

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.5734 OF 2017

ORDER:

Heard Sri Vedula Venkata Ramana, learned Senior Counsel appearing for petitioners and the learned Government Pleader for respondents.

2. All the petitioners are owners of various extents of lands totally admeasuring Ac.2.16 ¼ Gts., situated in Sy.Nos.51, 52, 54 and 61 of Nanakramguda Village, Serilingampally Mandal, Ranga Reddy District, having purchased the same under five registered sale deeds bearing Nos.7096/2012, 7097/2012, 7098/2012, 7099/2012 and 2728/2010. Petitioners 1 to 6 agreed to share the constructed area out of total land and accordingly prepared a common plan so as to raise multi-storied building. They obtained Feasibility Certificate from Hyderabad Metropolitan Water Supply and Sewerage Board on 06.05.2016 and also obtained Soil Testing Certificate, No Objection Certificate from Airport Authority of India on 11.04.2016. They have also obtained Environment Clearance Certificate on 20.06.2016 and applied for Provisional No Objection Certificate from the 2nd respondent on 05.05.2016. The plan along with the certificates was submitted to the Greater Hyderabad Municipal Corporation (for short, 'GHMC') on 04.08.2016. However, the 2nd respondent returned the plan submitted by the petitioners, for the rectification of advance in fire safety measures for their re-

submission by order dated 10.06.2016. The same was challenged by the petitioners in Writ Petition No.1680 of 2017 and the said writ petition was disposed of on 18.01.2017 remanding the matter to the 2nd respondent with the following observations:

“3. R.7(a)(vi) provides for obtaining a prior No Objection Certificate (NOC) from the Andhra Pradesh State Disasters Response & Fire Services Department and does not give any guidance with regard to the parameters that have to be observed by the said department and when it is read along with R.7(c), the learned counsel for the petitioners submits that they have complied with R.7(c) as the proposed structure was a pyramidal structure and the minimum 9 metres open space was left.

4. Since this Court is satisfied that there was misunderstanding of the application of the provisions in the instant case, the impugned order is treated as a notice to the petitioners and in the circumstances, petitioners are given liberty to submit their explanation bringing out to the notice of the second respondent the relevant provisions of the Rules and their compliance in the instant case. The second respondent is directed to consider the same and take appropriate action in accordance with law within a period of two weeks from the date of receipt of explanation.”

Accordingly, the petitioners submitted an application on 24.01.2017, but as the second respondent issued proceedings on 09.02.2017 rejecting the request for issuance of provisional No Objection Certificate, the present writ petition is filed.

3. Learned Senior Counsel appearing for the petitioners submits that the impugned order suffers from a misconception and the

petitioners complied with the requirements of G.O.Ms.No.168, Municipal Administration and Urban Development (M) Department, dated 07.04.2012.

4. Learned Government Pleader submits that the impugned order was passed by taking into consideration the National Building Code of India and Section 13(2) of the Telangana State Fire Services Act, 1999.

5. In the earlier round of litigation, when the 2nd respondent stated that the open space of 9 metres maintained by the builder was not sufficient and the builder is supposed to maintain 11 metres, this Court disposed of the writ petition as aforesaid.

6. The portion of the impugned order dated 09.02.2017 reads as follows:

“6) The Technical Committee has informed that, the building proposed is Stepped High Rise Building as per the check list submitted along with the application. Whereas vide Hon'ble High Court Order Dt.18.01.2017 in WP No.1680 of 2017, the proposed structure is mentioned as a Pyramidal Structure.

7) In view of the above deficits in the open spaces, the Technical Committee has Not recommended to issue the Provisional No Objection Certificate to the proposed Stepped High Rise Building of M/s. Magnificent Skyscrapers Private Limited & others, M.D. Sri Anil Kumar, S/o. Bajrangelal, at Sy.No.51, 52, 54 & 61, Nanakramguda Circle-II, Serilingampally Mandal, Ranga Reddy District.

8.(a) You are informed that, Section 13 of Telangana Fire Service Act 1999 mandates the compliance of National Building Code for considering the issue of Provisional No Objection Certificate and as per Section 13(2) of Telangana Fire Service Act, 1999 as detailed below.

“The Director General or any member of the service duly authorised by him in this behalf, shall within sixty days of receipt of such application or on inspection being satisfied about the provision of Fire Prevention and Safety measures as stipulated in the National Building Code of India, as amended from time to time, and for ensuring heights and setbacks as per the Hyderabad Municipal Corporation Act, 1955, Telangana Urban Areas (Development) Act, 1975, Hyderabad Metropolitan Development Authority (HMDA) Act, 2008, Telangana Municipal Corporations Act, 1994, Tealangana Municipalities Act, 1965, Andhra Pradesh Town Planning Act, 1920 and Rules, made there under as amended from time to time shall issue no objection certificates with such conditions as may be considered necessary and if not so satisfied, reject the same for reasons to be recorded in writing.”

8.(b) You are further informed that open space is defined in caluse 2.56 in Part 3 NBC of India 2005 as follows:

“An area forming an integral part of the plot, left open to sky.”

Note: The open space shall be the minimum distance measured between the front, rear and side of the building and the respective plot boundaries.

From the above it is clear that the open space has to be provided at ground level. It is further informed that the all-round open space at ground level is required for

conducting Fire Fighting and Rescue operations in times of emergency and for the manoeuvrability of various specialised Vehicles like Hydraulic Platforms, Water Browsers, Rescue Tenders etc., and in the interest of life and Fire safety of inmates of the building.

9) Therefore, your request for issuance of the Provisional NOC cannot be considered and hence rejected.”

A perusal of the impugned order shows that the 2nd respondent was commenting on the observations made by this Court in the earlier order treating the proposed structure as pyramidal type building. The 2nd respondent should have seen that the requirements are same for a stepped up structure as well as pyramidal building, and there are no separate requirements for stepped type or pyramidal type. Thus, he misconstrued G.O.Ms.No.168, dated 07.04.2012, in application of the same to the proposed construction made by the petitioners.

7. With regard to the application of Telangana Fire Services Act to the present facts of the case is concerned, the learned counsel for the petitioners brought to the notice of this Court the Minutes of the Meeting held on 24.11.2015 in the chambers of the Director General, State Disaster Response and Fire Services, Telangana, Hyderabad on Adaptation of Fire Services Act 1999 and Fire & Emergency Operation Rules, 2005, with regard to issuance of Fire NOC for regularisation of unauthorisedly constructed buildings and buildings constructed in deviation of the sanctioned plan.

8. The minutes disclose that the Government issued G.O.Ms.No.75, Home (Legal) Department, dated 17.11.2015, separating NBC and other laws for the time being in force regulating such purpose or activity into two separate categories and clarified that the *setbacks* and *heights* will be taken not from the NBC, but from the Telangana State Building Byelaws, which are the Rules made under various Municipal and Urban Area Acts. It was also stated that the fire services department shall no longer refer to the NBC for *setbacks & heights*. *Setbacks & heights* will be complied from G.O.Ms.No.168, Municipal Administration and Urban Development (M) Department, dated 07.04.2012, or any other GO that might be issued in future.

9. Though the learned Government Pleader pointed out that the said minutes applied to unauthorised structures, the purport of the G.O.Ms.NO.75, Home (Legal) Dept., dated 17.11.2015 as extracted in the minutes clearly show that the Building Rules would prevail over the NBC for the set backs and heights. In view of this, when the petitioner complied with G.O.Ms.No.168, dated 07.04.2012, the reference to the provisions of the Telangana State Fire Service Act and the NBC is of no avail. Rule 7(c) of the G.O.Ms.No.168, dated 07.04.2012, deals with both stepped type as well as pyramidal type building and requires maintenance of same width of all around space for the first five floors. When the petitioners propose to

maintain 9 metres, it would be a sufficient compliance with the said Government Order.

10. In view of the above, the impugned order, dated 09.02.2017, issued by the 2nd respondent is set aside and the 2nd respondent is directed to issue a Provisional No Objection Certificate under G.O.Ms.No.168, dated 07.04.2012, within a period of two (02) weeks from the date of receipt of a copy of this order, in order to enable the petitioners to apply to the GHMC for appropriate permission for construction of the proposed building.

11. Accordingly, the Writ Petition is allowed.

Miscellaneous Petitions, if any, pending in this writ petition, shall stand closed. There shall be no order as to costs.


A.RAMALINGESWARA RAO, J

Date:16.03.2017
INL