

IN THE HIGH COURT FOR THE STATE OF TELANAGANA
AT HYDERABAD

W.P. No. OF 2022

Between

Mehta & Modi Realty (Thimmapur) LLP,
Rep. by its Managing Partner, Soham Modi,
S/o. Late Satish Modi, R/o.5-4-187/3&4,
Soham Mansion, M.G. Road, Secunderabad-500003.

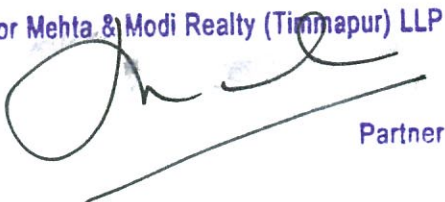
...Petitioner.

AND

1. State of Telangana rep by
Principal Secretary, Municipal Administration and
Urban Development Department,
Secretariat Hyderabad.
2. Hyderabad Metropolitan Development Authority,
Rep. by its Metropolitan Commissioner,
Hyderabad.
3. Kothur Municipality,
Rep. by its Commissioner,
Kothur Mandal, Ranga Reddy District.
4. Union of India,
Represented by its Secretary,
Ministry of Environment, Forest & Climate Change,
New Delhi.

...Respondents

For Mehta & Modi Realty (Thimmapur) LLP



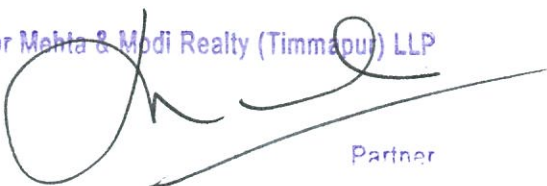
Partner

AFFIDAVIT

I, Soham Modi, S/o. Late Satish Modi, aged 50 Years, Occ: Business, R/o.5-4-187/3&4, Soham Mansion, M.G. Road, Secunderabad-500 003, do hereby solemnly affirm and state on oath as follows:

1. I am the Managing Partner of the Petitioner Firm and as such well acquainted with the facts of the case.
2. I submit that the Petitioner is filing the present Writ Petition questioning the rejection letter in File No.003213/ BP/HMDA/0583/SMD/2022, dated 12.07.2022 whereby the application filed by the Petitioner Firm in File No. No.003213/BP/HMDA/0583/SMD/2022, dated 25.03.2022, made for permission to construct a Cellar + Ground + 4 Upper Floors in land situated at Survey No.199, Timmapur Village, Kothur Mandal, Ranga Reddy District in a plot area of 14467.88 Sq. Meters proposing to construct a built up area of 38427.18 Sq. Meters was rejected on totally unsustainable grounds as arbitrary, illegal and in violation of the existing rules and norms.
3. I submit that the Petitioner Firm is the owner of the land admeasuring Ac.3-24 guntas forming part of Survey No.199, Timmapur

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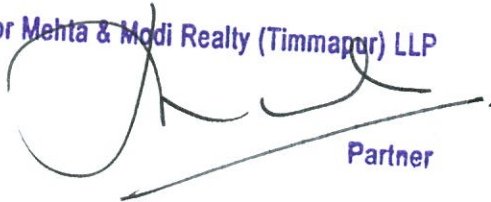
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Village, Kothur Mandal and Grampanchayath, Ranga Reddy District having purchased the same from its earlier owners under registered sale deed bearing doct.no.9507 of 2021, dated 17.12.2021 registered at the Sub-Registrar office, Shadnagar. It is further submitted that the Petitioner Firm has made an application dated 26.03.2022 for construction a residential building / apartment complex in a plot area as per drawing on 14417.88 Sq. Meters and with a built up area of 38427.18 Sq. Meters with one Cellar + Ground + 4 Upper Floors.

4. It is submitted that the 2nd Respondent herein vide TS-bPASS shortfall letter dated 04.04.2022 observed certain shortfalls as follows:

- i. To submit the documentary evidence from Kothur municipality regarding the proposed 60 ft road and confirmation letter from Kothur Municipality.
- ii. To submit the nala conversion certificate from RDO for the balance land, since earlier approval is accorded for Ac.2-38, now the proposal is submitted for Ac.3-23 Gts.
- iii. The applicant shall clarify that, in earlier approved plan the approach is shown at south west corner of site, now the entrance is showing through south east side.

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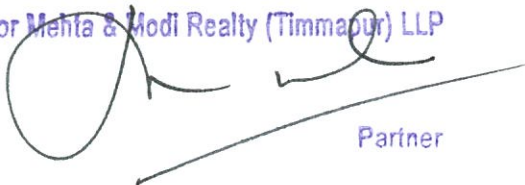
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- iv. To submit the revenue sketch duly showing the site u/r issued by concerned revenue authority.
- v. To submit the environmental clearance from SEIAA department.
- vi. To submit the revised drawing in accordance with SEIAA NOC, nala conversion, previous approved plan and confirmation letter from Kothur municipality regarding road.

5. It is submitted that, to this shortfall letter the Petitioner had submitted an explanation dated 15.06.2022 answering all the queries.

6. I submit that thereafter the 2nd Respondent has issued the impugned TS-bPASS Rejection letter in File No.003213/BP/HMDA/0583/SMD/2022 dated 12.07.2022 whereby the construction application was rejected on the ground that the Petitioner has not responded to the shortfall letter issued by the 2nd Respondent. It is submitted that the Petitioner has in fact issued an explanation letter dated 15.06.2022 which was not taken into consideration and orders were passed in a totally illegal manner. However, the Petitioner submits that the major objection regarding the application made by the Petitioner apart from the other objections is shortfall no.1(6). The other objections are already complied

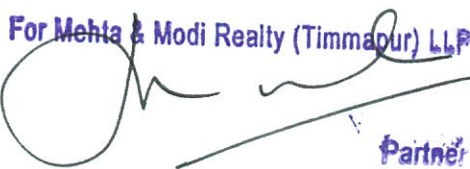
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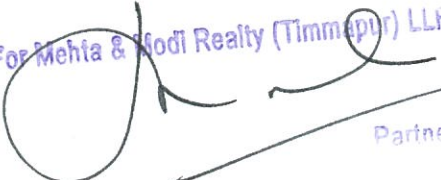
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as stated in the letter of explanation or will be complied in due course but in so far as objection of NOC from SEIAA is concerned it is submitted that the procedure for grant of Environmental Clearance ("EC") for construction of new projects or expansion or modernization of existing projects is governed by the **Environmental Impact Assessment Notification, 2006 ("EIA Notification, 2006")** issued by the Ministry of Environment and Forests, Government of India ("**MoEF**") under Section 23 of the Environment Protection Act, 1986 by way of S.O. No.1533 E dated 14th September, 2006.

7. This Notification classifies activities and industries in two categories. Category A includes those projects which require prior EC from the Central Government and its authorities. Category B includes those projects which require prior EC from the State level authority, i.e., the State Environment Impact Assessment Authority (SEIAA). As per the notification, EC is to be obtained before any construction or preparation of land by the project management. All activities ranging from new projects and/or expansion or modernization of existing projects etc would be categorized for permissions in a manner laid down in the EIA Notification, 2006.

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8. The Schedule to the EIA Notification, 2006 provides for a detailed list of projects or activities requiring prior EC as well as the threshold limit of the project for which prior EC would be required (“**Schedule**”). The Schedule also delineates activities into Category A or Category B on the basis of their threshold limit. Item No.8(a) of the Schedule pertains to ‘Building and construction Projects’ and threshold limit prescribed for the same was between 20,000 sq. mtrs and 1,50,000 sq. mtrs of built-up area. As per the EIA Notification, 2006, the Building and Construction Projects between 20,000 Sq. mtrs and 1,50,000 sq. mtrs of built-up area are classified as Category B, requiring prior EC from the SEIAA.
9. Thus, as on 14th September, 2006, a prior EC was to be obtained for Building and Construction Projects having more than 20,000 sq. mtrs of built-up area. The Ministry of Environment, Forest and Climate Change (“**MoEF&CC**”), Government of India, issued a notification to amend the EIA Notification, 2006 by way of S.O. No.3999 E dated 9th December, 2016. By way of this notification, Paragraph 14 was inserted in the EIA Notification 2006. As per Paragraph 14, the requirement of obtaining a separate prior EC was waived, **provided:**

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- a. The concerned State Government incorporated the objectives and monitorable environmental conditions given at Appendix XIV of the EIA Notification, 2006 in the approvals given for building construction by the local authorities.
- b. The local authorities made the said conditions legally enforceable.
- c. In such cases, the local authorities were required to follow specific procedures provided under this notification while granting building approvals.

10. Thus, as on 09.12.2016, the requirement of obtaining a prior EC for undertaking Building and Construction Projects was provisionally waived subject to the aforementioned conditions. The Ministry of Environment, Forest and Climate Change ("**MoEF&CC**"), Government of India, issued a notification being S.O. No.5736 E dated 15th November 2018 by way of which, the power to ensure compliance of environmental conditions (as specified in the Appendix to this Notification) was delegated to local bodies such as Municipalities, Development Authorities, District Panchayats etc ("**Local Authorities**") while

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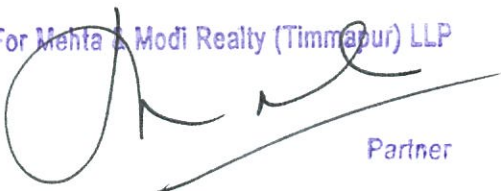
granting building approvals for projects with built up area between 20,000 sq.mtrs to 50,000 sq. mts.

11. Immediately after the notification dt.14.11.2018, the MoEF& CC issued a notification to amend the EIA Notification, 2006 by way of S.O. No.5736 E dated 15th November, 2018. By way of this notification, Paragraph 15 inserted by way of S.O. No.3999 E dated 9th December, 2016 was substituted as follows:

“14. Local bodies such as Municipalities, Development Authorities and District Panchayats, shall stipulate environmental conditions while granting building permission, **for the Building or Construction projects with built-up area_20,000 mtrs and <50,000 sq. mtrs** and industrial sheds, educational institutions, hospitals and hostels for educational institutions from built-up area – 20,000 sqm to <1,50,000 sqm as specified in Notification S.O. 5733(E) dated 14th November, 2018”.

12. Further, the threshold limit for Building and Construction Projects requiring prior EC was increased to projects between 50,000 sq.mtrs and

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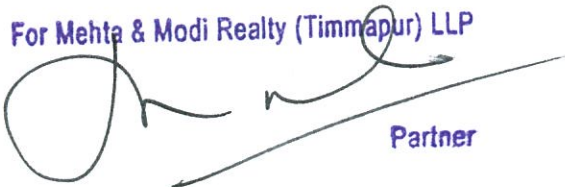
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1,50,000 sq. mtrs of built up area. It is crucial to note that all other requirements and procedures as provided under the Amendment Notification dated 09.12.2016 were removed.

13. Thus, as on 15.11.2018 the requirement of obtaining a prior EC for undertaking a Building or Construction Project between 20,000 sq. mtrs and 50,000 sq. mtrs of Built-up area was completely dispensed with and Local Authorities granting building permissions were delegated the power to stipulate environmental conditions. On 3rd December 2018, the Hon'ble National Green Tribunal (NGT) Delhi issued an order suspending the Notification dated November, 14, 2018. On 8th February 2019, the Hon'ble Supreme Court of India in *Tamil Nadu Pollution Control Board v. Sterilite Industries (I) Ltd & Ors*, Civil Appeal No.4763 / 4764 of 2013, held that the Hon'ble NGT only has appellate jurisdiction and it cannot entertain and exercise jurisdiction over the validity of Notifications issued by MoEF.

14. In view of the aforesaid order of the Hon'ble Supreme Court, the NGT Order suspending the Notification dated 14.11.2018 is without jurisdiction and thus not valid. In conclusion, as on this date the

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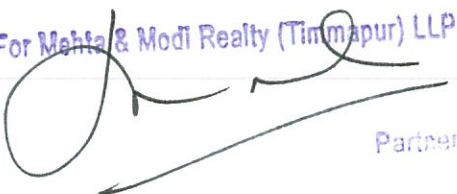


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notifications dated 14.11.2018 and 15.11.2018 remain in force and are applicable to a building admeasuring 43,538 sq. mtrs in built-up area. As per the said notifications, the entire power and authority to grant building permits including the applicable environmental conditions vests with the local authorities and the local authorities shall stipulate applicable environmental conditions while granting approval. No prior Environmental Clearance would be required for the same.

15. Thus, in view of the present position there is no requirement of obtaining Environmental Clearance from the authority and the local bodies and Local Authorities are empowered to grant building permissions in accordance with the environmental conditions. The stand taken by the 2nd Respondent that in view of the NOC from the SEIAA not being furnished the construction permission application has to be rejected is totally wrong, illegal, arbitrary, unsustainable and as such liable to be set aside. Thus the petitioner is constrained to file the present writ petition.

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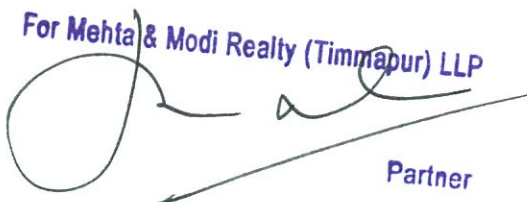
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16. The petitioner has got no other equally efficacious alternative remedy except invoking the extra ordinary original jurisdiction of this Hon'ble Court under Article 226 of the Constitution of India.

17. The petitioner has not filed any other writ petition or proceeding for the same relief claimed in the present writ petition.

18. It is necessary that this Hon'ble court may be pleased to direct the Respondent No.2 and 3 to consider the construction permission application filed by the Petitioner in File No.003213/BP/HMDA/0583/SMD/2022, dated 26.03.2022 without insisting on production of Environmental Clearance from the SEIAA pending disposal of the Writ Petition.

19. It is therefore prayed that this Hon'ble Court may be pleased to issue a writ of mandamus or any other appropriate Writ order or direction declaring the TS-bPASS letter no. 003213/BP/HMDA/0583/SMD/2022, dt: 12.07.2022 as arbitrary, illegal and unsustainable and set aside the same and consequently direct the Respondents 2 and 3 to grant construction permission to the Petitioner in respect of the Application in

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File No.003213/BP/HMDA/0583/SMD/2022, dt: 26.03.2022 and pass
such other order or orders in the interest of justice.

Sworn and signed before me on this
The ____th day of October 2022 at Hyderabad.

Deponent.

Advocate, Hyderabad

VERIFICATION

I, Soham Modi, S/o. Late Satish Modi, Aged 50 Years, Occ: Business,
R/o.5-4-187/3&4, Soham Mansion, M.G. Road, Secunderabad-500 003,
being the Managing Partner of the petitioner firm herein do hereby
declare that the contents of the above paragraphs are true and correct to
the best of knowledge, information and belief and hence verified on this
the ____th day of October, 2022 at Hyderabad.

Counsel for Petitioner

For Mehta & Modi Realty (Timmampuri) LLP
Deponent Partner