HON'BLE Dr.JUSTICE B.SIVA SANKARA RAO

Writ Petition Nos.5198 and 5235 of 2018

COMMON ORDER

W.P.No.5198 of 2018

This Writ Petition is filed by the Petitioner-Sarvesh Narayan Somani, against the two respondents viz; Hyderabad Metropolitan Development Authority (for short, 'the HMDA' represented by its Commissioner and the State of Telangana, rep. by its Principal Secretary, Municipal Administration Department, with the prayer as follows:-

> "to issue order or direction more particularly one in the Writ of Mandamus, to declare the order, objection made by the 1st respondent in file No.006583/GHT/R1/U6/HMDA/29.12.2017 dated 10-1-2018 in so far as "to submit Nala Conversion Certificate issued by the Revenue Divisional Officer or to show additional 5% mortgage for security purpose" by the petitioner, as without jurisdiction, unjust, unfair, unreasonable and violation of principles of natural justice and violation of Article 14 of Constitution of India and consequently direct the 1st respondent to issue the construction of building permission for ground + 1st floor to the petitioner in respect of the open plot No.2 middle East Part, in Sy.No.775/A/4, Korremul Village, Chowdariguda Grampanchayath, Ghatkesar Mandal, Medchal-Malkajgiri District (R.R.District) and to pass such other order or orders."

2. The specific averments of the supporting affidavit of the petitioner are that he purchased open plot No.2 middle East part, in Sy.No.775/A/4, admeasuring 160 sq.yards, situated at Korremul village, Chowdariguda grampanchayath, Ghatkesar Mandal, Medchal-Malkajgiri District (old Rangareddy district) vide registered document 6900/2017, dt.25.11.2017 from his vendor Srigopal Nawander who had purchased the same from Sri. D.Sriramulu and two others represented by their GPA holder Desham Laxminarayana Goud vide registered document No.23120 of 2006, dt.18.12.2006. He further submits that it appears his vendor purchased 800 sq.yards from out of said 800 sq.yards and he purchased 160 sq. yards.

W.P.No.5235 of 2018

3. This Writ Petition is filed by the Petitioner-Rajesh Narayan Somani, against the self-same respondents supra with the prayer as follows:-

> "to issue order or direction more particularly one in the Writ of Mandamus, to declare the order, objection made by the 1st respondent in file No.005890/ GHT/ R1/ U6/ HMDA/ 09.12.2017, dt.10.1.2018,006565/GHT/R1/U6/HMDA/29.12.2017,dt.10.01.2018,006618/GHT/R1/U6/HMDA/30.12.2017,dt.10.01.2018 and 006619/GHT/R1/U6/HMDA/30.12.2017,dt.22.01.2018 insofar as "to submit Nala Conversion Certificate issued by the Revenue Divisional Officer or to show additional 5% mortgage for security purpose" by the petitioner, as without jurisdiction, unjust, unfair, unreasonable and violation of principles of natural justice and violation of Article 14 of Constitution of India and consequently direct the 1st respondent to issue the construction of building permission for ground+1st floor to the petitioner in respect of the open plot No.2 middle East Part, in Sy.No.775/A/4, Korremul Village, Chowdariguda Grampanchayath, Ghatkesar Mandal, Medchal-Malkajgiri District (R.R. District) and to pass such other order or orders."

4. The specific averments of the supporting affidavit of the petitioner are that he purchased four open plots admeasuring 200sq.yards each, total to an extent of 800sq.yards in plot No.1 in Sy.No.775/A/4, situated at Korremul village, Chowdariguda grampanchayath, Ghatkesar Mandal, Medchal-Malkajgiri District (old Rangareddy district) vide registered document Nos.6886, 6887,6888 and 6889 of 2017, dt.25.11.2017 from his vendor Sabita Kulkarni through her GPA holder Sarvesh Narayan Somani.

1 5. The common averments in the respective affidavits are that the link documents ultimately shows that the agricultural land was sub-divided into plots before 31-5-2004. It is further submitted that Agricultural Land (Conversion for Non- Agricultural purposes) Act 2006 (for short, 'the Act, 2006') is enacted on 30-12-2005 which came into force with a later appointed date by publication of the notification issued by the Government. As the agricultural land was sub-divided into open plots prior to the enforcement of above said Act, the provisions of Act are not applicable for the agricultural lands which were already converted into non-agricultural lands. They further submit that R.1 issued respective proceedings No.23425/LPS/HMDA/PLG/ 2008-2009, dt.1.10.2010 and 23424/LPS/ HMDA/PLG/2008-2009, dt.17.08.2010 by regularizing the layout in respect of respective open plots supra. It is further submitted that the Layout Regularization Rules provides for regularization even for single plot/plots and on perusal of the conditions mentioned in the above said regularization proceedings, the person who got the LRS proceedings in respect of a plot and subsequent

purchasers need not submit NALA Conversion Certificate or to show additional 5% mortgage for security purpose and as per condition No.13 of the regularization proceedings, the authorities have to give house construction permission in respect of the plots for which the layout is regularized, since the said condition says that the plots which are not regularized remain unauthorized and Executive Officer/Panchayat Samithi shall not give permission to such plots till they are regularized by the HMDA. It is submitted that the regularization proceedings refers to the G.O.Ms.No.902 MA&UD Dept., dt.31-12-2007 and G.O.Ms.No.113 MA&UD Department dated 31-1-2008. On perusal of such G.Os, it is evident that such G.Os have been issued by exercising powers vested in Section 58 of A.P. Urban Areas Development Act 1975(for short, 'the Act, 1975'), Section 585 of Hyderabad Municipalities Corporation Act 1965, Section 44(2)(v) of Town Planning Act 1920 and Section 326(1) of A.P. Municipalities Act 1965. The sum and substance of the layout Rules in the above said enactments is to the effect that when the agricultural land is converted into plots, the NALA Conversion Certificate is to be submitted. Since, in respect of the subject plots, final LRS proceedings are issued vide proceedings, dt.1.10.2010 to their respective vendors, there is no necessity for submission of NALA Conversion Certificate. It is further submitted that after they purchased respective plots, seeking permission to construction of respective plots, the R.1 issued proceedings supra taking certain objections out of which one is to submit the NALA Conversion Certificate issued by concerned RDO or to show additional 5% mortgage for security purpose, and the respective petitioners are now impugning said condition only in the present writ petitions on the grounds that since the agricultural land is converted into open plots, wherein the subject plot is situated even prior to the coming into force of Act, 2006, the provisions are not applicable to the present case and thereby the petitioner need not submit any NALA Conversion Certificate. Hence, the act of the R.1 taking objection to submit NALA Conversion Certificate is without jurisdiction, unsustainable, arbitrary, unjust and contrary to law. Even as per the Building Rules 2012 made in G.O.Ms.No.168

MA&UD (M) Dept. dt.7.4.2012, submission of NALA Conversion Certificate is not necessary for getting permission by the applicants or for granting house construction permission by the authorities. No statutory appeal provision is available on the objections raised by the R.1. Hence the respective Writ Petitions.

6. The counter averments of the R.1-HMDA was denying the averments of the writ petition affidavits except which are specifically admitted, are that the demand made by the authorities to produce the NALA Conversion Certificate is valid in view of the Act purpose and the charges payable for converting the agriculture land into non-agriculture under the above Act is distinct and different from collecting the developmental charges for developing the land as residential plots which are located within the area of HMDA as per the provisions of the HMDA Act, 2008 and also provisions of the Act, 1975, therefore the grounds raised by the petitioners are unsustainable. The sale deed executed on 31.05.2004 selling the agricultural land admeasuring Ac.1-07guntas in Sy.No.77/A of Korremule village, as such, the land covered by the above survey number is admittedly an agriculture land and therefore, the averment that the land was converted into non-agriculture purpose through sale deed,dt.31.05.2004 is not correct. Even as per the agreement of sale-cum-general power of attorney with possession dt.17.11.2006 does not disclose that it is open plot to an extent of 4000sq.yards in Sy.No.775/4. Therefore there is no proof that the land in question is converted into non-agriculture land. The RDO is the competent authority to issue the certificate as per the provisions of the NALA Act. Even as per the rectification deed, dt.18.12.2006 filed by the petitioner as material paper shows that the land in question is an agriculture land as such, the contentions raised by the petitioner are not sustainable in law, however, the NALA Act came into force w.e.f.02.01.2006, hence, the petitioner is liable to pay NALA charges but the above issue is no more res-integra in view of the judgment rendered by the DB of this Court in batch of W.A.Nos.702 of 2010 on 28.08.2015 and as per which under NALA Act and Developmental

charges under the Act, 1975 payable separately. Merely collecting development charges under the provisions of the HMDA Act, 2008 and the Act, 1975, the petitioner is not exempted from the payment of conversion charges under the Act, 2006 also. He submits that whether or not the land is under cultivation and even if the land in question falls in the residential zone, the applicant seeking building permission shall produce the NOC from the RDO in proof of conversion of land use from agricultural use to non agricultural use. In the alternative such applicant may also produce permission granted by the Collector under AP (TA) and Land Revenue Act 1317 Fasli. It is further submitted that even if the land is not under cultivation for a long time and is vacant, the permission for conversion from agricultural use to non agricultural use is compulsory. The respondent further submits that the G.O. changing or converting one proposed use to another proposed use (as a modification to zonal development plan even in case of individuals) permission is required under Act 3 of 2006 for conversion of land use from agricultural use to non agricultural use. Notification of land under the conservation zone or any other zone is only a proposed use but not a permission either under the earlier Act or under Act 3 of 2006 under which Act, the RDO is competent to decide whether the land is an agricultural land or the non agricultural land. Under the AP (TA) Land Revenue Act 1317 Fasli, the Collector is the competent authority. The inference drawn by the petitioner that, in view of the G.O.No.902 dt.31.12.2007 and other, the petitioner need not submit conversion certificate under the NALA Act, 2006 is based on misconception as the conversion charges are payable under the NALA Act 2006 and development charges for developing the land are payable under the provisions of the HMDA Act and the Act,1975. The petitioner is bound to get the conversion certificate under NALA Act. The petitioner failed to show any proceedings from the competent authority to show that the land is not an agriculture land. In fact, even it is notified in the master plan prepared by the HMDA as it falls under the residential purpose still conversion certificate has to be furnished. Further no layout was furnished nor it was regularized. Hence, this respondent prays to dismiss the Writ petition.

7. Common arguments are heard on both sides and perused the material on record.

8. The core issue is the petitioners in their respective claims having paid the charges under the Act, 1975 are not liable again to pay any charges under the guise of conversion from agricultural to non-agricultural under the Act, 2006. While answering the same, it is necessary to refer few provisions of the Acts. The processing fees payable with Urban Development Authority is for permission of lay out u/secs.13 and 14 of the Act, 1975 what is claimed paid if any by the respective writ petitioners. Whereas, coming to Act, 2006, Section 2 speaks of the basic value which is a land value entered by the Basic Value Register with Sub Registrar they have to maintain and Section 3 speaks of procedure for application mainly for conversion of the agricultural land for non-agricultural purposes, Section 4 speaks of such conversion is on enquiry after calling for objections if any and on inspection either in person or by cause inspecting through any officer of the land in question for such conversion is objectionable or not and by taking cognizance of the Master Plan and such other land use restrictions if any in its determination therefrom to proceed to pass orders either to approve or reject and proposed conversion of agricultural to non-agricultural purposes. Section 6 speaks of the mode of payment of conversion fees as per the basic value notified from time to time by the Government to be entered in the Basic Value Register to be maintained in the Sub Registrar supra u/sec.2 of the Act. Section 8 speaks of the penalty in case it comes to the notice of the competent authority of any agricultural land was converted to non-agricultural purposes without obtaining prior permission of the owner or

occupant of the agricultural land. The State Government earlier under the Act, 1975 covered by Section 12(2) issued gazette notifications from time to time as to the use of the agricultural land for residential purposes and as per the zonal development plans filed if any.

9. Here coming to the contention of once that was contained, the Act 3 of 2006 has no application concerned, as pointed out by the learned counsel for the respondents in W.P.No.24092 of 2013,dt.25.11.2015 in Okya Engg.Constructions (P)Ltd. Vs. the Hyderabad Metropolitan Development Authority and others, the Single Judge of this Court while dismissing the said writ petition on similar contention of the direction to obtain NOC from the Collector/RDO for conversion from agricultural to non-agricultural use in the Act 3 of 2006 is illegal from the Act 1975 already invoked concerned that a Division Bench of this Court in K.Satyanand Patnayak and others Vs. HMDA in W.A.No.702 of 2010 and batch, dt.28.08.2015 clearly held of the application of both the Acts is independent and once the Division Bench so held it is not left open to raise again the same issue in challenge for this Court is bound to follow the Division Bench having its binding effect. In fact before the Division Bench in the batch of Writ petitions supra similar contentions raised of the writ petitioners therein complied u/sec.12 to 14 of the Act 1 of 1975 for the land in use for residential purpose in the zonal development plan by payment of usual charges any sanction of lay outs in the land u/sec.13 and 14 read with 27 and 29 of the Act,1975 and again insisting by invoking the Act 3 of 2006 to pay the conversion charges of agricultural to non-agricultural purpose and obtained NOC from the Collector/RDO is concerned is illegal. Whereas the respondents on the contra contended of both the Acts operate in different spheres and what is the payment of development fees under the Act, 1975 thereby does not exonerate the legal obligation of payment of conversion charges under the Act 3 of 2006. The Division Bench therefrom observed as follows:-

"Having considered the provisions of both the enactments independently and after interpreting the Sections in the manner indicated above and by relying upon the principles of law laid down by apex Court in KSL & Industries Ltd Vs.Arihant Threads Limited(2008) 9 SCC 763, we are of the view that the submissions of learned counsel appearing for the appellants are devoid of any merits and are accordingly rejected. Hence, it is held that either the scope and the ambit or payment of land conversion tax and the Development fee under Act 3 of 2006 and Act 1 of 1975 are separate and distinct. The question is answered accordingly.

The further contention of learned counsel for the appellants that the Urban Development Authority cannot insist upon production of NOC from Revenue Divisional Officer under Act 3 of 2006 by reference to the penalties provided under Section 6 of Act 3 of 2006, is equally unfounded. May be that under Section 6 of Act 3 of 2006, penalty for recovery of land conversion tax with fine is provided for. That does not mean that the Government with a view to synchronizing the functioning of all the departments and prevent loss of revenue cannot call upon the Urban Development Authority to insist production of NOC from the Revenue Divisional Officer under Act 3 of 2006. The Urban Development Authority constructing strictly gets jurisdiction to entertain on application for which conversion tax is paid under Act 3 of 2006 and the NOC can be justified by this reason as well. The insistence at best can be treated a concomitant and the authorities can certainly insist upon NOC from applicant for processing the application made under Section 14 of Act 1 of 1975. For the view we have taken on questions (i)(ii) and (iii), no exception could be found against the impugned common order dated 28.04.2010.

For the reasons stated above, the appeals are without merit and accordingly dismissed.

As we have confirmed the common order dated 28.04.2010, we are inclined to dispose of writ petitions as follows:-

a) It shall be competent for the Urban Development Authorities or the Local Authorities, as the case may be, to insist on submission of clearance/permission under the 2006 Act as a condition precedent for releasing of layouts, and

b) the land has been put to non-agricultural use before the 2006 Act came into force, such clearance/permission shall not be insisted.

c) Conversion of land into Non-agricultural use under the provisions of Act 3 of 2006 is necessary even if the land is covered by Master Plan and sanction of layout by the Development Authority under the provisions of Act 1 of 1975."

10. Having regard to the above and from the clear legal position of the Division Bench, coming back to the facts even of the agricultural land was earlier sub-divided into open plots prior to the coming into force of the Act 3 of 2006 came into force w.e.f.30.12.2005, the lay out regulation Rules provides for regularization even for single plot, it cannot be contended of a person who got LRS proceedings in respect of any plot of the land including any subsequent purchaser not liable for agricultural land to non-agricultural conversion charges under the Act, 2006 for the regularization under the Act, 1975 and the conversion charges under Act,

2006 as held by the Division Bench are different and independent and unless it is shown from the provisions of the Act 2006 supra of the case of the petitioners fall under any of the exemptions from the liability of payment of conversion charges, they are bound to pay. Thereby in view of the Division Bench judgment, the Writ Petitions are liable to be dismissed without prejudice to the availability of any right under the Act,2006 to claim any exemption if at all by making representation to that effect in answering to the impugned notices issued by the 1st respondent respectively dt.29.12.2017 to submit NALA conversion certificate of RDO concerned.

11. Accordingly and in the result, both the Writ Petitions are disposed of rather than dismissal. Consequently, miscellaneous petitions pending if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

26.04.2018

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