

HONOURABLE SRI JUSTICE B. VIJAYSEN REDDY

WRIT PETITION No.44677 OF 2022

ORDER:

This writ petition is filed to declare action of respondent No.2- Commissioner of Police, Rachakonda, in not disposing of the application of the petitioner dated 25.08.2022 for grant of 'No Objection Certificate (NOC)' for construction of multiplex theatre and shopping mall in Survey Nos.36/1/1, 36/1/2, 37, 37/1/1/1, 37/1/2, 38/1/1/1 and 38/1/2, admeasuring 8903.01 sq. meters, of Narapally Village, Ghatkesar Mandal, Medchal-Malkajgiri District, in terms of Rule 8B of the Telangana Cinemas (Regulation) Rules, 1970 (for short, 'the Rules'), as illegal, arbitrary and violative of Articles 14 and 19 of the Constitution of India, and to consequently direct respondent No.2 to dispose of the said application of the petitioner.

2. The petitioner is a registered partnership firm consisting of two partners namely M/s. Sensation Infracon Private Limited and M/s. Vijetha Infra Projects. The petitioner entered into development agreement with the landowners-respondent Nos.6 to 18 *vide* development agreement-cum-GPA bearing document No.7375 of 2019 dated 12.07.2019 in respect of the land to an extent of Ac.1.00 in Sy.Nos.38/1/2, 38/1/1/1, 37/1/2 and 37/1/1/1, and the development agreement-cum-GAP bearing document No.9822 of 2019 dated

11.09.2019 in respect of the land admeasuring Ac.1.08 guntas in Sy.Nos.36/1/2, 38/1/1, 36/1/1 and 36/1/1. As per the terms of the said development agreements, the sharing ratio between the petitioner and the landowners is 60:40. That in terms of the said development agreements, the petitioner made an application to respondent No.2 on 25.08.2022 for grant of NOC under Rule 8 of the Rules. The said application was forwarded to respondent Nos.3 to 5 for report *vide* proceedings dated 12.09.2022. The grievance of the petitioner is that when they approached the authorities seeking information about the status of their application, they were informed to get NOC from the landowners and their application is kept pending without approval in terms of the provisions of Rule 8 of the Rules.

3. Heard Mr. T. Bala Mohan Reddy, learned counsel for the petitioner, learned Assistant Government Pleader for Home appearing for respondent Nos.1 and 2, learned Assistant Government Pleader for Revenue appearing for respondent No.3, learned Assistant Government Pleader for Medical & Health appearing for respondent No.4, Mr. V. Narasimha Goud, learned Standing Counsel appearing for respondent No.5, Mr. T. Venkat Reddy, learned counsel appearing for respondent Nos.6 to 18 and Mr. G. Shashidhar Reddy, learned counsel appearing for respondent No.19.

4. Learned counsel for the petitioner submitted that in the capacity of GPA holder under the aforesaid two registered documents, the petitioner submitted application for NOC, as such, there is no requirement to get NOC from the landowners. If there is any dispute between the landowners and the petitioner-developer, the appropriate remedy lies before the civil court. The said two registered documents give absolute rights to the petitioner-developer to act on behalf of the landowners, as such, there is a consent from the landowners, and not only that, the petitioner is given irrevocable rights to develop the property by constructing a multiplex theatre. So long as the two development agreements are in force, the petitioner cannot be restrained to pursue the application for NOC submitted on behalf of the landowners. Learned counsel further submitted that the application for NOC has to be disposed of within a period of 45 days, and if such application is not disposed of within such time, the petitioner is entitled to proceed with the development under deemed permission clause. However, as huge multiplex is being proposed to be constructed, the petitioner did not want to take any risk and wanted a regular permission to be obtained.

5. Mr. T. Venkat Reddy, learned counsel appearing for landowners-respondent Nos.6 to 18, submitted that the petitioner did

not adhere to the terms and conditions of the said two development agreements and necessary legal steps are being taken to cancel the said agreements. Learned counsel also submitted that the landowners have issued legal notice dated 26.07.2022 to the petitioner firm cancelling the two registered development agreements and the petitioner got issued reply dated 03.09.2022 to the legal notice issued by the landowners.

6. Mr. G. Shashidhar Reddy, learned counsel appearing for respondent No.19, submitted that it was respondent No.19 who negotiated the deal with the landowners, however, ignoring his interest, the petitioner is proceeding with the construction. The rights of respondent No.19 would be adversely affected if any orders are passed by this Court.

7. In response thereto, learned counsel for the petitioner submitted that the dispute if any between the petitioner and respondent No.19 has to be adjudicated before an Arbitrator in terms of clause 15 of the partnership deed dated 18.05.2019. So also the learned counsel states that unless there is any prohibitory or injunction order passed by the civil court, the police or HMDA cannot keep the application of the petitioner in abeyance for an indefinite period.

8. Learned Assistant Government Pleader for Home, based on the written instructions, submitted that as per sub-Rule (c) of Rule 8B of the Rules, applicant should be in lawful possession of the subject site. The MOU entered with the landowners was cancelled and there is dissolution of firm.

9. It is stated by the learned counsel for respondent No.19 that notice has been issued by respondent No.19 for dissolution of partnership firm.

10. As seen from the record, a notice has been issued by the landowners to the petitioner cancelling the development agreements, but so far no order is passed by the Court. Mere issuance of notices cannot be treated as cancellation of the development agreements-cum-GPA or the dissolution of partnership firm. As of now, it is not in dispute that there are no prohibitory orders or restraint orders passed by any civil court. Thus, the contention of respondent No.2 that the applicant-petitioner is not in lawful possession of the subject site is without any legal basis. The petitioner claims to be in possession of the subject property on the strength of two registered development agreements-cum-GPA. However, this Court is not the forum for adjudication of the disputes if any between the landowners and the partners of the petitioner firm.

11. In the circumstances, the writ petition is disposed of directing *status quo* to be maintained for a period of four (04) weeks from today. Within this time, the landowners-respondent Nos.6 to 18 and respondent No.19 are given liberty to approach the Civil Court/Arbitrator/Commercial Court, as the case may be, by filing a suit or petition under Section 9 of the Arbitration and Conciliation Act, 1996, and seek interim orders against the petitioner. It is made clear that such suits/applications, if any filed, shall be decided on merits without being influenced by any of the observations made in this order. If there is no injunction/interim order passed by the Civil Court or Commercial Court in favour of the unofficial respondents or that the unofficial respondents have not approached the Civil Court/Commercial Court, then respondent No.2 shall consider the application of the petitioner for grant of NOC for construction of multiplex theatre in the subject property, within a period of two (02) weeks from the date of reminder that may be submitted by the petitioner.

As a sequel thereto, miscellaneous applications, if any, pending in the writ petition stand closed. No order as to costs.

B. VIJAYSEN REDDY, J