

THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN

AND

THE HON'BLE SRI JUSTICE N. TUKARAMJI

+ WRIT APPEAL No.157 of 2023

% Date: 03.02.2023

M/s. Akshara Constructions

... Appellant

v.

\$ The State of Telangana,
Rep. by its Special Chief Secretary,
Municipal Administration & Urban Development Department,
Secretariat, Hyderabad,
and others.

... Respondents

! Counsel for the appellant : Mr. A.Sudarshan Reddy,
Learned Senior Counsel

^ Counsel for respondent No.1: Ms. Borra Lakshmi kanakavalli,
Assistant Government Pleader for Municipal
Administration & Urban Development Department

^ Counsel for respondents No.2 and 3: Mr. V.Siddhartha Goud,
Representing Mr. V.Narasimha Goud,
Standing Counsel for HMDA.

^ Counsel for respondents No.4 and 5: Ms. A.Chandana,
Assistant Government Pleader for Revenue

^ Counsel for respondents No.6 to 8: Mr. D.Vijaya Kumar

< GIST:

➤ HEAD NOTE:

? CASES REFERRED:

1. AIR 1976 SC 386

THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN

AND

THE HON'BLE SRI JUSTICE N. TUKARAMJI

WRIT APPEAL No.157 of 2023

JUDGMENT: *(Per the Hon'ble the Chief Justice Ujjal Bhuyan)*

Heard Mr. A.Sudarshan Reddy, learned Senior Counsel for the appellant; Ms. Borra Lakshmi Kanakavalli, learned Assistant Government Pleader for Municipal Administration & Urban Development Department representing respondent No.1; Mr. V.Siddhartha Goud, learned counsel representing Mr. V.Narasimha Goud, learned Standing Counsel for respondents No.2 and 3; Ms. A.Chandana, learned Assistant Government Pleader for Revenue representing respondents No.4 and 5; and Mr. D.Vijaya Kumar, learned counsel for respondents No.6 to 8.

2. This intra-court appeal has been filed by the appellant against the order dated 27.12.2022 passed by

the learned Single Judge disposing of W.P.No.46153 of 2022 filed by respondents No.6 to 8 as the writ petitioners.

3. Respondents No.6 to 8 (hereinafter referred to as, ‘the writ petitioners’) had filed the related writ petition assailing the legality and validity of the order dated 26.11.2022 passed by the Secretary, Hyderabad Metropolitan Development Authority (HMDA).

4. Appellant who was arrayed as respondent No.6 in the writ proceedings had submitted application before HMDA for approval of layout in respect of land to the extent of Acs.30.08 guntas in Survey Nos.435/P, 436/P, 437/P, 454/P, 460/P, 461/P, 462/P, 463/P and 464/P of Bowrampet Village, Dundigal Gandimaisamma Mandal, Medchal Malkajgiri District (subject land).

5. HMDA, after due consideration, had granted approval of the draft layout on 31.08.2020. At that stage, writ petitioners approached this Court by filing W.P.No.23795 of 2022 stating that they had lodged complaints before HMDA against the approval sought for by the appellant on

23.12.2020, 02.06.2021 and 23.04.2022. They sought for cancellation of the draft layout. Learned Single Judge vide the order dated 20.05.2022 disposed of the writ petition by directing HMDA to consider the aforesaid representations of the writ petitioners. It was the case of the writ petitioners that a portion of the subject land admeasuring Acs.3.20 guntas in Survey Nos.435/1/1 and 464/1/1/1/1/1/1 belongs to them. However, learned Single Judge while directing consideration of their objection further directed HMDA authorities to afford reasonable opportunity of hearing to the appellant. It was thereafter that HMDA passed the impugned order dated 26.11.2022.

6. By the aforesaid order HMDA noted that both the parties are having *prima facie* title over the land in respect of Survey Nos.435 and 464. But the main dispute pertains to possession which HMDA is not competent to decide. Noticing that writ petitioners have filed O.S.No.231 of 2020 on the file of learned Principal Junior Civil Judge at Medchal against the appellant in respect of the land

claimed by the writ petitioners as belonging to them, HMDA relegated the complainants (writ petitioners) to the forum of civil Court and dismissed the complaint. Assailing this order, the related writ petition came to be filed.

7. Learned Single Judge by the order dated 27.12.2022 took the view that HMDA did not consider the entirety of the objections raised by the writ petitioners and therefore, set aside the order dated 26.11.2022, whereafter matter has been remanded back to HMDA for passing a fresh order in accordance with law.

8. Learned Senior Counsel appearing for the appellant submits that learned Single Judge was not justified in setting aside the order dated 26.11.2022 and remanding the matter back to the file of HMDA. The aforesaid order of remand has caused severe prejudice to the appellant. After adverting to the materials on record, he submits that sale deed of the writ petitioners in respect of the land claimed as being theirs is dated 30.07.2020, which is after

08.07.2020 when the appellant had made application for approval of layout. That apart, writ petitioners themselves have instituted O.S.No.231 of 2020 which is pending. HMDA had considered all relevant aspects of the matter and had rightly taken the view that question of possession cannot be decided by it. It is for the objector to prove his possession before the competent civil Court. He, therefore, submits that order passed by the learned Single Judge may be suitably interfered with by the appellate Court.

9. Mr. D.Vijaya Kumar, learned counsel representing the writ petitioners submits that it is evident that appellant had obtained approval to the draft layout by misrepresentation. He has referred to the materials on record to substantiate his submission. When permission is obtained by misrepresentation or by way of fraud, the same is liable to be cancelled. In this connection he has placed reliance on Section 22 of the Hyderabad Metropolitan Development Authority Act, 2008 (briefly, 'the Act' hereinafter). Supporting the order passed by the learned Single Judge, he submits that no prejudice can be said to

have been caused to any of the parties by the order of remand. All that learned Single Judge has directed is reconsideration of the objection raised by the writ petitioners by way of a speaking order.

10. Mr. V.Siddhartha Goud, learned counsel representing HMDA submits that learned Single Judge was not justified in setting aside the order dated 26.11.2022. The writ petition raised disputed questions of fact. Therefore, learned Single Judge ought to have dismissed the writ petition. In support of his submission he has placed reliance on a decision of the Supreme Court in **D.L.F.Housing Corporation (P) Ltd. v. Delhi Municipal Corporation**¹.

11. Submissions made by learned counsel for the parties have received the due consideration of the Court.

12. From the pleadings and rival submissions we find that there is a serious dispute to title as well as possession in respect of a portion of the subject land to the extent of

¹ AIR 1976 SC 386

Acs.3.20 guntas in Survey Nos.435/1/1 and 464/1/1/1/1/1/1. HMDA after examining the order of this Court dated 20.05.2022 as well as the record rejected the complaint lodged by the writ petitioners. In this regard, written arguments and written submissions were filed by both the parties which were duly considered. Vide the order dated 26.11.2022 HMDA held as follows:

Heard the matter and perused the documentary evidences as well as written arguments submitted by both the parties.

M/s. Akshara Constructions rep., by its PVSN Raju & others have filed for approval for Layout with Housing Under Gated Community (With Compound Wall) vide No.037207/MED/LT/U6/HMDA/08-07-2020 in respect of land to an extent of Ac 30.08 Gts, in survey no. 435/P, 436/P, 437/P, 454/P, 460/P, 461/P, 462/P, 463/P & 464/P of Bowrampet village, Dundigal Gandimaisamma Mandal, Medchal Malkajgiri District, after verification of ownership and technical aspects, the draft lay out was approved on d 31.08.2020 and issued DC letter on 01.09.2020, due to allegation raised by the others with respect to other survey numbers such as 436, 462, 463 and after disposal of complainant, this authority issued permission vide LP No:15/LO /HMDA/2022 dated:30.04.2022.

Meanwhile, received the court orders in WP No:23795/2022 filed by i. Venus Sita Devi & others Vs HMDA, M/s Akshara constructions with regard to cancelation of the layout permission, and disposed the case on 19.05.2022 with directions to consider the representations of the complainant and before taking any action, the HMDA may give an opportunity to the respondent herein.

Therefore, examined under Section 22 of HMDA Act 2008 which reveals that, *"The Metropolitan Development Authority or the Government as the case may be revoke any Development Permission issued under this Act whenever it is found that it was obtained by making any false statement or misrepresentation or suppression of any material fact or Rule"*. There cannot be any suppression of facts or mis-representation.

Accordingly, this authority has given opportunities to both the parties and conducted enquiry, and they have submitted their written arguments with documentary evidences.

While the matter is under enquiry, the respondent herein has approached the Hon'ble High Court vide W.P.No:39239/2022 and the Hon'ble court issued directions on 27.10.2022 to this authority to conclude the enquiry on 12.11.2022, and further ordered to pass orders on or before 30.11.2022.

On perusal of the documents submitted by both the parties, it is found that, both parties are having the

prima face title over the land in respect of the survey number 435, 464 situated at Bowrampet village. Hence it is construed that, the main dispute between the parties is 'possession', in which this authority is not a competent to decide.

Further, the complainant herein filed OS No.231/2020 on 16-9-2020 on the file of Hon'ble Principal Junior Civil Judge, at Medchal against the respondents herein with regard to the encroachment in the suit schedule land to an extent of Ac.3.20 gts in sy.no:435, 464 pertains to the complainant herein, and as there is no orders were passed.

While the matter stood thus, on perusal of the documents of the submitted by the respondent, it is found that, the vendors of the complainants herein have filed OS No:81/2020 on the file of Hon'ble XVI Addl., Dist., & Sessions Judge cum-III Addl. Judge family court at Rangareddy at Malkajgiri regarding cancellation of the sale deed no:12567/2020 pertains to the complainants herein, in this case, the Hon'ble court has passed interim injunction orders in favour of the vendors of the complainants herein, restraining the respondents therein from alienating the petition schedule property.

Accordingly, examined the *prima facie* with regard to the documents submitted by both the parties, it is noticed that the respondent and the complainants are having *prima facie* title over the survey numbers 435, 464 situated at Bowrampet village, Gandimaisamma Mandal and implemented in revenue records including

Dharani with khata numbers and the respondent herein has submitted NALA conversion orders.

Thus it laid down, in terms of Section 53 (4) of HMDA Act 2008, the Metropolitan Authorities "any development permission or other clearance given under this act shall be construed as from planned development point of view and shall in no way either confer the ownership rights or affect the ownership under the land revenue laws. The Metropolitan Development Authority shall stand absolved of any ownership disputes/discrepancies".

In view of the above circumstances, the complaint is hereby rejected with directions to seek redress of their grievance before the appropriate forum.

13. From the above, it is seen that according to HMDA, both the contesting parties are having *prima facie* title over the subject land in respect of Survey Nos.435 and 464. But, the main dispute pertains to possession which HMDA is not competent to decide. It was further noticed that complainants (writ petitioners) have instituted O.S.No.231 of 2020 on the file of Principal Junior Civil Judge, Medchal, against the appellant alleging encroachment in respect of land to the extent of Acs.3.20 guntas in Survey Nos.435

and 464. However, no orders have been passed by the civil Court. That apart, vendors of the writ petitioners have instituted O.S.No.81 of 2020 on the file learned XVI Additional District and Sessions Judge at Malkajgiri, Ranga Reddy, for cancellation of the sale deed on the basis of which writ petitioners are claiming title over the land to the extent of Acs.3.20 guntas in Survey Nos.435 and 464. Faced with such a situation and having regard to Section 53(4) of the Act which says that grant of development permission would not confer title, HMDA rejected the complaint of the writ petitioners giving liberty to them to seek redressal before appropriate Court.

14. Learned Single Judge vide the order dated 27.12.2022, disposed of the writ petition in the following manner:

5. Both the petitioners as well as the unofficial respondent have raised several grounds and a reply was also given by the unofficial respondent No.6. Respondent No.3 has failed to consider all the objections that are raised by the petitioner as referred supra in paragraph Nos.7 to 11 and having come to a conclusion

that both the petitioners and the unofficial respondent No.6 have *prima facie* title has rejected the application of the petitioner. This Court feels that there is a force in the arguments of the learned counsel for the petitioners and the respondents have failed to consider the representation in its proper perspective.

6. In view of the same, the order impugned is set aside and respondent No.3 shall afresh consider the objections of the petitioners particularly as extracted in paragraph Nos.7 to 11 of the order impugned and the submissions of the unofficial respondent in paragraph Nos. 20 to 22 of the internal pages of the order and pass a reasoned order within a period of three weeks from the date of receipt of a copy of this order.

15. Learned Single Judge took the view that HMDA had failed to consider all the objections raised by the writ petitioners, more particularly those made in paragraphs 7 to 11. Opining that there is some force in the arguments of learned counsel for the writ petitioners, learned Single Judge set aside the order dated 26.11.2022 by directing HMDA to consider the matter afresh and pass a reasoned order.

16. On due consideration, we are afraid, we cannot subscribe to the view taken by the learned Single Judge. Writ jurisdiction under Article 226 of the Constitution of India is exercised as a public law remedy. Contours of public law remedy is well known. Unless there is violation of any statutory provision or there is violation of principles of natural justice or mala-fides, a writ Court would not entertain a writ petition which basically espouses *inter se* private dispute between two contesting parties, as in the present case.

17. Learned Single Judge did not point out as to which statutory provision has been violated or deviated upon by HMDA while passing the impugned order. From a perusal of the impugned order, it is evident that full opportunity was granted to the contesting parties by the HMDA before passing the impugned order. It is not the case that HMDA was actuated by malice which vitiated the impugned order. It is trite law that judicial review is concerned with the decision making process and not with the decision *per se*. Merely observing or opining that objections raised by the

writ petitioners in paragraphs 7 to 11 of the complaint were not properly dealt with, in our opinion, cannot be a good ground for setting aside an order passed by a statutory authority in exercise of the power of judicial review.

18. Having said so, let us examine provisions of Section 22 of the Act. Section 22 of the Act reads as follows:

22. Revoking of permission:- The Metropolitan Development Authority or the Government, as the case may be, may revoke any Development Permission issued under this Act whenever it is found that it was obtained by making any false statement or misinterpretation or suppression of any material fact or rule, by following such procedure as may be prescribed.

19. From the above, what is discernible is that HMDA or the Government, as the case may be, may revoke any development permission issued under the Act if it is found that it was obtained by making false statement or misinterpretation or suppression of any material fact or rule, by following such procedure as may be prescribed.

While conferring such a power on the HMDA and the Government, the statute however has not provided for lodging of complaint by a complainant for revocation of any development permission granted earlier.

20. Section 53 reads as follows:

53. Effect of other laws:- (1) Notwithstanding anything contained in the Hyderabad Municipal Corporations Act, 1955, the Telangana Municipalities Act, 1965, the Telangana Panchayat Raj Act, 1994 or any other law which are contrary to the provisions of this Act, the provisions of this Act shall have an overriding effect over all such laws.

(2) The provisions of the Telangana Urban Areas (Development) Act, 1975 which are inconsistent with the provisions of this Act shall not be applicable to the metropolitan region constituted under Section 3 of this Act.

(3) Notwithstanding anything in any other law,-

(a) When Development permission for development in respect of any land has been obtained under this Act, such development shall not be deemed to be unlawfully undertaken or carried out by reason only of the fact that any permission, approval or sanction required

under such other law for such development has not been obtained.

- (b) When Development permission for such development in respect of any land has not been obtained under this Act, such development shall not be deemed to be lawfully undertaken or carried out by reason only of the fact that permission, approval or sanction required under such other law for such development has been obtained.

(4) Any Development permission, No Objection Certificate or other clearance given under this Act shall be construed as from the planned development point of view and shall in no way either confer the ownership rights or affect the ownership under the land revenue laws. The Metropolitan Development Authority shall stand absolved of any ownership disputes or discrepancies.

(5) Once a Development permission is given, the right to develop the land in that way can be exercised by anyone acquiring and occupying the land. It is not restricted to the person making the application unless a specific condition is incorporated in the grant of the Development Permission.

(6) Any draft development plan prepared by the Metropolitan Planning Committee for the Metropolitan area (region) under Section 10 of the Telangana Metropolitan Planning Committee Act, 2007 shall be

construed as a draft development plan by the Authority and the plan shall be subject to the review of the Authority.

21. Sub-section (1) of Section 53 of the Act starts with a *non obstante* clause. It says that notwithstanding anything contained in the Hyderabad Municipal Corporations Act, 1955, the Telangana Municipalities Act, 1965, the Telangana Panchayat Raj Act, 1994 or any other law which are contrary to the provisions of the Act, the provisions of the Act shall have an overriding effect over all such laws. As per sub-section (4), any development permission granted under the Act shall be construed from the planned development point of view. Such permission shall neither confer ownership nor affect ownership. HMDA is absolved of any ownership dispute.

22. In W.A.Nos.513 and 516 of 2022 (**P. Subba Rao v. Hyderabad Metropolitan Development Authority**) decided on 17.11.2022, this Court examined the aforesaid provisions, more particularly Section 53 of the Act. Sub-section (4) of Section 53 of the Act clarifies

that any development permission given under the Act shall be construed as from the planned development point of view and shall in no way either confer the ownership rights or affect ownership under the land revenue laws. This Court on a careful scrutiny of the provisions of the Act held that there is no provision in the Act for raising objection to development permission or issuance of no objection certificate granted by HMDA. Discretion is vested on the HMDA whether to grant development permission or not. While granting development permission, HMDA is not required to enter into disputed questions of title etc. If it is *prima facie* satisfied about the claim of the applicant seeking development permission, it can grant such permission. However, as already noted above, such permission granted would be construed from the planned development point of view which would in no way either confer ownership rights or affect ownership under the land revenue laws. It was further held that there is no provision in the Act to enable a person to file objection before the

HMDA opposing grant of development permission. Such an objection filed is not maintainable.

23. If filing of objection to development permission is not maintainable, it goes without saying that having regard to the mandate of Section 22 of the Act, an application for revocation of development permission would also not be maintainable.

24. That being the position and upon thorough consideration of all aspects of the matter, we are of the view that impugned order of HMDA dated 26.11.2022 does not suffer from any irregularity or illegality to warrant interference. Learned Single judge was not justified in entertaining the writ petition and setting aside the said order dated 26.11.2022.

25. We accordingly set aside the order of the learned Single Judge dated 27.12.2022 and consequently dismiss W.P.No.46153 of 2022.

26. Writ appeal is accordingly allowed.

Miscellaneous applications pending, if any, shall stand closed. However, there shall be no order as to costs.

UJJAL BHUYAN, CJ

N. TUKARAMJI, J

03.02.2023

Note: LR copy to be marked.

B/o.

vs