

THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH,
AT: HYDERABAD

W.P.No.

OF 2008

Between:-

1.M/s. Mehta & Modi Homes, rep. by its Managing Partner,
Soham Modi S/o Satish Modi, aged about 36 years,
having its office at 5-4-187/3 & 4, III Floor, Soham
Mansion, MG Road, Secunderabad.

2.Ms. Hetal K.Parikh D/o Mr.Krishna Kanth S. Parikh, aged about
years, R/o 5-4-187/3 & 4, III Floor, Soham Mansion, MG
Road, Secunderabad.

3.Pravesh B.Parikh S/o Bharat S Paarikh, aged about years,
R/o 5-4-187/3 & 4, III Floor, Soham Mansion, MG Road,
Secunderabad.

4.Piyush J Paarikh S/o Jagadish S Parikh, aged about years,
R/o 5-4-187/3 & 4, III Floor, Soham Mansion, MG Road,
Secunderabad.

...Petitioners

And

1.The Hyderabad Urban Development Authority, rep.
by its Vice Chairman, Begumpet, Hyderabad.

2.The State of A.P. rep. by its Principal Secretary, Revenue
Department, Secretariat, Hyderabad.

3.The State of A.P. rep. by its Principal Secretary, Municipal
Administration, Secretariat, Hyderabad.

...Respondents

AFFIDAVIT FILED BY THE PETITIONER

I, Soham Modi S/o Satish Modi, aged about 36 years, R/o 5-4-187/3 & 4,
III Floor, Soham Mansion, MG Road, Secunderabad, do hereby solemnly affirm
and sincerely state on oath as follows: --

1. I am the Managing Partner of the 1st petitioner herein and as such I am well
acquainted with the facts of the case. I am authorised to swear this affidavit on
behalf of the other petitioners also.

2. I submit that the 1st petitioner is a Partnership Firm and is the owner and
possessor of an extent of ~~107-287~~ guntas in Sy.No.31, 40/P, 41/P, 42, 44, 45 and



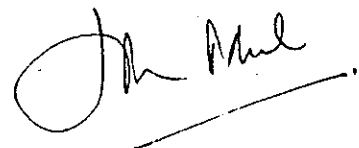
55 of Charlapalli village, Ghatkesar Mandal, Ranga Reddy District. Similarly petitioners 2 to 4 are the owners and possessors of land admeasuring 16.1109 guntas in Sy.No.45 of Charlapalli village, Ghatkesar Mandal Ranga Reddy District. All the petitioners have purchased their respective extents vide registered sale deeds.

3. I further submit that the petitioners have made an application for permission for development of land group housing scheme layout (Gated community) in Sy.No.31,40(p), 41(p), 42,44,45 and 55 of Charlapalli village, Ghatkesar Mandal, Ranga Reddy District for residential purposes vide application dated 26-2-2007 under section 14 of the A.P. Urban Area (Development) Act, 1975. I submit that the Department has issued letter No.2698/MP2/PLG./H/2007 dated 27-10-2007 informing the petitioners to pay Rs.36,94,332/- towards development charges under section 27 and 29 of the A.P. Urban Area (Development) Act, 1975 read with G.O.Ms.No.439 M.A. dated 13-6-2007 and also towards processing charges, publication charges and layout charges. A condition was also imposed that plot No.314 to 317 extent 1081.3 sq. yards was to be mortgaged to Hyderabad Urban Development Authority as shown in the plan. The petitioners have paid the said amount of Rs.36,94,332/- by way of challana dated 13-11-2007.

4. I submit that the 1st respondent has imposed a condition NO.1 for release of draft layout that a no objection certificate has to be submitted from the Collector for conversion of land into non-agricultural purpose as per A.P. Agricultural lands Act (conversion for non-agricultural purposes) Act, 2006 notified vide GOMs.NC.439 M.A. dated 19-10-2006. I submit that this action of the 1st respondent in imposing such a condition is challenged in this writ petition as the same is illegal, arbitrary and is liable to be declared so, on the following amongst other grounds:-

GROUNDS.

- i). The impugned condition is illegal, contrary to law and without any jurisdiction.
- ii). The 1st respondent failed to see that the provisions of the Act have got overriding effect on all other laws including the Andhra Pradesh Agricultural Land (Conversion for Non-Agricultural purposes) Act, 2006, hereinafter referred as the



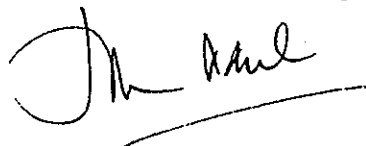
Agricultural lands Act, particularly in view of Section 57 (3) of the Act and therefore, no other permission or sanction is required under any other law and the Act is a code by itself so far as the land use and development in Urban areas is concerned and being special enactment, it will prevail over the general law relating the agricultural lands conversion under the Agricultural Land Act.

3. Power to levy and collect conversion fee:-

With effect on and from the date of commencement of this Act, every owner or occupier of agriculture land shall have to pay a conversion fee for non agricultural purposes at the rate of 10% of the basic value of the land in the areas as may be notified by the government from time to time.

iii). It is submitted that under Rule 4 (d) of the Agricultural Lands Rules, the competent authority i.e. Revenue Divisional Officer, shall take cognizance of the Master Plan and proposed conversion is objectionable or not. This rule says that the provisions of the Act shall have overriding effect and are binding on the authorities under the Agricultural Lands Act. No conversion is permissible contrary to the Master Plan and zoning Regulations under the Act and hence, the impugned condition is illegal.

iv). It is submitted that even before the act, the petitioners lands were not agricultural lands and they were earmarked for residential purposes. In view of section 13 of the Act, no land can be used for the purpose other than those earmarked under the development plans made under the Act and no such user will have serious consequences and subject to penalties under Section 41 and other actions under Chapter X of the Act. Further 'agricultural land' means the land used for agriculture. The Act, thus, refers to the actual user. Even before the act, they were not earmarked for agricultural purpose or used as such, the lands in Sy.Nos.31 and 42 are earmarked for residential use, 40 and 55 for residential part, 30.0 Mt. green belt park and Sy.No.34 and 41 for residential and Sy.No.40 for residential (major



part) and water based (small major part)). Further section 7 (e) of the Agricultural lands Act reads as follows:-

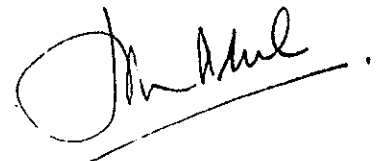
"7. Act not to apply to certain lands:-

Nothing in this Act shall apply to ...

(a) to (d)....

(e). Lands used for such other purposes as may be notified by the Government from time to time;" (emphasis supplied). Therefore, even otherwise, in view of the notification under the Act, the Agricultural lands Act has no application to the petitioners' lands and hence, the impugned condition is illegal.

5. It is submitted that the impugned condition is liable to be set aside for the aforesaid reasons. It is submitted that the petitioners are advised that they have merits in the writ petition. The petitioners have invested huge amount for the purpose of acquiring the lands and for the purpose of obtaining the change of land use under the Act and also towards conversion and development charges. The petitioners have developed the land spending crores of rupees and executed a mortgage in favour of the 1st respondent for 25% of the plotted area as per the terms and conditions of the layout. The petitioners have already sold the remaining plots to third party purchasers. The petitioners have changed their possession irretrievably and cannot collect any further amount from third parties. The petitioners have complied with all other conditions, except the impugned condition No.1 imposed by the 1st respondent in its letter No.2698/MP2/Plg/H/2005 dated 27-10-2007 and its, therefore entitled for the release of the final layout. The impugned action is ex-facie illegal and without jurisdiction and therefore, the petitioners have got prima facie case and balance of convenience for grant of the interim order. Since 25% plots are already mortgaged to the 1st respondent, the interest of the respondent, if any are fully secured. The petitioner will suffer seriously, if the interim order as prayed for is not granted.



6. The petitioners have no other alternate remedy except to approach this Honourable Court under Article 226 of the Constitution of India. The petitioners have not approached any court for the same relief, which is sought for in this writ petition.

7. It is necessary that the Honourable Court may be pleased to direct the 1st respondent to release the final layout, by suspending the condition No.1 imposed by the 1st respondent in their letter No.2698/MP2/Plg/H/2005 dated 27-10-2007 directing the petitioners to obtain No Objection Certificate" from the District Collector, as per A.P Agricultural Lands Act Rules, 2006 notified vide GOMs.No.439, Revenue, dated 13-6-2007, pending disposal of the writ petition in the interest of justice.

8. It is therefore prayed that the Honourable Court may be pleased to issue a writ of Mandamus or any other appropriate writ declaring the notice/letter of the 1st respondent in imposing condition No.1 in their letter No.2698/MP2/Plg/H/2005, dated 27-10-2007 directing the petitioners to obtain No Objection Certificate from the District Collector on per A.P Agricultural Lands Act, Rules, 2006 notified vide GOMs.No.439, Revenue dated 13-6-2007 as illegal, contrary to law, arbitrary and without any jurisdiction, and grant such other relief as it deems fit in the circumstances of the case.

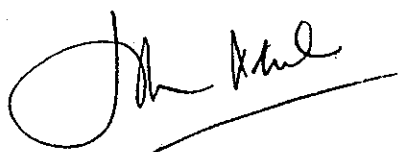
Sworn and signed before me on this the
31st day of January, 2008, at Hyderabad.


Deponent

Advocate, Hyderabad.

Verification Statement

I, Soham Modi S/o Satish Modi, aged about 36 years, R/o 5-4-187/3 & 4, III Floor, Soham Mansion, MG Road, Secunderabad, being the Managing Partner of the 1st petitioner herein, do hereby state that the facts mentioned in paragraphs 1 to 5 and grounds therein are true and correct to the best of my knowledge and belief and the facts mentioned in paragraphs 6 to 8 are true legal advice obtained from



my counsel and I believe the same to be true and correct. Hence,
verified to be true and correct on this the 31st day of January, 2008 at
Hyderabad.

Advocate


Deponent