

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.1832 OF 2019

Date: 06.06.2019

Between:

P. Virendranath Choudary, s/o. Major P T Choudary,
Aged 46 years, r/o. Plot No.965, Road No.48,
Jubilee Hills, Hyderabad.

.....Petitioner

and

The State of Telangana, rep.by its Prl.Secretary,
Municipal Administration & Urban Development,
Secretariat Buildings, Hyderabad and others.

.....Respondents



The Court made the following:

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ORDER:

Writ Petitioner is a member of Jubilee Hills Cooperative House Building Society and claims to own plot No.965 on Road No.48 of Jubilee Hills, Hyderabad. Petitioner alleges that respondent-society is constructing convention centre in residential area for commercial purpose, more particularly by occupying greenbelt area and road. This is the third writ petition filed by the petitioner on the same issue. According to petitioner, he was disturbed by deployment of huge machinery adjacent to his plot and carrying out digging work, blasting activity even in the night and as there was no response by the Police against his complaint, he filed W.P.No.15312 of 2018. According to the averments in the affidavit filed in support of writ petition No.38631 of 2018, on 30.04.2018 this Court directed the respondent-society not to undertake work from 7.00 P.M. to 7.00 A.M. While so, according to petitioner, he came to know that huge commercial complex having more than 19000 square meters of built up area for commercial purpose was being constructed on plot nos.966, 966-A, 967, 967-A, 967-B and 968 in a residential area and on his further enquiry, it came to light that greenbelt area is sought to be used for construction. Petitioner also learnt that building permission was granted by the Municipal Corporation. He filed Writ Petition No.38631 of 2018 praying to declare the action of respondent authorities in entertaining the application for construction of community hall and not stopping the present

works on those plots as illegal; sought for declaration that no such construction activity should be permitted in the area adjacent to his plot by encircling the greenbelt area, and sought further direction to Greater Hyderabad Municipal Corporation (GHMC) not to entertain any new application for construction of community hall, convention centre etc. This portion of the prayer was on the assumption that building permission granted on 01.11.2013 has expired and no further construction activity could be undertaken. This Court by order dated 13.11.2018 directed the Assistant City Planner, Circle-8 (subsequently changed as Circle-18) of GHMC to take appropriate action on the representation of the petitioner dated 29.07.2018. In pursuant thereof, on 19.01.2019 the Assistant City Planner addressed letter to the petitioner overruling the objections against construction of community centre. Challenging the said decision of GHMC, present writ petition is filed. In this writ petition, in addition to challenging the decision of Assistant City Planner dated 19.01.2019, petitioner sought further.

2. The bone of contention is against construction activity taken up by the respondent society on plot nos. 966, 966-A, 967, 967-A, 967-B and 968. The GHMC granted building permission on 01.11.2013 authorizing the respondent society to construct sub-basement, cellar for parking, upper two floors for community hall with total construction area as 7230.77 square meters. As per the building permission construction was to commence before 31.04.2015 and to be completed before 30.10.2016 i.e., within three years as per the norms then prevailing. The construction is in two parts, called Site-A with plot area of 3192.86 square meters

and Site-B with plot area of 4037.91 square meters. The construction permission is governed by the Building Rules, 2012. These Building Rules were amended including Rule 19(d) notification of which was issued vide G.O.Ms.No.7 Municipal Administration and Urban Development (M1) Department dated 05.01.2016. The effect of the amendment is building permission granted is valid for six years subject to condition that construction should commence within 18 months. It also enables revalidation for another two years. In terms of this amended provision, respondent society can undertake construction and complete before 31.10.2019.

3. Heard learned counsel for petitioner, Sri L.Venkateshwara Rao, Standing Counsel for GHMC for Respondents 2 and 3 and Sri C.V.R.Rudra Prasad, learned counsel for Respondent No.4 and extensive submissions are made by the learned counsel appearing for petitioner and learned counsel appearing for respondent-society and learned standing counsel for GHMC.

4. Learned counsel for petitioner made following submissions:

i) as original layout approved by the HUDA (HMDA) earmarked the area as residential zone with greenbelt cover and residential plots were made, no commercial activity can be taken up;

ii) the decision taken by the respondent society was to construct a convention centre, whereas the convention centre is a commercial activity and no commercial activity can be taken up in residential area. It would amount to violation of zonal regulations

and, therefore the same is *ex facie* illegal. Thus, GHMC could not have allowed such construction activity;

iii) abutting the plots on which construction was proposed portion of land was earmarked as greenbelt area. This portion of land is now occupied by the society; temporary sheds were constructed and construction material is dumped. This is illegal and society is liable for prosecution for encroaching the greenbelt area;

iv) it is further contended that building permission granted on 01.11.2013 was valid for three years. No construction activity was taken up within the time stipulated in the building permission. Therefore, the building permission ought to have been cancelled and at any rate no construction activity can be taken up after the period;

v) it is further contended that as the construction activity is in violation of the zonal regulations, there cannot be any validation of the building permission already granted/to grant fresh building permission, as the case may be;

vi) on the issue of construction of community hall, it is contended that as per the original layout, this area is earmarked as residential area and house plots were formed. This residential zone was converted into public and semi-public purpose by the Government specially with reference to construction of Bus Depot by RTC. Once RTC gave up its decision to construct Depot, the land would fall back to the same status, as per the original approved layout. There was no further conversion of land use and,

therefore, the society cannot undertake construction of building for commercial purpose in residential area.

5. The facts as narrated by the respondent society in their additional counter-affidavit would disclose that at the time of formation of layout and development of housing infrastructure, the society felt it necessary to earmark certain portion of land for establishment of Bus Depot by the Road Transport Corporation. Accordingly, on 5.9.1983 it had allotted Ac.4.45 of land to the then APSRTC (presently TSRTC) by receiving an amount of 2.85 lakhs from the Corporation. Possession was handed over to Corporation on 09.09.1983. The total extent of land is covered by the plots mentioned above. In other words, though initially the land was earmarked as house plots, having regard to the requirement of members of society, the house plots were converted for development of Bus Depot by APSRTC. It appears, APSRTC encountered problems to develop the land allotted to it. The GHMC raised objection for construction of Bus Depot as high-tension electricity lines are laid adjacent to the land; that road cannot pass through the Depot site; society cannot transfer roads; the land falls within the residential area where construction of Bus Depot is prohibited. The RTC requested for change of land use and sought for revised layout by duly deleting the road portion. Society also requested the Government to accept the request of RTC. Based on the report of Hyderabad Urban Development Authority (HUDA) vide Memo dated 19.09.1991, Government issued draft notification for change of land use of above plots on road no.48 to an extent of Ac.4.45 for special reservation for construction of Bus Depot

(public and semi-public use). This permission imposed two conditions i.e., i) a minimum of 40 feet width is left in between two rows of transmission lines and the pillars to ensure a continuous 120 feet wide road from Jubilee Hills to non-municipal area; and ii) further internal 40 feet road of Jubilee Hills layout could be deleted. HUDA addressed a letter dated 17.12.1991 to the Society regarding the change of land use. However, the RTC was not satisfied with the permission granted as it found that after excluding the land as suggested by the Government only 3.30 acres of land was available, which was not sufficient for construction of Bus Depot, and requested the society to transfer additional land. It appears, though such request was not accepted by the society, RTC encroached the adjacent plots including plot no.965 Part, claimed by the petitioner, and constructed compound wall. The members of the society protested against such encroachment. Fact remains that no Depot was constructed. Same land was transferred to Tourism Department. However, Tourism Department has also not developed the land. At this stage, Government requested the society to transfer the land at Road No.1, near Check-post to the Tourism Department in lieu of which, Tourism Department would return the land transferred to it by the RTC. In the said manner, this piece of land has come back to the society. In its order, Government specified to utilize this piece of land for construction of community hall. Therefore, society has decided to construct a community hall. Accordingly, permission was obtained.

6. Learned counsel Sri Durga Prasad vehemently denies the allegation of petitioner and doubts *bona fides* in prosecuting the litigation. According to learned counsel, there are no deviations in constructing the community hall. According to learned counsel, proposed construction is in two separate blocks on either side of the road. All required construction parameters are strictly followed and construction permission is for community hall and for commercial purpose. He would submit that as per amended Building Rules, Society has time till 30.10.2019 and, therefore, there is no bar against continuing the construction. He would submit that society encountered difficulties in making the land ready for construction in view of its terrain. He would contend that no right of petitioner is affected and, therefore, writ petition is not maintainable. As a member of the society petitioner ought to have availed remedy under the Telangana Cooperative Societies Act, 1964 (Act No.7 of 1964), including remedy of arbitration if he is not in favour of constructing community hall. He would submit that as per zonal regulations community hall can be constructed in residential area.

7. Learned standing counsel for GHMC defends the decision impugned in the writ petition. According to learned standing counsel after observing due norms, building permission was granted. The Corporation is satisfied with the explanation offered by the society on commencement of construction and as per amended Building Rules, the society has time till 30.10.2019 to complete the construction.

8. In the light of the submissions made and material placed on record, what is required to be considered is whether building permission granted by GHMC on 1.11.2013 to construct community hall is valid and legal.

9. Before considering this aspect, it is necessary to clear the objection of petitioner on expiry of building permission on 30.10.2016. No doubt when building permission was granted on 1.11.2013, the order stipulated that construction should be completed before 30.10.2016 i.e., three years from the date of permission. This stipulation was based on then prevailing provision in the Building Rules, 2012. These rules are amended in the year 2016 and the time limit for construction is extended to six years. This would expire on 30.10.2019. Therefore, objection on carrying out construction activity is no more valid. Incidentally, it was also contended that no construction activity was taken up within the time stipulated and, therefore, construction cannot be taken up. In the complaint filed before the GHMC, this objection is specially raised. GHMC, in turn, called upon the respondent society to explain as to whether construction activity commenced within time granted. In response, respondent society informed that construction activity already commenced within the time granted. As per the averments in the additional counter-affidavit, after obtaining permission from GHMC, society invited sealed tenders from the Contractors for earthwork excavation and sheet rock and cutting of boulders etc. The tenders were notified on 21/22.07.2014 and on finalizing the tenders, work was awarded to M/s. Associated Projects Infra Engineers & Contractors and the

said contractor started excavation work on the surface boulders. It is the categorical assertion of the society that excavation work is still in progress as land consisted of huge boulders and sheet rocks. Therefore, the objection against commencement and completion of work is no more valid.

10. It is not in dispute that as per the original layout, though this area was earmarked as residential zone, later it was converted to public and semi-public use. As part of revised development plan, (Master Plan) of GHMC (HMDA Core Area), Hyderabad Metropolitan Development Authority notified Zoning and Development Promotion Regulations. The Land Use Zoning Regulations contain the classification of land use under the headings, such as, residential use zone, commercial use zone, multiple use zone, public and semi-public use zone etc. As per these regulations in residential use zone all types of residential buildings, auditoriums on plots above 1000 square meters and abutting road of minimum 18 meters width, bakeries and confectioneries, banks, bus stands, community centres, etc., can come up. In other words, in residential use zone, community centres can come up. Permission granted by the Municipal Corporation in the subject area was for construction of community centre. Zonal Regulations permit construction of community centre/hall in residential use zone. Though permission granted is for construction of community centre, petitioner challenged the construction activity by contending that what is proposed by the respondent society is a convention centre and construction of convention centre cannot be said as intended for members of

society only, but would be for commercial purpose and no such commercial activity is permissible in residential use zone.

11. This contention is no more valid. The building permission now granted by the GHMC is only for construction of community hall. In paragraph-4 of the counter-affidavit, deposed by Sri T.Hanumantha Rao, who was Secretary of the Society, it is asserted that "the society will construct the building strictly as per the sanctioned plan and as such, the apprehension of petitioner is ill-founded". In the additional counter-affidavit also, the society clearly points out what is intended is construction of community hall, but not a convention centre as alleged by the petitioner. As building permission is for construction of community hall/ community centre and construction is by the society, it cannot be expected that society would violate the building permission granted and convert the community hall/community centre for commercial purpose, such as convention centre, as sought to be alleged. Further, it cannot be said that petitioner or any other member of the society is remediless if the management of the society misuses the facilities provided for members of the society for any other purpose including commercial activity contrary to the building permission obtained and contrary to the will of the members of the society.

12. It was forcibly asserted by the learned counsel for petitioner that greenbelt between the subject land and the road no.51 is destroyed by the society and the same is illegal. Respondent society has admitted the factum of utilizing the greenbelt by

constructing sheds for the construction workers. As per the zonal regulations specific areas are earmarked as greenbelt to ensure greenery in the residential areas. Therefore, respondent society could not have destroyed greenbelt area to construct temporary sheds to house the construction workers. The said action of the respondent society is illegal.

13. It is further alleged that the land in issue is divided by a road, whereas the respondent society is undertaking construction by utilizing single complex by utilizing road also and the same is illegal. As per the approved layout portion of road is formed and road cannot be utilized without amendment of the layout and utilization of road would be blocking the access to the residents of the society and others and the same is *ex facie* illegal.

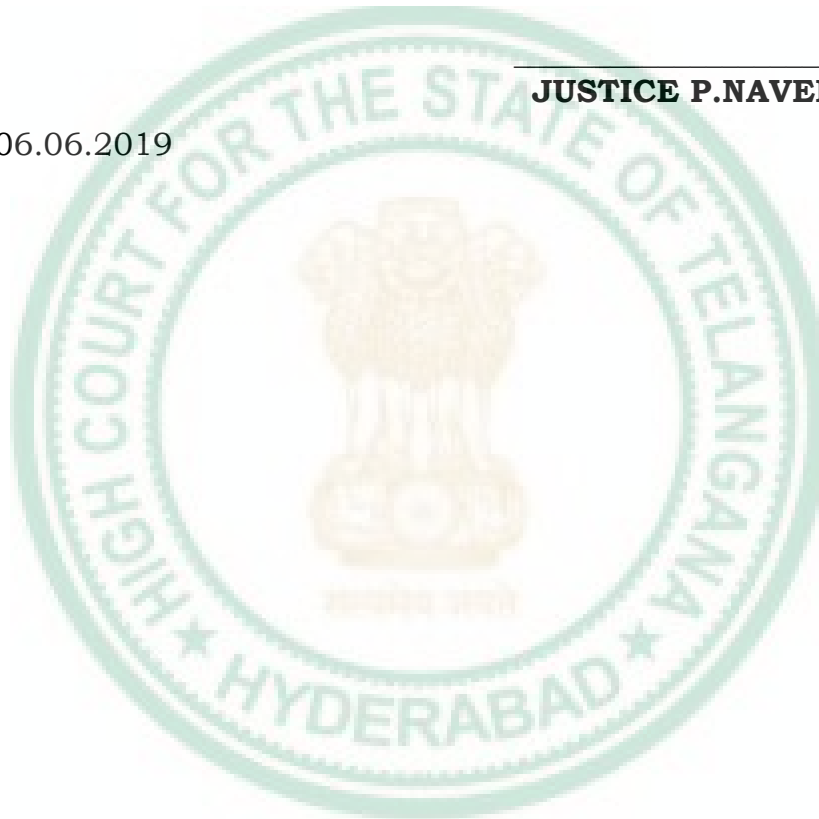
14. As can be seen from the building permission granted by the GHMC, the construction is divided into two separate blocks as Site-A and Site-B. According to the respondent society though the total extent of land is 4.5 acres, the construction is only covering 1.78 acres leaving road in the middle of the two sites, the greenbelt, 100 feet width area earmarked for high tension line where road is also passing and that it would not make any construction on the open space. In other words, it is the categorical assertion of the respondent society that the existing road is not converted and construction is taken up in two different blocks separated by road No.48. Therefore, this contention is also no more valid.

15. The Writ Petition fails on all aspects except utilisation of greenbelt. The society is directed to take immediate steps to remove the constructions made in the greenbelt area and to restore greenbelt. Such measures have to be taken and greenbelt area should be fully restored, if necessary, by planting grown up trees within four months from the date of receipt of copy of this order. The Writ Petition is accordingly disposed of.

Pending miscellaneous petitions if any shall stand closed.

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