

IN THE HIGH COURT OF ANDHRA PRADESH: AMARAVATI

HON'BLE MR. JUSTICE DHIRAJ SINGH THAKUR, CHIEF JUSTICE

&

HON'BLE MR. JUSTICE R. RAGHUNANDAN RAO

WRIT APPEAL No.751 of 2022

The State of Andhra Pradesh,
Rep. by its Special Chief Secretary,
Municipal Administration and
Urban Development Department,
Secretariat, Velagapudi,
Guntur District and two others.

... Appellants

Versus

M/s. Raghava Estates and Properties Limited,
D.No.64-9-2, Beside Eenadu, KanuruSubbaiah Building,
Vijayawada, Krishna District, Andhra Pradesh
Rep., by its Managing Director Sri L. Ravindra Rao
S/o. late Sri L. V. Raghava Rao and four others.

... Respondents

Mr. S. Sriram, learned Advocate General, representing Government
Pleader for Municipalities, Counsel for the appellants.

Mr. P. Veera Reddy, Senior Counsel a/w Mr. K. Jyothi Prasad,
Counsel for the respondents.

DATE : 19.03.2024

PER DHIRAJ SINGH THAKUR, CJ:

The present writ appeal under clause 15 of the Letters Patent
has been preferred against the judgment and order dated
04.03.2022 passed in W.P.No.22002 of 2020.

With a view to understand the background in the light of which the present controversy has arisen, it is necessary to state material facts in brief:

2. The petitioners/respondent Nos.1 to 5 herein are developers who owned certain parcels of land situate in Proddutur village in Kankipadu Mandal of Krishna District falling under S.Nos.27/1, 28, 28/2, 30, 30/2, 42/3, 43/3, 43/4, 52/4, 52/6, 60/6, 61/1, 61/4, 61/7, 177/1, 179/2, 180/4, 180/5, 180/8, 180/9 and 181/6. The petitioners claim that a 60 feet wide road had been earmarked in the Zonal Development Plan (for short, "ZDP") which would run through the aforementioned parcels of land belonging to the petitioners.

3. According to Section 17 of the Andhra Pradesh Urban Areas (Development) Act, 1975 which was in force then (which stood repealed by virtue of Andhra Pradesh Metropolitan Region and Urban Development Authorities Act, 2016), a land required for purposes of development of an area identified in the master plan or the ZDP and is subject to compulsory acquisition, could not have been built upon for a period of ten years from the date of operation of the plan under Section 10 of the said Act and it was only if the

land was not compulsorily acquired within the said period that the owner of the land got a right to issue a notice to the Government requiring his interest in the land to be so acquired. According to Section 17 (2) of the said Act, if the Government failed to acquire the land within a period of six months from the date of receipt of notice, then it would be presumed that such land was not required to be kept as an open space or was not designated as subject to compulsory acquisition.

4. Since certain land parcels of the petitioners fall within the sixty (60) feet wide road which was identified in the ZDP, the petitioners approached the Vice-Chairman, Vijayawada Guntur Tenali and Mangalagiri Urban Development Authority (VGTMUDA) for permission to develop the ZDP road at the cost of the petitioners. What was stated in the said application is reproduced for facility of reference:

“In the Zonal Development plan approved by the Government vide G.O.Ms.No. 387 MA, dated 31.05.2008, the proposed 60' wide road is identified going through our lands of R.S. No. 27 & 28 of Konathanapadu Village and R.S. No. 60/6, 61/1,4,7, 52/4 50/1 43/3, 4 42/3 , 179/2,180/4,5,8,9, 181/6,7, 177/1 of Prodduturu Village.

We are willing to develop the Master Plan Road with our own cost in view of the development that would take

place. So, we request you to kindly permit us to lay the road & hand it over to local bodies as per the norms of VGTM UDA. We also request you to issue the TDR certificate as per your rules & regulations.”

5. This communication was responded to by the Vice-Chairman, VGTMUDA wherein the Vice-Chairman sought to know the intent behind the development of the road in question, the extent and area which was sought to be developed as also sought information regarding the owners of the property.

Communication, dated 19.09.2008, was responded to by the petitioner's letter, dated 07.04.2009, wherein they deliberately chose not to disclose their intent for developing sixty (60) feet wide road and instead annexed only the documents of the affected land belonging to the petitioners and yet again sought permission to develop the master plan road and also prayed yet again for grant of TDR certificates.

6. Finally, the matter having been considered by the Vice-Chairman of the aforesaid authority permission was granted vide its communication dated 14.05.2009 in the following terms:

“The Z.D.P. roads have to be formed by the local bodies concern. As the formation of Master plan/ZDP road by the

individuals in whose land the road is proposed, will lessen the financial burden on the local bodies and also facilitate accessibility to the public at large and will open new avenues for development, permission is hereby granted to form and develop the ZDP road falling in S.No's. 43/2 (P), 3(P), 4(P), 52/6 (P), 60/6(P), 61/1(P), 4(P), 7(P) of Prodduturu(v), Kankipadu Mandal belonging to Sri L. Raveendra Managing Director, M/s Ragava Estates Ltd. which is designated as 60' -0" wide road in ZDP as approved vide G.O. Ms. No.678 dated 07-09-2007 subject to handing over the same to the concerned Gram Panchayat i.e. Prodduturu G.P. free of cost for the public purpose."

7. This letter was addressed to each of the writ petitioners. What is important to note in all these communications is that there was no promise that the TDR certificates would be issued in favour of the petitioners. Moreover, it was specifically mentioned in the communication, dated 14.05.2009, that road would be developed free of cost for public purposes.

It is not out of place here to mention that after the development of the part of the sixty (60) feet wide road, the petitioners executed gift deeds in favour of the VGTMUDA as per the chart below:

Details of land handed over by the petitioner from 2009 to 2013 for formation of 60ft. road					
S.No.	Document No.	Date of execution	Extent of site handed over		
			In Sqm	In Sqyards	
1	3516/2009	25-11-2009	1385.17	1656.66	
2	3531/2009	25-11-2009	3188.11	3812.97	
3	3532/2009	25-11-2009	264.69	316.56	
4	3534/2009	25-11-2009	18.23	21.8	
5	3537/2009	25-11-2009	1663.92	1990.04	
6	1016/2012	18-02-2012	2408.17	2880.17	Rectified deed No.3533/2009
7	1017/2012	18-02-2012	1401.05	1675.65	Rectified Deed No.3535/2009
8	1018/2012	18-02-2012	1593.36	1905.65	Rectified Deed No.3536/2009
9	3429/2013	27-04-2013	3188.11	3812.97	
10	7403/2013	10-12-2013	4444.23	5315.3	
			19555.04	23387.77	

8. After obtaining the approval in principle by virtue of communications dated 14.05.2009, the petitioners filed applications for obtaining layout permissions and subsequently, after obtaining layout permissions, Gift Deeds were executed in favour of the authority.

9. At this stage, it would be pertinent to reflect the chronology of events by way of the following table starting from the dates of Applications for surrender of land, date of grant of Permission for

developing ZDP road, dates of applications made by the petitioners for grant of layout permission, the date of said permission and the date of execution of the Gift Deeds in favour of the authority, with a view to highlight the fact that the layout permissions were applied for immediately after the permission in principle had been granted vide communication dated 14.05.2009.

Name of the Petitioner/ Applicant	Date of Application for surrender of land for formation of road	Date of grant of Permission for developing ZDP road	Date of layout application made by the petitioner	Extent (in Acres)	Date of grant of Layout Permission	Date of execution of Gift Deeds
M/s. Raghava Estates & Properties Ltd./ petitioner No.1	19.09.2008 and 07.04.2009	14.05.2009	--	8.06	09.11.2009	For Sy. Nos.61/1, 61/4 on 25.11.2009 and Rectified Deed on 18.02.2012
			20.04.2010	3.28	07.07.2011	For Sy. Nos.43/2, 43/3, 43/4 & 52/6 on 25.11.2009
			14.03.2013	7.669	24.12.2013	
			09.06.2014	11.56	30.04.2015	
M/s. Water Mark Villas (Development Agreement with Raghava Estates Ltd./ Petitioner No.2)	19.09.2008 and 07.04.2009	14.05.2009	05.03.2009	25.31	04.06.2009	For Sy. No.60/6 on 25.11.2009 and Rectified Deed on 18.02.2012
			05.08.2009	7.27	05.03.2011	
			19.01.2013	6.89	22.08.2013	
			01.03.2013	15.38	20.08.2013	

Petitioner Nos.1 and 2	19.09.2008 and 07.04.2009	14.05.2009	--	--	--	For Sy. Nos.42/3, 42/4 on 27.04.2013
REL Builders Pvt. Ltd./petitioner No.2 and RPT Constructions Pvt. Ltd./Petitioner No.3	19.09.2008 and 07.04.2009	14.05.2009	25.07.2018	1.29	11.01.2019	For Sy. Nos. 42/3, 179/2, 180/5, 180/4, 180/8, 180/9, 177/1, 181/6 on 09.12.2013 ; For Sy.No.28/2 on 25.11.2009 ; For Sy. No. 27/1 , 28, 30, 52/4 on 25.11.2009
Smt. Anitha/ Petitioner No.4	19.09.2008 and 07.04.2009	14.05.2009	--	--	--	For Sy. No.52/4 on 25.11.2009
Sri. L. Ravindra Rao	19.09.2008 and 07.04.2009	14.05.2009	--	--	--	For Sy. No.60/6, 61/7 on 25.11.2009 and Rectified Deed on 18.02.2012

10. It is not out of place here to mention that petitioner No.4 namely Mrs. Anitha, had not filed any application for grant of layout permission, yet insofar as the claim for TDR certificates is concerned, the petitioners all claim the said benefit.

11. According to the Zoning Regulations of 1993 for VGTMUDA framed by the Municipal Administration and Urban Development (I2) Department notified vide G.O.Ms.No.718, M.A., dated 30.11.1993 and in particular Regulation 20, any developer seeking permission for a layout certificate, should have an approach road from an existing public or private road of width not less than nine meters. According to Regulation 21, the streets and roads of length and width as prescribed in the table annexed thereto would be gifted in favour of the authority concerned and would continue to vest in the said authority.

What is important to notice in Regulation 21 is the fact that there was a requirement that a road with a minimum width of sixty feet (60 ft.) had to be kept where the length of the road in the layout was between six hundred meters (600 mts.) to one thousand meters (1000 mts.).

12. The claim of the petitioners for grant of TDR certificates has its genesis in the revised Building Rules of 2007 notified by Municipal Administration and Urban Development (M) Department vide G.O.Ms.No.678, dated 07.09.2007. Rule 15 thereof envisages as under:

“15. GRANT OF TRANSFERABLE DEVELOPMENT RIGHT:

Grant of Transferable Development Right (TDR) may be considered, by the Competent Authority for the following areas subject to the owner complying with the conditions of development above, as per the following norms:

(a) For the Master Plan road network undertaken and developed equivalent to 100% of built up area of such area surrendered.

(b) ...

(c) ...

The TDR may be arrived at on the basis of relative land value and equivalent amount in both export and import areas, as per the Registration Department records. The Competent authority shall have the discretion in the matter of applicability of TDR. The TDR shall not be allowed in unauthorized buildings/ structures/ constructions, and shall be considered only after the land is vested with the local authority/UDA. The TDR Certificate would be issued by the Competent authority would be valid or utilized/ disposed only within the concerned local body area and as per guidelines and conditions prescribed by the Competent Authority.”

12.1. TDR is defined under Rule 2 (1) (vii) as under:

“2. 1.

...

...

(vii) "Transferable Development Right" (TDR) means an award specifying the built up area an owner of a site or plot can sell or dispose or utilize elsewhere, whose site or plot is required to be set apart or affected for a community amenity or development for public purpose in the Master Plan or in road widening or covered in recreational use zone, etc. and applicable only after such lands are vested with the local body/ Urban Development Authority as the case may be. The award would be in the form of a TDR Certificate issued by the competent Authority."

13. The petitioners claim that land measuring four acres ninety two cents (Acs.4.92 cents) had been surrendered by them forming a part of the ZDP layout and therefore, were entitled to receive TDR certificates in that regard.

14. Subsequently, G.O.Ms.No.168 dated 07.04.2012 was issued which *inter alia* envisaged an increase in the grant of TDR certificates under Rule 17 as under:

"17. GRANT OF TRANSFERABLE DEVELOPMENT RIGHT:

(a) ...

(b) Grant of TDR can be considered by the Competent Authority / Sanctioning Authority for the following areas subject to the owners complying with the conditions of development above, as per the following norms:

(i) For the Master Plan Road / Road Development Plan undertaken and developed: equivalent to 200% of built up area of such area surrendered. For conservation and development of

lakes / water bodies / nalas foreshores & Recreational buffer development with greenery, etc: equivalent to 100% of built up area of such recreational buffer area developed at his cost.”

15. Thereafter, the Government issued Andhra Pradesh Building Rules, 2017 (hereinafter called as “Rules of 2017”) vide G.O.Ms.No.119, dated 28.03.2017, however, in the said Rules, the ratio earlier prescribed at 200% for grant of TDR certificates was maintained.

16. Government Order bearing G.O.Ms.No.223, dated 09.07.2018, was issued by the Government wherein Sub-clauses (a) and (b) of Rule 168 (2) was substituted as under:

“X. (1).

(i) for clause (a) and (b), the following shall be substituted, namely,-

(a) For the Master Plan Road / Road Development Plan undertaken and developed / Circulation network/ any development for public purpose in Master Plan/peripheral road in group development schemes equivalent to 400% of such area surrendered.

(b) For conservation and development of lakes / water bodies / nalas foreshores & Recreational buffer development with greenery/Roads on either side of Electrical Tower lines and clearance distance left for oil/gas pipelines: equivalent to 200% of such area surrendered.”

Finally, the Government appears to have issued the Government Order bearing G.O.Ms.No.180, dated 01.10.2020, whereby Rule 169 of the Rules of 2017 were amended inter alia as under:

“VII. (5) (d) Claiming of TDR for the portion of road formed by the owners or real estate developers to get access to the real estate project is not allowed.”

17. From the record, it appears that representations were filed by the petitioners on 13.07.2018, 11.10.2018, 07.06.2019, seeking the benefit of TDR from the respondents on account of their having surrendered the land to the extent of four acres ninety two cents (Acs.4.92 cents). These representations were considered and rejected by virtue of communication, dated 13.02.2020, issued by the Secretary to Government, Municipal Administration and Urban Development Department, wherein it was held that according to the existing layout rules, neither TDR certificates nor any compensation could be claimed inasmuch as the land owners when they apply for layout permission, the master plan road passing through the layout becomes the part of the layout pattern which has to be handed over to the local body free of cost.

18. The petitioners having failed to get the requisite relief from the respondents, preferred a writ petition which was allowed by

virtue of judgment and order dated 04.03.2022, which is impugned in the present writ appeal.

19. The learned single Judge held that the communication, dated 13.02.2020, as also G.O.Ms.No.180 was not binding upon the petitioners and that G.O.Ms.No.180 could not have taken away the rights which were already vested in the petitioners. The learned single Judge then proceeded to hold that the petitioners were entitled to the TDR certificates @ 400% as envisaged under G.O.Ms.No.223, dated 09.07.2018.

20. Learned Advocate General, appearing for the appellants, would submit that the view expressed by the learned single Judge is unsustainable in law on all counts. It is stated that there are no reasons given at all in the judgment impugned as to how the petitioners were entitled to receive the benefit of TDR as envisaged under the Rules of 2007 and assuming that they were, it was submitted that the learned single Judge had given no reasons at all as to how G.O.Ms.No.223, dated 09.07.2018, would be applicable to their case.

21. A lot of emphasis was laid on the fact that the entire proposal to develop the sixty feet (60 ft.) wide road was to enable the petitioners to use it as an access road for the layouts which they propose to develop on either side of the said road which was a part of the ZDP. It was urged that the authority concerned had been suspicious of the motives of the petitioners right from the beginning and therefore had questioned their intent vide communication, dated 23.12.2008, for the proposed development which deliberately was not disclosed by the respondents in their subsequent communication dated 07.04.2009. It is stated that while the permission had been granted by the authority to develop the sixty feet (60 ft.) wide road, there was no commitment made to the petitioners with regard to the grant of TDR.

It was further sought to be emphasized that immediately after the permission was granted by the authority on 14.05.2009, layout permissions were sought for and were granted between 2009 and 2013. It is stated that according to the layout rules, the developer had to provide for an access road from the main road which was not done in the present case and that the zonal development road was sought to be used by the petitioners as the access road. It was therefore, stated that since the ZDP road was permitted to be

developed at the cost of the petitioners, no TDR rights could have been legitimately and legally claimed by the petitioners.

22. Learned counsel for the appellant would further submit that if at all the petitioners were to be entitled to receive the benefit of TDR, it could have been only restricted to the rates envisaged under G.O.Ms.No.678, dated 07.09.2007, which envisaged the grant of TDR rights @ 100% of the built up area of such areas surrendered. It was therefore stated that since the land had been surrendered between 2009 and 2013, when the G.O.Ms.No.678, dated 07.09.2007 was in force, there was no basis for the learned single Judge to have allowed the petition holding that the petitioners were entitled to the benefit of G.O.Ms.No.223, dated 09.07.2018.

23. Counsel for the respondents have reiterated the submissions as were made before the learned single Judge.

24. The issue of the approval of the layout plans has no direct bearing on the right of a person to claim TDR. The fact that the petitioners were using the ZDP road as an access road without providing for a different access road would have some bearing on whether or not the layout permission ought to have been granted or

refused. However, we are not inclined to agree with the line of argument advanced by the counsel for the appellant that TDR could have been refused on that basis upto the time when the official respondents have now issued G.O.Ms.No.180, dated 01.10.2020 which in our opinion would have only prospective effect.

25. It is not denied that land measuring four acres ninety two cents (Acs.4.92 cents) has been surrendered by the petitioners to the authority by way of Gift Deeds as the same was falling in the sixty feet (60 ft.) wide road envisaged by the zonal development plan. It is a coincidence that the petitioners own land on either side of this road. For the time being, if one were to forget that the petitioners had any intention of planning a layout around the proposed sixty feet (60 ft.) wide road, the petitioners would not be able to construct upon those parcels of land which fell along the proposed road as per the ZDP. The said land would be subject to acquisition and if for a period of ten years, the land was not so acquired, the petitioners would be entitled to serve upon the respondents a notice 'requiring' his interest in the land to be so acquired and if the Government still failed to acquire the land within a period of six months from the date of receipt of the said notice, it would be considered that the land would not be required

and was not designated as a subject of compulsory acquisition. This was the spirit of Section 17 of the Andhra Pradesh Urban Areas (Development) Act, 1975 which before its repeal by the Andhra Pradesh Metropolitan Region Development Authorities Act, 2016 read as under:

“17. (1) Where any land situated in any development area is required by the Master Plan or zonal development plan to be kept as an open space or unbuilt upon or is designated in any such plan as subject to compulsory acquisition, if at the expiration of ten years from the date of operation of the plan under Section 10, or where such land has been so required or designated by any amendment of such plan, from the date of operation of such amendment, the land is not compulsorily acquired, the owner of the land may serve on the Government a notice requiring his interest in the land to be so acquired.

(2) If the Government fail to acquire the land within a period of six months from the date of receipt of the notice, the Master Plan or zonal development plan, as the case may be, shall have effect after the expiration of the said six months, as if the land were not required to be kept as an open space or unbuilt upon or were not designated as subject to compulsory acquisition.”

26. In our opinion, the petitioners would be entitled to TDR rights only when a right would accrue to the petitioners to claim such TDR

rights. Since TDRs are granted only in lieu of the compensation pursuant to acquisition of land, no such right to claim TDR certificates would accrue to the petitioners in the absence of any such acquisition proceedings having been initiated by the Government. For all we know the Government may change the ZDP and decide not to construct the road as envisaged earlier in the plan.

27. It appears to us that the aforementioned situation did not arise at all and the petitioners on their own volunteered to develop the road which included the land parcels of the petitioners and sought permission in that regard from the Vice-Chairman of the VGTMUDA, who after due consideration granted approval to the request of the petitioners with a specific condition that the land would vest in the Gram Panchayat free of cost for a public purpose. Not only this, the permission dated 14.05.2009, was conspicuously silent on the request of the petitioners with regard to granting them TDR.

28. The petitioners, in a great hurry gifted the parcels of land measuring four acres ninety two cents (Acs.4.92 cents) in favour of the Gram Panchayat out of their own free will and promise that it

would be 'free of cost' for a public purpose. If the land gifted to the Gram Panchayat is free of cost for a public purpose and has never been a subject matter of acquisition or intended acquisition, no right would accrue to the petitioners to claim the TDR rights in the absence of an actual acquisition or in lieu of compensation.

29. In our opinion, no right accrues to the petitioners to claim any TDR rights from the respondents. The judgment and order impugned in our opinion is unsustainable in law and is accordingly set aside.

30. For the reasons aforementioned, the present writ appeal is allowed. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

DHIRAJ SINGH THAKUR, CJ

R. RAGHUNANDAN RAO, J

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