

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

W.P.No.

OF 2009

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. Parish, D/o. Mr. Krishna Kanth S Parikh, aged about 40 years, R/o. 5-4-187/3 & 4, III Floor, Soham Mansion, MG Road, Secunderabad.
3. Pravesh B. Parikh, S/o. Bharat S Parikh, aged about 36 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 34 years, R/o. 5-4-187/3 & 4, III Floor, Soham Mansion, MG Road, Secunderabad.

...Petitioners

And

1. The Hyderabad Metropolitan Development Authority, rep. by its Metropolitan Commissioner, GHMC Building, West Marredpally, Secunderabad.
2. The State of Andhra Pradesh, rep. by its Principal Secretary, Revenue Department, Secretariat, Hyderabad.
3. The State of Andhra Pradesh, rep. by its Principal Secretary, Municipal Administration Department, Secretariat, Hyderabad.

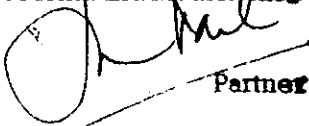
...Respondents

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 Partners of the 1<sup>st</sup> petitioner herein and as such I am well acquainted with the facts of the case. I am authorized to swear to this affidavit on behalf of the other petitioners also.

For Mehta and Modi Homes

  
Partner

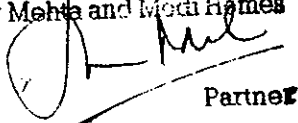
2. I submit that the 1<sup>st</sup> petitioner is a partnership firm and is the owner and possessor of an extent of Ac.7-28 ½ guntas in Sy.No.31, 40/P, 41/P, 42, 44, 45 and 55 of Charlapalli Village, Ghatkesar Mandal, Ranga Reddy District. Similarly petitioners 2 to 4 are the owners and possessors of land admeasuring Ac.1.09 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 1<sup>st</sup> 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 G.O.Ms.No.439, M.A., dated 19-10-2006.

5. I submit that the petitioners have challenged the action of the first respondent in imposing such a condition by way of writ petition

For Mehta and Modi Homes

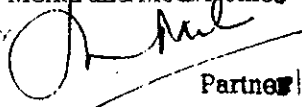
  
Partner

No.2286 of 2008 and this Honourable Court while admitting the said writ petition has granted interim direction to the respondents to release the layout without reference to condition No.1 in proceedings, dated 27.10.2007. The respondents pursuant to the orders of the Honourable Court have released the layout in respect of Ac.7-28 ½ guntas in Sy.Nos.31, 40(P), 41(P), 42, 44, 45 and 55 of Charlapalli Village, Ghatkesar Mandal, Ranga Reddy District. However, the layout could not be released in respect of Ac.1.09 guntas in Sy.No.45, Charlapalli Village due to certain technical difficulties. I submit that later on petitioners have submitted revised plans in respect of the balance area of Ac.1.09 guntas also showing them as additions in the proposed layout area. However, the respondents by letter, dated 20.12.2008 have required that the petitioners should submit No Objection Certificate from the Revenue Divisional Officer/Competent Authority for the extended area in the site for non-agricultural purpose as per Rules, 2006. I submit that the area for which layout is now being sought was also earmarked for residential purposes as early as in 2005 for residential purposes and the action of the respondents in demanding No Objection Certificate from the competent authority/Revenue Divisional Officer for the purpose of issuing layout is arbitrary and illegal on the following amongst others grounds: -

#### GROUNDS

- a) The impugned condition is illegal, contrary to law and without any jurisdiction.
  
- b) The 1<sup>st</sup> 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

For Mehta and Modi Homes

  
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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.

c) 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.

d) 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 net, they were not earmarked for agricultural purpose or used as such, the lands in Sy.Nos.31 and 42 & 45, 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: -

For Mehta and Modi Homes

  
Partner

Nothing in this Act shall apply to....

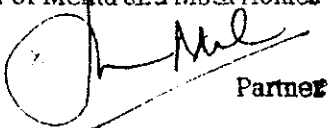
(a) to (d)

(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 amounts 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 1<sup>st</sup> 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 imposed by the 1<sup>st</sup> respondent in its letter No.2698/MP2/Plg./HMDA/2007, dated 28.01.2009 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 1<sup>st</sup> 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. I submit that the petitioners have issued a legal notice, dated 01.01.2009 to the respondents requesting for release of the layout as they have filed Writ Petition No.2286 of 2008 in respect of the entire

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Partner

land, and however, the respondents by letter, dated 28.01.2009 have stated that the orders of the Honourable High Court are limited only to the extent of Ac.7.28 ½ guntas and as such the petitioners have to obtain a fresh No Objection Certificate with regard to the Ac.1.09 guntas of the balance land. Thus, the petitioners are constrained to file the present writ petition questioning the orders of the respondent passed in letter No.2698/MP2/Plg/HMDA/2007, dated 28.01.2009 requiring the petitioners to obtain No Objection Certificate from the competent Authority/Revenue Divisional Officer in respect of Ac.1.09 guntas in Sy.No.45 of Charlapalli Village, Ghatkesar Mandal, Ranga Reddy District. Under these circumstances, the petitioners are constrained to file the present writ petition.

7. 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.

8. It is necessary that the Honourable Court may be pleased to direct the 1<sup>st</sup> respondent to release the final layout without insisting on the No Objection Certificate from Revenue Divisional Officer/Competent Authority vide their letter No.2698/MP2/Plg/HMDA/2007, dated 28.01.2009 directing the petitioners to obtain No Objection Certificate from the District Collector, as per A.P. Agricultural Lands Act Rules, 2006 notified vide G.O.Ms.o.438, Revenue M.A., dated 13-6-2007, pending disposal of the writ petition.

9. 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 1<sup>st</sup> respondent in insisting on production of No Objection Certificate from the Revenue Divisional Officer/Competent Authority vide letter No.2698/MP2/Plg/HMDA/2007, dated 28.01.2009 directing the petitioners to obtain No Objection Certificate from the District Collector as per A.P. Agricultural Lands Act, Rules, 2006 notified vide G.O.Ms.No.438, Revenue dated 13.6.2007 as illegal, contrary to law, arbitrary and without any jurisdiction, and consequently direct the 1<sup>st</sup> respondent to release the final layout without insisting

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Partner

on the No Objection Certificate from Revenue Divisional Officer/Competent Authority vide their letter No.2698/ME2/Plg/HMDA/2007, dated 28.01.2009 directing the petitioners to obtain No Objection Certificate from the District Collector, as per A.P. Agricultural Lands Act Rules, 2006 notified vide G.O.Ms.o.438, Revenue M.A., dated 13-6-2007 and grant such other relief as it deems fit in the circumstances of the case.

Sworn and signed before me on this the 16<sup>th</sup> day of February, 2009, at Hyderabad.

For Mehta and Modi Homes



Partner

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 1<sup>st</sup> petitioner herein, do hereby state that the facts mentioned in paragraphs 1 to 6 and grounds therein are true and correct to the best of my knowledge and belief and the facts mentioned in paragraphs 7 to 9 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 16<sup>th</sup> day of February, 2009 at Hyderabad.

For Mehta and Modi Homes



Partner

Advocate

Deponent