

(1999) 10 AP CK 0054

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 19080 and 19078 of 1996

G. Pochaiah

APPELLANT

Vs

Government of Andhra Pradesh and another

RESPONDENT

Date of Decision : 05-10-1999

Acts Referred:

Andhra Pradesh Urban Areas (Development) Act, 1975 — Section 12, 14(2), 15, 28
Urban Development Authority (Hyderabad) Rules, 1977 — Rule 15

Citation : AIR 2000 AP 52 : (1999) 6 ALD 796 : (2000) 1 ALT 713

Hon'ble Judges : Goda Raghuram, J

Bench : Single Bench

Advocate : Mr. L. Ravichander, for the Appellant; Government Pleader, for Municipal Administration and Mr. T. Niranjan Reddy, SC for HUDA, for the Respondent

Judgement

1. These two writ petitions involve similar facts and warrant application of common principles of law. Having been heard together they are disposed of by this common judgment. The facts in Writ Petition No. 19078 of 1996 are recorded for the purpose of analysis of the issues involved.

2. The petitioner assails the letter N0.793S/MP-1/HUDA/95, dated 7-5-1996 of the Hyderabad Urban Development Authority calling upon him to remit an amount of Rs.7,35,138/- towards the difference of development charges. The established and undisputed facts are as under:

(a) The petitioner made an application dated 10-6-1993 to respondent 2 for according change of land use u/s 12 of Andhra Pradesh Urban Areas (Development) Act, 1975 (for short" Act.

(b) On 14-11-1995 respondent 2 issued a draft notification u/s 12(2) of the Act inviting objections to the proposal containing therein for effecting change of land use as represented by the petitioner.

(c) By a communication dated 15-11-1995 respondent 2 called upon to pay an

amount Rs.2,65,046/- towards development charges, green belt charges and processing charges. The said notice also intimated that if the petitioner fails to remit the above amount within the stipulated time the government would close further processing of the matter for nonpayment of the prescribed charges. It is also stated that the above charges except the processing charges are refundable without interest in the event of the State Government not agreeing to the proposed modification of the plan. Pursuant to the above communication the petitioner paid the amounts demanded on 24-11-1995.

(d) The impugned proceeding dated 7-5-1996 was issued by respondent 2 calling upon the petitioner to pay an amount of Rs.7,35,138/- towards the difference of development charges. This communication stated that the Government by its letter dated 12-2-1996 has directed respondent 2 to collect these charges on the basis of the revised developmental charges ordained in G.O.Ms. No.51 MA, dated 5-2-1996. This proceeding is assailed in this writ petition.

3. Sri Prabhakar Sripada, learned Counsel for the petitioner contends that an analysis of the statutory regime operating in the area including the provisions of the said GO would conclusively posit the position that the development charges existing as on the date of the application made u/s 12 of the Act are required to be paid and not development charges that exist as on the date a final notification is issued. This contention is supported by reliance on the provisions of Section 14(2) of the Andhra Pradesh Urban Areas (Development) Act, 1975, which is in the following terms:

"(2) Every application under subsection (1) shall be accompanied by such fee as may be prescribed:

Provided that no such fee shall be necessary in the case of an application made by a Department of the Government, or any local authority."

4. The provisions of Rule 15 of the Urban Development Authority (Hyderabad) Rules, 1977 are also relevant to identify the relevant date for the purpose of determining the development charges due and payable in respect of an application for conversion of land use. Rule 15 states that "No application for permission u/s 14 shall be deemed valid unless the person giving an application has paid to the Authority, in advance the fees determined by the Authority from time to time for the grant of permission". Further, Rule 15(5) states that Any person who intends to develop or change any use of any land or building under the provisions of the Act shall, along with the application for permission on a prescribed form, pay the development charges levied at the rates specified in the Table...., and the proviso to this sub-Rule states that such development charges shall be levied only with effect from such date as the Government may by notification specify" in that behalf.

5. An inter-active analysis of the provisions of Section 14 and Rule 15 warrant the irresistible conclusion that the development charges prescribed and subsisting as on the date of application u/s 12 shall be the charges due and

payable and that such charges shall accompany any application made for invoking the provisions of Section 12.

6. The learned Counsel for the respondents Sri Rama Rao for the State Government and Sri Niranjan Reddy for IIUDA resist the relief sought in the writ petition contending that the development charges payable are such developmental charges as are specified and subsisting as on the date of the issue of the final notification. This contention is sought to be reinforced by urging that the Government is free to alter the rates of development charges from time to time and that till a final notification is issued the change of land use is not effectuated and therefore an applicant for change of land use is duty bound in law to pay such development charges as existing on the date the final notification is issued.

7. The counter of respondent 2 also refers to the amendment incorporated to Section 28 of the Act by Ordinance No.1 of 1996 and 10 of 1996. By the said amendment the first proviso to Section 8 was amended enabling the levy of developmental charges at different rates for different institutions of use as may be prescribed from time to time. This amendment does not facially or conceptually throw any light on the relevant date for the purpose of determining the developmental charges to be paid. The two provisions in the statutory environment having a bearing on the question are the provisions of Section 14(2) of the Act and Rule 15 of the Rules. As already noticed these two provisions clearly warrant the inference that the date of application is the relevant date and that the development charges prescribed and subsisting as on the date of the application alone need be paid since the payment of development charges is a condition precedent for conversion of land use. Any contention that development charges as amended subsequent to the date of the application and subsisting as on the date of the final notification need be paid is a vacuous contention without any authority of law. There is no legal foundation for such contention and in fact the analysis of the legal environment to which reference has already been made to disclose that such contention would run counter to the ordained Legislative environment. This contention of the respondents thus does not commend itself to this Court and is accordingly rejected.

8. On the above analysis of the facts and governing law the impugned order of respondent 2 dated 7-5-1996 warrants invalidation and is accordingly declared illegal and inoperative.

9. The writ petitions are accordingly allowed with the above declaration. No costs.