
(2022) 11 TEL CK 0050
In the Telangana High Court
Case No : Writ Appeal Nos. 513, 516 Of 2022

P. Subba Rao

APPELLANT

Vs

Hyderabad Metropolitan Development Authority

RESPONDENT

Date of Decision : 17-11-2022

Acts Referred:

Hyderabad Metropolitan Development Authority Act, 2008 — Section 53, 53(4)

Citation : (2022) 11 TEL CK 0050

Hon'ble Judges : Ujjal Bhuyan, CJ;C.V.Bhaskar Reddy, J

Bench : Division Bench

Advocate : P V L Bhanu Prakash, Y Rama Rao

Final Decision : Dismissed

Judgement

1. This judgment will dispose of W.A.Nos.513 and 516 of 2022.
2. We have heard Mr. Dammalapati Srinivas, learned Senior Counsel for the appellants; Mr. Y.Rama Rao, learned counsel for the Hyderabad Metropolitan Development Authority (HMDA); Mr. G.Malla Reddy, learned Standing Counsel for Manikonda Municipality; Mr. V.Ravinder Rao, learned Senior Counsel as well as Mr. P.Sri Raghu Ram, learned Senior Counsel for M/s.Rishab Realtors and Developers (briefly, 'M/s. Rishab Realtors' hereinafter) and M/s. Raghuram Pradeep Constructions (India) LLP (briefly, 'M/s.Raghuram' hereinafter) arrayed as respondents No.8 and 9 in W.P.No.15777 of 2022 and respondents No.5 and 6 in W.P.No.18966 of 2022.
3. W.A.No.513 of 2022 arises out of W.P.No.15777 of 2022, whereas W.A.No.516 of 2022 arises out of W.P.No.18966 of 2022.
4. Both W.P.Nos.15777 and 18966 of 2022 were filed by the appellants. Both were dismissed vide the common order dated 15.07.2022. Assailing the aforesaid common order dated 15.07.2022, the two writ appeals have been preferred.

5. W.P.No.15777 of 2022 was filed by the appellants assailing the legality and validity of the order dated 28.08.2021 passed by the HMDA intimating payment of development charges and other charges by M/s.Raghuram. By the aforesaid order dated 28.08.2021, the aforesaid charges were levied while sanctioning permission for construction of multi-storied residential buildings in the land measuring Acs.9-32.5 guntas and Acs.5-32.7 guntas in Survey Nos.441, 442 and 447 part of Puppalguda Village, Gandipet Mandal in the District of Ranga Reddy (briefly, 'the subject land' hereinafter).

6. In the second writ petition i.e., W.P.No.18966 of 2022, challenge has been made to the order dated 30.11.2021 issued by the Manikonda Municipality in furtherance of the technical approval dated 22.10.2021 issued by the HMDA for construction of the aforesaid multi-storied residential building on the subject land.

7. By the common order dated 15.07.2022, learned Single Judge dismissed both the writ petitions by giving liberty to the appellants to avail their remedy, if any, before the competent forum.

8. In the hearing today, Mr. Dammalapati Srinivas, learned Senior Counsel for the appellants submits that order dated 22.10.2021 cannot be sustained in law inasmuch as notice issued to the appellants on 11.10.2021 in connection with the objection filed by the appellants against the multi-storied residential buildings construction were not served upon the appellants. Therefore, they could not file their objection. HMDA was not justified in taking the view that since appellants did not submit any explanation, the objection should be dismissed. Having received the objection, it was the bounden duty of the HMDA to have served upon the appellants the notice of hearing on the objection and without carrying out the above exercise, HMDA was not justified in rejecting the objection of the appellants. Referring to the reply affidavit filed by the appellants to the counter affidavit filed by M/s.Raghuram in W.P.No.15777 of 2022, he submits that it has been the consistent stand of the appellants that the notice dated 11.10.2021 was never received by the appellants. Appellants have a better claim over the subject land, having obtained a decree from the competent civil Court.

9. Mr. V.Ravinder Rao, learned Senior Counsel representing M/s.Rishab Realtors as well as M/s.Raghuram submits that the objection raised by the appellants to the construction of multi-storied residential buildings is without any substance. Appellants have been putting spanner in the works of his clients since a long time. They had raised a similar objection in 2017 which was dismissed by HMDA. Referring to the decree obtained by the appellants on 21.06.2018 in O.S.No.723 of 2003, he submits that the said decree is an ex-parte one, that too was obtained in a collusive manner by the appellants, which is however subject to appeal filed by M/s.Rishab Realtors and M/s.Raghuram, being A.S (SR).No.8095 of 2020, pending before the Principal District Judge, Ranga Reddy District. Contending that there is absolutely no merit in the writ appeals, he seeks dismissal of the same.

10. Mr. P.Sri Raghu Ram, learned Senior Counsel representing the same set of respondents submits that learned Single Judge is absolutely right in dismissing the two writ petitions. There is no provision under Section 53 of the Hyderabad Metropolitan Development Authority Act, 2008 (briefly, 'the Act' hereinafter) enabling an objector to file objection to development permission. Therefore, there was legal obligation on the part of HMDA to have entertained objection of the applicants and to have issued notice of hearing to them. Factum of receipt or non-receipt of such notice is therefore immaterial. He further submits that as a public authority, there was no duty cast upon HMDA to have heard the objection of the appellants under Section 53 of the Act. He submits that appellants have not been able to demonstrate any infringement of public law to avail the public law remedy. Appellants are asserting their civil rights vis-a-vis his clients. There is no element of public law involved. That apart, while granting building permission HMDA does not decide title. If the appellants are of the view that they have a better title over the subject land, they can avail their remedy under the private law, but no case for seeking relief under public law remedy is made out.

11. In reply, Mr. Dammalapati Srinivas, learned Senior Counsel for the appellants, submits that appellants have assailed the decision making process of HMDA. By not hearing the objector, HMDA has violated principles of natural justice. Further, the decree of the civil Court was obtained after rejection of the earlier complaint. Therefore, fresh complaint was lodged.

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

13. At the outset we may advert to the order of the learned Single Judge. Learned Single Judge rejected the contention of the appellants in the following manner:

"7. The petitioners made a representation to the HMDA not to grant any permission in favour of the unofficial respondents on the ground that they have a decree in their favour and the Appeal against the said judgment and decree is also pending. In view of the pending civil disputes, HMDA should not grant permission in favour of the unofficial respondents. When an Application is filed seeking building permission before the HMDA or before the municipality, they have no jurisdiction to go into any disputed questions of fact or decide the title of the parties. They can only consider the Application seeking building permission basing on the material placed before them by looking at the prima facie title to the property and either grant or refuse permission. In this case, the petitioners have filed a suit for specific performance and obtained a decree. So far the sale deed is not executed in favour of the petitioner. Whereas, it is submitted by the learned Standing Counsel for HMDA that the unofficial respondents have pahanis, registration certificate, encumbrance certificate, etcetera in their favour. HMDA taking all these documents into consideration and having satisfied with the prima facie title granted permission. In none of the suits, HMDA is a party and no prohibitory orders are passed by the Courts restraining the HMDA from granting

permission. Earlier also, multiple complaints were filed by the petitioners in the similar lines and they were rejected. Now they have come up with another set of complaints before the authorities. This has become a growing trend in the city where the parties in the process of settling their civil disputes are relying more on the local bodies and the HMDA and further approaching this Court. The respondents have no jurisdiction to entertain these kind of petitions. Petitioner, who has no registered document evidencing title to the property basing on the pending civil litigation, cannot stall the construction activity of the unofficial respondents and the respondents cannot be compelled to go beyond their jurisdiction and interfere in the disputed questions of fact. Hence, this Court finds no reason to entertain these Writ petitions.

8. Accordingly, both the Writ Petitions are dismissed giving liberty to the petitioners to seek appropriate remedy, if any before the competent Court. There shall be no order as to costs."

13.1. From a perusal of the above, it is seen that learned Single Judge held that while granting building permission, HMDA is not required to go into any disputed question of fact or decide the title of the parties. HMDA is required to consider such application on the basis of materials placed before it by taking a prima facie view. On the contention of the appellants that they have a decree in their favour, learned Single Judge noted that HMDA is not a party to the suit or the appeal. There is no restraint order of the Court restraining HMDA from granting permission. Insofar objections filed by the appellants are concerned, learned Single Judge noted that earlier also multiple complaints were filed by the appellants against the construction of M/s.Rishab Realtors and M/s.Raghuram. All those complaints were dismissed. Learned Single Judge further noted that appellants did not have any registered sale deed evidencing title in their favour. Therefore, at their instance, construction carried out by the unofficial respondents could not be stopped.

14. At this stage we may refer to Section 53 of the Act, which deals with effect of other laws. It reads as under:

"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."

15. From the language of Section 53 of the Act we find that the said provision has got overriding effect over related statutes, such as, Hyderabad Municipal Corporations Act, 1955, Telangana Municipalities Act, 1965, Telangana Panchayat Raj Act, 1994, Telangana Urban Areas (Development) Act, 1975 etc. Sub-section (4) makes it clear that any development permission, no objection certificate etc., granted under the Act would be construed from the planned development point of view and shall in no way either confer ownership rights or affect ownership under the land revenue laws.

16. On a careful scrutiny of Section 53 of the Act as well as other provisions thereof, we do not find that there is any provision for raising objection to development permission or 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.

17. Reverting back to the order dated 22.10.2021, we find that appellants had filed objection on 17.05.2018 to the building permission granted to M/s. Rishab Realtors and M/s.Raghuram. Explanation was called for from M/s.Raghuram on 11.10.2021. However, it was noted that such explanation was not received.

Referring to sub-section (4) of Section 53 of the Act, it was stated that any development permission given under the Act is to be construed from the planned development point of view which would in no way either confirm ownership rights or affect the ownership under land revenue laws. It was further noted that there is no provision in the Act to enable a person to file objection before HMDA opposing grant of development permission. This has been judicially decided. Therefore, the objection filed by the appellants was not maintainable. Clarifying that development permission granted would not confer any title nor would it take away the right of any other person from over the subject land, it was clarified that the objector could approach the appropriate forum for redressal of grievance. Before concluding, Metropolitan Commissioner stated that appellants had filed similar complaint in 2017 which was examined, but was rejected.

18. On due consideration, we are of the view that stand taken by HMDA is in accordance with Section 53 of the Act and does not suffer from any irregularity or illegality to warrant interference. If the appellants are aggrieved or if the appellants have grievance pertaining to title over the subject land, they are at liberty to work out their civil remedy before the appropriate forum. As we have rejected the challenge to the order dated 22.10.2021, challenge to the order dated 28.08.2021 calling for payment of development charges becomes redundant.

19. In the circumstances, we do not find any good ground to entertain the two appeals.

20. Both the writ appeals are accordingly dismissed.

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