THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WP No.13988 of 2019

ORDER::

This writ petition is filed seeking to issue a writ of mandamus declaring the action of the respondents in insisting the petitioners for production of conversion certificate from agriculture to non-agricultural purposes in respect of the site admeasuring 5950 sq. meters bearing municipal H.No.5-5-185 and 186, Sy.No.53 and 56 of Sahebnagar Khurd village, Hayathnagar mandal, Ranga Reddy District, (for short, "the subject land") under the provisions of the Telangana Agricultural Land (Conversion for non-agricultural purposes) Act, 2006, (for brevity, "the Act 2006") for issuing NOC to them for construction of a multiplex theatres with six screens-cum- shopping mall, as being arbitrary and illegal and consequently direct the 1st respondent to issue the NOC forthwith without insisting conversion of the subject land under provisions of the Act 2006.

02. Facts stated briefly are:-the petitioners represented by their General Power of Attorney holder submitted an application dated 08-06-2018 to the 1st respondent seeking permission for establishment and running of a multiplex cinema hall-cum-mall on the subject land. In pursuance thereto, the 1st respondent vide letter dated 26-06-2018 addressed to the 2nd respondent called for remarks as to grant NOC to enable him to consider the

application of the petitioners in accordance with Rule 8 (B) of the TS Cinema Regulation Rules, 1970. That one of the requirement among other things for grant of NOC is conversion of subject land use under Section 4 of the Act 2006 from agricultural to non-agricultural purposes. The case of the petitioners is that the subject land is located in commercial zone and it is not agricultural land. That as a matter of fact, the subject land is treated as non-agricultural land even prior to the enactment of the Act 2006 *i.e.* A.P. Agricultural Land Conversion for non-agricultural purposes Act, 2006 and this aspect has been clarified by the 5th respondent-Tahsildar in letter dated 23-02-2019 addressed to the 2nd respondent-District Collector and the 4th respondent-Revenue Divisional Officer. Thus there is no necessity of conversion of subject land to non-agricultural use under Section 4 of the Act 2006. That the question of applicability of the Act 2006 for lands which are not agricultural lands by the date of coming into force of the Act 2006 is no longer *res-integra* in the light of the Division Bench judgment in WA No.702 of 2010 and batch, dated 28-08-2015. That the subject land is assessed to property tax as house/godown from the year 1970. That when there are structures in the form of house and godown, requiring conversion of the subject land use from agriculture to non-agricultural purposes is absurd and contrary to the scheme of the Act 2006. That the petitioners have submitted a representation dated 28-06-2019 to the 3rd respondent-Joint

Collector stating that the subject land is known as Panama Godowns and it is not an agricultural land and in the light of the judgment of this Court in WA No.702 of 2010, there is no necessity for conversion under the Act 2006 and requested for issue NOC without insistence on the conversion under Section 4 of the Act 2006. As there is no reply or response to their application made in that behalf, hence, this writ petition.

03. Counter affidavit is filed by the 5th respondent-Tahsildar, Hayathanagar mandal, Ranga Reddy District, wherein *inter alia* it is stated that the Act 2006 was enacted by repealing the A.P. Non Agricultural Land Assessment Act, 1963 and introduced levying of lumpsum @10% on the basic value of the land for the purpose of conversion of agriculture land into non-agricultural purpose as one time conversion fee. That the said Act was adopted by the State of Telangana vide GO Ms.No.4, Revenue (Land Matters) Department, dated 05-01-2016 and the since the subject land falling in the territory of Telangana, the petitioners are liable to pay conversion charges if the agricultural land is put to use for other than the agriculture purpose. That pursuant to the report sought on the subject matter, by the 2nd respondent-District Collector, she has sent up reports on the subject matter stating that the subject land, as per the revenue records, is recorded as non-agriculture land, duly enclosing the particulars relating to nature of the land and its classification. That the said subject land is covered with godowns and

it is in an extent of Ac.1-21 guntas and is situate in Sy.No.56, and there is no material available to clarify with regard to the Sy.No.53 of the subject land. That the Chief Commissioner, Land Administration has issued circular vide CCLA Ref.No.Lr-1/1198/2018, dated 23-08-2018 to the effect that the HMDA is entitled to insist for clearance/permission or payment of NALA tax under NALA Act, as a condition precedent for release of layouts of plots or regularization of illegal layouts or plots or grant of building permission, etc., as required by law under the provisions of the HMDA Act, 2008 That as per the Telangana Regularization of unapproved and Illegal Layout Rules, 2015, HMDA will not insist for any certificate where plot of land or layouts which have already been put to non-agriculture use prior to commencement of the Act 2006, but subject to condition that any layouts, plots or illegal constructions made without sanction or approval of the competent authority as required by law prior to commencement of the Act 2006. The authorities are entitled to collect conversion fee under Act 2006. That without permission granted by the competent authority for construction on the agricultural land, *viz.,* godowns/houses will not amount to authorized constructions to claim that the land was already converted to non-agricultural use prior to the Act 2006 came into force. In the absence of any of the document or evidence produced, the petitioners are not entitled to claim the subject land as non agricultural land. That Section 61 of the

Telangana Area Land Revenue Act, 1317 Fasli which came into force on 21st Meher, 1317 Fasli specifically states that the occupant of agricultural land shall not be entitled, except, with written permission of the Collector, to appropriate agriculture land to purpose other than agriculture. Since this Act was in force before the enactment of the Act 2006, the petitioners are under obligation to produce conversion permission from the competent authority under the said Act to enable him to claim the application of ratio laid down by this Court in WA No.702 of 2010. That the petitioners to circumvent the procedure, without obtaining necessary conversion permission, made application and insisting for disposal of the same without obtaining NOC to evade the statutory liable charges payable to the State. Therefore, the writ petition is misconceived and the same is liable to be dismissed in *limini.*

04. Counter affidavit is filed by the 1st respondent wherein *inter-alia* it is stated that petitioners made application for grant of NOC for construction of multiplex theatre-cum-shopping mall on the subject land and pursuant thereto, had addressed letters to the 2nd respondent-District Collector, District Medical and Health Officer, Ranga Reddy District, the Commissioner, GHMC, Hyderabad and the Director General of State Disaster Response and Fire Services Department, Hyderabad, to send reports on the subject matter to examine the application of the petitioners for grant of NOC for construction of multiplex theatre-cum-shopping mall on the

subject land. That the reports from the concerned authorities are awaited. The counter also refers to certain provisions of Telangana Cinemas (Regulation) Act, 1955. Section 4 of the Act deals with power to grant licence by licensing authority, Section 5 deals with restrictions of powers of licensing authority and Section 6 deals with special provisions for buildings constructed or reconstructed solely for cinematograph exhibitions. That the that the reports on the subject matter from the concerned authorities are awaited and the application of the petitioners would be examined after receipt of reports from the concerned authorities.

05. Heard the learned senior counsel Sri Vedula Venkataraman, appearing for the petitioners, learned Asst. Government Pleader for Home and Law for respondent no.1 and the learned Asst. Government Pleader for Revenue for respondents 2 to 6.

06. It is to be seen that the application of the petitioners for construction of a multiplex theatre-cum-shopping mall is not yet adjudicated nor any opinion formed by the 1st respondent either to grant or reject it. Now the germane point that arises for consideration in this writ petition is whether the petitioners are required to pay the conversion charges and obtain a certificate to that effect signifying the conversion of nature of land from agriculture to non-agricultural purposes under Section 6 of Act 2006. It is vehemently contended by the learned senior counsel that the subject land is

put to non-agricultural use prior to the Act 2006 coming into force and in the light of the ratio laid down by a Division Bench of this Court in ***K.SATYANANDA PATNAIK vs. THE HYDERABAD URBAN DEVELOPMENT AUTHORITY***[1] the petitioners are exempt from payment of conversion charges under the provisions Act 2006. In ***K.SATYANANDA PATNAIK's*** case the Division Bench of this Court considered batch of writ appeals which arose against the common order dated 28–04–2010 in WP No.26688 of 2007 and batch. The said writ appeals are disposed of the with the following observations:-

> *50. Further reasons stated above, the appeals are without merit and accordingly dismissed.*
> *51. As we have confirmed the common order dated 28 – 04 – 2010, we are inclined to dispose of the writ petition is as follows:-*
> *a) it shall be competent for the Urban development authority is of 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 nonagricultural use before 2006 act came into force, such clearance/permission shall not be insisted.*
> *c) conversion of land in to nonagricultural use under the provisions of act three of 2006 is necessary even in the land is covered by master plan in sanction of layer layout by the development authority and the provisions of act one of 1975"*

07. The petitioners' claim is the subject land is put to non-agricultural use prior to the coming into force of Act 2006 and being used as such. But, they have not converted the land use from agriculture to non-agricultural

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[1] 2016 (3) ALD 600

under the repealing act i.e. AP Non-agricultural Land Assessment Act, 1963 or under the provisions of the Telangana Area Land Revenue Act, 1317 Fasli. Under those situations, the petitioners cannot be permitted to contend that mere usage of the subject land from the year 1970 for non-agricultural purposes as godowns/houses *ipso facto* change the nature of usage of the land to other than agricultural purposes to claim exemption from application of Act 2006. The petitioners have not produced any evidence showing that he converted the subject land into non-agricultural purpose under the repealing Act or any other law governing the field prior to the Act 2006 coming into force. As such no relief can be granted basing on the judgment in ***K.SATYANANDA PATNAIK's*** case and is not applicable to the facts of the present case.

08. In the result and in the light of the facts and circumstances of the case, the writ petition fails and it is accordingly dismissed. However it is open for the petitioners to pay the conversion charges in respect of the subject land under Section 6 of Act 2006. The miscellaneous petitions, if any pending shall also stand dismissed. There shall no order as to costs.

A.RAJASHEKER REDDY,J

Dated: 28-11-2019
NRG

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

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