

IN THE HIGH COURT FOR THE STATE OF TELANAGANA
AT HYDERABAD

W.P. NO. OF 2023

Between:

1. Sunkaraneni Vijaya Laxmi
W/o. G Mallikarjun , aged 45 years
Occ: Housewife, R/o. 6-2/32 (Villa No. 32)
Bloomdale Community
Shamirpet, Medchal Malkajgiri District
2. G. Mallikarjun,
S/o. Chennaiah
Aged 52 years
Occ: Business
R/o. 6-2/32 (Villa No. 32)
Bloomdale Community
Shamirpet, Medchal Malkajgiri District

...Petitioners.

AND

1. The State of Telangana,
Rep. by its Principal Secretary,
Department of Panchayat Raj,
Dr. B.R. Ambedkar Bhavan, Secretariat,
Hyderabad.
2. The District Panchayat Officer,
Medchal Malkajgiri District
3. The Panchayat Secretary,
Shamirpet Grampanchayat,
Shamirpet Mandal,
Medchal Malkajgiri District.

For KADAKIA AND MOOI HOODING



Partner

4. M/s. Kadakia & Modi Housing
Rep by its Managing Partner, Soham Modi
S/o. late Satish Modi, aged 55 years
Occ : Business
R/o. Survey No 1139,
Shamirpet Mandal,
Medchal Malkajgiri District

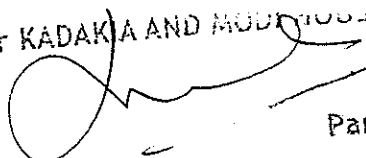
... Respondents.

COUNTER AFFIDAVIT FILED ON BEHALF OF THE
4th RESPONDENT

I, Soham Modi, S/o. S/o. late Satish Modi, Aged 55 Years, Occ:
Business, R/o. Survey No 1139, Shamirpet Mandal, Medchal Malkajgiri
District, Telangana State do hereby solemnly affirm and state on oath as
follows:

1. I am the Managing Partner, the 4th Respondent herein and as such
well acquainted with the facts of the case.

2. I submit that I have gone through the contents of the affidavit filed in
support of the writ petition and the same does not disclose any grounds
for grant of the relief as prayed for. The contents of the affidavit are denied
in total except to the extent specifically traversed and admitted hereunder.
The Petitioner is put to strict proof of the contents of the affidavit.

For KADAKIA AND MODI HOUSING

Partner

3. At the outset it is submitted that the present writ petition is liable to be dismissed for suppression of facts and mis-representation before this Honourable Court. The paragraph-wise reply to the contents of the affidavit are given as follows:

- 1) In reply to paragraph no. 1, no specific reply is required.
- 2) In reply to paragraph no. 2, it is submitted that petitioners have purchased Villa No. 32 under Sale Deed mentioned from this respondent.
- 3) In reply to paragraph no. 3, it is denied that the petitioners have obtained any fresh construction permission from 3rd respondent herein i.e. Gram Panchayat. It is submitted that the petitioners could not have obtained any construction permission from the 3rd respondent Gram Panchayat on 19.04.2023 for construction of a new building in the existing premises. It is submitted that that the petitioners have purchased the property villa no. 32 from this respondent. This respondent has sold a fully constructed building after obtaining construction permission from HMDA on 12.05.2008 under permission number 660/MP2/HMDA/PLG/2008 which was obtained for a Gated Community. It is submitted that the

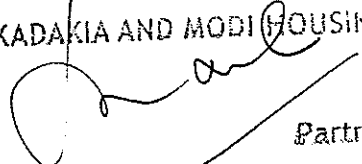
For KADAKIA AND MODI HOUSING



Partner

petitioners have entered into Agreement of Sale dated 30.06.2017 and obtained sale deed dated 10.12.2018 and they are Members of Association formed for the purpose of maintaining the gated community and they are bound by the terms and conditions of the agreement of sale, sale deed, memorandum of association of the maintenance society. The terms and conditions of the agreement clearly stipulate that there cannot be any cutting or damage to any part of the structure or for any part of the villa or making any alterations to the villa without permission of the vendors or the association formed for the maintenance of the project. In spite of this situation, writ petitioners have deliberately obtained construction permission from the Gram Panchayat without reference to HMDA which is clearly illogical.

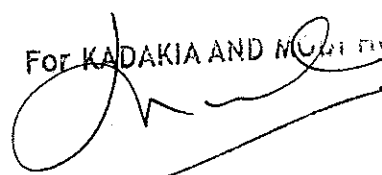
It is submitted that the HMDA is yet to grant occupancy certificate in respect of the project and the application for the occupancy certificate is pending before this Gram Panchayat. It is submitted that while things stood thus, deliberately the writ petitioners have obtained construction permission from 3rd respondent Gram Panchayat suppressing that they are in a gated community. It is submitted that this fact was brought to the notice of the 3rd respondent Gram Panchayat and HMDA and requested for appropriate action in the illegal structures constructed and thereafter

For KADAKIA AND MODI HOUSING

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Gram Panchayat has issued a notice dated 07.12.2023 cancelling the construction permission in favour of the writ petitioners. It is submitted that suppressing these facts, the construction permission is cancelled as it is obtained by fraud and mis-representation, the writ petitioners have filed the present writ petition without mentioning any of the facts. The petitioners have filed the writ petition on false averments and obtained interim orders from this Court and the same are liable to be vacated. It is submitted that construction permission obtained by the petitioners is illegal as such rightly cancelled by the 3rd respondent Gram Panchayat.

4) In reply to paragraph no. 4, the contents of the same are denied and the petitioners are put to strict proof of the same. It is submitted that the compliant given to the Gram Panchayat and HMDA by this respondent and on the basis of the said complaint, the construction permission issued in favour of the writ petitioners was cancelled and the so called explanation submitted by them is not tenable and rightly ignored by the Gram Panchayat.

5) In reply to paragraph no. 5, that it is denied that the work of the petitioners was disturbed by the Gram Panchayat without issuing any notice. It is submitted that the petitioners were making construction

For KADAKIA AND MISHRA

Partner

illegally and the 3rd respondent Gram Panchayat is bound to stop the illegal construction made by the petitioners and they cannot be found fault for the same.

6) In reply to paragraph no. 6, the grounds raised are not tenable and not maintainable and construction permission obtained by the petitioners is without any entitlement and in illegal manner by suppressing the material facts and the same is rightly cancelled and the writ petition is devoid of merits and is liable to be dismissed.

7) It is relevant to submit here that the HMDA is the Authority which has granted gated community permission in favour of this respondent and as such this respondent has given several complaints to HMDA about the illegal construction being made by the writ petitioners the last being vide letter dated 24.11.2023 and in response to the same HMDA had issued a letter dated 27.01.2024 clearly informing the 3rd respondent Gram Panchayat to take action against the illegal construction being raised by the writ petitioners in accordance with the law. It is submitted that thus it is very clear that constructions which are being raised by the writ petitioners under the guise of the so called construction permission issued by the 3rd respondent Gram Panchayat is illegal more particularly

For KADAKIA AND MODI HOUSING

Partner

continuing the same even after construction permission is cancelled amounts to further illegality thus the writ petition absolutely has no merits.

It is therefore prayed that this Hon'ble Court may be pleased to dismiss the writ petition and pass such other order or orders in the interest of the justice.

Sworn and signed before me on this
the 10th day of February, 2024 at
Hyderabad.

For KADAKIA AND MOBI HOUSING

Partner

DEPONENT.

ADVOCATE :: HYDERABAD

