

THE HON'BLE SRI JUSTICE A.V. SESA SAI

WRIT PETITION No.15841 OF 2018

ORDER:

Heard Sri Addepalli Suryanarayana, learned Senior Counsel representing Smt.V.Karuna Kumari, learned counsel for the petitioner and Sri S.Lakshminarayana Reddy, learned Standing Counsel for the 1<sup>st</sup> respondent- Greater Visakhapatnam Municipal Corporation.

According to the petitioner, he purchased plot No.194 admeasuring 300 square meters at Resapuvanipalem, Visakhapatnam from Srinivasa Cooperative Society, Visakhapatnam, which is a part of Visakhapatnam Urban Development Authority layout. The petitioner herein submitted an application seeking permission for construction of a building in the said property. The 1<sup>st</sup> respondent-Corporation while principally deciding to grant approval asked the petitioner to fulfil the following conditions:-

1. The applicant has to pay the Vacant Land Tax up to date.
2. The applicant has to give an understanding letter on Non-Judicial stamp paper to a worth of Rs.100/- on the following items:
  - (i) He will not make any construction in the balconies.
  - (ii) He will not construct additional constructions other than permitted.

3. The applicant has to hand over 10% of total built up area as mortgage to the GVMC through Registered Deed.
4. The elevated water tank shall be constructed to a height of 1.5 Mts from Top floor and it should not be exceeded the height prescribed.
5. The applicant shall provide rainwater harvesting structure in their compound at one place to protect the rainwater so as to increase the water level in the locality.
6. The applicant shall erect information board showing all the Technical details of the proposed construction at the site under reference for information of the public and prospective buyers.
7. The applicant should pay the 14% Open Space charges as per prevailing market value.

According to the learned counsel for the petitioner, though the petitioner herein complied with all the objections pointed out in the endorsement, dated 06-03-2018, the respondent-Corporation is not releasing the building permission on the ground that the petitioner herein did not submit a registered mortgage deed. It is further submitted by the learned counsel for the petitioner the said action on the part of the 1<sup>st</sup> respondent is highly illegal, arbitrary and unreasonable and contrary to Sub-rule(20) of Rule 3 of the A.P. Building Rules, 2017. In elaboration, it is submitted by the learned counsel for the petitioner that in reality, the petitioner herein submitted a notarised affidavit as

stipulated under the provision of law. During the course of hearing, an endorsement bearing B.A.No.15091/2012/ACP-II/G2, dated 04-04-2018 has been placed on record by the learned Standing Counsel for the 1<sup>st</sup> respondent-Corporation wherein the 1<sup>st</sup> respondent-Corporation directed the petitioner to file a registered mortgage deed. In this context, it is appropriate to refer to Sub-rule(20) of Rule 3 of the A.P. Building Rules,2017, which reads as under:-

“ a. The owner and builder/developer shall give an affidavit in the prescribed Form duly notarized to the effect that in the case of any violation from the sanctioned building plan, the Enforcement Authority can summarily demolish the violated portion.

b.....

c...

d. The owner is required to hand over 10% built-up area in any approved floor shall be mortgaged, as the case may be, to the sanctioning authority by way of a Notarized Affidavit/Registered Mortgage Deed. In respect of row houses/detached houses/cluster housing 5% of the units shall be handed over by way of notarized affidavit/Registered Mortgage Deed to the sanctioning authority. The Notarized Affidavit/Registered Mortgage Deed shall be got entered by the sanctioning authority in the Prohibitory Property Watch Register of the Registration Department. Then only the Building sanction will be released.”

It is very much clear from a reading of the above provision of law that according to clause(d) of the above

Rule, it is open for the applicant either file a notarized affidavit or a registered mortgage deed. In the instant case filing notarised affidavit by the petitioner is not in dispute. Therefore, the impugned action on the part of the respondents cannot be sustained in the eye of law and there is no justification on the part of the 1<sup>st</sup> respondent-Corporation in not processing the application further on the ground that the petitioner herein failed to submit a registered mortgage deed.

For the aforesaid reasons, the writ petition is allowed, directing the 1<sup>st</sup> respondent-Corporation to process the building application of the petitioner herein and to release the same in accordance with law within a period of two(2) weeks from the date of receipt of a copy of this order. No order as to costs. Miscellaneous petitions pending consideration, if any, in this case shall stand closed in consequence.

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A.V.SESHA SAI, J

12.06.2018  
TSNR