

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

CONTEMPT CASE NO. 85 OF 2022

IN

W.P. NO.15838 OF 2021

BETWEEN:

MODI REALTY VIKARABAD LLP

A Limited Liability Firm, Rep. by its Designated Partner,
Palle Balaram Reddy, S/o. Sanjeev Reddy,
Aged about 34 Year, Having its Office at 5-4-187/3 & 4,
2nd Floor, Soham Mansion, M.G. Road,
Secunderabad.

...Petitioner.

AND

1. Sharath Chandra
Commissioner, Vikarabad Municipality,
Vikarabad, At Vikarabad District.
2. Sreedhar
Town Planning Officer,
Vikarabad Municipality
At Vikarabad District.

....Respondents

AFFIDAVIT

I, Palle Balaram Reddy, S/o. Sanjeev Reddy, Aged about 34 Year, Having its
Office at 5-4-187/3 & 4, 2nd 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 as such well acquainted with the facts of
the case.

For MODI REALTY VIKARABAD LLP
Balaram
Partner

1. I submit that the petitioner is filing the present Contempt Case against the Respondents herein for willful and deliberate violation of the orders passed by this Hon'ble Court in W.P.No.15838 of 2021 by deliberately creating hurdles in the path of the petitioner, in the garb of complying with the orders passed by this Hon'ble Court and issuing shortfall letters by inserting shortfalls which were not existing earlier only to avoid passing of favorable orders in favour of the petitioner and to avoid granting construction permission in favour of the petitioner for extraneous and obvious reasons. It is submitted that the petitioner is a Construction Company involved in the construction of apartment complexes and gated communities. The petitioner made an application for construction vide No.3042/W14/2020/1727 dated 20-06-2020 for construction of apartments.

2. The petitioner submits that it is the absolute owner and possessor of land admeasuring 0-39 Guntas (4719 Sq. Yards) in Survey No.83, Gangaram Village, Vikarabad Mandal, Vikarabad District having purchased the same under Registered Sale Deed bearing Doct. 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 Doct. No.5552 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 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

For MODI REALTY VIKARABAD LLP
Balram
Partner

falling at a distance from the outer edge of the property of the petitioner. It is submitted that G.O.Ms.No.168, dated 07.04.2012 governs the building applications in the State of Telangana. It is submitted that the said G.O., is amended by way of G.O.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 (NOC) from Railway Authorities need not be insisted. However it will be the responsibility of the Applicant to follow the applicable Rules as prescribed by the Railway Authorities in their Rules.*

3. 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 short fall notice issued by the 2nd and 3rd Respondents is on the basis of the un-amended Rule 3(b) in G.O. No.168. However, pursuant to the amendment there is no such requirement of NOC.

4. It is submitted that when the Respondents have issued shortfall notice dated 01.10.2020 requiring the petitioner to obtain NOC, the same was questioned in this Hon'ble Court in W.P.No.15838 of 2021 and this Hon'ble Court was pleased to dispose of the writ petition directing the Respondents to

For MODI REALTY VIKARABAD LLP
Balaram
Partner

process the application of the petitioner dated 20.06.2020 for construction of residential apartments without insisting for NOC from Railway Department subject to compliance with the other aspects as pointed out in the impugned notice. It is submitted that pursuant to the same the petitioner has complied with the shortfall mentioned in the letter dated 01.10.2020 on 31.07.2021 and further at the request of the Respondent herein uploaded an application in TSBPASS as the earlier DPMS portal had some technical issues as per the information provided by the Respondents and as per their advice and was closed. It is submitted that instead of granting construction permission the Respondents have again issued a shortfall notice dated 12.10.2021 with the following shortfalls.

Shortfalls:

- a) Latest Market value Certificate for site under reference.
- b) Amenities block shall not be mortgaged. Submit the revised drawing duly changing the mortgaged area.
- c) 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 between railway boundary and site boundary. If the railway boundary and the site boundary are same then the applicant has to earmark 30 mts buffer area.
- d) Clarity required on existing road.
- e) The drawing is not tallied with ownership document details i.e., there is no road towards eastern side, if 25' road is exist on the ground, 5' road effected is required all along the eastern side.
- f) Parking area is not enough to 102 flats as proposed be verify.

For MODI REALTY VIKARABAD LLP
Balaram
Partner

It is submitted that as far as those shortfalls are concerned, the following are the comments submitted by the petitioner:

Comments:

- (a) Latest market Value Certificate has been submitted on 31.07.21 and there is no change in market value since then. This is known to DTCP.
- (b) There is no such rule in G.O.Ms.No.168 M.A. dated 07.04.2012. In several other projects we have mortgaged amenities area. Plan of 2 such projects are attached herein (approved by HMDA).
- (c) This is squarely covered in the writ petition. There is no rule or GO that has been issued by DTCP or railway authorities about earmarking a 30 mtrs buffer area.
- (d) The eastern side of our land is in Sy.No.84 which is a private land belonging to Hanumanthaiah & Others (as per Dharani records). The comments are purely speculative. No such road exists either at site or in the master plan. The question of making such a road or 5ft requirement on the eastern side does not even arise.
- (e) The comments are purely speculative. No such road exists either at site or in the master plan. The question of making such a road or 5ft requirement on the eastern side does not even arise.
- (f) The rules for providing parking are clearly defined in GO No.168 dated 07.04.2012 under Clause 13. Table V gives details of parking, which in this case is 20% of the total built up area. Additionally, 10% of the 20% is to be provided for visitor parking under clause 13(c)(xii). Therefore total parking required is 22% of built-up area. Parking provided is 26.09%.

For MODI REALTY VIKARABAD LLP
Balram
Partner

5. It is submitted that the shortfall letter is issued only to harass the petitioner that too especially in view of the earlier writ petition filed to create a semblance of compliance of the orders passed by this Hon'ble High Court. It is submitted that though this Hon'ble Court directed the Respondent to dispose of the application without reference to the NOC, deliberately again question of the maintenance of distance of railway boundary is inserted into the shortfall notice in violation of the orders passed by the Hon'ble High Court. Thus these Respondents have committed willful and deliberate contempt of the order passed by this Hon'ble Court and they are liable to be punished for the contempt committed by them.

6. I further submit that the petitioner is also seeking a direction to the Respondents to issue the construction permission in compliance with the orders passed by this Hon'ble Court by way of interim measure in the present contempt case as this Hon'ble Court has got the power and jurisdiction to do so.

7. It is necessary that this Hon'ble Court maybe pleased to direct the Respondents herein to grant and release construction permission pursuant to its application dated 20.06.2020 and the subsequent application dated 24.09.2021 pending disposal of the Contempt Case.

8. It is therefore prayed that this Hon'ble Court may be pleased to punish the Respondents for willful and deliberate violation of the orders passed by this Hon'ble Court in W.P.No.15838 of 2021 dated 14.07.2021 and pass such

For MODI REALTY VIKARABAD LLP
Balaram
Partner

other order or orders as this Hon'ble Court may deem fit and proper in the interest of justice.

Sworn and signed before me on
this the 8th day of November, 2021
at Hyderabad.

For MODI REALTY VIKARABAD LLP
Balaram
Deponent Partner

Advocate/Hyderabad

VERIFICATION

I, Palle Balaram Reddy, S/o. Sanjeev Reddy, Aged about 34 Year, Having its Office at 5-4-187/3 & 4, 2nd Floor, Soham Mansion, M.G. Road, Secunderabad Telangana State, being the deponent in the Contempt Case 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 8th day of November 2021 at Hyderabad.

Counsel for the Petitioner

For MODI REALTY VIKARABAD LLP
Balaram
Deponent Partner