

THE HON'BLE SRI JUSTICE A.ABHISHEK REDDY

WRIT PETITION Nos.17471 and 23840 of 2020

COMMON ORDER:

Since the order under challenge in both the writ petitions is one and same, they are heard together and being disposed of by this common order.

2. In these two writ petitions, the petitioners are challenging the building permission *vide* Permit No.1/C20/03310/2020, dated 06.03.2020, issued by the respondent No.2-The Greater Hyderabad Municipal Corporation (in short 'GHMC') in favour of respondent No.7.

3. W.P.No.17471 of 2020 is filed by one of the members of the Fertilizer Corporation of India Employee's Co-operative Housing Society Limited (hereinafter referred to as 'the Society'), whereas W.P.No.23840 of 2020 is filed by the Society, along with its members.

4. It is stated that the Society had purchased an extent of Ac.20.00 guntas in Survey Nos.124 and 125, situated at Gachibowli under a registered sale deed dated 04.06.1981, and developed the land into housing plots and allotted/sold them to the respective members under various registered sale deeds. That prior to the purchase of the land, the Society had framed the bye-laws for the benefit of its members, to deal with the trade of buying, selling, hiring, letting and developing land in accordance with Cooperative principles and to give loans to its members for construction of new dwelling houses. However, some of the members of the Society had violated the bye-laws by selling their plots to some third parties without prior approval of the Managing Committee of the Society.

5. Some of the members who are owners of Plot Nos.159, 160, 161 and 162 or their successors have jointly entered into a Development Agreement of Sale-cum-General Power of Attorney, dated 24.05.2018, with M/s. Supadha Constructions Private Limited, which in turn, has approached GHMC seeking permission for construction of a multi storied commercial complex, consisting of three Cellars + Ground + 15 Upper Floors, without obtaining NOC from the Society. GHMC has granted building permission *vide* permit dated 06.03.2020. Challenging the said permit, the petitioner has made a representation dated 16.09.2020 to respondent Nos.1 and 2, but till date, no action is taken so far.

6. A counter-affidavit, sworn by the Director of respondent No.7-company, has been filed on behalf of respondent Nos.3 to 7. In the counter affidavit, it is stated that the petitioner himself had entered into a Development-Agreement-cum-General Power of Attorney dated 14.02.2020 in respect of Plot No.40 claimed by him, along with neighbouring plot owners, with another builder for construction of residential/commercial building. When some plot owners did not give their plots for development, along with the petitioner, the petitioner filed the present writ petition. In fact, a part of the layout is in the residential zone and the remaining part including the plots belonging to respondent Nos.3 to 6, are in the commercial zone. There is no need for obtaining the NOC from the Society, which has become defunct and the rights are only imaginary and contrary to the provisions of the Hyderabad Metropolitan Development Act, 2008, and the Master Plan and the Zoning Regulations thereunder. It is further stated that two members of the Society, namely P.V. Sai Abhinay and Sareena

Suresh, have filed A.R.C.No.18 of 2017 before the Registrar of Co-operative Societies, Hyderabad, against 160 persons including the Society and its members alleging that the Society had allotted the plots without a valid layout, and sought for resumption of the entire land. Though initially, on 20.07.2017, an interim order was passed in the said A.R.C., but on contest, the same was vacated on 21.08.2017. The petitioner is one of the respondents in the said A.R.C; that respondent No.170 in the A.R.C has filed W.P.No.17018 of 2019 before this Court challenging the jurisdiction of the Registrar of Co-operative Societies, Hyderabad, to entertain the A.R.C. This Court *vide* order dated 08.08.2019 has granted interim stay and the same is in subsistence. The plots in the layout were regularised under the Urban Land Ceiling and also Layout Regularisation Rules and the same were never challenged. Except making bald and baseless allegations in the representation dated 25.07.2019, the petitioner has not done any thing. The respondent has submitted an explanation on 13.09.2019 and after consideration of the said explanation only, the building permission was granted by the GHMC. The petitioner in collusion with some builders have created a bogus Managing Committee of the Society and resorting to blackmail tactics to compel the other plot owners to surrender their plots to the said builder. Furthermore, the petitioner filed the representation on 16.09.2020 and filed the present writ petition on 28.09.2020, which proves that there is no cause of action for filing the writ petition. It is further stated that the respondent has already spent huge amounts towards building permit fee to the GHMC, advances to vendors, suppliers, consultants etc.

7. A counter affidavit has been filed on behalf of respondent No.8-Society (petitioner in W.P.No.23840 of 2020). In the said counter affidavit it is stated that in order to achieve its objectives, the Society had purchased the subject land from one Smt. Santha Hemaraj under a registered sale deed dated 04.06.1981. On 12.07.1981, D. Laxmi Narayana, the then Secretary, applied to Kothagudem Gram Panchayat for a layout in respect of the said Acs.20.00 guntas of land purchased by the Society; that in fact, as on the said date, the master plan of HUDA was extended to Gachibowli and as such, the application should have been made to HUDA for approval of layout; that on 11.08.1981, the Sarpanch, Kothaguda Gram Panchayat, addressed a letter to the then Secretary of the Society stating that the layout has been approved as per the plan submitted; that there are two layouts with the signature and seal of the Sarpanch, Kothaguda Gram Panchayat, but the said layouts did not bear any date. However, the sale deeds were executed in favour of the members of the Society on the basis of both the layouts; that the said D. Laxmi Narayana, the then Secretary executed the sale deeds on different dates from 05.11.1981 to 25.01.1982. It is further stated that the contents of the sale deeds in favour of the members of the Society show that the said sale deeds were subject to certain conditions and that no consideration was paid to the Society under the said sale deeds separately. Though the documents are styled as sale deeds, in fact, it is an allotment of plots by the Society to its members; that as per the terms of the sale deeds, the members who were allotted the plots are bound by the bye-laws and also bound by the decisions taken by the Society from time to time. The Society has the right to

resume the plots if any condition is violated. It is further stated that the Society had applied for conversion of usage of land from agricultural to non-agricultural and the Government has issued Orders dated 07.11.1996 converting the nature of land use from agricultural to non-agricultural. When the Society approached the HUDA along with the Land Use Conversion for the purpose of regularising the layout, the Society was asked to get 'No Objection Certificate' from the Urban Land Ceiling Authorities. Accordingly, the Society had applied for the 'No Objection Certificate' from the ULC Authorities; that the ULC authorities instead of issuing the 'No Objection Certificate', declared the land purchased by the Society as "surplus land" to the vendor of the Society, and issued a notice to the Society to get the land regularised. Challenging the said proceedings, the Society filed a revision before the State Government and the same was dismissed by the Government. Aggrieved by the same, the Society approached this Court and filed W.P.No.19652 of 2007, and this Court had allowed the writ petition on 29.04.2011. Challenging the same, the Government filed Writ Appeal No.494 of 2013 and the same was dismissed by this Court *vide* order dated 06.09.2013. The Special Leave Petition (Civil) No.15388 of 2015 filed by the Government was also dismissed by the Hon'ble Supreme Court on 02.07.2015.

8. Furthermore, two members of the Society filed A.R.C.No.18 of 2017 on 17.06.2017 under Section 61 of the TS Cooperative Societies Act, 1964, before the Registrar of Societies. Respondent No.135 in the A.R.C. filed I.A.No.9 of 2019 seeking rejection of the said proceedings on the ground that the Registrar of Cooperative Societies has no jurisdiction to entertain the said A.R.C., and the

said I.A was dismissed on 21.05.2019. Suppressing the said order dated 21.05.2019, which became final, the petitioner filed W.P.No.17018 of 2019 alleging that the said A.R.C. is not maintainable and obtained stay of all further proceedings in the A.R.C. All the members of the Society, including respondent Nos.3, 4, 6 and donor of respondent No.5 are bound by its bye-laws. As per bye-law 42(3) of the bye-laws of the Society, the plots shall be allotted strictly after the layout is approved. However, no approved layout is issued by the competent authority till date. Therefore, all the allotments shall be treated as only provisional. Furthermore, neither respondent Nos.3 to 6 nor the donor of respondent No.5 obtained any permission from the Managing Committee of the Society for execution the Registered Development Agreement-cum-General Power of Attorney in favour of respondent No.7. Therefore, alienation of land in favour of respondent No.7 is not valid. That respondent Nos.3 to 6 have no right, title or interest in any portion of the land of the Society, and therefore, the GHMC ought not to have granted any permission in respect of the land of the Society.

9. Learned counsel for the petitioner in W.P.No.17471 of 2020 contends that a large extent of land from out of Ac.20.00 gunts of land purchased by the Society was affected in road widening, whereby the area and extent of most of the plots were reduced, and therefore, the Managing Committee of the Society had brought into existence second layout and made allotments based on the second layout. Learned counsel further contends that since there is a dispute regarding the layout, the very title of respondent Nos.3 to 6 is in dispute; the applications made by respondent Nos.3 to 7 are not in accordance with the statutory norms and regulations, and

therefore, respondent No.2 cannot unilaterally grant permission without verifying the *prima facie* details. The respondent Nos.3 to 7 have obtained permission for construction of commercial complex in a disputed area by playing fraud and by misrepresenting, more particularly, when the issue regarding overlapping and identity of plots was pending before the Registrar of Cooperative Societies, Hyderabad, in A.R.C.No.18 of 2017. The learned counsel further states that respondent Nos.3 to 7 have acted in contravention of the established norms and provisions of the Greater Hyderabad Municipal Corporation Act, 1955, as well as the law laid down by this Court. In support of the said contentions, the learned counsel has relied on the judgment of this Court in **Shri Manohar Rao Kulkarni v. The Commissioner, Hyderabad Municipal Corporation (Town Planning Section)**¹.

10. The learned counsel for the petitioner-Society in W.P.No.23840 of 2020 has submitted that no member of the Society can claim title or possession over any particular plot, as the very allotment was not on the basis of any layout approved by the Competent Authority i.e., HUDA and that the Society has made several representations to the GHMC and its authorities not to grant any permission in respect of the land of the Society till the dispute, with regard to the allotment and identity of the land to its members, is resolved. The GHMC ought not to have granted any permission for construction till the disputes are resolved. Therefore, the permission granted by respondent No.2 is not valid and the same is liable to be set aside as the documents on the basis of which respondent Nos.3 to 7 are claiming their right, title

¹ 1971 (1) Andhra Weekly Reporter 313

and possession are *prima facie* invalid. Learned counsel further states that no notice was issued by the GHMC to the Society before granting building permission in favour of respondent Nos.3 to 7 for making construction in the lands of the Society and that respondent Nos.3 to 7 suppressed the material facts and obtained building permission, and therefore, prayed to set aside the impugned building permission granted by the GHMC in favour of respondent Nos.3 to 7.

11. Heard the learned counsel for the respective parties. Perused the material available on record.

12. As seen from the respective pleadings of the parties, the case has chequered events. Even as per the admissions of the respective parties, the disputes, such as overlapping of plots, their identity, restoration of entire land to the Society, etc. are all disputed questions of fact and are the subject matter of A.R.C. No. 18 of 2017 pending on the file of the Registrar of Cooperative Societies, Hyderabad. Even the said proceedings were stayed by this Court in W.P. No. 17018 of 2019, by order dated 08.08.2019. Thus, the entire dispute pertaining to the allotment of plots and other related issues are *sub judice*. Therefore, this Court is not inclined to go into those aspects.

13. With regard to the specific challenge in both the writ petitions, regarding the construction permission granted in favour of M/s. Supadha Constructions Private Limited (respondent No. 7 in both the writ petitions), it is brought on record that the representation, dated 16.09.2020, stated to be filed by the petitioner in W.P. No. 17471 of 2020, is still pending with the officials of GHMC, and the respondents have already filed their

objections to the said representation. Although the learned counsel for the respondents have argued extensively, with regard to the maintainability of the very writ petitions, as they involve disputed questions of fact, as discussed above, this Court sitting under Article 226 of the Constitution of India, is not inclined to delve into those disputed questions of fact. Since this Court is not inclined to go into the merits of the case, ends of justice would be met if a direction is given to the officials of the GHMC to dispose of the said representation dated 16.09.2020 as expeditiously as possible.

14. Accordingly, both the writ petitions are disposed of directing the official respondents to consider and dispose of the representation filed by the petitioner in W.P. No. 17471 of 2020, dated 16.09.2020, if not already disposed of, duly taking into consideration the explanation submitted, as expeditiously as possible, preferably within a period of three months from the date of receipt of a copy of this order. It is needless to state that the officials before passing any order shall put all the parties on notice and grant them an opportunity of hearing. The orders, so passed by the officials, shall be communicated to the respective parties.

Miscellaneous petitions pending, if any, shall stand closed.
There shall be no order as to costs.

A.ABHISHEK REDDY, J

Date : 01-02-2021
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