

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND**

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

Writ Appeal Nos.611 and 612 of 2018

And

Writ Petition Nos. 10503 and 10504 of 2018

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

Heard Sri M.V.S. Suresh Kumar, learned Senior Counsel for the appellant in both these appeals, Sri Vedula Venkataramana, learned Senior Counsel appearing on behalf of the respondent-writ petitioners in W.A. No. 611 of 2018, Sri S. Niranjan Reddy, learned Senior Counsel appearing on behalf of the respondent-writ petitioners in W.A. No. 612 of 2018 and Sri Y. Rama Rao, learned Standing Counsel for the HMDA and, with their consent, both the Writ Appeals and the Writ Petitions are disposed of by a common order.

The respondent-writ petitioners, in both these appeals, filed W.P. Nos. 10503 and 10504 of 2018 questioning the order passed by the Hyderabad Metropolitan Development Authority (HMDA) in proceedings dated 12.3.2018 holding that, since there were serious title disputes involved in the case, the permission granted earlier, vide proceedings dated 6.2.2015, was revoked under Section 22 of the Hyderabad Metropolitan Development Authority Act, 2008 (hereinafter referred to as "the 2008 Act"). On the said cancellation order of the HMDA being subjected to challenge in the aforesaid two Writ Petitions, the learned Single Judge passed an ad-interim order holding that, since the HMDA had admitted that it had no jurisdiction to decide disputed questions of title, it ought not to have revoked the building permission and the layout permission granted to the respondent-writ petitioners on 6.2.2015, through the impugned order dated 12.3.2018, on the pretext that the respondent-writ petitioners did not mention about certain pending cases

on title issues when, admittedly, no such cases were pending on the date when this order was passed. Holding that, *prima facie*, the order suffered from non-application of mind, an interim order was passed suspending operation of the said order dated 12.3.2018.

While there has been a long pending dispute between the parties, with the respondent-writ petitioners in W.A. No. 611 of 2018 having invoked the jurisdiction of this Court twice earlier, as also the jurisdiction of the Wakf Tribunal, it would suffice for us to take note of the order of the Division Bench of this Court in W.A. Nos. 1368 and 1381 of 2017 dated 18.9.2017, wherein the validity of the proceedings of the HMDA dated 12.6.2017 was in issue. In its order dated 12.6.2017, the HMDA had observed that, on verification of the title documents and pattadar passbooks, title was clearly in favour of the developer; as such permission was accorded for development of a draft layout for a gated community vide letter dated 6.2.2015; however, there was a serious title dispute between both the parties in which a case was pending before the High Court; the High Court had granted interim stay in W.P. No. 3203 of 2017; and the approval, accorded in the letter dated 6.2.2015, was to be kept in abeyance till the title was established in favour of the developer. The HMDA had requested the Executive Officer, Manikonda Gram Panchayat to take necessary action. On the proceedings of the HMDA dated 12.6.2017 being questioned, both by those who claimed to be the owners of the said property and its developers, in W.P. No. 20100 and 20106 of 2017, the learned Single Judge had, in his order dated 14.7.2017, observed that the HMDA had erred in keeping the layout and the building permissions in abeyance on the basis of the representation made by the appellant herein. 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 notices to all the parties concerned, and after providing them an opportunity of hearing regarding the dispute between

the parties. In its order, in W.A. Nos. 1368 and 1381 of 2017 dated 18.9.2017, the Division Bench had observed that it was 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 2008 Act dated 15.4.2017, had not been considered by the Commissioner, HMDA, and he had not even taken note of the objections raised by the appellant. Consequently, the Commissioner was directed to consider the matter afresh, after giving the parties 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 the order. The Division Bench made it clear that all objections, including on the power of the Commissioner to adjudicate on questions of title, were left open to be considered by him in accordance with law.

In the order impugned in the Writ Petitions dated 12.3.2018, the Commissioner, HMDA has merely observed that he had no power to decide title; while granting permission he was only required to examine whether the party had, *prima facie*, title or not; the respondents-writ petitioners had not mentioned about the cases pending in Court on the title issue, while obtaining permission; it amounted to suppression of facts; permission was liable to be revoked under Section 22 of the 2008 Act; and, since serious title disputes were involved in the case, permission dated 6.2.2015 was being revoked under Section 22 of the 2008 Act.

Section 22 of the 2008 Act relates to revocation of permission and, thereunder, the Metropolitan Development Authority or the Government, as the case may be, may revoke the development permission issued under the Act whenever it is found that it was obtained by making any false statement or mis-representation or suppression of any material fact or rule, by following such procedure as may be prescribed.

While Sri M.V.S. Suresh Kumar, learned Senior Counsel appearing on behalf of the appellant, would contend that permission was obtained from the HMDA suppressing the fact that several Writ Petitions and Writ Appeals filed by the respondent-writ petitioners earlier, as also the OA filed by them before the Wakf Tribunal, were all dismissed, both Sri Vedula Venkataramana and Sri S. Niranjan Reddy, learned Senior Counsel, would contend that it is only failure to mention relevant and material facts which would fall within the ambit of Section 22 of the 2008 Act, and not every fact even if it be irrelevant to the permission sought for by them from the HMDA.

The question whether the respondent-writ petitioners' failure to state, that the earlier Writ Petitions, Writ Appeals and O.A. filed by them before the Wakf Tribunal had been dismissed, is material or not is again a matter which the HMDA is required to examine, in the first instance, before the jurisdiction of this Court, under Article 226 of the Constitution of India, can be invoked. The obligation cast on the Commissioner, HMDA, under Section 22 of the 2008 Act, is to examine whether permission was obtained by making (1) a false statement or (2) a mis-representation or (3) on suppression of any material fact or rule. It is only if the Commissioner is satisfied that any one of the aforesaid three contingencies are attracted, can he then proceed to revoke the development permission granted earlier. The statutory obligation cast on the Commissioner is to ascertain whether the appellant's claim, of the respondent-writ petitioners having suppressed relevant and material facts, is justified or not. He has failed to do so in the order impugned in the Writ Petitions. As Section 22 requires the Commissioner to follow the procedure prescribed, suffice it, while setting aside the order impugned in the Writ Petitions, to direct the Commissioner to give the appellant, and the respondent-writ petitioners in both the Writ Appeals, a fresh opportunity of being heard and pass a reasoned order thereafter, in the exercise of his powers under Section 22

of the 2008 Act, with utmost expedition; and, in any event, not later than three months from the date of receipt of a copy of this order.

The order impugned in the Writ Petitions is set aside, and both the Writ Petitions and 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)

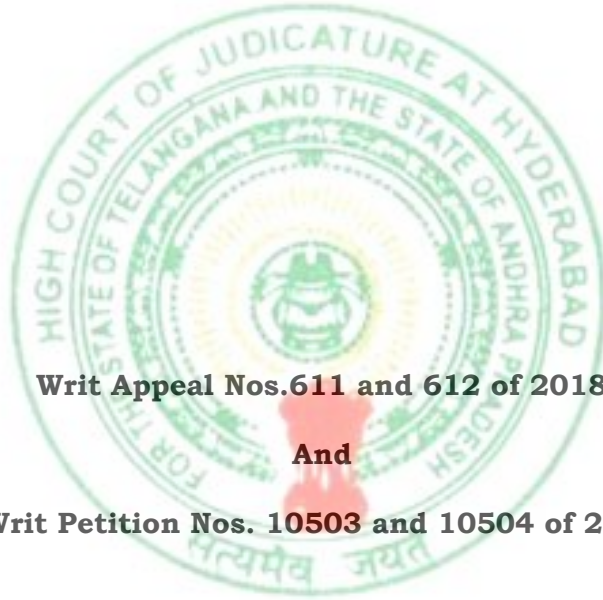
(KONGARA VIJAYA LAKSHMI, J)

18th April, 2018

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