

**(2022) 04 TEL CK 0071**

**In the Telangana High Court**

**Case No :** Writ Petition No. 27784, 27793 Of 2018

Darshinee Infra Projects

APPELLANT

Vs

Greater Hyderabad Municipal Corporation

RESPONDENT

**Date of Decision :** 25-04-2022

**Acts Referred:**

A.P. Regulation Of Unapproved And Illegal Layout Rules, 2007 — Rule 2(iv)

**Citation :** (2022) 04 TEL CK 0071

**Hon'ble Judges :** P. Madhavi Devi, J

**Bench :** Single Bench

**Advocate :** C Hari Preeth

**Final Decision :** Allowed

## Judgement

W.P.No.27784 of 2018:

This Writ Petition is filed seeking a Writ of Mandamus declaring the revocation Notice No.LRS/432/CR-11/WZ/GHMC/2012-18 dt.23.07.2018 served on 02.08.2018 on the petitioner in respect of Plot No.22/A and revocation Notice No.LRS/919/CR-11/WZ/GHMC/2012-18 dt.23.07.2018 served on 02.08.2018 in respect of Plot No.19/A, as illegal and arbitrary and in contravention of the provisions of the GHMC Act and the Rules framed thereunder and G.O.Ms.No.902-MA dt.31.12.2007 which was extended by G.O.Ms.No.113-MA dt.31.01.2008 and to consequently set aside the said proceedings.

2. Brief facts leading to the filing of this Writ Petition are that one Mr. Syamala Rao, having purchased Ac.5.00 of land in Survey Nos.78, 80 and 82P of Raja Rajeswari Nagar, Kondapur Village, Serilingampally Mandal, Ranga Reddy District, developed the same by way of an unapproved layout called 'Park Avenue' layout. He applied for regularisation of the said layout and the same was allowed in the year 2012. Mr. Syamala Rao sold Plot Nos.19/A and 22/A to one Mr. K. Harshavardhan Reddy from whom the petitioner has purchased the said plots. It is submitted that since LRS proceedings were already issued in favour of Mr.

Syamala Rao, i.e., vendor of the petitioner's vendor, the petitioner applied for building permission and the respondents have also issued building permission in favour of the petitioner vide proceedings No.1/C14/00083/2016 dt.31.12.2016. It is submitted that the petitioner has accordingly started construction of the building and when 90% of the said building was constructed, the respondents have issued show-causes notice dt.27.06.2018 as to why the LRS proceedings issued vide orders dt.14.06.2012 and 08.10.2012 should not be cancelled on the ground that Mr. Syamala Rao obtained LRS proceedings on material misrepresentation of facts and fraud. In reply to the said show cause notices, the Managing Partner of the petitioner stated that they are not connected with the said show-cause notices as the show-cause notices allege fraud by Mr. Syamala Rao. Therefore, the respondents issued show-cause notices to Mr. Syamala Rao and thereafter, the LRS permission granted to Mr. Syamala Rao was cancelled on the ground that Plot Nos.19-A and 22-A are falling in the open space earmarked for lung space for public purpose at large in the layout of Park Avenue, Raja Rajeshwari Nagar, Kondapur Village, Serilingampally Mandal and that these plots were non-sequenced plot numbers which clearly shows that the petitioner's vendor's vendor converted the layout open space into random plots and obtained LRS approval on material misrepresentation of facts and on fraud and that the petitioner has purchased the property without verifying the same and therefore the GHMC is not responsible. Accordingly, the LRS permission granted vide proceedings dt.14.06.2012 and 08.10.2012 were cancelled by the impugned revocation orders and the petitioner was directed to return the original copy of the permit order and sanctioned plan. Challenging the same, this Writ Petition has been filed.

3. Learned counsel for petitioner points out that the LRS proceedings were issued in the year 2012 after due verification of the site and it is in the year 2018, i.e., after a period of 6 years that the respondents have sought to cancel the LRS permission. It is submitted that it is on the basis of the LRS permission granted to Mr. Syamala Rao that the building permission was granted to the petitioner and till date the building permission has not been cancelled and the petitioner has already completed nearly 90% of the construction and by virtue of the interim order granted by this Court to maintain status quo, the petitioner is not able to complete the works and all of its funds are blocked in the said construction and it is suffering irreparable loss. He submits that when admittedly, the layout in which the plots of the petitioner are located is an unapproved layout and therefore, the vendor of the petitioner's vendor had made an application for regularisation and it is after collection of the penal charges for the open spaces that the respondents have issued the LRS permission. He submits that after a period of 6 years without any basis, the LRS permissions are cancelled, which is illegal and arbitrary. He places reliance upon a decision of the National Green Tribunal, South Zone in Application No.36/2015 (SZ) in the matter of Janam Kosam rep. by its General Secretary Thakur Rajkumar Singh Vs. The State of Telangana rep. by its Chief Secretary and others Application No.36 of 2015 (SZ)

dt.03.08.2016, wherein the Tribunal has held that where the Government of Andhra Pradesh has regularised the unapproved layout and on the basis of the same, the respondents therein having purchased the property and made constructions thereon in accordance with the building permissions, such persons cannot be said to be encroachers of the property. He submitted that similarly the petitioner herein has also purchased the property after LRS was granted and therefore, the respondents cannot now turn around and say that the LRS granted to the predecessor-in-title of the petitioner is illegal. He has also filed photographs of various buildings that have come up in the area to demonstrate that the authorities have granted permission to all others except the petitioner herein.

4. Learned Standing Counsel for GHMC, Sri Sampath Prabhakar Reddy, on the other hand, relies upon the reasons given in the impugned orders, wherein it is stated that the area earmarked for open space has been marked as plots out of sequence, which have been sold and therefore the LRS given for such plots has rightly been cancelled/revoked. He places reliance upon Rule 2(iv) of the A.P. Regulation of Unapproved and Illegal Layout Rules, 2007 and also G.O.Ms.No.902, MA & UD (M1) Department, dt.31.12.2007 in support of his contentions.

5. Having regard to the rival contentions and the material on record, it is seen that Mr. Syamala Rao, the vendor's vendor of the petitioner had purchased Ac.5.00 of land in the year 1999 by way of a registered sale deed bearing Document No.7873 of 1999 dt.19.11.1999. Mr. Syamala Rao converted the said land into a layout known as "Park Avenue" layout. Thereafter he applied for ULC clearance from the Special Officer, Competent Authority, ULC, Hyderabad vide his application dt.05.05.2006 for Plot No.19A admeasuring 571.5 square metres and Plot No.22A admeasuring 571.5 square metres in the said unapproved layout of Park Avenue, Kondapur Village, Serilingampally Mandal, GHMC Serilingampally Circle, Ranga Reddy District. Thereafter, he entered into an Agreement of Sale-cum-GPA vide registered Document Nos.10584 of 2012 dt.07.09.2012 and 10587 of 2012 dt.07.09.2012 for Northern parts of Plots 19A and 22A respectively admeasuring 341.8 square yards each and also handed over possession of the same to the vendees. Subsequently, vide registered sale deed No.7859 of 2016 dt.22.06.016, the vendor through his AGPA holder sold Northern part of Plot No.19A in favour of the petitioner and Northern part of Plot No.22A in favour of (1) one Mr. V. Pavan Kumar, S/o V. Shanker, (2) one Mr. Kusuma Ganesh, S/o Venkata Reddy Kusuma and (3) one Mr. P. Pavan Kumar, S/o P. Siva Kumar. The said persons entered into a Development Agreement-cum-General Power of Attorney with the petitioner herein for development of the said land. The petitioner thus having purchased Northern parts of Plot Nos.19A and Plot No.22A, thereafter obtained building permissions for construction of Cellar + ground + 5 upper floors on a total area of 570.78 square metres.

6. From the above facts, it is clear that the layout called as "Park Avenue" was an

unauthorised layout and it was developed by Mr. Syamala Rao. Mr. Syamala Rao had also obtained LRS proceedings in respect of Plot Nos.19/A and 22/A. The authorities have collected penal charges for regularisation of the above two plots in the unauthorised layout and also collected pro-rata charges towards shortfall in the open space in the layout for both the plots. The respondents have filed a copy of the layout which is allegedly filed by the 'Park Avenue Welfare Association', before them along with their complaint. According to the said document, there are no Plot Nos.19/A and 22/A. However, it is also observed by the respondents that on site inspection they found a road in between the open area of 107" x 270" as marked for open area in the layout. If the said layout is taken into consideration, the plotted area is mentioned as 60%, road area as 25.49% and open area as 14.50%. If this was to be accepted and the said layout document has been taken into consideration for regularisation of Plot Nos.19/A and 22/A, then there was no need for collection of any pro-rata charges for open area because as per the A.P. Regulation of Unapproved and Illegal Layout Rules, 2007, the open area required for a layout for approval is only 10%. However, the predecessor-in-title, i.e., vendor's vendor of the petitioner, paid the pro-rata charges for shortage of open area and the department has accepted the same and has regularised the plots by collecting the penal charges as well as pro-rata charges for shortfall of open area. Therefore, the respondents have accepted the plots carved out of open space in the unapproved layout. They cannot now turn around to say that the open area in the unapproved layout has to be maintained as such.

7. Further, the petitioner had made a submission that the show-cause notice has not been issued to the person who has got the plots regularised, i.e., Mr. Syamala Rao and that the notice addressed to Syamala Rao was served on the petitioner at the site and therefore there is no service of the show-cause notice on the land owner who had converted the land into the layout and had also got the plots regularised under the LRS Scheme. Though, in the counter affidavit filed by the respondents, it is stated that the notice was served on Syamala Rao both at the address given and also at the schedule property, there is no proof of issuance of or service of notice to Mr. Syamala Rao at the address given in the notice. There is no reference to any submissions made by Mr. Syamala Rao after receipt of the alleged show-cause notice. Therefore, it appears that the respondents have not served the notice at the address given in the notice on Mr. Syamala Rao, but they have only served the notice on the petitioner at the schedule property. For this reason alone, the orders revoking the LRS permissions are liable to be set aside. Even otherwise, having regard to the fact that the respondents have visited the site and have regularised Plot Nos.19/A and 22/A after collecting the pro-rata charges for shortfall of open area, it is clear that the open area as alleged by the respondents is not available in the unapproved layout. Further, the petitioner had purchased the property after obtaining information from the respondents under the Right to Information Act about the unapproved layout and only after being satisfied that the subject plots

have been regularised under the LRS Scheme. Therefore, cancellation or revocation of the LRS without serving notice on the land owner who has obtained the LRS and that too after a period of six (6) years is not sustainable.

8. In view of the same, W.P.No.27784 of 2018 is allowed and the revocation orders dt.23.07.2018 cancelling the LRS proceedings in respect of Plot Nos.19/A and 22/A of Park Avenue, Raja Rajeswari Nagar, Kondapur Village are set aside. No order as to costs.

W.P.No.27793 of 2018

9. The facts in this case are also similar, except that the petitioner herein has purchased Southern parts of Plots 19A and 22A respectively vide registered sale deeds and has obtained building permission to construct thereon.

10. Therefore, in view of the detailed reasons given above, W.P.No.27793 of 2018 is also allowed. No order as to costs.

11. Pending miscellaneous petitions, if any, in these Writ Petitions shall stand closed.