



* THE HON'BLE SRI JUSTICE B KRISHNA MOHAN

+ WRIT PETITION No. 404 of 2023

% 04.07.2023

Between:

1. Jaldu Ram Nitesh, S/o. Jaldu Raja Visala Subba Rao, Aged about 32 years, Occ: Business, R/o. D.No. 15/154-156, Anandapeta, Revenue Ward No. 15, Machilipatnam, Krishna District.

2. Jaldu Raja Visala Subba Rao, S/o.Rama Rao, Aged about 64 years, Occ: Advocate, R/o. D.No. 15/154-156, Anandapeta, Revenue Ward No. 15, Machilipatnam, Krishna District.

....Petitioners

And

\$ The State of Andhra Pradesh, Municipal Administration and Urban Development Department, Secretariat, Velagapudi, Amaravathi, Guntur District. Rep by its Principal Secretary and 4 others.

....Respondents

! Counsel for the petitioners

: Sri G. Vivekananda

^ Counsel for the respondents

: Sri. V. Surya Kiran Kumar

The learned Government Pleader for
Municipal Adminstration

<gist:

>Head Note:

? Cases referred:

**THE HON'BLE SRI JUSTICE B KRISHNA MOHAN****WRIT PETITION No. 404 of 2023**

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....Respondents

DATE OF ORDER PRONOUNCED: 04.07.2023.

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. 404 of 2023

ORDER:

Heard Sri O.Manohar Reddy, the learned senior counsel for the petitioners and the learned standing counsel for the respondent Nos.2 and 3.

2. This writ petition is filed questioning the action of the respondent Nos.2 and 3 in not issuing the Occupancy Certificate in respect of the shopping mall-cum-multiplex constructed in pursuance of the building permission No.1070/0035/B/MCP/ MAC/2019 dated 26.09.2019 even though the same was constructed in accordance with the building permission and in tune with Rule 111 of the Rules issued in G.O.Ms.No.119, Municipal Administration and Urban Development (M) Department, dated 28.03.2017.

3. The learned Senior counsel for the petitioners submits that the petitioners were given building permit order dated 26.09.2019 by the respondent No.2 for construction of multiplex on the application of the petitioners dated 12.02.2019 under Sections 209, 210 and 227 of the



A.P.Municipalities Act, 1965 and A.P.Building Rules 2017. Some of the details of the permission sanctioned are as under:

The height of the building-multiplex is 15.90 mts. The Ground floor area is 1877.23 (m²) and the area of two upper floors is 5480.28 (m²) and the stilt area for parking is 2,797(m²). The said building permission was sanctioned subject to the conditions mentioned in the building permit order itself dated 26.09.2019. As per the condition No.13 of the permit order, cellar and stilts approved for parking in the plan should be used exclusively for parking of the vehicles without partition walls and the rolling shutters and the same should not be converted or misused for any other purpose. The condition No.22 says that all public and semi public buildings shall provide facilities to physically handicapped persons. As per the building permit order only the construction of the said multiplex was carried out, but instead of providing the stilt floor, cellar floor is provided with the excess parking area than stipulated. It is a RCC roof building. As per the approved plan the stilt floor is to be provided with 2797.79 square metres of site area but in the construction the cellar floor parking area has come upto 3150.00 square metres of site area which is in excess of 300 square metres of parking area. The stilt/cellar as per the approved plan is



24 metres ground level + 0.8 metres and below ground level 3.2 metres. But it has come after construction 4.5 metres in excess of 1.3 metres. Though for modification of the building permit order was applied through the building application form dated 06.12.2021, the authorities said it is not required. Hence, the same is not pursued.

4. Then, the petitioners submitted representations dated 27.12.2022 and 28.01.2023 for issuance of no objection certificate to the respondent No.2-authority. The respondent No.2-Corporation officials inspected the said multiplex-cum-shopping mall and submitted the inspection report dated 13.02.2023. Referring to the same, the respondent No.2 under the impugned proceedings dated 14.02.2023 observed that the applicant made deviations in respect of parking space/stilt as Cellar. Hence, it is refused as per Rule 111(2)(c) of the G.O.Ms.No.119, dated 28.03.2017.

5. To test the above said impugned order dated 14.02.2023, it is necessary to look into some of the relevant rules of the A.P. Building Rules of the year 2017 framed in G.O.M.No.119 MA & UD (M) Department dated 28.03.2017 as under:

Rule 2 (133) reads as follows:

(133) Parking Space

Parking space means an area enclosed or unenclosed, covered or open, sufficient in size to park vehicles, together with a drive-way



connections, the parking space with a street or alley and permitting ingress and egress of the vehicles.

Rule 2 (14) reads as follows:

(14) Basement/Cellar

The lower storey of a building below or partly below the ground level, with one or more than one level and to be used for parking of vehicles.

Rule 3 (33) reads as follows:

(33) Occupancy Certificate

(a) Occupancy Certificate shall be mandatory for all buildings. No person shall occupy or allow any other person to occupy any building or part of a building for any purpose unless such building has been granted an Occupancy Certificate by the Sanctioning Authority.

(b) The Sanctioning Authority or the person authorized, on receipt of notice of completion shall undertake inspection to verify the following aspects:

(i) No. of Floors.

¹[Note-The total height of the building may vary to a maximum of 1m with no change in the permitted number of floors subject to compliance of fire service norms.]

(ii) External setbacks.

(iii) Usage of the building.

(iv) Parking space provision.

(v) Abutting road width.

(vi) Rain Water Harvesting Structures, as applicable.

(vii) Solar Energy Structures in Buildings, as applicable.

(viii) Recycle of Water Treatment Plants, as applicable.

¹ Added by G.O.Ms.No.401 M A AND U D (M) Dept., Dated.15-11-2017



The T.P staff shall inspect the building and submit remarks within 10 days failing which the online system shall generate occupancy certificate automatically under deemed provision.

(c) In case, if the Occupancy Certificate is refused due to deviation, which cannot be compounded, the completion certificate will be rejected and communicated to the applicant in the prescribed form.

(d) The Sanctioning Authority shall communicate the approval of the Occupancy Certificate in the prescribed Form within 15 days or may issue the same after levying and collecting compounding fee, if any.

(e) If nothing is communicated within this period, it shall be deemed to have been approved by the Authority for occupation provided the fact is immediately brought to the notice of Authority in writing by the person, who had given the completion notice and has not received any intimation from the Authority within 15 days.

(f) If the authority fails to issue the occupancy certificate within the above stipulated period the responsibility shall be fixed with the concerned officer who fails to process the file.

(g) The Sanctioning Authority is empowered to compound the offence in relation to setbacks violations (other than the front setback) in respect of non-high rise buildings only up to 10%, duly recording thereon the violations in writing. The rate of Compounding fee shall be equivalent to one hundred percent of the value of the land as fixed by the Registration Department at the time of compounding for the violated portion and the Government may revise this rate from time to time. Compounding of such violation shall not be considered for buildings constructed without obtaining any sanctioned plan.

(h) For all high rise buildings, the work shall be subject to inspection by the Andhra Pradesh State Disasters Response & Fire Services Department and the Occupancy Certificate shall be issued only after clearance from the Andhra Pradesh State Disasters Response & Fire Services Department with regard to Fire Safety and Protection requirements.

(i) The sanctioning authority shall ensure that all public and semipublic buildings are constructed disable friendly and provide facilities for Differently abled persons, Elderly and Children as per the



Rules there under and also as per the latest version of National Building Code of India while issuing occupancy certificate.

(j) The functional/line agencies dealing with electric power, water supply, drainage and sewerage shall not give regular connections to the building unless such Occupancy Certificate is produced, or alternatively may charge 3 times the tariff till such time Occupancy Certificate is produced. This condition shall also be applicable to all unauthorized constructions and buildings constructed without sanctioned building plan. In addition to the above, the Local Body shall collect every year two times the property tax as penalty from the owner / occupier.

(k) The Registration Authority shall register only the permitted built up area as per the sanctioned building plan and only upon producing and filing a copy of such sanctioned building plan. On the Registration Document it should be clearly mentioned that the registration is in accordance with the sanctioned building plan in respect of setbacks and number of floors.

(l) The financial agencies / institutions shall extend loan facilities only to the permitted built up area as per the sanctioned building plan.

Chapter-X-3 deals with the Provisions For Construction And Regulation Of Multiplex Complexes.

Rule 107- Parking requirements

(1) The parking requirements within the site shall be as follows:

TABLE - 26

Parking requirements for Multiplex Complex

| Type of Building | Parking area to be provided as percentage of total built up area (inclusive of all internal aisles, driveways, stairs, etc.) | |
|---|---|-----------------------|
| | In Municipal Corporation Areas | In other Areas |
| A | B | C |
| Multiplex Complexes (inclusive of all activities areas) | 60% | 50% |



- (2) The parking spaces may be provided in:
- (a) basements or cellars or
 - (b) on stilt floor or
 - (c) in the open space over and above the minimum required setbacks (except the front setback) to be left around the building with adequate vehicular access, aisle, drives, ramps required for maneuvering of vehicles.
 - (d) Multi-Level Parking Complex [MLPC] adjoining to the complex within the site may be considered provided that a minimum clear open space of 6 m from the site boundary is ensured.

Rule 111-Occupancy Certificate to be obtained:

- (1) The final license shall be issued by the Licensing Authority only after the owner/applicant submits a final NOC from the Fire Service department and an Occupancy Certificate in the prescribed format from the Building Approving Authority.
- (2) For obtaining the Occupancy Certificate, the owner shall submit a notice of completion through the registered architect and licensed builder/developer along with prescribed documents and plans and Final NOC from the Andhra Pradesh Disasters Response and Fire Services Department to the Building Approving Authority. The Building Approving Authority on receipt of such notice of completion shall undertake inspection with regard to the following aspects and shall communicate the approval or refusal of the occupancy Certificate within 15 days.
 - h) Number of floors
 - i) External setbacks
 - j) Parking space provision
 - k) Abutting road width
 - l) Rain Water Harvesting Structures, as applicable.
 - m) Solar roof top structures, as applicable.
 - n) Recycle of water treatment plants, as applicable.



6. On the other hand, the learned Standing Counsel appearing for the 2nd and 3rd respondents submits that the petitioners were given permit order dated 26.09.2019 for the construction of shopping mall cum multiplex in which as per the application, stilt portion of one floor was given for the parking area to an extent of 2797(m²). But on the ground, they have constructed cellar portion instead of stilt, may be in a larger extent. The same is found to be violation for rejection of the occupancy certificate under the impugned proceedings of the 2nd respondent dated 14.02.2023. Hence, it is pleaded that the said rejection is justified.

7. In view of the above said facts and circumstances and upon consideration of the rival contentions, it is to be seen that there is no dispute with regard to the factual matrix of the case and about the issuance of the impugned proceedings dated 14.02.2023. As per condition No. 13 of the permit order dated 26.09.2019, the cellar/stilt made for parking should be used exclusively for the parking of the vehicles without partition walls and rolling shutters and the same should not be converted or misused for other purposes. It is true that the petitioners obtained permission for stilt floor to provide parking for the vehicles in the site area of 2797.79 Sq. meters and constructed cellar floor parking area in an extent of 3150.00 Sq. meters of the site area



instead of stilt floor. Admittedly, they have given excess parking area of 300 Sq. meters in the cellar area as there is no stilt floor at all. As per the above said rules, the word “Parking Space” does not draw any distinction between the stilt and basement/cellar for parking the vehicles and it can be either enclosed/unenclosed or covered/open, sufficient in size to park the vehicles together with driveway connections having ingress and egress for the vehicles from the street or alley to the parking space. The parking area provided above the ground level and below the ground floor area of the building is called as “stilt floor” and if the parking is provided in the lower storey of the building or partly below the ground level with one or more than one level, it would be called as “cellar parking area”. The word stilt is also defined at 1.4.111 of Delhi Development Authority, Unified Building Bye Laws dated 12.02.2020 in the similar manner.

8. As per Rule 3 (33) r/w Rule 111 of the above said rules (A.P. Rules), contemplates issuance of occupancy certificate in a mandatory form. On completion of the construction of the building/ multiplex, as per the permit order, on the application made by the owners/petitioners, it is the duty of the sanctioning authority to issue occupancy certificate upon satisfaction of the requirements as mentioned above under the said rules. For the purpose of issuance of



occupancy certificate, broadly it would be seen, the approved floors constructed, external setbacks provided, usage of the building, parking space provision and abutting road width etc. There can be variance in the total height of the building to an extent of one (1) meter without there being any change in the permitted approved floors. It is to be carefully seen that the above said rules dealing with the occupancy certificate do not specify or emphasize the parking space which should be either in the stilt or in the cellar only as per the application and permission obtained. It only speaks about the parking space provision whether it is provided or not as per the requirements of the site area shown in the permit order. Here is a case, where the parking space provision is there in a larger extent more than required under the permission order which is undisputed. But the same is provided in the form of cellar instead of the stilt area. It is not the case of the respondents that both the stilt and cellar portions were constructed in the said building/multiplex and stilt is being misutilized or altered for some other purpose contrary to the permit order by shifting the parking area to the cellar. Admittedly, no stilt was constructed and in its place cellar has come below the ground level because of which the total height of the building also must have come down proportionately to the extent of the height of the stilt floor as per the plan which is not violative or contrary to the above said rules. It is not the case of the



respondents that the above said building rules are deviated in respect of the mandatory clauses and the parking space provision is not given. Even according to the Rule 107 (1) of the above said rules, for the Multiplex complex (inclusive of all the areas of activities) the parking area of 60% is to be provided out of the total percentage of the built up area (inclusive of internal aisles, driveways, stairs, etc.). Similarly, as per Rule 107 (2) of the above said rules, the parking space can be provided either in the basement/cellar, stilt floor, open space or in the multi level parking complex as specified in the above said rules. In Rule 107 (2), the word used is “or” while describing various types of parking spaces. Hence, it cannot be construed as violation or deviation from the permit order, when cellar parking area is provided instead of stilt parking area. It is also not the case of the respondents that in the cellar parking area also there are deviations and it is dangerous to the rights of the neighbouring property owners, there will be an obstruction for the general public in their movement in the connected streets or alleys and causes inconvenience to the visitors of the subject building-Multiplex. At any rate providing cellar parking area in the subject building-multiplex satisfies the condition No. 13 of the permit order dated 26.09.2019, Rule 2 (133), Rule 2 (14), Rule 3 (33) r/w Rule 111 and Rule 107 of the A.P. Building Rules of the year 2017.



9. For the foregoing reasons, the impugned action of the respondents dated 14.02.2023 is not justified and the same is liable to be set aside. Accordingly, it is set aside directing the respondents to consider for issuance of the no objection certificate for the subject Shopping Mall cum Multiplex under the building permission No. 1070/0035/B/MCP/MAC/2019 dated 26.09.2019 if it is otherwise in order.

10. Accordingly, the Writ Petition is allowed. No costs.

As a sequel, miscellaneous applications, pending, if any, shall also stand closed.

JUSTICE B KRISHNA MOHAN

04.07.2023.

Note: LR copy to be marked
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