

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

WRIT PETITION No.27106 of 2022

O R D E R:

The writ petition is filed seeking the following relief:

“... to issue Writ, order or direction more particularly one in the nature of Writ of mandamus declaring the action of the respondent authorities in demanding to pay 14% open space contribution charges amounting to Rs.19,70,500/- (Rupees nineteen lakh seventy thousand five hundred only) for an extent of 476 Sq.Yds of petition schedule property vide Demand note/Challan No.TS7330/2022 dated 26.04.2022 for granting building construction permission vide file No. 002694/GHMC/1357/KPL2/2022/BP dated 14.03.2022 to all that the Plot No.6 and 33 in Sy. No.64, 63 and 66 admeasuring 476 Sq.Yds or 397.93 Sq.mts situated at Hydernagar Village, Kukatpally Mandal and GHMC Circle, Medchal-Malkajgiri District, Telangana State is illegal, arbitrary, without any jurisdiction and not pursuant to any law and against the principles of natural justice and consequently direct the Respondent Authorities to release the building construction permission vide file No. 002694/GHMC/1357/KPL2/2022/BP dated 14.03.2022 without collecting 14% open space contribution charges and”.

2. Mr. Shri Pilli Nagaraj, learned counsel for the petitioners submits that the petitioners are represented by the Development Agreement-cum-General Power of Attorney holder with respect to schedule property. Petitioner No.1 is the original land lady having purchased the property vide registered sale deed dated 18.04.2001 and later, she has gifted part of the property to her sons who are the petitioner Nos.2 and 3 in the year 2021 and all of them have executed the Development Agreement in favour of the deponent herein i.e. GPA holder. He submits that the petitioners with a proposal to construct a residential apartment have applied for building permission on

14.03.2022 by paying an amount of Rs.10,000/-. The respondents having examined the petitioners application have sent a fee intimation letter dated 26.04.2022 to pay the balance amount of Rs.26,63,549/- towards fee and other charges through online within ten days from the date of notice cautioning that if failed to pay, application will be returned or refused without any further intimation. The respondent authorities have also derived an online challan/demand note dated 26.04.2022 indicating 14% open space contribution charges for an amount of Rs.19,70,500/- (along with other charges) which is not in dispute. The alleged amount claimed by the respondent authorities i.e.14% open space contribution charges amounting to Rs.19,70,500/- are the charges payable for the unauthorized layouts in pursuance of G.O.Ms.Nos.151, 131 and 135.

3. Learned counsel for the petitioners submits that the land lady in pursuance of G.O.Ms.No.151 dated 02.11.2015 has made an application for regularization of her plots vide application no. 3000052901 and paid an amount of Rs.10,000/- and also made another application under layout regularization scheme, 2020 and paid an amount of Rs.1000/- and till date, the LRS applications have not been determined by the respondent authorities as this court has stayed any action by the Telangana Government over the LRS

applications received under said G.Os until disposal of the pending SLP before the Hon'ble Supreme Court.

4. Learned counsel for the petitioners submits that the demand raised by the respondent authorities claiming to pay 14% open space contribution charges amounting to Rs.19,70,500/- for an extent of 476sq.yds of schedule property is illegal without jurisdiction and not pursuant to any law and the said amount of 14% open space contribution charges is for land regularization of the unauthorized layout plots. It is submitted that whenever in future, the LRS applications are processed and demand raised, accordingly, he shall pay the demands raised by the respondent authorities. He submits that if G.O.Ms.No.135 dated 16.09.2022 is perused, the amendment is made to G.O.Ms.No.151 dated 102.11.22015 and G.O.Ms.No.131 31.08.2020 as "if 10% open space is not available in the unapproved layout pro rata open space charges @ 14% of the plot value prevailing as on the date of registration of such plots shall be paid". It is submitted that in pursuance of the amendment vide G.O.Ms.No.135 dated 16.09.2022, the petitioner is liable to pay 14% of the plot value prevailing as on the date of registration where the 1st petitioner has bought the petition schedule property but not on the present market value.

5. Learned counsel for the petitioners further submits that the petitioners have no other alternative remedy except to come before this court. Hence, they have assailed the directions to declare the action of the respondents in demanding to pay 14% of the open space contribution for granting building permission as arbitrary and illegal.

6. A counter affidavit has been filed by the respondents. Mr. Sampath Prabhakar Reddy, learned standing counsel for the respondents submits that the betterment charges, site approval charges, sub-division charges and open space contribution charges etc., on plot area shall be collected where the sites are abutting to public road and not covered by approved layouts/approved subdivisions and not having previously sanctioned plan. It is submitted that the civil authorities can levy 14% open space contribution charges either at the time of regulation of the plot or at the time of applying for building permission. It is submitted that insistence on payment of open space contribution charges cannot be said to be illegal as the decision is meant to serve public cause at large and promote planned development of urban areas and protect the hygiene and environment so as to provide a better quality of life for the citizens.

7. Learned standing counsel submits that the petitioners have submitted LRS application for regularization of the site but due to

legal impediments, the applications filed under LRS 2020 were not processed and in the meantime, the Government of Telangana has issued Memo No.14148/PLG.III/2020 dated 30.12.2020 with guidelines to grant building permissions duly collecting the LRS fee and charges and to facilitate the citizens/builders so as to obtain building permission. It is submitted that the contention of the petitioners is that as he has already applied for regularization of the site under LRS-2020, fee and charges can be paid when the LRS file is considered and finalized in future. It is submitted that now, the petitioners are requesting to accord the building permission pending finalization of LRS application and as well as without payment of fee and charges since he is ready to submit undertaking to the effect that he will pay the requisite fee and charges at the time of finalization of LRS 2020.

8. Learned standing counsel submits that in spite of the cases pending in connection with LRS 2020 before the Hon'ble Apex Court, the Government has issued a memo dated 30.12.2020 and as per the said memo, the following guidelines are issued:

- i) Building permission for the applicants those who have applied under LRS-2020 can be considered after collecting the fee and charges as specified in LRS G.O.

- ii) Building permission for the applications those who have not applied under LRS-2020 can be considered duly collecting the 14% open charges basing on the present market value of the land but not on the market value mentioned in their document.

9. Learned standing counsel submits that the petitioners proposal was examined on the basis of the above guidelines and it is noticed that the registered documents submitted by the applicants are after the cutoff date specified in the LRS G.O and subsequent orders and therefore, the proposal comes under the second guideline of the Government memo. It is submitted that the petitioners building application was examined and they were informed to pay the requisite fee and charges including 14% open space charges on the present market value of the site. It is submitted that if the petitioners seek building permission, they shall pay the 14% open space contribution charges on the present market value as per the guidelines framed in the Government memo. It is submitted that there is no illegality or irregularity on the part of the respondents corporation in levying 14% open space contribution charges and they have acted in accordance with law as per the Government Memo dated 30.12.2020.

10. The Government has issued G.O.Ms.No.151 dated 02.11.2015 for regularization of unapproved and illegal layouts. As

per the said G.O, the cutoff date is mentioned as 28.10.2015 where the plots have been sold by registered sale deed on or before 28.10.2015. Thereafter, they have also fixed charges for regularizing the said layouts the said layouts. Further, the Government has issued another G.O i.e. G.O.Ms.No.131 dated 31.08.2020 wherein they have mentioned the cutoff date as 26.08.2020. This G.O has been issued by the Government as there are still many unapproved, illegal and unauthorized layouts and because of their deficiencies in infrastructure puts extra pressure on the local bodies but more importantly, puts the plot owners in such layouts at great inconvenience.

11. Thereafter, G.O.Ms.No.135 dated 16.09.2020 has been issued by the Government whereby the regularization charges were amended and also pro-rata open space charges and by virtue of this amendment, they have also amended Rule 8 (a) (ii) of Telangana Regularization of unapproved and illegal layout rules 2020 by “Pro-rata open space charges”: If 10% open space is not available in the unapproved layout, pro-rata open space charges @ 14% of the plot value prevailing as on the date of registration of such plot shall be paid. Thereafter, basing on the regularization made by the GHMC, the Government has issued a memo dated 30.12.2020 wherein the

procedure is prescribed for granting building permission in the following categories:

1. The plots/sites falling in unapproved/illegal layouts having documents registered on or before 26.08.2020 for which application filed under New LRS 2020 Scheme and applied for grant of building permissions, the building permissions in such cases can be processed duly collecting the fee/charges as per the LRS-2020 on submission of LRS-2020 acknowledgement receipt by the applicant in the respective building application.
2. The plots/sites falling in unapproved/illegal layouts having documents registered on or before 26.08.2020 for which applications not filed under New LRS 2020 scheme, the building permissions can be processed duly collecting basic penalization charges as per LRS-2020 and 33% compounding fee on the same plus open space contribution charges (14%) on the present market value of the site/plot applied for building permission.”

12. In this case, the petitioners are represented by their GPA holder and this writ petition is filed by the GPA holder stating that the 1st petitioner has purchased the property in the year 2001 and she has gifted part of the petition schedule property to her sons i.e. petitioner Nos.2 and 3 in the year 2021 and all of them have executed the Development Agreement-cum-Irrevocable General Power of Attorney in his favour. The mother of the 1st petitioner has made an

application for regularization of her plots in pursuance of G.O.Ms.No.151 dated 02.11.2015 and in pursuance of G.O.Ms.No.131, dated 31.08.2020, she has made another application under layout regularization scheme, 2020 and both the applications are pending for the entire extent of land. In that backdrop, a perusal of the memo issued by the Government, as per first clause, the plots/sites having documents registered on or before 26.08.2020 for which application filed under New LRS 2020 Scheme and applied for grant of building permission, the building permissions in such cases can be processed duly collecting the fee/charges as per the LRS-2020 on submission of LRS-2020 acknowledgement receipt by the applicant in the respective building application and whereas, as per the second clause, the plots/sites falling in unapproved/illegal layouts having documents registered on or before 26.08.2020 for which applications not filed under New LRS 2020 scheme, the building permissions can be processed duly collecting basic penalization charges as per LRS-2020 and 33% compounding fee on the same plus open space contribution charges (14%) on the present market value of the site/plot applied for building permission.

13. The 1st petitioner has purchased the property way back in the year 2001 and she has already applied for the regularization of the entire extent under both the schemes of LRS 2015 and LRS 2020.

Now, by virtue of the gift deed and Development Agreement that are executed by her, still those plots were already part of the applications that have already been made under the regularization scheme. In view of the same, the case of the petitioners will fall under Clause 1 of the said memo as in respect of the same, already an application under LRS 2020 is pending. As already, the entire land is pending consideration for the LRS, now the respondents basing on a Development Agreement-cum-Irrevocable General Power of Attorney or the gift deed cannot consider it under Clause 2 wherein, it deals with the applications not filed under New LRS 2020 scheme.

14. In view of the same, the writ petition is allowed directing the respondents to consider the petitioners building application by collecting fees/charges as per LRS 2020 scheme on submission of LRS-2020 acknowledgement receipt by the applicant in the respective building application. There shall be no order as to costs.

The Miscellaneous Applications, if any shall stand automatically closed.

LALITHAKANNEGANTI,J

24th January, 2023
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