

Telangana High Court

Bench: SRI JUSTICE C.V. BHASKAR REDDY

Date of Decision: 1 November 2023

WRIT PETITION No.45462 of 2022

Mr. Srikanth V J Tanikella **Petitioner**

Versus

The State Of Telangana**Respondent**

Legislation:

Section 15 of the Hyderabad Metropolitan Development Authority Act, 2008

Article 226 of the Constitution of India

Subject: Challenge to the construction of an expressway extension and flyover, alleging violation of rules and procedures in road widening and construction, with a focus on balancing public interest, private landowners' interests, and environmental preservation in infrastructure projects.

Headnotes:

Land Dispute - Petitioners seek relief against the change in the nature and purpose of a road - Allegation of arbitrary and illegal encroachment for the extension of Outer Ring Road - Violation of constitutional rights and legal provisions - Petitioners claim to be residents of a residential complex - Building Rules prescribe a minimum abutting road width for high-rise buildings - Approval for road widening from 36 meters to 45 meters granted, but petitioners argue against converting the road into an extension of the Outer Ring Road - Allegation of non-compliance with legal procedures for modification of the Master Plan - Respondents argue that the construction is in accordance with the norms and required for traffic flow and future development - Dispute over the width and purpose of the road - Contentions regarding procedural violations, land acquisition, and building rules - Counter-affidavit submitted by the respondents - Legal arguments presented by both sides. [Para 2-5]

Administrative Law - Infrastructure Development - Challenge to the construction of an expressway extension and flyover - Petitioners alleging violation of rules and procedures in road widening and construction - Review of the earlier dismissal of similar petitions - Public interest vs. individual

interests - Balancing environmental concerns and road development - Court's jurisdiction limited in the absence of legal infirmities and mala fide action by the respondents. [Para 6-10]

Environmental Concerns - Balancing environmental sensitivity with the need for infrastructure development - Consideration of viability of road alignments in ecologically sensitive zones - Public interest outweighing individual landowners' interests - Preservation of water bodies in the area. [Para 10]

Legal Precedent - Reference to Jayabheri Properties Pvt. Ltd. v. State of Andhra Pradesh - Balancing public interest, private landowners' interests, and environmental preservation in infrastructure projects - Application of principles to the present case. [Para 10]

Decision - Dismissal of the writ petition on the grounds that the petitioners' legal rights have not been affected, and the Court's earlier dismissal of similar petitions has attained finality - Lack of merits in the present case. [Para 11]

Referred Cases:

Jayabheri Properties Pvt. Ltd. v. State of Andhra Pradesh (2010) 5 SCC 590

B.P. Mahesh v. State of Karnataka SCC Online Kar 39

State of Maharashtra v. Prabhu (1994) 2 SCC 481

National High Speed Rail Corporation Limited v. Montecarlo Limited (2022) 6 SCC 401

Food Corporation of India v. M/s Kamdhenu Cattle Feed Industries (1993) 1 SCC 71

Sethi Auto Services Station v. Delhi Development Authority (2009) 1 SCC 180

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, is filed by the petitioners, seeking the following relief:

“...to issue an appropriate writ, order or a direction, more particularly one in the nature of a mandamus, declaring the action of the Respondents in changing the nature and purpose of the 36 meters wide road connecting the Service Road and the Gandipet- Shankarpally Road in Survey Nos.239 and 240 of Kokapet Village, Rajendranagar Mandal, Ranga Reddy District ("Subject Road") by encroaching upon it and converting it into an extension of the Outer Ring Road, as being arbitrary, illegal, vexatious and violative of the constitutional rights of the Petitioner under Articles 14, 21 and 300A as well as being contrary to the provisions of the HMDA Act, 2008, G.O.Ms.No. Nil, MA &UD Dept., dated 09.07.2008; G.O.Ms.No.168, MA & UD Dept., dated 07.04.2012 (i.e the Building Rules, 2012) and G.O.Ms. No. 24 MA &UD Dept., dated. 04.02.2020 and to consequently direct the Respondents to:

(i) desist from changing the nature of the Subject Road to that of an extension of the Outer Ring Road; and

(ii) to limit any modification of the Subject Road only to widening it to 45 metres width strictly in conformity with the approved variation at Sl. No. 6 of G.O.Ms. No. 24 MA &UD Dept., dated. 04.02.2020; and

(iii) to remove all such constructions to the extent already made including construction of the tunnels, earth retainers, etc. and restore the Subject Road to its original use as one connecting the service road to the ORR and the Gandipet- Shankarpally Road;....”

2. The petitioners claim to be residents of residential complex by name “Movie Towers” situated in Survey Nos.239 and 240 of Kokapet Village, Rajendranagar Mandal, Ranga Reddy District. The case of the petitioners is that G.O.Ms.No. Nil, MA & UD Dept., dated 09.07.2008 and G.O.Ms.No.168, MA & UD Dept., dated 07.04.2012 (i.e, the Building Rules, 2012) prescribe that the minimum abutting road width for a high rise building/complex of above 50 meters height has to be 30 meters. The purpose of prescribing minimum width for an abutting road is to ensure sufficient unhindered access and free flow of traffic for the residents of the building and also other commuters of such abutting road. Since the width of road on the eastern side of Movie Towers connecting the Service Road of the ORR at one end and the Gandipet-Shankarpally road on the other was 36 metres wide, the building permission for the residential complex Movie Towers was accorded

for a building height of 57 metres. The Respondent No.2 proposed that 36 metre road be widened to 45 meters, which modification to the Master Plan was approved by G.O.Ms.No.24 MA & UD Dept, dated 04.02.2020. The said G.O only contemplates widening of existing road from 36 metres to 45 metres but does not in any manner contemplate subsuming and converting the Subject Road to an extension of the ORR by way of a trumpet interchange and ramp of accessing the Outer Ring Road. It is further case of the petitioners that any modification to the Master Plan has to be carried out only in accordance with the provisions of Section 15 of the Hyderabad Metropolitan Development Authority Act, 2008 (for short "HMDA Act"). Section 15(2) requires that a report be prepared for any such modification and submitted to the Government for approval. Section 15(3) requires that any proposed variation be published in at least two popular newspapers and objections called for and considered before approving any modification to the Master Plan. Any approved modification is then required by Section 15(4) to be published in the Telangana Gazette and would come into effect from the date of such publication. The case of the petitioners is that there was only a proposal to widen the Subject Road and that at no point of time there was a proposal or approval for changing the nature of the road from a road connecting the service road to one of a trumpet interchange and ramp connecting directly to the ORR. The public notice published in Hans India (English) and Andhra Jyothi (Telugu) on 07.09.2019 as well as the approved variations in G.O.Ms. No. 24 MA &UD Dept., dated. 04.02.2020 only contemplates the widening of the road and in no manner authorise the conversion of the road to a ramp for and extension of the ORR. The approval of the Government for the proposed modification vide G.O.Ms.No.24 MA & UD Dept., dated 04.02.2020 was also conditional upon the 2nd Respondent

complying with the conditions stipulated in G.O.Ms. No. 168 dated 07.04.2012 (i.e the Building Rules, 2012) & G.O.Ms.No. 33 dated 24.01.2013. It is further case of the petitioners that the Respondents are seeking to convert the Subject Road into a trumpet interchange and ramp with controlled toll-paid access through 8 toll booths as an extension of the main carriage way of the ORR and reduce the width of the Subject Road to 10 metres, thereby violating G.O.Ms. No. 24 MA & UD Dept., dated 04.02.2020 as well as the Building Rules, 2012 which require a minimum width of 30 metres for roads abutting buildings over 50 metres in height. It is further stated that G.O.Ms. No. 24 MA &UD Dept., dated 04.02.2020 does not permit reduction of the abutting road width to 10 meters. The Respondents, having prescribed a minimum access road width of 36 metres in accordance with the Building Rules, are bound by it and they are estopped from causing any reduction thereof. It is further case of the petitioners that while the width of the abutting road may be a consideration for the purpose of approving the building plans, it is also a minimum requirement and casts a corresponding obligation on the Respondent not to make any modification reducing such width and detrimentally altering the rights of the persons. The action of the Respondents encroaching and converting the Subject Road not only adversely affects the Petitioners right to life as well as quality of life but also rights guaranteed under Article 300A of the Constitution of India as it diminishes the value of the Petitioners property. The fact that such encroachment is being undertaken by the Respondents under the guise of G.O.Ms. No. 24 MA & UD Dept., dated 04.02.2020 and for the benefit of the Neopolis project propounded by the Respondents is nothing but a brazen abuse of state authority and a blatant bulldozing by instrumentalities of the state. The encroachment effectively narrows down the Subject Road to just

7 meters and also impairs access to the Service Road. The sudden and acute narrowing of the Subject Road would not just cause a huge traffic bottleneck but the placement of the tunnels & ramp for the impugned conversion also impairs the access to the underpass and compels commuters such as petitioners and thousands of others to travel an additional distance of over 4 km to be able to join the service road towards Narsingi. The impugned action also appears to be undertaken with an ulterior profit motive for enhancing toll collection by forcing commuters to use the ORR. It is further case of the petitioners that a resident of Movie Towers has filed W.P.No.15952 of 2022 and a few other residents have filed W.P.No.33346 of 2022 challenging the reduction of width of the Subject Road on varying grounds and the said writ petitions are pending for adjudication. It is further case of the petitioners that respondents have failed to adhere to the procedure prescribed by Section 15 of the HMDA Act, 2008 for modifying the HMDA Master Plan 2031 for construction of a ramp and trumpet exchange thereby extending the ORR by subsuming the Subject Road. The Respondents are hurriedly and motivatedly proceeding with the construction of a trumpet interchange and ramp as part of and for the benefit of the Neopolis project propounded by it without any consideration to the detriment being caused to the Petitioners in disregard to objections raised as well as the orders of this Hon'ble Court. It is further case of the petitioners that in the counter affidavit filed in W.P.No.15952/2022, the Respondents stated that proposal of a 36 metre road on the northern side of Movie Towers was dropped on account of the objections. It is the case of the petitioners that the respondents are carrying out the work in an accelerated pace without considering the objections of the flat owners who are occupied nearly 320 flats and population of approximately 1500, who are regularly using the said road in addition to

thousands of private, public, commercial and other vehicles commuting to and through the Service Road and the Gandipet-Shankarpally road. Any reduction of the width of the Subject Road would perilously affect the efficacious movement of vehicles like school buses, transport vehicles, fire engines, ambulances etc. Therefore, the petitioners prayed that this Court to issue writ of mandamus, declaring the action of Respondents in changing the nature and purpose of 36 meters wide road connecting the Service Road and the Gandipet- Shankarpally Road in Survey Nos.239 and 240 of Kokapet Village, Rajendranagar Mandal, Ranga Reddy District ("Subject Road") by encroaching upon it and converting it into an extension of the Outer Ring Road, as being arbitrary, illegal, vexatious and violative of the constitutional rights of the Petitioners under Articles 14, 21 and 300A as well as being contrary to the provisions of the HMDA Act, 2008, Building Rules approved by the Government and G.O.Ms.No.24 MA &UD Dept., dated 04.02.2020 and consequently prayed this Court to direct the Respondents to: (i) desist from changing the nature of the Subject Road to that of an extension of the Outer Ring Road; and (ii) to limit any modification of the Subject Road only to widening it to 45 metres width strictly in conformity with the approved variation at SL. No. 6 of G.O.Ms. No. 24 MA &UD Dept., dated 04.02.2020; and (iii) to remove all such constructions to the extent already made including construction of the tunnels, earth retainers, etc. and restore the Subject Road to its original use as one connecting the service road to the ORR and the Gandipet- Shankarpally Road;

3. The respondent Nos.2 and 3 filed their counter affidavit, wherein *inter alia* it is stated that there is no illegal encroachment and Construction is being undertaken by HMDA as per the norms and there is no change in nature of the 36 metres wide road connecting to the service road and the Gandipet-Shankarpally Road in Sy.Nos.239 and 240 situated at Kokapet Village, Rajendranagar Mandal, Ranga Reddy District and is in accordance with the G.O.Ms.No.24 dt:04.02.2020. It is further stated that the said road is not an

extension of Outer Ring Road, as it is part of the 'Neo Polis Layout'. It is further stated that the said road is having connectivity to the R & B road leading to is proposed taking into consideration of the future growth and seamless connectivity and conflict free junction for smooth flow of traffic by proposing the required trumpet and ramps with all necessary slip roads and access roads to the development along the said road. It is further stated that the road is proposed and taken up for construction duly following all the norms for future traffic and also to provide sufficient unhindered access of 10 metres carriageway abutting to the movie towers property, accessing to the Outer Ring Road and Neo polis Layout. At Present, the road is 36 metres wide with existing carriageway of 7 metres which is now widened to 45 metres road with different carriageways accessing to the Outer Ring Road Service Road and Outer Ring Road Main Carriageway and 10 metres carriageway along the property line of movie towers, which is more than the existing road. It is further stated that the G.O.Ms.No.24 MA & UD, Department dated 04.02.2020 contemplates widening of existing road from 36 metres to 45 metres and the above road is not an extension of Outer Ring Road. It is a 45 metres road connecting to Outer Ring Road through the Trumpet Interchange so as to have conflict free junction for the faster connectivity to the different parts of the City. It is further stated that proposals are formulated taking into consideration of the traffic growth due to lot of developments coming up in Kokapet and surrounding areas including the Neo polis Layout. The proposals are formulated duly following all the mandatory provisions and G.O.Ms.No.24 MA & UD, Department dated 04.02.2020 was issued, notifying the road as 45 metres as against the existing 36 metres. It is further stated that many flyovers, Road Over Bridges and Interchanges/Grade Separators are constructed within the available Right of Way and are proposed based on traffic volumes.

It is further stated that Section 15 of HMDA Act stipulates the procedure for modifications to the Metropolitan Development Plan which includes widening of the roads and creating master plan roads and hence the same is not applicable for understanding any developments like foot over bridges, flyovers, etc., on the existing roads and the authorities are empowered to take up such development works on existing roads for free flow of traffic and to ease the congestions on the roads and hence taking up such works relating to infrastructure is required to enable the traffic on the existing roads in the city to eventually culminate on to the ORR. It is further stated that the HMDA has taken up the development of Neo-polis Layout in Sy.Nos.239 & 240 duly providing all Infrastructure facilities including construction of Trumpet Interchange for providing direct access to the 8 Lane access controlled Outer Ring Road with well-planned traffic circulation pattern for

smooth traffic flow taking into consideration of the future growth of the Neopolis Layout. It is further stated that the proposal of widening of existing 36.00 metres to 45.00 metres road with trumpet interchange, slip roads, service roads fitting within the 45 metres Right of Way are undertaken while taking into consideration of the Neopolis layout and the development that will be coming up along the road and in the adjoining areas and a proper road network as a long term solution. It is further stated that the Government has constructed various flyovers in the heart of the city within the available right of way and approach ramps are connected with sufficient width of service roads to have a proper ingress and egress to the buildings existing. It is further stated that the residents are of the opinion that the road of 36.00 Metres/45.00 Metres belongs to them and no structures should be built up in the 45.00 Metres. In the Gazette it will be given as widening of road from 36.00 metres to 45.00 metres only and the structures to be built on that road need not be mentioned. It is further stated that the present 7 metres carriageway in the existing 36 metres Right of way is under development to the 10 metres carriageway as slip road, connecting to the movie towers and its adjoining buildings in the 45 metres wide Master Plan road connecting Outer Ring Road service road and R & B road to Shankarpally. The existing road with 36 meters width in front of Movie Towers is widened to 45 meters and the said road commences from R & B road (i.e., Shankarpally to Gandipet) and culminates into service road abutting ORR. The facility is increased to 3-lane as against existing 2-lane with multiple carriageways for the traffic to the entire Kokapet and its surrounding areas. The purpose of widening 36 meters to 45 meters is to cater to the growing traffic needs of the larger area road network flowing from Shankarpally, Gandipet, Vattinagulapally, etc., so as to enable them to merge into service road and

also onto ORR. It is further stated that for the purpose of connecting any of the city roads to the service roads and ORR, infrastructures like construction of ramp, flyover are required to enable the traffic on such city road to take the ramp, then the flyover and then onto the trumpet interchange and take required diversions on the said trumpet interchange as per their destinations and eventually merge themselves onto their respective service roads connecting the ORR. It is further stated that the present Right of way in front of Movie Towers is 36 metres which is proposed for widening to 45 metres. The carriageway is proposed to 2 Nos. of 3-lane carriageway i.e. 6-lane carriageway in addition to the 10 metres wide i.e. 3-lane road in front of Movie Towers as against the existing 7 metres width carriageway. It is further stated that the carriageway for Movie Tower residents and future development along the Movie Towers is 10 metres (i.e. for a length of 600 metres) which is actually with a better facility once the works are completed. It is further stated that in view of the aforesaid reasons and since after obtaining opinion of the technical experts the work of converting the Subject Road to an extension of the ORR by way of a trumpet interchange and ramp of accessing the Outer Ring Road is being taken up and prayed to vacate the interim order of *status quo* passed by this Court in W.P.No.45462/2022 dated 22.12.2022 and dismiss the writ petition.

4. The learned counsel appearing for the petitioners has vehemently argued that without considering the representation submitted by the petitioners, the respondents have undertaken the construction of changing the nature and width of existing 36 meters wide connecting ORR service road on the Eastern side of MOVIE Towers to 45 meters by revising the master plan in exercise of the power under Section 15 of the HMDA Act, 2008. Learned counsel further submitted that the respondents without acquiring any land for

increasing the road width from 36 meters to 45 meters; and without complying the conditions laid down in G.O.Ms.No.168, dated 07.04.2012 and contrary to the Building Rules, 2012 framed in G.O.Ms.No.24, dated 04.02.2020, which states that the minimum abutting road width for high rise building/complex of above 50 meters height is 30 meters and all-round open space is 16 meters and also without following the procedure under Section 15 of the HMDA Act for making any alteration to the Master plan, undertook construction of an express way extension to the ORR comprising of a trumpet for landing and exit from ORR with a flyover and a ramp as a part of the NEOPOLIS project for development of IT & ITES SEZs, by providing suitable infrastructure facilities in Acs.119.00 of land in Survey Nos.239 and 240 of Kokapet Village. Learned counsel further submitted that existing 36 meters wide connecting ORR service road on the Eastern side of MOVIE Towers is the only access road for all the residents for ingress and egress as well as Gandipet-Shankerpally Road and the respondents are proposing to erect eight toll gates being three for entry and five for exit on the ramp portion of the proposed extension to the ORR. The purport of extension of ORR and the road shown in the said layout planned on the Northern side of Movie Towers to provide access road to the petitioners is absent in the HMDA Master Plan, 2031. The respondents have abandoned the proposal of providing an alternate access road on the Northern side and connection to service road and ought not have continued with their plan to extend the ORR by using the only available required access road of 30 meters width on the Eastern side. They are proposing to reduce the abutting access road width for MOVIE Towers to 9 meters out of which also only 7 meters full carriageway and 2 meters earthen shoulder is proposed. Such a narrow two-line road, apart from being contrary to the building rules, is highly insufficient

and vehicles like school buses, transport vehicles, fire engines, ambulances, etcetera cannot even move freely and prayed to allow the writ petition.

5. On the other hand, Sri E. Ajay Reddy, learned Senior Counsel representing Smt. D. Madhavi, learned Standing Counsel for HMDA submitted that the respondents have followed all the established procedures and there is no procedural violation as averred by the petitioner. He submitted that they have increased the width of ORR Service Road at MOVIE Towers to Gandipet – Shankarpally Road to 45 Meters vide G.O.Ms.No. 24, MA & UD Department, dated 04.02.2020 by revising the Master Plan in exercise of the powers conferred under Section 15 of the HMDA Act, 2008. He submits that for widening of road from 36 to 45 meters on the eastern side of the Movie Towers they have taken utmost care not to disturb the setbacks/compound wall at the junction of ORR connectivity, the Trumpet Interchange is proposed with a six lane with central meridian without conflict to the traffic flow on to the ORR going towards Patancheru, Shamshabad and Gachibowli sides with slip roads of sufficient width connecting to the service roads. Learned counsel submitted that the slip road connecting to the service road with access to the MOVIE Towers is provided with three-lane carriage way (10 meters) with 1 meter footpath for the traffic flow as against the existing two-lane carriage way presently 36 Meters ROW and the flyover is proposed all along the centre of the road which is a general practice for construction of any flyover. It is submitted that while considering any application for building permission which are abutting to this 45 Meters wide road, the entire road width of 45 Meters will be taken into consideration for all practical purposes and building permissions will be issued accordingly. It is further submitted that the whole endeavour of the respondents in constructing the flyover on the Trumpet lane is for smooth traffic flow taking into consideration the future growth of

NEOPOLIS Layout. The present proposal of widening of existing 36 Meters to 45 Meters road with Trumpet Interchange, slip roads, service roads fitting within the 45 Meters row are taken up taking into consideration the NEOPOLIS Layout and the development along the road and in the adjoining areas as proper road network is required to achieve a long term solution. The learned Senior Counsel relied on the following judgments:

i) **Jayabheri Properties Pvt. Ltd. v. State of Andhra Pradesh**¹² ii) **B.P.**

Mahesh v. State of Karnataka² iii) **State of Maharashtra v. Prabhu**³

iv) **National High Speed Rail Corporation Limited v. Montecarlo Limited**⁴

v) **Food Corporation of India v. M/s Kamdhenu Cattle Feed Industries**⁵ vi) **Sethi Auto Services Station v. Delhi Development Authority**⁶

The learned Senior Counsel also relied upon the common order dated 20.06.2023 passed in Writ Petition Nos.15952 and 33346 of 2022, and prayed to dismiss the present Writ Petition.

6. A learned Single Judge of this Court after elaborate consideration of submissions made by both sides, material placed on record and also the above referred judgments relied upon by the learned Senior Counsel appearing for HMDA, dismissed Writ Petition Nos.15952 and 33346 of 2022 filed seeking similar relief, vide common order dated 20.06.2023 on the following observations:

“10. In Writ Petition No. 33346 of 2022, the petitioner sought for a mandamus directing the respondents not to make any construction in Survey Nos. 239 and 240 of Kokapet Village including construction of

¹ (2010) 5 SCC 590

² SCC Online Kar 39

³ (1994) 2 SCC 481

⁴ (2022) 6 SCC 401

⁵ (1993) 1 SCC 71

⁶ (2009) 1 SCC 180

express way, extension of ORR which is likely to reduce the width of the access road to MOVIE Towers and to remove such constructions which are already made including construction of express way.

11. *Writ Petition No. 15952 of 2022 is also filed with the similar relief. The bone of contention of both the learned Senior Counsel as well as the learned counsel is that when they are prescribing particular parameters by virtue of G.O.Ms.No. 24, the respondents have to follow their own rules. If the flyover is constructed just opposite to their apartment, it will affect their ingress and egress which will create congestion and traffic problems. It is also their case that width of the road is extended from 35 to 45 meters by amending the master plan without following the due procedure as contemplated under the Act.*

12. *It is the contention of the respondents that even while constructing the flyover they are still maintaining 36 meters wide road, it is only the apprehension of the petitioners. They have brought to the notice of the Court the G.O., whereby the master plan was amended extending the road width from 30 to 45 meters. On the first count, the petitioner cannot question the amendment of the master plan by the respondents in this Writ Petition for the reason the said G.O.Ms.No. 24, dated 04.02.2020 issued by the respondents by amending the Master Plan is not in question before this Court. Hence, the petitioners cannot agitate the said issue and this Court cannot go into the said aspect. The Courts as well as the people cannot lose sight of the fact that the city is developing multi-fold in a fast pace. The government has the responsibility to act in tune with the growing requirements and take steps to provide the road and other facilities to the inhabitants of the city. In that process, looking at the larger interest, the respondents have taken a decision to construct a flyover. The petitioners have to demonstrate before this Court that their constitutional rights are affected or there is violation of any statutory rules. Further, this Court can interfere on the grounds of mala fides, arbitrariness or unreasonableness. When no such grounds are raised this Court cannot interfere with the construction of flyover which is in the larger public interest. Learned Senior Counsel for HMDA has brought to the notice of this Court G.O.Ms.No. 168, dated 07.04.2012 and also going through the contents of the counter affidavit wherein it is categorically*

mentioned that by constructing a flyover or trumpet interchange before the petitioner's towers, width of the road is not condensed. Even assuming for argument sake that the width of the road before the petitioners' apartment is reduced, still the Court will not interfere as it is settled law that in case of a conflict between public interest and individual interest, public interest will outweigh the personal interest. Hence, in any view of the matter, no grounds much less legal grounds are made out seeking interference of the Court.

13. *Accordingly, both the Writ Petitions are dismissed. No costs."*

7. The prayer and the contentions raised in the earlier Writ Petition Nos.15952 and 33346 of 2022 and the present writ petition are almost similar.

8. It is the case of the petitioners herein in this writ petition is that without considering the representation of the petitioners; without acquiring any land for increasing the road width from 36 meters to 45 meters; and without complying the conditions laid down in G.O.Ms.No.168, dated 07.04.2012 and contrary to the Building Rules, 2012 framed in G.O.Ms.No.24, dated 04.02.2020, which states that the minimum abutting road width for high rise building/complex of above 50 meters height is 30 meters and all-round open space is 16 meters; and also without following the procedure under Section 15 of the HMDA Act for making any alteration to the Master plan, the respondents undertook construction of an express way extension to the ORR comprising of a trumpet for landing and exit from ORR with a flyover and a ramp as a part of development of NEOPOLIS project in Survey Nos.239 and 240 of Kokapet Village. According to the petitioners, the purported extension of ORR and the purported road shown in the said layout planned on the Northern side of Movie Towers to provide access road to the petitioners is absent in the HMDA Master Plan, 2031 and the respondents have abandoned the proposal of providing an alternate access road on the

Northern side and connection to service road and ought not have continued with their plan to extend the ORR by using the only available required access road of 30 meters width on the Eastern side. It is further case of the petitioners that existing 36 meters wide connecting ORR service road on the Eastern side of Movie Towers is the only access road for all the residents for ingress and egress as well as Gandipet Shankerpally Road and the respondents are proposing to erect eight toll gates being three for entry and five for exit on the ramp portion of the proposed extension to the ORR.

9. It is apt to extract Section 15 of the Hyderabad Metropolitan Development Authority Act, 2008, which reads as follows:

“15. Modifications to the Metropolitan Development Plan and Investment Plan.

(1) The Metropolitan Development Authority or the Government, as the case may be, may make such modifications to the Metropolitan Development and Investment Plans as it may think fit and which in its opinion are necessary.

(2) The Metropolitan Commissioner shall prepare a report together with necessary plan, any such modification and submit to the Government for approval.

(3) Before making any modifications to the Metropolitan Development Plan and Investment Plan, the Metropolitan Development Authority, or the Government, as the case may be, shall publish a notice in at least two popular local newspapers and Telangana Gazette inviting objections and suggestions from the public specifying such date in the notice and for examining the proposals and report and shall consider all objections and suggestions that may be received by the Metropolitan Development Authority or Government.

(4) Every modification made under the provisions of this section shall be published in the Telangana Gazette and newspapers and the modifications shall come into operation from the date of publication of such notification in the Telangana Gazette and newspapers.

(5) The Metropolitan Development Authority shall levy such fees and conversion charges from the owners as applicable and as may be prescribed in any such modification effected to the Metropolitan Development Plan and Investment Plan.”

The above provision of law specifically states the procedure for modification to the Metropolitan Development Plan and Investment Plan, which includes widening of the roads and creating master plan roads. It is a known factor that the authorities are bound to improve or widen the existing roads for hassle free traffic and to avoid traffic congestions on the roads and hence taking up such works relating to infrastructure is required to enable the traffic on the existing roads in the city to eventually culminate on to the ORR. Such power is impliedly vested with the authorities. Once the power has been conferred by the Statute for development plans, it is for the authority to undertake the work subject to technical sanction for developmental works and the Courts cannot intervene into such powers which are having foundation of technical sanction. When the technical matters are involved, the Courts should be more reluctant to interfere with the decision taken by the authorities as the Courts do not have necessary expertise to adjudicate upon the technical issues. Admittedly, in the present case, the respondents have taken up the construction work of changing or widening the existing road from 36 metres to 45 metres. Therefore, there is no need to mention about the structures built on the said road. Further, the present 7 metres carriageway in the existing 36 metres Right of way is under development to the 10 metres carriageway as slip road, connecting to the movie towers and its adjoining buildings in the 45 metres wide Master Plan road connecting Outer Ring Road service road and R & B road to Shankarpally. The existing road with 36 meters width in front of Movie Towers is widened to 45 meters and the said road commences from R & B road (i.e, Shankarpally to

Gandipet) and culminates into service road abutting ORR. The facility is increased to 3-lane as against existing 2-lane with multiple carriageways for the traffic to the entire Kokapet and its surrounding areas. The purpose and object of widening 36 meters to 45 meters is to cater to the growing traffic needs of the larger area road network flowing from Shankarpally, Gandipet, Vattinagulapally, etc., so as to enable them to merge into service road and also onto ORR. For the purpose of connecting any of the city roads to the service roads and ORR, infrastructures like construction of ramp, flyover are required to enable the traffic on such city road to take the ramp, then the flyover and then onto the trumpet interchange and take required diversions on the said trumpet interchange as per their destinations merge themselves onto their respective service roads connecting the ORR. Since these technical aspects will fall within the knowledge and discretion of the concerned experts, who prepare plan after studying the traffic pattern, the same does not require to be interfered in exercising the jurisdiction under Article 226 of the Constitution of India that too in the absence of the petitioners establishing the legal infirmities and mala fide action on the part of the respondents. The learned Single Judge of this Court in W.P.Nos.15952 and 33346 of 2022 after elaborately considering the requirements of constructions and extension of existing road width from 36 metres to 45 metres and the powers vested with the respondents under the provisions of the HMDA Act, dismissed the said Writ Petitions by a reasoned order. In the instant case also, this Court does not find any legal infirmities warranting interference with the construction activities being undertaken by the respondents for construction of an express way extension to the ORR comprising of a trumpet for landing and exit from ORR with a flyover and a ramp, facilitating the public at large. Further, even if individual interest of the

petitioners is suffered, that cannot have any bearing over the interest of the public at large. The respondents specifically stated in their counter affidavit that by constructing a flyover or trumpet interchange in front of the petitioners towers, the width of the road is not reduced and the petitioners rights, are not affected in any manner and there is no violation of the Building Rules, 2012. As admittedly, the rights vested in the Government are free from all encumbrances, the petitioners are not entitled to question the action of the respondents, particularly, in the absence of a vested right being accrued in their favour.

10. In **Jayabheri Properties Pvt. Ltd. v. State of Andhra Pradesh's** case (1 supra), the Hon'ble Supreme Court observed as follows:

“38. We have taken pains to set out the fact situation in some detail since a decision in this matter depends on the fact situation leading to the change of alignment of the western sector of the Outer Ring Road Project in the twin cities of Hyderabad and Secunderabad in Andhra Pradesh. From the site plans of the area submitted by the parties, it is clear that both the two alignments touch and disturb existing water bodies, which was the main ground for the change of alignment in the first place. From the reports submitted by the various local authorities, it is, however, clear that in order to proceed according to the first alignment, the respondents would have to cut through a great deal of rock, which is not so as far as the second alignment is concerned.

39. It is no doubt true that in terms of the environmental policies of the State Government, the western sector of the Project has been shown to be a highly ecologically sensitive zone, but we have no choice but to consider the viability of either of the two alignments for the purpose of the connectivity of the outer ring road and while doing so we have to balance the aforesaid factor and also the interest of the private landowners as against the interest of the public. Apart from the above, we have also to take into consideration the factors that the major stretch of the outer ring road is said to have been completed, even in the western sector, and only a small stretch involving the plots of the appellants, is yet to be completed.

40. There is no doubt that in the facts of this case the public interest will outweigh the interest of the individual plot-holders. The only consideration is with regard to the preservation of the water bodies which are yet untouched, such as, Plot No. 300 mentioned in the report of the Central Water Commission and also in the letter written by the Executive Engineer on 23-12-2006.”

In the instant case, since the petitioners legal rights have not been effected and as this Court has already taken a view and dismissed the earlier writ petitions which are filed seeking similar relief and the findings recorded therein attained finality, this is not a fit case to interfere with the action of the respondents. Under these circumstances, the present writ petition is devoid of merits and is liable to be dismissed.

11. Accordingly, this Writ Petition is dismissed.

Miscellaneous Petitions, if any, pending in these writ petitions shall stand closed. No order as to costs.

© All Rights Reserved @ LAWYER E NEWS

*Disclaimer: Always compare with the original copy of judgment from the official website.