

IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
APPELLATE SIDE

No. OF 2023
AGAINST

No. OF 2023

On the file of the Court of
Modi Realt Vikarabad LLP

Appellant/
Petitioner

V E R S U S

The Secretary MA&UD & 3 Other's

...Respondent

I/We Modi Realty Vikarabad LLP Rep by its designated Partner,
Palle Balaram Reddy, S/o Sanjeev Occ: Business, R/o 5-4-187
/3&4, MG Road Secunderabad.
Appellant/Respondent in the above application do hereby
appoint and retain

PERI PRABHAKAR (6390)
ADVOCATE

Advocate/s of the High Court to appear for ME/US in the
above APPEAL/PETITION and to conduct and prosecute (or
defend) the same and all proceedings that may be taken in
respect of any application connected with the same or any
decree or order passed therein including all applications for return of
documents or the receipt of any money that may be payable to ME/US in
the said Appeal/ Petition and also to appear in all applications under
Clause XV of the Letters patent and in all applications for review and for
leave to the Supreme Court of India and in all applications for review of
Judgment.

For MODI REALTY VIKARABAD LLP

Balaram
Partner

I certify that the contents of this Vakalat were read out and explained in
(.....) in my presence to the executants of executants who
appeared perfectly to understand the same and made his /her/their
signatures or mark in my presence.

Executed before me this.....day of2023

Advocate, Hyderabad

S.R. No.

_____ District

IN THE HIGH COURT FOR THE STATE
TELANGANA AT HYDERABAD

APPELLATE SIDE

No. _____ of 2023

AGAINST

No. _____ of 2023

VAKALAT

ACCEPTED

Modi Realty Vikarabad LLP

..Appellant

Versus

The Secretary MA&UD
& 3 Other's

..Respondents

PERI PRABHAKAR (6390)
ADVOCATE

Advocate for Petitioner

Address for Service: _____ Ph:23210956

102, NARVEN'S VAISHNO
SUDHAM, 6-3-1089 & 1089/A,
GULMOHAR AVENUE, VILLA
MARIE COLLEGE LANE, RAJ
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IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABD

W.P.NO. OF 2023

Between:

Modi Realty Vikarabad LLP

A Limited Liability Firm, Rep. by its Designated Partner

Palle Balaram Reddy, S/o. Sanjeev Reddy

Aged about 34 years, Having its Office at 5-4-187/3&4

2nd Floor, Soham Mansion, M.G. Road

Secunderabad.

.... Petitioner

And

1. State of Telangana
Rep. by its Principal Secretary
Municipal Administration and Urban Development
Department, Secretariat, Hyderabad.
2. Vikarabad Municipality
Rep by its Commissioner, Vikarabad
At Vikarabad District.
3. Town Planning Oficer
Vikarabad Municipality
At Vikarabad District;
4. Director of Town & Country Planning,
Rep. by its Director,
5th Floor, Opp: PTI Buildings,
AC Guards, Hyderabad-4.

.... Respondents

For MODI REALTY VIKARABAD LLP

Balaram
Partner

AFFIDAVIT

I, Palle Balaram Reddy, S/o. Sanjeev Reddy, aged about 34 years, Occupation: Designated Partner at M/s. Modi Realty Vikarabad LLP, Office at 5-4-187/3&4, Second Floor, Soham Mansion, M.G Road, Secunderabad, Telangana State do hereby solemnly affirm and state on oath as follows:

1. I am the petitioner herein and I am the Designated Partner of the Petitioner and as such I am well acquainted with the facts of the case.
2. The petitioner is filing the present writ petition questioning the TSbPASS shortfall letter dated 24.09.2021 in file no. 002584/BP/DTCP/3042/0015/2021 issued by the respondent no. 3 requiring the petitioner to maintain 30 meter buffer area for the purpose of issuing construction permission for constructing residential apartments though there is no such requirement as per law as arbitrary and illegal.
3. The petitioner submits that he is the absolute owner and possessor of land admeasuring 0-39 guntas (4719 sq yds) in survey no. 83, gangaram village, vikarabad mandal, vikarabad district having purchased the same

For MODI REALTY VIKARABAD LLP


Partner

under registered sale deed bearing document no. 7080 of 2018 dated 13.08.2018 from the owners of the property. Subsequently the petitioner also obtained the deed of rectification dated 27.07.2020 bearing document no. 3552 of 2020 when there was a typographical error in the document. Thus under both the documents the petitioner is the absolute owner and possessor of the land mentioned above. It is submitted that the petitioner had made an application dated 20.06.2020 in BA No 3042/W14/2020/1727 seeking permission to construct residential apartments consisting of stilt (parking). Five upper floors in the said plot. It is submitted that there is a railway property whose boundary is falling at a distance of 8.10 meters from the outer edge of the property of the petitioner. It is submitted that GO Ms No. 168 dated 07.04.2012 governs the building applications in the state of Telangana. It is submitted that the said GO is amended by way of GO Ms No 7 dated 05.01.2016 to enable ease of doing business and to encourage building construction sector. By virtue of this amendment Rule 3(b) of 2012 Rules were amended and Rule 3(b) as on today reads as follows :

Rule 3 (b) : In case a site abutting railway properties, no objection certificate from railway authorities could not be insisted. Further it is the

For MODI REALTY VIKARABAD LLP

Balakrishna

Partner

responsibility of the applicant to follow rules as prescribed by the railway authorities in their rules.

4. Thus as on today there is no requirement of the petitioner to obtain an NOC from the Railway Authorities. In spite of all this rule position, the respondent no. 3 has issued a shortfall notice stating that as the distance between the Railway property boundary and edge of the building is 30 meters hence required NOC from the authorities. It is submitted that the shortfall notice issued by the 2nd and 3rd respondents is on the basis of the un-amended Rule 3(b) in GO No. 168. However pursuant to the amendment there is no such requirement of NOC. It is submitted that the shortfall notice of the respondent municipality is clearly arbitrary and illegal and contrary to the rule position.

5. It is submitted that as such the petitioner has filed Writ Petition No. 15838 of 2021 in this Honourable Court questioning the action of the respondents in requiring No Objection Certificate (NOC) to be submitted from the Railway Authorities. It is submitted that this Honourable Court has disposed of the said writ petition by an order dated 14.07.2021 directing the petitioner as follows:

In that view of the matter, the writ petition is disposed of directing the petitioner to make a representation before the respondents within two

For MODI REALTY VIKARABALI LLP

Baldam

Partner

weeks from today bringing to their notice the GO Ms No. 7 dated 05.01.2016 issued by the Government exempting the need to submit NOC from the Railway Authorities. The official respondents are also directed to without insisting for NOC from the Railway Department subject to the petitioner complying with the other shortfalls pointed out in the impugned notice and pass necessary orders thereon , as expeditiously as possible, preferably within a period of four weeks thereafter. A copy of the order that may be passed by the official respondents shall be communicated to the petitioner.

6. It is submitted thereafter the petitioner made a fresh building permission application under TSBPASS vide File No. 002584/BP/DTCP/3042/0015/2021, to the 2nd respondent along with a copy of the order passed by this Honourable Court. The 2nd respondent has again issued a short fall letter dated 12.10.2021 with 4 short falls. It is submitted that in so far as the shortfalls 1,2 and 4 are concerned, the petitioner will be addressing them separately before the 2nd respondent. However the shortfall no. 3 is coming in the way of the petitioner which is as follows :

As per the site inspection officer, the site under reference is near to track and the applicant has not earmarked the railway boundary. The site inspection officer is asked to submit the remarks regarding the distance

For MODI REALTY VIKARABAD LLP
Barham

between the railway boundary and site boundary. If the railway boundary and the site boundary are the same then the applicant has to earmark 30 meters buffer area.

7. It is submitted that the observation of the 2nd respondent that the site is near the track and the applicant has not earmarked railway boundary and that if the site boundary is within 30 meters of the railway boundary then the petitioner has to earmark 30 meters buffer area is totally illegal, arbitrary and not even the requirement of the Railway Department.

8. It is submitted that Rule 3(b) of the Building Rules stands amended and it says that no NOC is required from Railway Authorities and as per the amended Rule 3(b) no NOC is required. But the applicant should follow the applicable rules as prescribed by the Railway Authorities.

9. It is submitted that Railway Department has issued Annexures to the letter no. W274/BW/SC/W/17 dated 11.02.2008 which are general guidelines for issuing NOC by Railways for construction of the Government and Private Buildings near railway lands.

For MODI REALTY VIKARABAD LLP

Baldam
Partner

10. It is submitted that the as per guidelines 2.4, the norms prescribed in the said guidelines in site above 2500 sq mts a setback of minimum 7 meters have to be left.

11. It is submitted that the as per guidelines 2.5.1, a minimum distance should not be less than 15 meters plus set back as stipulated in para 2.4 subject to minimum of 15 meters. Thus if the guidelines of the railways are taken into consideration, the petitioner has to left a setback of 22 meters i.e. 15+7 meters from the centre line of the railway track + setback subject to minimum of 15m.

12. It is submitted that as per the plan submitted by the petitioner, the petitioner has left more than 22 meters as set back which is sufficient to comply with the requirements of the railway department.

13. It is further submitted that the 2nd respondent without taking into consideration these aspects is insisting for 30 meters buffer area between railway boundary and the petitioner's land.

14. It is submitted that as per the railway guidelines itself the petitioner is liable to leave only 22 meters as set back whereas on the contrary the 2nd

respondent is insisting for 30 meters which would result in huge amount of land being wasted for no reason at all.

15. The petitioner would suffer severe huge loss and the petitioner is forced to leave a further area of about 8 meters resulting in loss of land without construction. Thus the petitioner is constrained to file the present writ petition for appropriate reliefs.

16. The petitioner has no other equally efficacious alternative remedy except to approach this Hon'ble Court invoking the extraordinary original jurisdiction vested in this Hon'ble Court under Article 226 of the Constitution of India.

17. The petitioner has not filed any other writ petition or proceedings for the same relief, which is being claimed in the present writ petition and no other proceedings are pending before any other forum with respect to the same subject matter.

18. It is necessary that the Hon'ble Court may be pleased to direct the respondents 2 and 3 to grant construction permission to the petitioner as per building application bearing no. 002584/BP/DTCP/3042/0015/2021,

For MODI REALTY VIKARABAD LLP

Baldam
Partner

dated 12.10.2021 without insisting to leave a buffer area of 30 meters from the railway boundary pending disposal of the writ petition.

19. It is therefore prayed that the Hon'ble Court may be pleased to issue a Writ of Mandamus or any other appropriate writ or order direction declaring annexures and the general guidelines for issuing NOC by Railways for construction of the Government and Private Buildings near railway lands in annexures to letter no W274/BW/SC/W/17 dated 11.02.2008 and set aside the shortfall notice to the said extent and consequently direct the respondents 2 and 3 to consider and grant construction permission to the petitioner in respect of the building application no.002584/BP/DTCP/3042/0015/2021, dated 12.10.2021 for constructing residential apartments in land admeasuring Ac 0-39 guntas in survey no. 83, gangaram village, Vikarabad Mandal, Vikarabad District and pass such other order or orders in the interest of the justice.

Sworn and signed before me on
this July, 2023 at Hyderabad

For MODI REALTY VIKARABAD LLP
Babbar
Partner

Deponent

Advocate :: Hyderabad

VERIFICATION

I, Palle Balaram Reddy, S/o. Sanjeev Reddy, aged about 34 years,
Occupation: Designated Partner at M/s. Modi Realty Vikarabad LLP,
Office at 5-4-187/3&4, Second Floor, Soham Mansion, M.G Road,
Secunderabad, Telangana State, being the deponent herein, do hereby
verify and declare that the above paragraphs are true and correct to the best
of my knowledge, information and belief and as per legal advice.

Verified on this the day of July, 2023 at Hyderabad.

Counsel for the Petitioner

For MODI REALTY VIKARABAD LLP

Partner
Deponent