

*** THE HON'BLE SRI JUSTICE B KRISHNA MOHAN**

+ WRIT PETITION No.2066 of 2021

% 31.10.2023

Between:

Larsen & Toubro and Vision Ventures Limited A company incorporated under Companies Act, 1956, Having its registered office at Post Box No. 979 Mount Poonamalies Road, Manapakkam, Chennai, Tamil Nadu – 600089, Represented by its Director, Sri B. Lakshmi Prabhakar, S/o. Sri Nageswara Rao, Flat No. B-24, Stonevally, Road No.4, Banjara Hills, Hyderabad.

.... Petitioner

Versus

\$ The State of Andhra Pradesh, Rep. by its Principal Secretary, Municipal Administration & Urban Development Department, Velagapudi, Amaravathi and another.

....Respondents

! Counsel for the petitioner : Sri Venkateswara Rao Gudapati

^ Counsel for the respondent : Addl. Advocate General
SC for VMRDA

<Gist:

>Head Note:

? Cases referred:

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DATE OF ORDER PRONOUNCED: 31.10.2023.

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE B KRISHNA MOHAN

1. Whether Reporters of Local newspapers may be allowed to see the Order? Yes/No
2. Whether the copies of order may be marked to Law Reporters/Journals? Yes/No
3. Whether Your Lordships wish to see the fair Copy of the Order? Yes/No

JUSTICE B KRISHNA MOHAN

IN THE HIGH COURT OF ANDHRA PRADESH :: AMARAVATI**THE HON'BLE SRI JUSTICE B KRISHNA MOHAN****WRIT PETITION No.2066 of 2021**

Larsen & Toubro and Vision Ventures Limited A company incorporated under Companies Act, 1956, Having its registered office at Post Box No. 979 Mount Poonamalies Road, Manapakkam, Chennai, Tamil Nadu – 600089, Represented by its Director, Sri B. Lakshmi Prabhakar, S/o. Sri Nageswara Rao, Flat No. B-24, Stonevally, Road No.4, Banjara Hills, Hyderabad.

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The State of Andhra Pradesh, Rep. by its Principal Secretary, Municipal Administration & Urban Development Department, Velagapudi, Amaravathi and another.

....Respondents

ORDER:

Heard the learned counsel for the petitioner, the learned Standing Counsel for the 2nd respondent and the learned Government Pleader for the 1st respondent.

2. This writ petition is filed questioning the G.O.Ms.No.4, Municipal Administration and Urban Development Department dated 22.01.2021 issued by the 1st respondent permitting the 2nd respondent to cancel the land allotment in an extent of Ac. 31.30 cents (an extent of Ac.22.71 cents in Sy.No.7, 165/P & 166 and an extent of Ac. 8.59 cents in Sy.No. 67/P of Kommadi Village,

Visakhapatnam Rural Mandal & Visakhapatnam District) in Kommadi Village in favour of the petitioner-company and the consequential order in Rc.No.9464/2005/L&T/F1 dated 22.01.2021 passed by the 2nd respondent.

3. The learned counsel for the petitioner submits that the petitioner-company is a Special Purpose Vehicle incorporated on 22.12.2006 by Larsen and Toubro Limited and Vision Ventures limited exclusively for implementation of the project i.e, developing, financing, constructing and marketing residential township in Visakhapatnam District as per the terms and conditions stipulated by erstwhile Visakhapatnam Urban Development Authority (VUDA) now the respondent No.2 vide its Letter of Award (LOA) R.C.No.9464/05/P.M.U dated 28.11.2006. The 2nd respondent was assigned an extent of Ac. 55.15 cents in Sy.No.1 of Vepagunta Village, Pendurthi Mandal, Visakhapatnam District under RC.No.411/2000/Special R.I dated 30.09.2000 for the purpose of comprehensive development by the respondent No.1 and accordingly, the respondent No.2 for the purpose of developing the said land with Housing Project on Public Private Partnership (PPP) Mode issued a notification on 11.12.2005 calling for Expression of Interest (EOI) from the prospective and reputed developers registered in the Country or Multi National Companies having Member Consortium with Indian Companies to design and to build, finance and market independent dwelling

units/bungalows. In pursuance of the notification issued by the 2nd respondent, the petitioner company submitted and participated in the competitive bidding process and was declared as the highest final bidder and accordingly passed the evaluation of technical business and commercial proposals as consortium between M/s Larsen & Toubro, Chennai and Vision Ventures Private Limited for the development of housing project at Vepagunta, Visakhapatnam on the land in an extent of Ac. 55.15 cents in Sy.No.1 on the joint venture basis under PPP mode. The Letter of Award (LOA) R.C.No. 9464/05/P.M.U dated 28.11.2006 was also issued to the consortium lead by Larsen & Toubro limited. In terms of the conditions in the LOA dated 28.11.2006, the petitioner-company was incorporated as Special Purpose Vehicle/Joint Venture to complete the development project. Thus, the petitioner-company was specifically incorporated for the purpose of implementing the project contemplated by the respondent No.2. The petitioner-company inter-alia established regional offices, created office infrastructure, hired qualified engineering and senior staff, marketing and advertising agents to complete the project within a period of 30 months as stipulated in the LOA dated 28.11.2006. In pursuance of the said LOA dated 28.11.2006, the development agreement dated 31.03.2007 was executed incorporating the terms and conditions for development of the project. The power of attorney was also executed on the

same date i.e, 31.03.2007 by and between the 2nd respondent and the petitioner-company. The development agreement dated 31.03.2007 sets out the rights and obligations of both the petitioner-company (as developer) and the respondent No.2. The respondent No.2 was to hand over the project site i.e., vacant land of Ac.55.15 cents in Sy.No.1 of Vepagunta Village, Pendurthi Mandal, Visakhapatnam District to the Developer as is where is basis, for the petitioner to develop and the petitioner –company was to pay 10% of Minimum Guaranteed Amount of Rs. 6,24,00,000/- which was later adjusted as advance against the total sale consideration. The petitioner-company also paid an amount of Rs. 43,12,000/- toward Project Development Expenses incurred by the Respondent No.2 on land management, payment to consultants, etc. in order to bring the project to bidding stage. The project concept is set-out in Article 1.2 of the Development Agreement dated 31.03.2007. As per Article 1.2, the project concept as conceived by erstwhile VUDA included independent 2,3,4 and 4- Bedroom dwelling units/Bungalows with a mix of Low rise and High Rise Group Housing with world class amenities including Shopping Malls, IT Campus, School, Hospitals, Star Rated Hotel Club House, Health Spa & Swimming Pool, Community Center etc. to be designed, developed, financed, constructed, marketed, operated and maintained by the Developer. The Obligations of the petitioner-company (Developer) are set out

in Article 3 of the Development Agreement dated 31.03.2007 and in simple terms, the petitioner-company was to develop/construct residential township with all infrastructure facilities in the project site allotted by the respondent No.2.

4. The petitioner company pursuant to the execution of the development agreement has appointed world class consultants like Surbana International Consultants India Private Limited and others for the conceptualization of Residential township. The Regional offices in Visakhapatnam was also set out pursuant to the Development Agreement. Engineering and other staff members were hired for the execution of the Project in a timely manner. The petitioner company also appointed consultants for Geological Investigations, soil exploration, contour survey and hired, deployed on site execution team and started work at project site. The petitioner company had also appointed a full-fledged team for marketing and advertisement, as it was one of the obligations of the petitioner company under the development agreement.

5. In pursuance of the said development agreement, the petitioner proposed soil testing on the project site at Vepagunta Village, Visakhapatnam and accordingly the personnel of the 2nd respondent along with the petitioner approached the site for formation of roads and also for the survey process to hand over the said land in pursuance of the Development Agreement. When the team of officials from the petitioner company visited the project

site for physical inspection, much to the surprise and shock of the petitioner company, it came to light that the project land offered at Vepagunta Village, Visakhapatnam by the 2nd respondent was a notified forest land and included in the Reserve Forest Block. The respondent No.2 was not the owner of the project site offered. Having parted with the amount and having appointed Architects, drawings and survey, by incurring huge costs, the petitioner company was surprised to know that the land offered by the respondents was not in their possession and it is a disputed land.

6. In view of the disputed ownership of the project site at Vepagunta Village and deliberations with the respondent No.2, the respondent No.1 has issued G.O.Ms.No.729 dated 24.10.2008 for allotment of alternate land. Under G.O.Ms.No. 729 dated 24.10.2008, the respondent No.1 permitted the respondent No. 2 to allot alternative land in an extent of Ac.49.33 cents in Kommadi Village, Visakhapatnam (Ac.33.38 cents in Sy.No.7, Ac.8.84 cents in Sy.No.67/P and Ac.7.11 cents in Sy.No.164/P of Kommadi Village) at the rate of Rs.1,53,00,000/- per acre on outright sale basis in favour of the petitioner in lieu of the project land in Sy.No.1 of Vepagunta Village for construction of Housing units with other conditions as stipulated in the Development Agreement. The rate fixed by the 1st respondent at Rs.1.53 crores per acre for outright sale of land was way above the market rate prevailing at that point in time and was atleast 2 and half times higher than the

market rate. However, the petitioner approached the respondent No.2 requesting hand over of the physical possession of the subject land. During the process, the petitioner company found that this alternative land parcel was also deficient in extent and there was no approach road for entering the land. There was no basic infrastructure i.e., an access road for approaching the subject land. The petitioner company incurred huge expenditure for preliminary investigations. The respondent did not provide necessary documents and deliver the possession of the subject land and as the project was not materialising, the petitioner was constrained to issue a legal notice dated 25.02.2009, seeking refund assessing the loss of Rs.176.00 crores and on 07.10.2009 a legal notice was issued under section 80 of the Code of Civil Procedure, 1908 requesting to pay Rs.194,48,00,000/- together with interest of 18% from 13.03.2009 apart from the amount so deposited by virtue of the Development Agreement dated 31.03.2007 entered by the petitioner. The Joint survey was conducted even in respect of the land allotted under G.O.Ms.No.729 dated 24.10.2008 wherein also there is discrepancy with regard to the similar problem of the claim of the Forest Department and therefore the land on ground is available only Ac.37.52 cents out of Ac.49.33 cents and out of even Ac.37.52 cents, an extent of Ac.31.30 cents was available and for the balance Ac.6.22 cents there is a claim of the Forest

Department even in the land in Sy.No.164/P of Kommadi Village. The availability of the land was tabulated in the respondent No.2's letter R.c.No.9464/2005/PMU dated 03.07.2014. But the 2nd respondent kept assuring the petitioner company to withdraw the legal notices and that suitable land would be allotted after the joint survey.

7. There were numerous correspondence between the respondents and the petitioner between 2009 to 2013 including the Legal notices dated 03.10.2012 and 27.11.2012 issued by the petitioner. Vexed with the attitude of the respondents, the petitioner was constrained to approach the Hon'ble High Court for appointment of an Arbitrator to resolve the disputes in A.A.No.13 of 2013 and accordingly, the learned Arbitrator was appointed by order dated 12.07.2013 to resolve the dispute in between the petitioner and the respondents in terms of development agreement dated 31.03.2007. Even after the appointment of the Hon'ble Arbitrator, the respondent No.2 assured that land would be allotted to the petitioner and requested not to initiate any legal proceedings. In the letter dated 21.08.2013, the 2nd respondent stated that the land offered to be allotted to the petitioner in Sy.No.7 of Kommadi Village overlaps with another survey number i.e, Sy.no.1 of Paradesipalem Village and on request of the respondent No.2 a survey was undertaken in October 2012 by the concerned revenue officials. It was also stated that Ac.9.73 guntas

of land was encroached by Forest Department. It was further stated that the 2nd respondent would require a minimum of 5 months to conduct a survey. The 2nd respondent issued a letter in R.c.No.9464/2008/PMU dated 03.07.2014 detailing the issues involved with handing over of the project land. It was mentioned that Ac.49.33 cents of land originally allotted, the respondent No.2 can hand over nearly Ac.37.52 cents out of which Ac.31.30 cents is readily available to be handed over to the petitioner since an extent of Ac.0.25 cents in Sy.No.67/P of Kommadi and Ac.6.22 cents in Sy.No.164/p of Kommadi are under encroachment of the Forest Department and the same will be handed over to the petitioner after boundary dispute is resolved. The Planning and Engineering wings of VUDA was already in the job of providing approach to the bits of land handed over through the Master Plan Roads to be laid by VUDA. The respondent No. 2 requested for payment of Rs.41,64,90,000/- towards cost of Ac.31.30 cents unencumbered land and it was further agreed that the consideration for the balance extent of Ac.6.22 cents Rs.9,51,66,000/- will be paid after resolving the dispute. All along, the respondent no. 2 had made withdrawal of all claims including the claim before the Arbitrator, a condition precedent for execution of sale deed in pursuance of the allotment of land as also the Development Agreement dated 31.03.2007.

8. The respondent No.2 also sought a legal opinion from its counsel, who vide legal opinion dated 09.08.2014 had opined that the subject land i.e., Ac.31.20 cents in Sy.No.7 and Sy.No.67/P of Kommadi Village can be registered in favour of the petitioner subject to an unconditional undertaking by the petitioner that it shall not make any claims against the 2nd respondent and to withdraw or terminate the proceedings of the arbitration under section 32(2)(a) as claimant withdrawing its claim. Between September 2014 and September 2016, the respondent No. 2 was communicating with the AP Housing Board Corporation and the Respondent No.1 for providing access road to the subject land in Kommadi Village and for necessary sanctions. The respondent No. 2 accorded permission for safeguarding the land with barbed fencing in 2016. While so, certain locals obstructed the construction of 60 feet wide Master plan approach road to the subject lands. The 2nd respondent issued notice vide Rc.No.LT/85/2014/L5/ dated 14.09.2016 to one Mr. Chandramouli and others on 14.09.2016 stating that the land was already notified as Master plan road. The respondent No.2 vide letter in R.C.No. 9464/2005 dated 20.09.2016 sent draft sale deed for an extent of Ac.8.59 cents in Sy.No.67/P of Kommadi Village, Visakhapatnam District and a Memorandum of Understanding for execution of the sale deed for Ac.22.71 cents in Sy.No.7 after providing the approach road and execution of the sale deed

subject to availability of lands in respect of balance land agreed to be transferred in favour of the petitioner.

9. The 2nd respondent issued another letter in R.C.No.9454/05/PMU dated 23.01.2017 stating that there is an overlapping of allotted lands between one Deccan infrastructure Limited, Hyderabad and L & T Vision Ventures Limited and that land in Sy.No.7 of Kommadi Village allotted to the petitioner has approach road which must be carved out of the lands owned by AP Housing Board and the land allotted to Deccan Infrastructure Limited. The respondent No. 2 also stated that about 1600 sq. yards of VUDA land in the same site will be handed over in exchange to Deccan Infrastructure Limited and sought the matters to be taken up with Housing Commissioner of AP Housing Board to hand over land to VUDA for laying approach road in 1600 sq.yards of APHB in Sy.No.165 of Kommadi Village, Visakhapatnam.

10. The Board Meeting (No.533) was also conducted on 06.02.2017 by the respondent No.2 to seek exchange of land with Vice Chairman and Housing Commissioner of AP Housing Board. This exchange of land was permitted by the Respondent No.1 vide its letter No. 26754/H2/2012 dated 08.05.2017 and a joint survey for refixing of the boundaries was conducted on 09.06.2017. Pursuant to the exchange of lands, the respondent No.2 again addressed a letter Rc.No.9464/05/PMU dated 07.09.2017 to the

respondent No.1 stating that the petitioner is ready to pay the balance sale consideration of Rs.41,61,90,000/- and sought permission to execute sale deed in favour of the petitioner. Another letter in Rc.No.9464/05/PMU dated 11.12.2017 was also addressed by the respondent No.2 to the respondent No.1, expressly stating that the delay is not on the part of the developer i.e., the petitioner herein and requested for permission to execute sale deeds for a total extent of Ac.31.30 cents in favour of the petitioner. The petitioner was always willing to pay the balance sale consideration to the respondent No.2, however it was due to the lack of approach road, discrepancies, unavailability of land on ground and the administrative delays on the part of the respondents which lead to the petitioner not being able to get the sale deed executed in its favour. The petitioner was ready to get executed the sale deed and prepared to pay the total amount of Rs.41,61,90,000/- as demanded by the respondent No.2. As stated above, the land covered by the draft sale deed does not have the approach road for the land in Sy.No.67/P and the Sy.No.7 of Kommadi Village and there was a hindrance created by the neighbourhood land owners to approach the land in Sy.No.67/P and there was also exchange of land in between the 2nd respondent and AP Housing Board in respect of Sy.No.7 of Kommadi Village and on submitting and resolving the said issues, the petitioner expressed its intention to withdraw the arbitration

proceedings and also to pay the balance amount and to get the sale deed registered in its favour. The petitioner never committed any default at any point of time and was misrepresented and misguided by the respondent authorities. In fact, the petitioner so far apart from the payment of amounts towards sale consideration, incurred huge expenditure for preliminary enquiries, investigations, consultations, travelling, having engineers employed and other incidental miscellaneous expenses. As the respondent No.2 failed to execute the registered sale deed with respect to the aforesaid land even after the petitioner was constrained to file the writ petition No. 10686 of 2018 before the erstwhile Common High Court, Hyderabad which after bifurcation of the composite state of Andhra Pradesh is pending for adjudication before this Hon'ble court. The 2nd respondent filed counter affidavit in the said writ petition admitted all the contentions raised by the petitioner. However, unless the 1st respondent accords sanction and permission, the respondent No. 2 is not in a position to convey land in favour of the petitioner company.

11. While the W.P.No.10686 of 2018 was pending adjudication, the 2nd respondent issued G.O.Ms.No.108 dated 07.03.2019 permitting the respondent to execute the sale deed for land to an extent of Ac.31.30 cents i.e., an extent of Ac.22.71 cents in Sy.No.7, 165/P and 166 and an extent of Ac.8.59 cents in

Sy.No.67/P of Kommadi Village, Visakhapatnam Rural Mandal and Visakhapatnam District in favour of the petitioner Company on payment of balance of Rs. 41.64 crore with 7% simple interest p.a., from 24.10.2008 subject to withdrawal of all legal proceedings. This proceeding is issued without creating the infrastructure up to the subject land i.e., without laying any approach road. Pursuant to the said G.O.Ms.No.108 dated 07.03.2019, the 2nd respondent issued letter in Rc.No.9464/05/PMU dated 02.05.2019 attaching the draft sale deed for sale of Ac.31.30 cents of land in Kommadi Village in Visakhapatnam. The G.O.Ms.No.108 dated 07.03.2019 permitting the 2nd respondent to execute sale deed for the land to an extent of Ac.31.30 cents in favour of the petitioner on payment of balance of Rs. 41.64 crores with 7% simple interest p.a., from 24.10.2008 would substantially increase the value of the land. At 7% interest on Rs.41.64 crore calculated from October 2008 to January 2021 would make the value of 1 acre of land sought to be sold in Kommadi Village, is Rs. 2.86 crore instead of Rs.1.53 crore which was agreed in the year 2008. The Government Valuation of 1 acre of land in Sy.No.7 of Kommadi Village as on the date of issuance of G.O.Ms.No.108 dated 07.03.2019 is Rs.1.98 crore. The current government valuation of 1 acre of land in Sy.No.7 of Kommadi Village is Rs.2.20 crore as revised on 01.08.2020. The rate of Rs.6 crore per one acre in Kommadi Village, mentioned in the

impugned G.O.Ms.No.4 dated 22.01.2021 is without any basis and is only to deny the petitioner the allotment of subject land for extraneous considerations. After the issuance of the G.O.Ms.No.108 dated 07.03.2019, the respondent No.2 issued the proceedings vide Computer No.848381/Estate/1-1/2019 dated 22.03.2019 writing to the District Collector, Visakhapatnam, stating that the District Collector has given advance possession of Ac. 31.30 cents (an extent of Ac.22.71 cents in Sy.No.7, 165/P & 166 and an extent of Ac. 8.59 cents in Sy.No. 67/P of Kommadi Village, Visakhapatnam Rural Mandal & Visakhapatnam District) in Kommadi Village to the respondent No.2, however the name of the respondent No. 2 is not mutated in the revenue records. The 2nd respondent requested the respondent No.1 to direct the Tahasildar, Visakhapatnam Rural to carry out the mutation in favour of the 2nd respondent in order to comply with the G.O.Ms.No.108 dated 07.03.2019. The respondent No.2 was forcing the petitioner company for the balance sale consideration without even getting its name mutated in the revenue records.

12. The petitioner had written letters dated 07.06.2019, 17.06.2019, 12.07.2019, 17.07.2019 and 16.08.2019 requesting the respondents to provide the basic infrastructure ie., the approach roads, power and more importantly, the land is still in the name of the government and the sub-registrar office had informed the petitioner company that execution of sale deed would

not be permissible as the land is not owned by the respondent No.2. The petitioner reliably learnt that there were certain complaints received by the respondent Nos. 1 and 2 that the subject land falls within Eco-sensitive Zone. The respondent No.1 issued letter No. 26754/M1/2012 dated 01.10.2019 requesting the respondent No.2 to keep the file on hold until further examination of the government. Further joint inspection appears to have been conducted and report came to be prepared vide Rc.No.4409/2019/D/ dated 12.01.2020 stating that the subject land does not fall within Eco Sensitive Zone. The petitioner was not put on notice with respect to any of the complaints received in respect of the subject land ever and any mention to them in the impugned order, without putting the petitioner on notice would violate the principles of natural justice.

13. While so, due to Covid-19 pandemic period, the life came to stand still. The petitioner addressed an e-mail dated 17.04.2020 to the respondent No.2 requesting it to get the land mutated in its name, from the District Collector, in order to execute sale deed at the earliest. The 2nd respondent neither responded to the email nor communicated that the mutation was done its favour and a sale deed can be executed in favour of the petitioner. On 23.11.2020, it was reported before this Hon'ble Court in W.P.No.10686 of 2018 that since the lands are not mutated in favour of the 2nd respondent, it was not in a position to execute sale deed and

sought time to report before Hon'ble Court as and when the mutation to be effected by the Collector and accordingly the matter was posted to 01.12.2020 and on that date, it was reported that the learned Advocate General would appear on behalf of the respondents therein and requested for time. The matter was finally posted to 22.01.2021. On that date, the learned counsel for the 2nd respondent reported that G.O.Ms.No. 729 dated 24.10.2008 was cancelled by the 1st respondent. Upon enquiry, the petitioner got to know that the respondent No. 1 issued the impugned G.O.Ms.No. 4 dated 22.01.2021 permitting the 2nd respondent to cancel the allotment of Ac.31.30 cents of land in Kommadi Village to the petitioner. The 2nd respondent immediately on the very same day issued consequential order in Rc.No.9464/2005/L & T/F1 dated 22.01.2021 cancelling the allotment of the subject land in Kommadi Village in favour of the petitioner. The 2nd respondent also issued the demand draft of Rs.6,24,00,000/- in favour of the petitioner towards refund of the amount paid by the petitioner in the year 2007 towards sale consideration. The petitioner was not given any opportunity before issuing the impugned proceedings by the respondent Nos. 1 and 2 respectively.

14. On the other hand, the learned Government Pleader appearing for the respondents relying upon the counter affidavit of the respondent No.1, submits that the respondent

No.1 issued G.O.Ms.No.4, MA & UD Department dated 22.01.2021 permitting the respondent No.2 to cancel the land allotment to an extent of Ac.31-30 cents (an extent of Ac.22-71 cents in Survey No.7, 165/P & 166 and an extent of Ac.8-59 cents in Survey No.67/P of Kommadi Village, Visakhapatnam Rural (Mandal), Visakhapatnam District) in favour of the petitioner company and the consequential order in Rc.No.9464/2005/L&T/F1, dated 22.01.2021 is passed by the respondent No.2 which are under challenge in this writ petition.

15. Initially, an extent of Ac.55-15 cents in Survey No.1 of Vepagutnta Village of Pendurthy Mandal, was handed over to the Visakhapatnam Urban Development Authority, (VUDA) by the Mandal Revenue Officer, Pendurthi vide delivery receipt Rc.No.411/2000/SPL.RI, dated 13.09.2000 for promoting comprehensive development. The VUDA proposed to develop the said site with the housing project on Public Private Partnership (PPP) Mode. Hence, a notification was issued on 11.12.2005 calling for Expression Of Interest (EOI) from the prospective and reputed developers registered in the country or from the Multinational Companies (MNCs) having

consortium with Indian Companies to design, build, finance and market independent dwelling units/bungalows.

16. The petitioner company quoted the highest financial bid and had passed the evaluation of technical, business and commercial proposals and emerged as the highest successful bidder for the development of Housing Project at Vepagunta, admeasuring Ac.55-15 cents in Survey No.1 of Vepagunta Village on joint venture basis under PPP Mode. Basing on the above, the VUDA had entered into an agreement with the petitioner company for development of the housing project. The petitioner paid @10% minimum guaranteed amount (MGA) of Rs.6,24,00,000/- vide VUDA receipt No.147700 dated 04.04.2007 besides one time project development (Non-refundable) fees of Rs.43,12,000/- on 04.04.2007 towards the site in Survey No.1 of Vepagutna, measuring Ac.55-15 cents. At that stage, the Forest Department raised objections on the ownership of the land stating that this land was included in the Reserve Forest Block. Hence, the letters were addressed by the VUDA for the forest department and to the Government for exemption of the land from the provisions of the Forest Department, but the same has not been deleted.

17. In view of the said dispute in the matter of allotment of land to the petitioner company in Survey No.1 of Vepagunta Village at the request of the petitioner company the respondent No.2 had requested the Government for consideration of allotment of the following alternative land measuring Ac.49-33 cents in Kommadi village of Visakhapatnam (Rural) @ Rs.1.53 crores per acre on outright sale basis in lieu of the land in Survey No.1 of Vepagunta Village.

Sl.No.	Survey NO. & Village	Extent in Ac-Cts.,
1.	7 of Kommadi	33.38
2.	67/P of Kommadi	8.84
3.	164/P of Kommadi	7.11

The Government after careful examination of the matter, permitted the VUDA to allot the alternative land measuring an extent of AC.49.33 cents in Kommadi Village @ Rs.1.53 crores per acre on outright sale basis in favour of the petitioner company in lieu of the land in Survey No.1 of Vepagunta Village for construction of housing units with the conditions as stipulated in the development agreement and as per the orders issued in G.O.Ms.No.729, dated 24.10.2008

by the Government in this regard. Subsequently, the petitioner company filed an arbitration application No.13 of 2013 before the Hon'ble High Court alleging that the VUDA had neither implemented the provisions of the development agreement dated 31.03.2007 nor refunded the amount due and claimed damages/compensation of Rs.1,76,00,00,000/- on the ground that the land had not been handed over to them so far. The Hon'ble High Court in its order dated 12.07.2013 appointed the Hon'ble Justice Sri Tamada Gopala Krishna, retired Judge of the High Court as Sole arbitrator to adjudicate the disputes between the parties by virtue of the development agreement dated 31.03.2007. When the matter was under examination by the VUDA, keeping in view of the order of the Hon'ble High Court in A.A.No.13, dated 12.07.2013 and the Government's G.O.Ms.No.729, dated 24.10.2008, another company viz., Deccan Infrastructure and Land Holding Ltd., (DIL) vide its letter No.TILL/Lands/15/2010, dated 09.04.2010, requested the VUDA to conduct a Joint Inspection as the land was belonging to the AP Housing Board and the DIL Ltd., Hyderabad measuring an extent of Ac.42.64 cents in Survey No.164/2, 164/3, 165 (carved out of Survey No.7 of

Kommadi Village, Visakhapatnam Rural and Mandal) was found to be partly overlapping with the land in Survey No.1/p of Paradesipalem village which belonged to VUDA. Hence the VUDA authorities, the Housing Board and M/s.Deccan Infrastructure and Land Holding Ltd., Hyderabad conducted a joint inspection on their lands on 29.10.2013. It was found during the Joint Inspection that there was a discrepancy in fixation of village boundary between Komadi Survey No.7 and the adjoining Survey No.1/2 of Paradesipalem village it was found that the available land for the APHB and DIL was only Ac.25-92 cents of Ac.42-674 cents, allotted to them. Hence the status of the lands to be given to the petitioner company was worked out as detailed below.

Sl.No.	Survey NO. & Village	Extent as per G.O.Ms.No.72 9, dated 24.10.2008	Event available on ground, ready to be handed over to the petitioner	Remarks on readily available land to be handed over the petitioner
1.	7 of Kommadi	Ac.33-38 cts	Ac.22-71 cts	
2.	67/P of Kommadi	Ac.8-84 cts	Ac.8-59 cts	Ac.0-25 cts is within the boundary wall constructed by the Forest Department
3.	164/P of Kommadi	Ac.7-11 cts	Ac.6-22 cts	Ac.0-33 cts, extent of land is under Forest Department's encroachment and will be

				handed over after resolving the boundary dispute with the Forest Department.
4.	Total	Ac.49-33 cts	Ac.37.52 cents	Ac.31-30 cents, immediately available, Ac.6-22 cents, will be handed over after resolving the issue with the Forest Department.

Accordingly, the VUDA informed the decision of the VUDA Board to the petitioner that VUDA can handover nearly Ac.37-52 cents, against AC.49-33 cents, as per the GO., and as Ac.6-22 cents in Survey No.164/P of Kommadi village were under encroachment of Forest Department, the same would be handed over to the petitioner after the boundary dispute is resolved and the petitioner was requested to take over possession of the available extent of Ac.22-71 cents in Survey No.7 of Kommadi village and Ac.8-59 cents in Survey No.67/P of Kommadi village. The petitioner expressed willingness to accept and take over possession of the land parcels of Ac.22-71 cents in Survey No.7 and Ac.8-059 cents in Survey No.67/P of Kommadi village, totally an extent of Ac.31-30 cents @ Rs.1-53 crores

per acre, which comes to Rs.47,88, 90,000/-. The petitioner company said that Rs.6.24 crores has already been paid by them and that they were ready to pay the balance amount of Rs.41,64,90,000/-. The petitioner company also requested that the site cost for an extent of Ac.6-22 cents in Survey No.164/P of Kommadi village i.e., Rs.9,51,66,000/- would be paid after resolving the Forest issue and also requested to issue the draft sale deed for the land parcels of Ac.22-71 cents in Survey No.7 and Ac.8-59 cents in Survey No.67/P, after which, they would file affidavit for withdrawal of arbitration case against the VUDA, which is pending. The petitioner company had not pursued the arbitration proceedings ordered by the Hon'ble High Court and the same is pending.

18. After examining the pros and cons in the allotment of total land of Ac.49-33 cents, the petitioner company was informed through letters in Rc.No.9464/2005/PMU, dated 03.07.2014 and dated 12.02.2016 that since an amount of Rs.6,24,00,000/- was paid earlier towards 10% minimum guaranteed amount, the petitioner company may pay the balance amount of Rs.41,64,90,000/- towards Ac.31-30 cents unencumbered land @ Rs.1.53 crores per acre on

outright sale basis. The petitioner company was also informed that Rs.9,51,66,000/- can be paid after resolving the land dispute to an extent of Ac.6-22 cents in Survey No.164/P of Kommadi village with the Forest Department. This is as per the VUDA board decision against the allotment of Ac.49-33 cents as per the G.O.Ms.No.729 dated 24.10.2008 to which the petitioner company had agreed. At the request of the petitioner company vide letter dated 20.08.2016 the draft sale deed for an extent of Ac.8-59 cents in SurveyNo.67/P of Kommadi village, and Memorandum of Understanding (MOU) for the balance lands to be considered for execution of sale deeds subject to availability of lands were sent to the petitioner company vide VUDA's letter Rc.No.9464/2005/PMU/F1 dated 20.09.2016. However the petitioner company responded to the offer made in this regard after some correspondence and addressed a letter vide Rc.No.L&T-VUL/VUDA/014, dated 27.07.2017 raising the following two issues for their clearance before proceeding with the registration of the available land of Ac.31-30 cents.

- 1) Hindrances created by the neighbourhood land owners, to restrict the approach to S.No.67/2.
- 2) Documentation of exchange of land between the VUDA and the APHB in respect of S.No.7 of Kommadi and

submission of land exchange documents, land use conversion papers to MA & UD in the required proforma as per the APHB Board resolution in respect of exchange of land between APHB & VUDA dated 31.01.2017.

In this regard, a Joint Survey was already conducted on 09.06.2017 with the three teams i.e, VUDA officials, APHB Officials, L & T – VVL officials and re-fixation of the boundaries between the VUDA and the APHB with respect to Ac.22-71 cents, in Survey No.7 of Kommadi was completed and approach road was formed. Accordingly, two sets of plans were prepared. Further, a detailed letter was addressed to the Government MA & UD Department vide Rc.No.9464/2005/PMU/F1, dated 07.09.2017 for according permission to hand over an extent of Ac.31-30 cents unencumbered land which was available with VUDA against Ac.49-33 cents approved for allotment to the petitioner company by the Government at the rate of Rs.1.53 crores per acre vide G.O.Ms.No.729 dated 24.10.2008. The permission was still awaited from the Government and soon after its approval, the registration of the Ac.31-30 cents of the land would be made in favour of the petitioner company, which

includes the land admeasuring Ac.8-59 cents in Survey No.67/P of Kommadi village, Visakhapatnam District.

19. While the W.P.No.10686 of 2018 is pending for adjudication, the respondent no.1 issued G.O.Ms.NO.108, MA & UD, dated 07.03.2019 according permission to this respondent to execute the sale deed for the land to an extent of Ac.31-30 cents (i.e., Ac.22-71 cents in Survey No.7, 165/P, & 166 and Ac.8-59 cents in Survey No.67/P of Kommadi village, Visakhapatnam Rural Mandal, Visakhapatnam District in favour of M/s. L & T Vision Ventures Ltd., on payment of balance amount of Rs.41.64 crores with 7% simple interest from 24.10.2008 to till payment made to take further action in the subject matter and also issued draft proforma sale deed dated 02.05.2019 to the petitioner. Instead of conveying its willingness to the respondent No.2, the petitioner had addressed a letter to the Government, MA & UD dated 26.06.2019 to consider the following grievances and do the needful.

- a) May allow the SPV to get registration in parcel while by paying the land cost calculated @ Rs.1.53 crore per acre (principle amount) and facilitate them to proceed with the

benching/levelling of hill portion of Ac.22.71 cents to start the project.

- b) May allow SPV to pay the interest amount along with the project approval fee as per G.OMsd.No.108, MA & UD (M) Dept., dated 07.03.2019, and
- c) May instruct VMRDA to provide the required infrastructure line reads, power and water and all necessary approvals to be proposed land parcels and allow the SPV to develop the same.
- d) The Government vide letter NO.26754/M1/2012, dated 15.07.2019, having examined the matter in detail, did not accept the plea of the applicant firm and instructed respondent No.2 to take necessary action.

As per the earlier Government orders issued in G.O.Ms.No.108, dated 07.03.2019 the petitioner agreed to pay the balance sale consideration along with 7% simple interest from 24.10.2008 as fixed by the Government. The petitioner also requested to allow ample time to raise the required money to get the said land parcels of a total extent of Ac.31-30 cents i.e, Ac.8-59 cents and Ac.22-71cents to be registered by the respondent No.2 in two phases i.e., in the first phase and the second phase respectively after paying the demanded amount to the respondent No.2. This request of

the petitioner was not considered as it is beyond the scope of the Government Order. The petitioner was therefore informed through letter in Rc.No.9464/05/PMU dated 21.03.2019 to pay the balance principal amount of Rs.41.64 crores along with 7% simple interest from 24.10.2008 to 31.03.2019 tentatively as mentioned below in one lumpsum so as to execute the sale deeds for the above land parcels by the VMRDA in one go and not in parcels subject to withdrawal of all the court cases filed against the VMRDA/the respondent No.2 herein. The petitioner was informed that the final interest amount would be calculated till the date of payment and registration would be done within 15 days of receipt of payment in one lumpsum for both the parcels together.

1. Balance principal amount	-	Rs.41,64,00,000/-
2. Simple Interest @ 7% per annum from 24.10.2008 to 31.03.2019	-	Rs.30,43,37,063/-
Total amount	-	Rs.72,07,37,063/-

In spite of issuance of the notice, the petitioner not paid the amount. Since the petitioner did not comply with the letter RC.No.9464./05/PMU dated 21.03.2019 issued by the respondent No.2 in accordance with G.O.Ms.No.108, dated 07.03.2019 of the

government MA & UD Department, it was reported to the Government by the VMRDA vide letter No.2426/04/F1 dated 17.12.2020 that the petitioner has to pay a sum of Rs.88.73 crores including the simple interest for the period between 24.10.2008 to 31.12.2020. However, the petitioner did not pay any amount and no reply has been given in this regard. As per the SRO value Rs.2.20 per acre but prevailing market values are so high, due to scarcity of land and demand for the land in Visakhapatnam, it may fetch much higher rate per acre in open auction. As the land value was arrived through auction in 2008, only 10% minimum guarantee amount of the value of the land originally bided, is paid as Minimum guaranteed Amount, and as the petitioner is expected to sell the developed land at today's market rates, but not the rates of 2008, present market value of the land has to be reassessed. The Government, after careful examination of the matter, permitted the respondent No.2 to cancel the land allotment to an extent of Ac.31-30 cents (i.e., Ac.22-71 cents in Survey No.7, 165/P and 166 and Ac.8-59 cents in Survey No.67/P of Kommadi village, Visakhapatnam Rural Mandal, Visakhapatnam) in favour of the petitioner by reimbursing already paid amount with simple interest from the date of payment and the respondent No.2 was ordered to take further necessary action in the matter accordingly vide G.O.Ms.No.4 MA & UD Dept (M) dated 22.01.2021.

20. Accordingly, the allotment of the land to an extent of Ac.31-30 cents (i.e., an extent of Ac.22-71 cents in Survey No.7, 165/P, 166 and an extent of Ac.8-59 cents in Survey No.67/P of Kommadi village, Visakhapatnam Rural Mandal, Visakhapatnam) in favour of the petitioner by reimbursing already paid amount with simple interest is hereby cancelled as mentioned below:

- a) An amount of Rs.6,24,00,000/- towards 10% Minimum guaranteed amount paid by M/s. L & T Vision Ventures Ltd., by way of Cheque No.618502 dated 31.03.2007 of SBI Commercial Branch, Hyderabad hereby refunded by way of Demand Draft bearing No.034767255 dated 22.01.2021 of Indian Overseas Bank, VMRDA Branch, Visakhapatnam drawn in favour of M/s. L & T Vision Ventures Ltd enclosed.
- b) The simple interest from the date of payment on the amount already paid by the M/s. L & T Vision Ventures Ltd will be reimbursed immediately after receiving clarification on the rate of interest from the Government.

Subsequently, the Government vide letter No.26754/M1/2021 dated 04.02.2021 addressed to the respondent No.2, informing that the SBI marginal cost of lending rate is 6.9% and therefore, respondent No.2 is permitted to pay at the rate of 7% of simple interest from the date of payment to M/s. L & T Vision Ventures Ltd., i.e. the simple interest worked

out to Rs.6,03,38,236/- out of this amount, deduction of TDS @ 7.5% (which comes to Rs.45,25,368/-) under Section 194a of IT Act 1961, accordingly, a Demand Draft bearing No.034877885, dated 18.02.2021 and Demand Draft bearing No.934767885, dated 18.02.2021 for Rs.5,58,12,868/- of Indian Overseas Bank, VMRDA Branch, Visakhapatnam drawn in favour of M/s. L & T Vision Ventures Ltd., has been sent to the petitioner company by registered post vide postal receipt No. EN 33464875IN for Hyderabad address & EN 33464861 in for Chennai address on 01.03.2021.

21. In view of the above said facts and circumstances and upon consideration of the rival submissions, it is to be seen that broadly the facts are not in dispute. Initially the land in an extent of Ac.55.15 cents in Sy.No.1 of Vepagunta Village of Pendurthi Mandal, Visakhapatnam was handed over to the 2nd respondent for promoting the comprehensive development. Then the 2nd respondent proposed to develop the said sight with a housing project on Public Private Partnership (PPP) Mode. A notification was issued on 11.12.2005 calling for Expression of Interest from the prospective and reputed developers as mentioned above. The petitioner company became the highest successful bidder for the development of Housing project at Vepagunta in an extent of Ac.55.15 cents in Sy.No.1 of the said village on Joint Venture Basis under PPP Mode. Basing on the same, the 2nd respondent

entered into a Development Agreement with the petitioner company for the Housing Project. The petitioner paid at 10% Minimum Guarantee Amount (MGA) of Rs.6,24,00,000/- dated 04.04.2007 as detailed above. At that stage, the Forest Department claimed that the said land was included in the Reserve Forest Block. Then the 1st respondent after careful examination of the matter permitted the 2nd respondent to allot an alternative land in an extent of Ac. 49.33 cents in Kommadi Village at Rs.1.53 Crore per acre on outright sale basis in favour of the petitioner in lieu of the land in Sy.No.1 of Vepagunta Village for construction of housing units with the conditions as stipulated in the above said Development Agreement and as per the orders issued in G.O.Ms.No. 729 dated 24.10.2008. Subsequently, the petitioner company filed arbitration application No. 13 of 2013 before the erstwhile High Court of Andhra Pradesh claiming damages/compensation of Rs.1,76,00,000/- in which the learned Sole Arbitrator was appointed to resolve the dispute vide order dated 12.07.2013. Subsequently, the 2nd respondent authority, Housing Board and M/s. Deccan Infrastructure and Land Holding Ltd., Hyderabad conducted a Joint inspection on the said lands on 29.10.2013 and it was found that an extent of Ac.22.71 cents in Sy.No.7 of Kommadi Village, Ac.8.59 cents in Sy.No.67/P of Kommadi Village and Ac.6.22 cents in Sy.No.164/P of Kommadi Village in total Ac. 37.52 cents is readily available to hand over the

same to the petitioner. Accordingly, the 2nd respondent informed the petitioner that it can hand over nearly Ac.37.52 cents as against Ac.49.33 cents as per the G.Os and Ac.6.22 cents in Sy.No.164/P of Kommadi Village under the encroachment of the Forest Department will be handed over to the petitioner after the boundary dispute is resolved and the petitioner was requested to take over the possession of the available extent of Ac. 22.71 cents in Sy.No.7 of Kommadi Village and Ac.8.59 cents in Sy.No. 67/P of Kommadi Village. The petitioner expressed willingness to take over the land parcels of Ac. 22.71 cents in Sy.No.7 and Ac.8.59 cents in Sy.No. 67/P in total an extent of Ac.31.30 cents at Rs. 1.53 crore per acre which comes to Rs. 47,88,90,000/-. The petitioner company also informed that Rs.6.24 Crores had already paid towards MGA and it is ready to pay the balance amount of Rs. 41,64,90,000/-. The petitioner company also informed that site cost of Rs.9,51,66,000/- for an extent of Ac. 6.22 cents in Sy.No. 164/P of Kommadi Village will be paid after resolving the Forest issue and requested the 2nd respondent to issue draft sale deed for the land parcels of Ac. 22.71 cents in Sy.No.7 and Ac.8.59 cents in Sy.No. 67/P by submitting further that it will withdraw the arbitration case. Then the petitioner company was also informed through the letters dated 03.07.2014 and 12.02.2016 that it may pay the balance amount of Rs. 41,64,90,000/- towards Ac. 31.30 cents unencumbered land at the rate of Rs. 1.53 Crore per acre on

outright sale basis. At the request of the petitioner company, the draft sale deed for an extent of Ac. 8.59 cents in Sy.No.67/P of Kommadi Village, Visakhapatnam District and memorandum of understanding for the remaining lands to be considered for execution of sale deed subject to availability of land were sent to the petitioner vide letter of the 2nd respondent dated 20.09.2016. But the petitioner company responded to the same vide its letter dated 27.07.2017 raising two issues for their clearance before proceeding for the registration as mentioned above. Again a Joint Survey was conducted on 09.06.2017 with respect to Ac.22.71 cents in Sy.No.7 of Kommadi Village and approach road is formed. The 1st respondent also issued G.O.Ms.No. 108 MA & UD (M) Dept., dated 07.03.2019 according permission to the 2nd respondent to execute the sale deed for the land in an extent of Ac. 31.30 cents (Ac. 22.71 cents in Sy.No. 7, 165/P and 166 and Ac.8.59 cents in Sy.No. 67/P of Kommadi Village, Visakhapatnam Rural (Mandal), Visakhapatnam District) in favour of the petitioner on payment of balance amount of Rs. 41.64 Crores with 7 % Simple Interest from 24.10.2008. Accordingly, on 21.03.2019, the 2nd respondent requested the petitioner to convey its willingness in clearing the balance principal amount with simple interest at 7% per annum from 24.10.2008 till the payment is made to take further action in the subject matter by issuing draft proforma sale deed on 02.05.2019 to the petitioner. But without conveying its

willingness, the petitioner addressed a letter to the 1st respondent dated 26.06.2019 to consider the issues/grievances as mentioned above before proceeding further in the matter. As per the earlier Government Order issued in G.O.Ms.No. 108 dated 07.03.2019, the petitioner agreed to pay the balance amount of Rs. 41.64 Crores with 7 % Simple Interest from 24.10.2008 as fixed by the government. The petitioner also requested to provide sufficient time to raise the required money to get the said land parcels of total extent of Ac.31.30 cents i.e., Ac.8.59 cents and Ac.22.71 cents to be registered by the 2nd respondent in two phases i.e., in the 1st phase and the 2nd phase respectively after paying the demanded amount to the 2nd respondent but this request of the petitioner was not considered by the respondents as it is beyond the scope of the above said government order. Hence, the petitioner was informed through the letter dated 21.03.2019 to pay the balance principle amount of Rs. 41.64 Crores with 7 % Simple Interest from 24.10.2008 in one lumpsum for the purpose of executing the sale deed for the above said land parcels by the 2nd respondent at one stretch subject to withdrawal of the court cases filed against the 2nd respondent.

22. As stated supra, the petitioner has to pay a sum of Rs. 88.73 Crores including the Simple Interest for the period between 24.10.2008 to 31.12.2020. However, the petitioner did not pay any amount and no reply has been given thereafter. After having

waited sufficiently for a long time and as the SRO value of the said land is at Rs. 2.20 Crores per acre and the prevailing market value is much higher, the government after examining the issue thoroughly permitted the 2nd respondent to cancel the subject land allotment to an extent of Ac.31.30 cents situated in Kommadi Village as detailed above in favour of the petitioner by reimbursing the already paid amount with Simple Interest from the date of payment to the petitioner. Accordingly, the 1st respondent issued the impugned G.O.Ms.No.4 MA & UD Department dated 22.01.2021 and consequentially the 2nd respondent returned the Minimum Guarantee Amount of Rs. 6,24,00,000/- with 7% Simple Interest as mentioned above.

23. For the aforesaid reasons, it can be safely concluded that there is no consensus ad idem between the parties with respect to the sale consideration and the free hold character of the subject land. There was no acceptance by the petitioner for the offer made by the respondents and the petitioner ultimately did not come forward to pay the balance sale consideration and take possession of the subject land inspite of there being offers repeatedly as stated above. Except showing readiness and willingness on paper, it never acted upon thereafter. Hence, it cannot be construed as a concluded contract at any stage of the transactions as occurred by way of continuous negotiations, proceedings, correspondence and issuance of G.Os time to time as detailed above. Unless there is a

payment of sale consideration and delivery of possession of the subject land on execution of the sale deeds, the above said development agreement also will not come-in to play. In view of the same, no mandamus can be issued in favour of the petitioner.

24. Accordingly, the Writ Petition is dismissed. There shall be no order as to costs. Interim Orders if any, deemed to have been vacated.

As a sequel, Miscellaneous Petitions pending, if any, shall stand closed.

JUSTICE B KRISHNA MOHAN

31.10.2023
UPS/LMV