

IN THE HIGH COURT FOR THE STATE OF TELANAGANA
AT HYDERABAD

W.P. No.

OF 2024

Between

M/s. Kadakia & Modi Housing
Rep. by its Managing Partner, Soham Modi,
S/o. Late Satish Modi, Aged 52 Years, Occ: Business,
R/o. Survey No.1139, Shamirpet, Shamirpet Mandal,
Medchal-Malkajgiri District. ...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,
7th Floor, Swarna Jayanthi Complex, Ameerpet,
Hyderabad.
3. Shamirpet Grampanchayat,
Rep. by its Executive Secretary,
Shamirpet Village and Mandal,
Medchal-Malkajgiri District.
4. S. Vijayalaxmi, W/o.G. Mallikarjun,
Aged about 43 Years, Occ: Housewife,
R/o.B-3, Nalsar University, Shamirpet,
Hyderabad.
5. G. Mallikarjun, S/o. G. Chennaiah,
Aged about 50 Years, Occ: Business,
R/o.B-3, Nalsar University, Shamirpet,
Hyderabad.

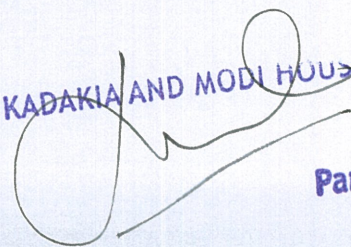
...Respondents

For KADAKIA AND MODI HOUSING
Partner

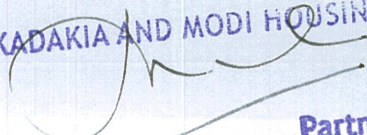
AFFIDAVIT

I, Soham Modi, S/o. Late Satish Modi, Aged 52 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 Firm is filing the present Writ Petition praying the Hon'ble Court to take action on the illegal and unauthorized construction being raised by the Respondents 4 & 5 in the Residential layout Cum Group Housing Project executed by the Petitioner Firm in violation of the Agreement of Sale, in violation of the Bylaws of the Association of which they are members.
3. I submit that the Petitioner Firm had applied for Development of Gated Community and Group Housing Scheme on land admeasuring Ac.5-86 guntas in Survey No.1139, Shamirpet Village and Mandal, Medchal-Malkajgiri District and the same was approved by the then HUDA now HMDA vide letter

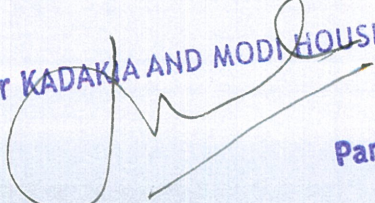
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No.660/MP2/Plg/H/2007 dated 12.05.2008. It is submitted that pursuant to the said sanction the Petitioner firm has constructed Villas in the said project and sold the same to various parties. The Respondents 4 & 5 who are wife and husband have entered into an Agreement of Sale dated 30.06.2017 for purchase of Villa No.32 admeasuring 178 Sq. yards. It is submitted that subsequently registered sale deed was executed in favour of the Respondents 4 & 5 with respect to the said property. It is submitted that as per Clause 14 of the said Agreement of Sale dated 30.06.2017 the purchasers shall not cut, dump or damage any part of the structure or any part of the Villa nor shall make any additional alternations to the Villa without permission of the vendor or the body formed for the purpose of maintenance of the project. Further, the purchaser also shall not be allowed to alter any portion of the Villa that may change the external part of the Villa without due permission of the vendor or the Association / Society formed for the purpose of maintaining the project. Further, in the very same agreement Clause 3.1.9, 3.1.10 and 3.1.11 there are several restrictions on the purchasers for making additions and alterations. It is further submitted that the respondents 4&5 are bound by the terms and conditions of the agreement of sale

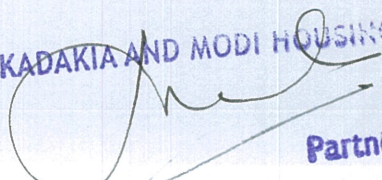
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dated 30.06.2017 and the sale deed dated 10.12.2018 and the bye laws of the association formed on -

4. It is further submitted that the Petitioner Firm has completed the construction of the Gated Community in accordance with the permission granted to it and applied for an Occupancy Certificate in the year 2019 and the said application is pending before the 3rd Respondent. It is submitted that while things stand thus even before the Occupancy Certificate is issued by the Respondent No.2 & 3 to the Petitioner Firm in respect of the entire Gated Community the Respondent No.4 & 5 have demolished a portion of the Villa and they are making additional floors and structures completely altering the elevation of the Villa apart from making additional construction. At this point of time the Petitioner Firm has given complaint to the Respondents 2 and 3 appraising them of the situation and requesting for taking action against the illegal construction as the same would hamper issuing of Occupancy Certificate in favour of the Petitioner Firm and is contrary to the terms and conditions of the agreement of lease, sale deed and bye laws of the association. Basing upon these representations an enquiry was caused and the 3rd

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Respondent herein had issued an order dated 07.12.2023 in GPS/S/2023 canceling construction permission which was issued by the 3rd Respondent for expansion of Villa no.32 clearly stating that the said expansion permission was obtained by the 4th and 5th Respondents by suppression and misrepresentation. In spite of canceling the construction permission the Respondents 4 & 5 are going ahead with the construction highhandedly thereby changing the original design of the Villa and jeopardizing the interest of the Petitioner Firm in obtaining Occupancy Certificate as the Respondents 2 & 3 would not give any Occupancy Certificate in favour of the Petitioner firm in respect of the entire project if the constructions found within the Gated Community are illegal and unauthorized. Thus it is causing severe hardship to the Petitioner Firm and its interest if the construction of the 4th & 5th Respondents is permitted to go ahead. It is submitted that the construction is totally illegal apart from being in violation of the Agreement signed by the Respondents 4 & 5 and the bye laws of the association of which the Respondents 4 & 5 are members invariably due to the agreement signed by them. It is submitted that though the Respondent no.3 had issued a notice canceling the construction permission issued in favour of the Respondents

For KADAKIA AND MODI HOUSING

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4 & 5, they are not taking any action for demotion of the illegal and unauthorized structures raised by the Respondents 4 & 5 inspite of the specific request made by the Petitioner Firm. Thus the Petitioner is constrained to file the present writ petition.

5. The Petitioner Firm 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.

6. The Petitioner Firm has not filed any other writ petition or proceeding for the same relief claimed in the present writ petition.

7. It is necessary that this Hon'ble court may be pleased to direct the Respondents 2 & 3 to act against the illegal and unauthorized structures raised by the Respondents 4 & 5 in Villa No.32 of Gated Community and Group Housing Scheme on land admeasuring Ac.5-86 guntas in Survey No.1139, Shamirpet Village and Mandal, Medchal-Malkajgiri District and demolish the same pending disposal of the Writ Petition.

8. It is therefore prayed that this Hon'ble Court may be pleased to issue a writ of mandamus or any other appropriate Writ order

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or direction declaring the inaction of the Respondents 2 & 3 in demolishing the illegal and unauthorized structures raised by the Respondent No.4 & 5 in Villa No.32 of Gated Community and Group Housing Scheme on land admeasuring Ac.5-86 guntas in Survey No.1139, Shamirpet Village and Mandal, Medchal-Malkajgiri District as arbitrary, illegal and dereliction of duty and consequently direct the Respondents 2 and 3 to demolish the said structures in Villa No.32 of Gated Community and Group Housing Scheme on land admeasuring Ac.5-86 guntas in Survey No.1139, Shamirpet Village and Mandal, Medchal-Malkajgiri District forthwith and pass such other order or orders in the interest of justice.

Sworn and signed before me on this
the 22nd day of January 2024 at Hyderabad.

For KADAKIA AND MODI HOUSING
Partner
Deponent.

Advocate, Hyderabad

VERIFICATION

I, Soham Modi, S/o. Late Satish Modi, Aged 55 Years, Occ: Business, R/o. Survey No.1139, Shamirpet, Shamirpet Mandal, Medchal-Malkajgiri District, Telangana, 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 22nd day of January, 2024 at Hyderabad.

For KADAKIA AND MODI HOUSING
Partner
Deponent

Counsel for petitioner

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

No. _____ OF 2024

AGAINST

No. _____ OF 2024

On the file of the Court of
M/s Kadakia & Modi Housing

Appellant/
Petitioner

V E R S U S

The State of TS Secretary MA&UD & 4 Other's

...Respondent

I/Kadakia & Modi Housing Rep by its Managing Partner, Soham
Modi, S/o Late Satish Modi 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 KADAKIA AND MODI HOUSING

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 of2024

Advocate, Hyderabad

S.R. No.

District

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STATE TELANGANA AT HYDERABAD**

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No. of 2024

VAKALAT

ACCEPTED

M/s Kadakia & Modi Housing

..Appellant

Versus

The State of TS Secretary MA&UD
& 4 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
BHAVAN ROAD, SOMAJIGUDA,
HYDERABAD-82, TELANGANA.
9849026415

Email: periprabhakar@yahoo.co.in
periprabhakar9@gmail.com

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Clause XV of the Letters patent and in all applications for review and for
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BHAVAN ROAD, SOMAJIGUDA,
HYDERABAD-82, TELANGANA.

9849026415

Email: periprabhakar@yahoo.co.in
periprabhakar9@gmail.com