

DKH
Served by
Feli Phobok
18/6/18

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND STATE OF ANDHRA PRADESH



WPMP NO. OF 2017

IN
WP NO. 12584 OF 2015

Between:

Janapriya Arcadia Flat Owners Welfare Association
Rep. by its Secretary Anand S. Mehta, S/o Suresh Mehta,
aged about 45 years, Occ: Business,
R/o R/o 2nd Floor, Soham Mansion, M.G. Road,
Secunderabad,

... Petitioner

And

1. The State of Telangana
Rep. by its Principal Secretary,
Municipal Administration and Urban Development,
Secretariat (T)
Tank Bund, Hyderabad.
2. The Greater Hyderabad Municipal Corporation
Rep. by its Commissioner,
Liberty Circle, Hyderabad.
3. Deputy Commissioner, GHMC,
Alwal Circle, Alwal
Secunderabad – 500 010.
4. The Hyderabad Metropolitan Development Authority
Rep. by its Metropolitan Commissioner, HMDA,
Block A, District Commercial Complex,
Tarnaka, Secunderabad – 500 017
5. The Zonal Commissioner,
HMDA Medchal Zonal Officer,
Plot No. 14 & 15, Chandra Nagar,
Opp: Mukundh Theatre
Medchal, Ranga Reddy District

6. Janapriya Engineers Syndicate Limited
H.No. 3-6-115115/a, Himayathnagar, Hyderabad –
And Door No. 8-2-120/8/86 & 8-2-120/86/1,
3rd Floor, Keerthi & Pride Towers, Road No.2,
Banzara Hills, Hyderabad 50034
Rep. by MD. K. Ravinder Reddy, S/o. late Purushotham Reddy
H.No. 3-6-115/a, Himayathnagar, Hyderabad.

.. Respondents

7. M/s VillaOrchids Owners' Association,
(Regd. No.979 of 2017),
Survey No.127, Kowkoo Village, Bollaram,
Secunderabad – 500 010.

....ProposedRespondent No. 7

AFFIDAVIT

I, Anand S. Mehta, S/o Suresh Mehta, aged about 45 years, Occ:
Business, R/o 2nd Floor, Soham Mansion, M.G. Road, Secunderabad, do
hereby solemnly affirm and sincerely state on oath as follows:

1. I am the Secretary and authorised signatory of the Petitioner herein
and the proposed 7th Respondent in the writ petition and as such well
acquainted with the facts of the case.

2. I submit that the Petitioner is filing this application seeking to
implead in W.P. 12584 of 2015 and the Misc. applications therein as
7th Respondent as it is a necessary and proper party to the writ petition for
effective and complete adjudication of the writ petition and in view of the

facts and circumstances stated by the Petitioner in the subsequent paragraphs which necessitate the impleading of the Petitioner as necessary and proper party to the writ petition. I submit that the writ Petitioner has filed the writ petition against the department of Municipal Administration and Urban Development and GHMC and M/s. Jana Priya Engineers Syndicate Limited for the following reliefs.

“ It is therefore prayed that, this Hon’ble Court may be pleased to issue Writ Direction or order more particularly in the nature of Writ of Mandamus declaring the action of official Respondent s in allowing Respondent 6 to extend the approach road belonging to Petitioner ’s association to the adjacent and separate lay-out in Sy. No. 3 to 9, 33 of Mahadevpur (V) 1,3 to 7 of Kowkooor (V), Malkajgiri (M), R.R (Dist) marketed as VillaOrchids by declaring the main access road of Petitioner ’s gated community (Janapriya Arcadia) as a public road & approach road to new residential gated community marketed as VillaOrchids promoted by Respondent 6 vide GHMCs letter No. 40972/28/06/2011-13/1498, dated 25-4-2013 as being illegal, arbitrary and violative of Article 14,21 and 300 (A), provisions of GHMC Act, 1955 and the Andhra Pradesh, Hyderabad Revised Common Building Rules, 2006 in respect of gated community and pass such other order or orders as may be deemed fit and proper in the circumstances of the case. ”

3. I submit that the writ Petitioner is claiming the relief in the capacity of the Residents Welfare Association of the complex constructed by the 6th Respondent construction company and on the ground that the 12 mtrs wide road which passes through the apartment complex blocks which is constructed by the 6th Respondent is meant for the exclusive use of the

apartment complex and the same is not a public road and as such no person can claim a right of passage or treat the same as public road. I further submit that the owners of the land along with M/s. Janapriya Engineers Syndicate and others have earlier applied for construction permission for residential flats consisting of A, B, C and D blocks under permit No. 2809/B4/Plg/2007 in Ac. 11-32 gts in Sy. No. 8, 10 to 12, 13 (P), 14 to 21, 27 to 29, situated at Mahadevpur Village, Malkajgiri Mandal Ranga Reddy District and as per this sanction plan the owners are required to provide approach road from the main road which is a thorough road and land admeasuring Ac. 1-02.28 gts. was gifted to GHMC from main road of Kowkoor to Darga X roads and the said road is a thorough road to the rear side property which belonged to the owners and others. Thus as the land for the entire approach is donated by the owners, it is not open to the writ Petitioner society to claim exclusive right over the road. It is further submitted nowhere in the construction permission sanctioned by the 4th Respondent it is written that the sanction is for a gated community. The sanction is granted for construction of residential apartments as blocks and not as gated community. This being the case the writ Petitioner cannot claim exclusive right over the road and cannot maintain the writ petition. It is submitted that GoMs. No.168 issued by the M.A. & U.D. Department, dated 07.04.2012 building rules was governing the sanction

of construction permission, layout permission etc. It is submitted that Rule 8 (k) reads as follows:

“ A thorough public access road of 12 m width with 2-lane black-topped is to be developed within the applicant's site on any one side at the periphery/as per suitability and feasibility for the convenience of accessibility of other sites and lands located in the interior. This condition would not apply if there is an existing abutting peripheral road on any side”.

It is submitted that Rule 8 (n) reads as follows:

“All roads and open spaces mentioned in this Rule shall be handed over to local body at free of cost through a registered gift deed before issue of occupancy certificate. The society/association may in turn enter into agreement with the local authority for utilizing, managing and maintaining the roads and open spaces. In case of any violation or encroachment, the local authority shall summarily demolish the 16 encroachments and resume back the roads and open spaces and keep it under its custody”.

All group housing schemes (i.e. land area above 4,000 Sq.mtrs.) have to provide a peripheral road to the sites located in the interior and such roads have to be handed over to the local authority by way of a registered gift deed.

Permit for any group housing development can only be given when they are in compliance of the above.

4. It is submitted that the Developers of the Janapriya Arcadia and Owners of the land together have executed a gift settlement deed in favour of Greater Hyderabad Municipal Corporation (GHMC) bearing document No.3137 of 2011 whereby the owners and the Developers together have gifted and settled the rights in respect of the approach road as demarcated in the layout of Janapriya Arcadia as shown in the map for approach to the interior site i.e. Villa Orchids. Thus the 12 mtr road is meant not only for use by the Janapriya Arcadia Apartment Owners' but also as an approach road to the interior site i.e. Villa Orchids site. The gift deed in favour of GHMC is executed and registered and the transfer is complete and road stands vested in the GHMC as on today for use by one and all. Similarly the owners and developer have also registered another gift deed bearing document No.3221 of 2011 dated 25.10.2011 whereby a 9 mtr approach road for a length of 357.95 mtrs totally admeasuring 3959.2 Sq. yards in Survey No.3,4,5,6,7,8, 9 and 33 of Mahadevpur Village and Survey Nos. 1,3,4,5,6, and 7 of Kowkooor Village to be utilized as an approach road to the sites beyond the Villa

Orchids layout. Thus, as per rules the connecting roads which are approach roads to the interior sites have to be left by the owners and developers and the gift deeds have to be executed and the roads vest in the GHMC thereafter for use of one and all. The grievance of the Petitioner Association is not genuine and they are trying to deprive the members of the proposed Respondent and the general public from using the roads which are meant to be used by one and all.

5. Thus it is not correct to say that the Janapriya Arcadia is a Gated Community and as such the Developers cannot retain rights in the approach road for the purpose of their layout being developed in the adjacent land. The very construction permission granted for Janapriya Arcadia reveals that it is not a Gated Community. In fact, a perusal of the letter dated 26.03.2007 issued by the then HUDA clearly shows that what is granted is only a layout permission along with the construction permission for apartment blocks and the permission dated 31.03.2007 issued by the 3rd Respondent Alwal Municipal Commissioner also shows that sanction is accorded for construction of residential apartments, stilt plus 5 floors. Nowhere in these two permissions is it revealed that a Gated Community is either proposed by the Builders and the Developers or that a Gated Community is sanctioned. In fact, the letter dated 25.04.2013 issued by the GHMC clearly reveals that the 12 meters

approach road is a public road which was already handed over to GHMC and DMC, Alwal Circle on 27.10.2011 itself. Thus there is no truth in the allegation made by the writ Petitioner Association that it is a Gated Community.

6. I submit that land admeasuring Ac. 21-32 gts forming a part of Sy. No. 3,4,5,6,7,8 and 33 of Madhadevpur Village and 1,3,4,5,6, of Kowkoor Village, Medchal District which is adjacent to the Janapriya Arcadia Apartments was originally owned by 4 groups of persons / companies as mentioned below

- (a) Janapriaya Group consisting of M/s. Janapriaya Properties Private Limited, M/s. Janapriaya Engineers Syndicated Private Limited, both represented by Mr. Ravinder Reddy and Mr. Nanda Nandam Reddy Director in Jana Priya Group Companies.
- (b) Jogi Reddy Group consisting of Mr. B.Jogi Reddy, his son Dr. B.Sridhar Reddy, his wife A. Manorama and his cousin B. Bal Reddy
- (c) Sri Venkata Ramana Constructions Group consisting of : A Ram Reddy, his son A Vikram Reddy his wife A. Aruna Reddy and M/s. Sri Venkataramana Constructions, a partnership firm with the 3 persons as its partners (Note K. Yadi Reddy & others, the original parttedar of land had agreed to sell their land to Sri Venataramana Constructions several year ago, however, conveyance deed was executed in May 2014).
- (d) B.N. Reddy Group consisting of : B.N. Reddy, Ex-serviceman and his daughters B. Sarita Reddy and B. Vijaya Reddy.

7. At no point was M/s. Janapriya Properties Pvt., Ltd the owner of the entire land. It owned only about 1/4th of the land GHMC was given details of ownership of the land i.e. it was owned by 2 private limited companies and 12 individuals at the time of application for building permit. Without establishing ownership, GHMC could not have even processed the application. The names of the 4 groups of owners are clearly stated in the application for construction permission and they are shown in the permit for construction.

8. I submit that the application was made to the HMDA &GHMC for construction of residential enclave by M/s. Janapriya Group and other co-owners of the land and permit No. 24873/HO/NZ/CIR/-17/2013 in file No. 40972/28/06/2011, dated 13-6-2013 was issued. Subsequently NOC was also obtained from the Defense Department.

9. I submit that after acquiring the construction permissions etc., from the Respondent No. 2 and 4 and after completion of the Janapriaya Arcadia blocks-A,B,C & D, all the owners have also obtained permission for construction of the Villa Orchids i.e. 343 independent houses consisting of ground floor, 1st floor, amenities block with two cellars by parking ground plus upper 3 floors and LIG/ EWS with stilt for parking plus 5 upper floors. It is submitted that in respect of this construction approach road is given and shown as 12 mtrs road which passes through

Jana Priya Arcadia. It is submitted the permission is granted in file No. 40972/28/06/201, permit No. 24873 / HO/ NZ/Cir-17/2013, dated 13-6-2013. It is relevant to submit here that all the groups of owners collectively own land of about Ac.21-32 gts in Sy. No. 3 to 9 and 33 of Mahadev pur Village in Sy No. 1,3,4,5,6 & 7 of Kowkooor Village, Malkajgiri Mandal, Ranga Reddy District having purchased the same under various valid registered sale deeds. Out of the 4 Groups in whose favour permit for the construction was issued, K. Yadi Reddy and others sold their share of land, and the other 3 groups, namely, Janapriya Group, Jogi Reddy Group and B.N. Reddy Group sold their share of plots after obtaining permit for construction to M/s Venkataramana Constructions Group, which is a Partnership Firm whose partners are A. Ram Reddy, A. Vikram Reddy and A. Aruna Reddy. They were one out of 4 Groups in whose favour the permit for construction was issued correct subsequent clauses in light of insertion of this clause.

10. I submit that the writ Petitioner has made only one of the owners of land and developers of the property as party to the writ petition as 6th Respondent . However, in view of the subsequent development i.e. acquisition of land of all the other groups of owners by M/s Venkataramana Constructions Group it has become necessary that the Petitioner should have made M/s Venkataramana Constructions Group

as a party in the writ petition as it is an interested and necessary party as a Respondent to the writ petition and party which will be adversely affected if any adverse orders are passed in the writ petition.

11. It is submitted that M/s Venkataramana Constructions Group was one of the owners of the property and the entire land was owned by 4 groups as mentioned above. It is submitted that subsequently M/s Venkataramana Constructions Group has purchased the property from all the other groups under registered sale deeds as mentioned in Annexure-1. Thus M/s Venkataramana Constructions Group has become exclusive owner / developer of the entire land. Thus M/s Venkataramana Constructions has become exclusive owner of all the plots in the land Admeasuring Ac. 21-323 gts in Sy. No. 3 to 9 and 33 of Mahadevpur Village and in Sy No. 1,3,4,5,6 & 7 of Kowkooor Village, Malkajgiri Mandal, Ranga Reddy District in which individual houses and EWC houses are being constructed.

12. It is submitted that the interest of the 6th Respondent has extinguished in the subject land and they may not take effective steps to place all the facts before the Hon'ble Court and pursue the matter effectively.

13. I submit that pursuant to the purchase of all the interest in the project by M/s Venkataramana Constructions Group, they have entered into an agreement with M/s VillaOrchids LLP for construction of the Villas in the individual plots under a separate agreement and also issued a power of attorney in respect of some of the plots to the said M/s VillaOrchids LLP to construct and sell the Villas to 3rd parties. It is submitted that pursuant to the said arrangement, M/s Villa Orchids LLP has taken up the project and completed several of the Villas and constructed several other Villas after entering into agreements with 3rd parties for sale of the said Villas and other LIC flats. It is submitted that all such purchasers of Villas and LIG and MIG housing flats in the said layout are the members of the Petitioner /proposed 7th Respondent Association. It is submitted that all these purchasers have formed the said Association and they are very much interested in the subject matter of the writ petition as they will be seriously affected if the said writ petition is allowed without the entire material being placed before the Hon'ble Court and the Hon'ble Court being appraised of the actual facts and situation, the same would adversely affect the interest of the members of the Petitioner Association and they would lose their approach road basing on which they have purchased the Villas. It is submitted that 6th Respondent has no interest in the property as on date as it has already *sold its interest in favour of M/s Venkataramama Constructions and may*

not effectively pursue the matter or even pursue the matter at all. As such the Petitioner Association is now filing this application before this Hon'ble Court seeking to implead in the above writ petition and the miscellaneous applications therein and if the Petitioner is not impleaded as Respondent to the above writ petition, the members of the Petitioner Association would suffer severe and irreparable hardship and loss.

14. It is submitted that the Hon'ble Court may permit the Petitioner to file a counter affidavit to the averments made by the writ Petitioner in the writ affidavit and the contentions raised therein after impleadment of the Petitioner as 7th Respondent in the writ petition and the Petitioner reserves its right to file a detailed counter affidavit to the affidavit filed in support of the writ petition.

15. I submit that the Petitioner will be put to irreparable loss if the Petitioner is not impleaded as the 7th Respondent in the Writ Petition as its members are the purchasers of the Villas and Flats in the layout of the project and will be effected if any adverse orders are passed in the writ petition in their absence.

16. It is therefore prayed that this Hon'ble Court may be pleased to implead the Petitioner as 7th Respondent in WP No.12584 of 2015 and the

Miscellaneous Applications therein and pass such other order or orders as this Hon'ble Court deems fit and proper in the circumstances of the case.

Sworn and signed before me on
this the day of June, 2018
at Hyderabad.

Deponent

Advocate/Hyderabad

VERIFICATION

I, Anand S. Mehta, S/o Suresh Mehta, aged about 45 years, Occ: Business,, R/o 2nd Floor, Soham Mansion, M.G. Road, Secunderabad, do hereby verify and state that the contents of above paras are true to my personal knowledge, belief and information and the prayer is based on the legal advice. Hence, verified on this the _____ of June, 2018 at Hyderabad.

Counsel for the Petitioner

Deponent