

IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

THURSDAY, THE EIGHTEENTH DAY OF AUGUST
TWO THOUSAND AND ELEVEN

:PRESENT:

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION NO: 22770 of 2011

Between:

M/s.Vista Homes, A partnership firm rep.by its Managing partner Sri Soham
Modi, Having its office at 5-4-187/3&4, Soham Mansion, M.G.Road,
Secunderabad

..... PETITIONER

AND

1. The Greater Hyderabad Municipal Corporation, rep.by its Commissioner,
Tank Bund, Hyderabad
2. The Chief City Planner, Greater Hyderabad Municipal Corporation,
3. The Building Committee of Greater Hyderabad Municipal Corporation,
rep.by the Chief City Planner, GHMC, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the Hon'ble High Court may be pleased to issue writ or order or direction more particularly one in the nature of writ of mandamus declaring the action of the respondents particularly the action of the 3rd respondent in returning building plan proposals with present file No.36678/11/10/2010 with its earlier file Lr.No.0461/CSC/TP01/EZ/2010 dated 1.7.2010 and Lr.No.0617/CSC/TP-1/EZ/2009 dated 29.7.2009 submitted by the petitioner vide its decision dated 17.6.2011 as communicated by the 2nd respondent vide letter No.36678/11/10/2010/2378 dated 16/27-7-2011 as illegal, arbitrary, absurd, unjust, malafide and against the constitutional guarantees and the principles of natural justice and to consequently direct the respondents to approve the building plan application of the petitioner with present file No.36678/11/10/2010 with its earlier file Lr.No.0461/CSC/TP01/EZ/2010 dated 1.7.2010 and Lr.No.0617/CSC/TP-1/EZ/2009 dated 29.7.2009 forthwith.

W.P.M.P.No.27838 of 2011 :

Petition under Section 151 of CPC praying that in the circumstances stated in the affidavit filed therewith, the High Court will be pleased to pass an interim order directing the respondents to approve the building plan approvals with present File No.36678/11/10/2010 with its earlier file Lr.No.0461/CSC/TP01/E2/2010 dated 01/07/2010 and Lr.No.0617/CSC/TP-1/E2/2009 dated 29/07/2009 forthwith, pending disposal of the above writ petition.

Counsel for the Petitioner :SRI. K.SARVA BHOUMA RAO

Counsel for the Respondents : SRI C.DAMODAR REDDY, SC FOR
G.H.M.C

The Court made the following ORDER

ORDER:

This Writ Petition is filed for a Mandamus to declare the action of respondent No.3 in returning proposals of the petitioner for approval of building plan, vide his letter No.36678/11/10/2010/2378, dated 16/27.07.2011, as illegal and arbitrary.

A perusal of the impugned letter would show that the building application filed by the petitioner for permission to construct A to H blocks with cellar and stilt for parking + five floors in Sy.Nos.193 to 195 of Kapra, Keesara Mandal, Ranga Reddy District, was returned ^{for compliance} with three conditions namely (1) that under Rule-10.7C a through access of 9 meters width is to be developed on one side at the periphery for the convenience of accessibility of other sides; that by the analysis of O.S.R.T photographs, it is observed that there is a requirement of connectivity to rear side lands and therefore, the committee has desired to call for a revised plan showing provision of 9 meters wide peripheral road; (2) that the petitioner should submit topo detailed plan showing the 'nala' position; and (3) that the petitioner shall obtain No Objection Certificate from the revenue authorities as the site is surrounded by the Government lands and burial ground.

Even though the petitioner has seriously questioned the wisdom of the respondents in stipulating condition No.1 supra relating to providing access of 9 meters wide road, it has eventually reconciled

itself having realized that the said condition is in conformity with Rule-10.7C of the extant rules.

At the hearing, Sri Sarvabhōma Rao, learned counsel for the petitioner, submitted that his client is willing to provide the access as stipulated in the first condition and that it will submit a revised plan. As regards the second condition, the learned counsel submitted that his client has no objection even for complying with the same by submitting a topo detailed plan showing the 'nala' position. Learned counsel, however, seriously questioned the third condition relating to submission of No Objection Certificate.

Learned Standing Counsel for the Greater Hyderabad Municipal Corporation, representing the respondents, is unable to place reliance on any provision under the Greater Hyderabad Municipal Corporation Act, 1955 or the Rules made thereunder stipulating production of such No Objection Certificate from the revenue authorities. As held by this Court in *Hyderabad Potteries Private Limited V. District Collector, Hyderabad*¹ and *K.Pavan Raj, V. Municipal Corporation of Hyderabad*² the respondents are only entitled to examine the *prima facie* title of the person who seeks building permission and that the applicants are under no obligation to produce such No Objection Certificate. In view of this settled legal position,

¹ 2001(3) ALD 600

² 2008(1) ALD 792

the third condition relating to production of No Objection Certificate cannot be sustained and the same is accordingly set aside.

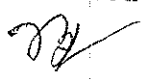
In the premises as above, the petitioner is permitted to resubmit its application by complying with condition Nos.1 and 2 supra, and within one month from the date of receipt of such application, the respondents shall take a decision in accordance with law and communicate the same to the petitioner.

With the above directions, the Writ Petition is disposed of.

As a sequel to disposal of the Writ Petition, W.P.M.P.No.27838 of 2011 filed by the petitioner for interim relief is disposed of as infructuous.

SD/-S. SAMMAIAH CHARY
ASSISTANT REGISTRAR

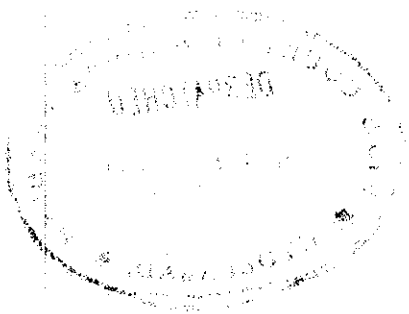
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SECTION OFFICER

To

1. The Commissioner, Greater Hyderabad Municipal Corporation, Tank Bund, Hyderabad
2. The Chief City Planner, Greater Hyderabad Municipal Corporation,
3. The Chief City Planner, Building Committee of Greater Hyderabad Municipal Corporation, GHMC, Hyderabad.
4. Two CD Copies
5. One CC to SRI. K.SARVA BHOUMA RAO Advocate [OPUC]
6. One CC to Sri C.Damodar Reddy, SC for GHMC Advocate (OPUC)

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HIGH COURT

DATED:18/08/2011

ORDER

WP.No.22770 of 2011

And

W.P.M.P.NO.27838 OF 2011



Disposing of the W.P and the W.P.M.P
As infructuous without costs.

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