

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITIONS No. 34807 of 2017 & 7056 of 2018

COMMON ORDER:

Since the relief claimed in both these Writ Petitions is one and the same, they are heard together and disposed of by this common order.

The petitioners claim to be the absolute owners and possessors of a piece of land in Plot Nos. 17 and 15 situated at Anmagal Village, Hayathnagar Mandal, Ranga Reddy District respectively. It is their claim, when the erstwhile government announced land regularization scheme in 2012, they had applied for regularization of the above said land by paying the prescribed fee of 71,194/- and Rs.30,100/-, as allegedly suggested by the respondent authorities, in the form of Demand Drafts drawn on Corporation Bank, Dilsukhnagar Branch, Hyderabad. However, to their surprise, the petitioners came to know that their respective land was already in an approved layout, as is evident from the letter dated 06.08.2010 issued by the 5th respondent. The petitioners therefore, requested the 3rd respondent Zonal Commissioner, Greater Hyderabad Municipal Corporation through their letter dated 10.06.2014 to refund the above said amount. However, the 4th respondent issued the impugned order dated 23.01.2017 informing the petitioners that *"as per your request the file circulated to Head Office, GHMC for refunding of LRS amount through e-office, but our building byelaw No. 5.3 of 1981, any such withdrawal shall terminate all proceedings with respect to such application by the fees paid shall, in no case been refunded"*. Hence, the Writ Petitions.

A counter-affidavit was filed on behalf of the 4th respondent in Writ Petition No. 34807 of 2017, wherein it has been stated that the representation of the petitioners for refund of the amount was received by their office and on verification, it was noticed that the layout was approved by the 5th respondent HMDA. It is further stated that the petitioners' request was not considered because there was no provision in the scheme to return the amount by deducting 10% towards process fee and as per Building Bylaws No. 5.3 of 1981, any such withdrawal shall terminate all proceedings with respect to such application, but the fees paid shall in no case, be refunded.

In the counter-affidavit filed by the 5th respondent, it was stated that Sri V. Bikshapathi, C/o Sri P. Sukender Reddy, H.No.1-3, Hayathnagar filed an Application dated 30.08.1985 to obtain lay out permission in Survey Nos. 44/P, 58 & 59 situated at Amangal, Hayathnagar Village and Mandal, under Sections 13 and 14 of the Andhra Pradesh Urban Areas (Development) Act, 1975 to an extent of 17,995.19 square meters, the same was scrutinized under the provisions of layout rules with reference to A.P. Gram Panchayat Lay out, Building Rules & Regulations and considered the proposals and the lay out was technically approved by the then Vice-Chairman, HUDA on 25.02.1986 and the same was forwarded to the local body on 21.03.1986, subsequently, the same was examined by the then Vice Chairman, HUDA on 23.10.1986 and the technically approved final layout plan was forwarded to the then Gram Panchayat on 15.12.2986. It is further stated that the reference letter dated 06.08.2010 pertains to land use information.

Learned counsel for the petitioners Sri Jella Nagaraj, vehemently, contends that Byelaw No.5.3 of the Municipal Corporation Building Bye-Laws, 1981, referred to in the impugned proceedings, has no application to the case on hand, for, the petitioners herein had applied for regularization of land but not building. Hence seeks the learned counsel refund of the fees paid by his clients.

Heard learned Government Pleader for Municipal Administration & Urban Development, Sri Pasham Krishna Reddy learned Standing Counsel for the Corporation and Sri V. Narsimha Goud, learned Standing Counsel for HMDA.

The question, which falls for consideration is whether in the facts of the present case, the petitioners are entitled to refund of the amounts paid in terms of G.O.Ms.No. 902, Municipal Administration & Urban Development (M1) Department, dated 31.12.2007 read with G.O.Ms.No. 113, dated 31.01.2008 seeking regularization of Plot Nos. 17 and 15 situated at Anmagal Village, Hayathnagar Mandal, Ranga Reddy District, purchased by them petitioners and the reasons stated for rejection of the claim of the petitioners for refund through the impugned intimation dated 23.01.20017 are justified.

Undisputedly, the petitioners purchased Plot Nos. 17 and 15 situated at Anmagal Village, Hayathnagar Mandal, Ranga Reddy District in the lay out developed by one Sri V. Bikshapathi, C/o Sri P. Sukender Reddy, H.No.1-3, Hayathnagar. The said individual had developed the lay out, which, in fact, was approved by the HMDA on 25.02.1986, on the Application made by him on 30.08.1985. Once the lay out is approved, the purchaser of plot in

the approved lay out is not required to seek any regularization as the lay out itself is a regulated one and hence, the question of Application to be made under G.O.Ms.No. 902, dated 31.12.2007 does not arise. The fact that the petitioners have chosen to apply, in their anxiety, seeking regularization, in anticipation as is required in terms of the said G.O., duly paying the prescribed fees, that by itself, cannot be put against the petitioners as the amount is paid under mistake of law. Thus, there is no dispute to hold that the petitioners are entitled to be refunded the amount paid under mistake of fact and law, as, otherwise, that would be illegal and unjust collection of amounts by the respondent authorities. The reasons stated in the impugned intimation by the respondent authorities is that the building byelaws, particularly byelaw No. 5.3 do not allow the fees once paid to be refunded / returned.

Here, it may be noticed that 1981 Byelaws are basically intended to regulate the permission to be granted to enable the individual plot owner / developer to obtain sanction for making constructions. Byelaw 1.3 specifically states that the same are applicable to be building activity given from para 1.3.1 to 1.3.5 which reads as under:

“ **1.3 Applicability:-** They shall apply to the building activity given from 1.3.1 to 1.3.5.

1.3.1. Where a building is erected, the Bye-laws shall apply to the design and construction of buildings.

1.3.2. Where the whole or any part of the building is removed the bye-laws shall apply to the extent of the building so removed.

1.3.3. Deleted in view of the re-drafting of 1.3.2.

1.3.4. Do. Do.

1.3.5. Where the occupancy of a building is changed, the Bye-laws apply to all parts of the building affected by the change.”

The above-quoted paras do not relate to the development of the land. It may also be borne in mind that G.O.Ms. No. 902 came to be issued in exercise of the power vested in the State under the Andhra Pradesh Urban Areas (Development) Act, 1975 read with provisions of the Greater Hyderabad Municipal Corporation Act, 1955, the Andhra Pradesh (Andhra Area) Town Planning Act, 1920 and the Andhra Pradesh Municipalities Act, 1964. The entire of the provisions, under which G.O.Ms.No. 902 came to be issued, basically relate to regulated development of land into lay outs, plots, colonies, etcetera. Further, none of the other Building Byelaws of 1981 have any application to the facts of the present case.

In those circumstances, the Writ Petitions are allowed. No costs.

Consequently, the miscellaneous Applications, if any shall stand closed.

CHALLA KODANDA RAM, J

18th April, 2019

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