11-2015 does not indicate the same, though it was relied in the counter affidavit.

Rule-7 of Rules, which is relied on by the counsel for the petitioner reads as under:

“ In cases where an application is received in a site that is contrary to the land use stipulated in the statutory plan, the competent authority shall have the power of approving the case except those specified in rule 5 above by levying the necessary conversion charges.”

Rule-7 of Rules provides for competent authority shall have power of approving the case except those specified in Rule 5 by levying necessary conversion charges, where an application is received in a site that is contrary to land use stipulated in the statutory plan. In the present case, since the land falls in the municipality, the competent authority as per rule 3 (b) (v) contained in Telangana Regularization of unapproved and illegal layout Rules, 2015 in G.O.Ms.No.151 is the Commissioner. As such, the Commissioner is the competent authority and the 3rd respondent clearly stated as per proceedings dated 15-02-2016 the Commissioner, Mancherla Municipality passed orders for conversion of the same. Said aspect is not disputed either by the 3rd respondent or the 4th respondent. In the counter affidavit, what all is stated that the Commissioner has no authority to do the same i.e. conversion from residential to other use. It is

also stated that conversion charges are not paid, whatever charges are paid by the petitioners includes penal charges and open space contribution charges. Rule 7 of Rules does not make any difference from conversion of residential to commercial and gives powers to the competent authority. Accepting the same, while levying necessary conversion charges by issuing proceedings dated 15-02-2016 regularizing the unauthorized unapproved lay out plots shows that conversion charges shown as 'Nil', but the learned counsel has pointed that total amount payable by the petitioner is Rs.2,16,282/- but the petitioner was asked to pay Rs.3,20,268/- which includes conversion charges also. But the 3rd and 4th respondent in the counter affidavit has taken that is also one of the grounds for rejecting the proposals. This aspect has to be verified by the 5th respondent. But, nowhere it is stated in the G.O.Ms.No.151. In view of the same, the impugned proceedings issued by the 3rd respondent for not granting technical approval on that ground is not valid. The 5th respondent could have been directed to verify the same, if the petitioners have not paid conversion charges the 5th respondent could have been directed to collect the same. As such, the question of returning the proposal for technical approval does not arise.

Learned Assistant Government Pleader for Municipal Administration reiterated the submissions in the counter affidavit and says that conversion charges are not paid, since

the proceedings dated 15-02-2016 does not indicate that any conversion charges are paid.

In view of above facts and circumstances, the impugned proceedings are set aside. The 4th respondent is directed to take action on the proposals sent by the 5th respondent for technical approval and grant technical approval and thereafter, the 5th respondent is directed to take appropriate action on the application of the petitioner for grant of permission within a period of six weeks from the date of receipt of a copy of this order and if conversion charges are not paid, the 5th respondent can direct the petitioner to pay the same.

Accordingly, the writ petition is allowed to the extent indicated above.

As a sequel to the disposal of the writ petition, miscellaneous petitions, if any, pending shall stand closed.

A.RAJASHEKER REDDY,J

27-07-2017

Note:
Issue CC in one week.
Nvl