HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH
(Special Original Jurisdiction)

WEDNESDAY, THE THIRTEENTH DAY OF AUGUST
TWO THOUSAND AND FOURTEEN

PRESENT

THE HON'BLE SRI JUSTICE A RAMALINGESWARA RAO
WRIT PETITION NO: 524 OF 2010

Between:

1. M/s. Gulmohar Residency, a Registered Partnership firm, having its office at 5-4-187/3&4, III Floor, Soham Mansion, M.G. Road Sec'bad, Rep. by its Partner Mr. Soham Modi, S/o. Satish Modi, 41 yrs, Occ: Business
2. Jade Estates, a Registered Partnership firm, having its office at 5-4-187/3&4, III Floor, Soham Mansion, M.G. Road Sec'bad, Rep. by its Partner Mr. Soham Modi, S/o. Satish Modi, 41 yrs, Occ: Business
3. M/s. Paramount Avenues Housing Private Ltd., a company, incorporated under companies Act 1956 having its registered Office at 5-4-187/3&4, IIIrd Floor, Soham Mansion, M.G. Road, Sec'bad, Rep. by its Gauranga Mody S/o. Jayantilal Mody 39 yrs, Occ: Business, R/o. Flat No. 105, Sapphire Apartment
4. M/s. Modi Estates a Registered Partnership firm, having its office at 5-4-187/3&4, IIIrd Floor, Soham Mansion, M.G. Road, Sec'bad, Rep. by its Partner Mr. Soham Modi, S/o. Satish Modi, 41 yrs, Occ: Business

.....PETITIONERS

AND

1. Greater Hyderabad Municipal Corporation, Rep. by its Commissioner, Tank Bund, Hyderabad
2. The Chief City Planner, Greater Hyderabad Municipal Corporation Tank Bund, Hyderabad
3. Nuclear Fuel Complex , Rep. by Chief Executive a Production unit of Department of Atomic Energy, Mallapur, Kapra, Hyderabad

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased issue writ of Mandamus or any other appropriate writ or order or direction declaring the action of the respondents 1 and 2 in requiring No Objection Certificate from the third respondent for grant of construction permission to the petitioner in respect of lands in Sy.No. 19 Mallapur Village, GHMC Kapra Circle, Uppal Mandal, Hyderabad , Ranga Reddy District as arbitrary illegal, and violative of Hyderabad Revised Building Rules, 2006 and consequently direct the respondents 1 and 2 to consider and grant construction permission of the petitioners without insisting on the NOC from the 3rd respondent

WPMP NO. 643 OF 2010

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the writ petition, the High Court may be pleased to direct the respondents to consider the construction application of the petitioners vide T.P. No. 500/CSC/TP-1/EZ/2009 dt. 11-6-2009 afresh without

insisting on the No Objection Certificate from the third respondent pending disposal of the writ petition

WPMP NO. 13621 OF 2014

Between

1. M/s. Gulmohar Residency, a Registered Partnership firm, having its office at 5-4-187/3&4, IIIrd Floor, Soham Mansion, M.G. Road Sec'bad, Rep. by its Partner Mr. Soham Modi, S/o. Satish Modi, 41 yrs, Occ: Business
2. Jade Estates, a Registered Partnership firm, having its office at 5-4-187/3&4, IIIrd Floor, Soham Mansion, M.G. Road Sec'bad, Rep. by its Partner Mr. Soham Modi, S/o. Satish Modi, 41 yrs, Occ: Business
3. M/s. Paramount Avenues Housing Private Ltd., a company, incorporated under companies Act 1956 having its registered Office at 5-4-187/3&4, IIIrd Floor, Soham Mansion, M.G. Road, Sec'bad, Rep. by its Gauranga Mody S/o. Jayantilal Mody 39 yrs, Occ: Business, R/o. Flat No. 105, Sapphire Apartment
4. M/s. Modi Estates a Registered Partnership firm, having its office at 5-4-187/3&4, IIIrd Floor, Soham Mansion, M.G. Road, Sec'bad, Rep. by its Partner Mr. Soham Modi, S/o. Satish Modi, 41 yrs, Occ: Business

.....PETITIONERS

AND

1. Greater Hyderabad Municipal Corporation, Rep. by its Commissioner, Tank Bund, Hyderabad
2. The Chief City Planner, Greater Hyderabad Municipal Corporation Tank Bund, Hyderabad
3. Nuclear Fuel Complex , Rep. by Chief Executive a Production unit of Department of Atomic Energy, Mallapur, Kapra, Hyderabad

...RESPONDENTS

4. The District Collector, Ranga Reddy District at Lakdikapool, Hyderabad

.....PROPOSED RESPONDENT

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the writ petition, the High Court may be pleased to permit the petitioners herein to implead The District Collector, Ranga Reddy District at Lakdikapul, Hyderabad as Respondent No.4 in the Writ Petition No.524 of 2010 and its Miscellaneous Application therein

Counsel for the Petitioner:SRI .PRABHAKAR PERI

Counsel for Respondent Nos.1&2 : SMT A.DEEPTHI (S.C FOR GHMC)

Counsel for Respondent No.3 : SRI B.NARAYANA REDDY (ASST SOL GEN)

The Court made the following: ORDER

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.524 of 2010

ORDER:

Heard Sri Vedula Venkataramana, learned Senior Counsel appearing on behalf of the petitioners, and the learned Standing Counsel for respondent Nos.1 to 3.

The first petitioner is the owner of land admeasuring Acs.4.04 guntas in Survey No.19 (P) of Mallapur Village, GHMC Kapra Circle, Uppal Mandal, Ranga Reddy District, and the second petitioner is the owner of an equal extent of land in the same survey number. The land of the first and second petitioners is adjacent to each other. The third and fourth petitioners are the developers, who entered into separate development agreements with the second and the first petitioners respectively. They wanted to construct a residential apartment complex comprising two cellars, stilt plus five upper floors in five blocks. All the petitioners jointly submitted proposals to the first respondent for construction of residential buildings consisting of two cellars, stilt plus five upper floors in five blocks i.e., A, B, C, D and E, vide file No.1404/CSC/TP-1/EZ/2008 dated 10.12.2008 by paying the required processing fee. Thereafter, the second respondent issued a letter bearing No.1404/CSC/TP-1/EZ/2008/684 dated 12.03.2009, raising 14 objections and refused the permission and returned the plans unapproved. One of the objections is that the site is located adjacent to the Nuclear Fuel Complex Campus, and as it comes under the Ministry of Defence, it requires clearance from the concerned department as required under building byelaws. The petitioners complied with all the other 13

objections, except obtaining the No Objection Certificate from the Nuclear Fuel Complex, and submitted an application afresh on 11.06.2009. They also submitted a letter dated 29.06.2009 stating that the Nuclear Fuel Complex does not have any authority to issue the No Objection Certificate as required by the first respondent. It appears that the first respondent addressed a letter to the third respondent calling for the remarks/opinion from the third respondent on 10.08.2009. Thereafter, the first respondent issued letter No.0500/CSC/TP-1/EZ/2008/2786 dated 10.11.2009 to the first petitioner returning the proposals unapproved/refused without any sanction, on the ground that the NFC authorities had not issued clearance for construction of high rise building residential complex in the NFC premises. Challenging the same, the present Writ Petition is filed.

The first respondent, while rejecting the application of the petitioners for building permission, stated in the impugned order dated 10.11.2009 that the site was inspected and it was observed that the proposed site was located very adjacent to the NFC Atomic Energy Department, and clearance is required as per clause (3)A of the revised common Building Rules issued vide G.O.Ms.No.86 dated 03.03.2006 from the Defence Department.

The third respondent filed a separate counter affidavit stating that during the visit of Director General, Central Industrial Security Force (CISF) in 1999, while reviewing the security arrangement of the third respondent organization, it was noted that a large number of slum dwellers had settled down in the lands adjacent to the third respondent organization compound wall, towards western side of their organization's administrative building. Keeping in view the

terror threats faced by the country and sensing the seriousness of the security of the plant which houses and operates strategic and critical plant/equipment, it was felt absolutely necessary to create an exclusion zone by erecting another fencing at a distance of 15 to 20 meters outside the present compound wall so that no inhabitation takes place in the area. In pursuance thereof, the third respondent addressed a letter on 24.02.1999 requesting the District Collector to examine the feasibility of creation of exclusion zone up to 20 meters outside the boundary wall of NFC so that NFC would be able to erect one more boundary in that exclusion zone for security reasons. The matter was taken up with the concerned authorities of the State Government and they are yet to declare the exclusion zone of 20 meters around the compound wall of the third respondent's organization. No final decision has been taken so far.

There is no Rule (3)A in G.O.Ms.No.86 dated 03.03.2006. Learned Senior Counsel appearing for the petitioners submits that if at all any objection had to be raised, it has to be only in relation to Rule 5(d) of the Hyderabad Revised Building Rules, 2006, which reads as follows:-

> "For Building activity within the restricted zone near the airport or within 500m distance from the boundary of Defence areas/Military establishments, necessary clearance from the concerned Airport Authority/Defence Authority shall be obtained. For sites located with the Air Funnel zone, prior clearance from the Airport Authority shall be obtained."

The said Rule does not contain restriction of construction of building activity in the vicinity of any Atomic Energy establishment, and the Nuclear Fuel Complex does not come under the Ministry of Defence and it is not a defence area/military establishment.

Learned Senior Counsel fairly submits that even if any restriction is placed, such a restriction should find place in the relevant Rules, and though the land of the petitioners is adjacent to the third respondent's land, the restriction on the development of the land amounts to deprivation of the property, and unless, action is taken in accordance with the provisions of any enactment, a private citizen cannot be restrained from developing the property.

Learned Senior Counsel appearing for the petitioners further submits that the proposed building is less than 18 meters and it may not pose a threat to the third respondent. However, the threat perception had to be perceived by the third respondent and necessary measures have to be taken by the third respondent by protecting its establishment within its boundary wall. But, in order to protect the third respondent, the rights of the private citizens cannot be affected save by operation of law.

If the exclusion zone of 20 meters is created and the land of the petitioners also comes within the said zone, the respondents should necessarily take steps for acquisition of that land in accordance with the provisions of the Land Acquisition Act. Since, no final decision has been taken, it is for the third respondent to create a buffer zone within its boundary at a distance of 20 meters from the compound wall within the site of the third respondent. Beyond the compound wall, if the authorities want to take any action, they have to take action in accordance with law only. In the absence of any Rule, excluding the construction activity beyond 20 meters of the compound wall of the third respondent, the insistence of No Objection Certificate from the third respondent is unwarranted. Learned Standing Counsel for the first respondent is not able to show

any Rule prohibiting the construction of the building within the 20 meters area of the compound wall of the third respondent.

In the circumstances, the first respondent is directed to consider the building permission application of the petitioners dated 11.06.2009 in accordance with law without insisting for a No Objection Certificate from the third respondent, and the said exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

The Writ Petition is, accordingly, allowed. The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

That Rule Nisi has been made absolute as above. Witness the Hon'ble SRI KALYAN JYOTI SENGUPTA, the Chief Justice on this Wednesday, The Thirteenth day of August, Two Thousand and Fourteen.

Sd/-M.VIJAYA BHASKAR
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1 The Commissioner, Greater Hyderabad Municipal Corporation, Tank Bund, Hyderabad
2 The Chief City Planner Greater Hyderabad Municipal Corporation,Tank Bund, Hyderabad
3 The Chief Executive, Nuclear Fuel Complex , a Production unit of Department of A tomic Energy, Mallapur, Kapra, Hyderabad
4 One CC to Sri, Advocate Peri Prabhakar , High Court of Judicature at Hyderabad (OPUC)
5 One CC to Sri Nagesh Bheemapaka (SC for GHMC) Advocate, High Court of Judicature at. Hyderabad (OPUC)
6 One CC to Sri B.Narayana Reddy (ASST.SOL.GEN.) Advocate, High Court of Judicature at Hyderabad (OUT) .
7 One CC to Smt. K.Rajitha, Advocate, High Court of Judicature at Hyderabad (OPUC)
8 Two CD Copies

mbs

HIGH COURT

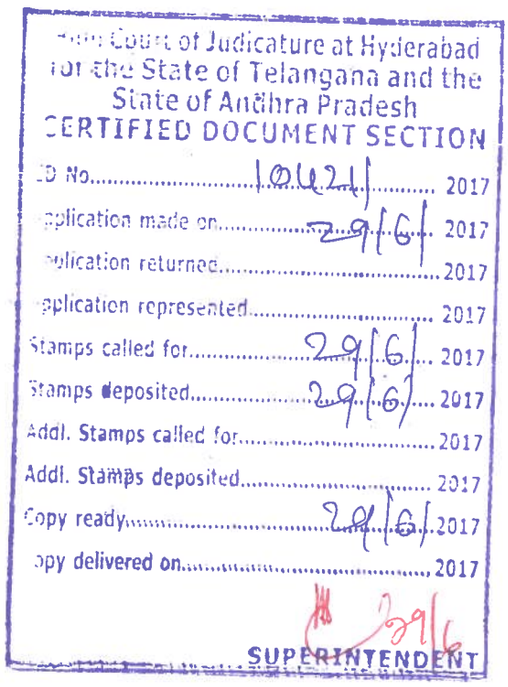
ARLR,J

DATED:13/08/2014

C.D. 10421/17
W.P. 524/10
Prabhakar Peri
14-00
14-00 Lg.

ORDER

WP.No.524 of 2010



ALLOWING THE WRIT PETITION
WITHOUT COSTS

ASM
25/8/14