THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE

AND

THE HON'BLE SRI JUSTICE N.V.SHRAVAN KUMAR

+ WRIT PETITION No.12538 of 1999
and
WRIT PETITION No.25738 of 1997

% Date: 04.10.2023

P.Venkateshwarlu and another

... Petitioners

v.

$ Government of Andhra Pradesh,
Rep. by Secretary, Municipal Administration,
Secretariat Buildings, Hyderabad,
and others.

... Respondents

! Counsel for the petitioner in W.P.No.12538 of 1999:
Mr. N.Vijay

! Counsel for the petitioner in W.P.No.25738 of 1997:
Mr. Siddharth Sharma

^ Counsel for the respondents : Mr. Pasham Krishna Reddy,
Learned Government Pleader
for Municipal Administration
and Urban Development
Department.

Mr. J.Prabhakar
Learned Senior Counsel for APHB

Mr. Resu Mahender Reddy,
Learned Senior Counsel representing Mr. Ravinder Reddy Muppu, learned counsel for respondents No.5 and 6 in W.P.No.12538 of 1999

< GIST:

➢ HEAD NOTE**:**

? CASES REFERRED:

1. 2001 (6) ALD 533 (DB)
2. (1991) 4 SCC 54
3. (1999) 6 SCC 464
4. (1995) 5 SCC 762
5. (2018) 15 SCC 407
6. (2019) 14 SCC 411
7. (2013) 5 SCC 336
8. (2019) 7 SCC 248
9. (2018) 15 SCC 407
10. (1997) 1 SCC 388
11. (2019) 14 SCC 411
12. (2021) 10 SCC 1
13. (2022) 10 SCC 544
14. 1997 (2) ALT 512
15. (2010) 2 SCC 27

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WRIT PETITION No.12538 of 1999
and
WRIT PETITION No.25738 of 1997

COMMON ORDER: *(Per the Hon'ble the Chief Justice Alok Aradhe)*

In both the writ petitions, the grievance of the petitioners is about construction of multi-storeyed commercial complex by the respondent Nos.5 and 6 in the open space admeasuring 600 sq. yards, which was earmarked for a park in Plot Nos.S1 and S2 of Indian Airlines Employees Housing Colony, located in Sy.No.194/11 of Begumpet Village, Rangareddy District. The petitioners have also prayed for a direction to the respondent Nos.3 and 4 to demolish the aforesaid structure raised by the respondent Nos.5 and 6. Both the writ petitions were therefore heard together and are being decided by this common order. For the facility of reference, the facts in W.P. No.12538 of 1999, which has been filed *pro bono publico*, are being referred to.

(I) FACTS:

2. The Andhra Pradesh Housing Board (hereinafter referred to as, "APHB") sought permission of the State Government on 20.06.1974 to acquire Ac.15.19 guntas situated at Begumpet village for constructing a housing colony for staff of Indian Airlines. The State Government vide G.O.Ms.No.132, Health, Housing and Municipal Administration Department, dated 28.12.1974 granted permission to acquire the land. Thereupon, on 10.06.1975 the State Government issued a notification under Section 4(1) of the Land Acquisition Act, 1894 notifying that the land admeasuring Ac.12.24 guntas forming part of Sy.No.194/11 situated at Begumpet Village was required for the purposes of constructing houses for the staff of Indian Airlines.

3. On 20.02.1986, the State Government accorded permission to APHB to take up construction of 159 houses. According to the sanctioned layout, an open space of 600 sq. yards was earmarked for park in the Indian Airlines Employees Housing Colony. The respondent Nos.7 and 8

asserting themselves to be the office bearers of the Managing Committee of the aforesaid Housing Colony vide Registered Sale Deeds, dated 12.06.1996, sold 600 square yards of land to the respondent Nos.5 and 6.

4. According to respondent Nos.5 to 7, i.e., private respondents, the original lay out prepared in the year 1984, in which the area in question was marked as park, was revised and the said land admeasuring 600 square yards earmarked as park was shown as the land for commercial use and was numbered as Plot Nos.S1 and S2. According to respondent Nos.5 to 7, on 05.10.1988, the APHB authorised the respondent No.7 and respondent No.8 (since deceased) to sell the plots, namely S1 and S2, to the respondent Nos.5 and 6.

5. On 29.08.1996, respondent No.7 applied for permission for construction of commercial complex. The respondent Nos.7 and 8 furnished an undertaking on 26.12.1996 to the Municipal Corporation of Hyderabad (hereinafter referred to as, “MCH”) that in case the land admeasuring 600 sq. yards is found to be the land reserved

for the purpose of park, the permission which may be granted to them shall be deemed to be cancelled. The MCH on 03.01.1997 accorded permission to raise construction of cellar for parking, ground, first, second and third floors with the condition that in case if it is found at a later date that the said land is public park, permission granted by MCH shall automatically deemed to be cancelled.

6. Thereafter, on 16.10.1999 Deed of Rectification was executed by the respondent Nos.7 and 8 in favour of the respondent Nos.5 and 6 correcting the Sale Deeds, dated 12.06.1996 by substituting the description of the property as S1 and S2 in place of A-159 and A-160.

7. On 15.06.1999, W.P.No.12538 of 1999 was filed as Public Interest Litigation in which a declaration was sought that the action of the respondent Nos.1 to 4 in permitting the respondent Nos.5 and 6 to construct commercial complex on the land admeasuring 600 square yards in Plot Nos.S1 and S2 in Indian Airlines Employees Housing Colony in Sy.No.194/11 of Begumpet Village, Rangareddy District, as illegal and arbitrary, and a consequential

direction was sought to the respondent Nos.1 to 4 to demolish the structures raised by the respondent Nos.5 and 6 and also to direct the respondent Nos.1 to 4 to lay a public park in the land as per the sanctioned layout.

8. In W.P.No.25738 of 1997, a declaration was sought that Permit No.50/49 of 1996 granted in favour of Indian Airlines Housing Society in respect of the area in Sy.No.194/11 be declared as illegal and be set aside and for a consequential direction was sought to the respondents to demolish illegal structures constructed in the area earmarked for the purpose of park.

9. A Division Bench of this Court by order dated 01.08.2000 passed in W.P.No.12538 of 1999 directed the I Additional Chief Judge, City Civil Court, Secunderabad, to conduct an enquiry on the issue whether the site in dispute was earmarked for a park in the layout. The Additional Chief Judge, City Civil Court, Secunderabad conducted an enquiry and submitted a report on

18.08.2001 stating that the site in dispute was initially earmarked for park but later the APHB revised the layout.

(II) PREVIOUS ROUND OF LITIGATION:

10. Thereafter, a Division Bench of this Court by Judgment, dated 16.10.2001 in **P.Venkateswarlu vs. Government of Andhra Pradesh**[1] *inter alia* held that the APHB had no jurisdiction to revise the layout and sanction construction of building complex on the area earmarked for park and directed the respondent Nos.1 to 4 to take action for demolition of the construction, which was raised on the area earmarked as park in the layout.

11. Against the aforesaid order, Special Leave Petitions were preferred before the Supreme Court, namely Civil Appeal Nos.9582 and 9583 of 2003. The Hon'ble Supreme Court remitted the matter for decision afresh by order dated 19.04.2006. The order passed by the Hon'ble Supreme Court reads as under:

> These appeals have been preferred from two separate orders. One set of appeals has been

[1] 2001 (6) ALD 533 (DB)

preferred from an order allowing a writ petition filed by way of Public Interest Litigation on 16.10.2001. The second set of appeals relates to an order dismissing an application for review dated 1.2.2002. The parties have agreed that both the orders dated 16.10.2001 and 1.2.2002 should be set aside and the matters remanded back to the High Court for reconsideration of the merits of the matters afresh. The High Court will take into consideration the documents which have been brought on record before this Court. We do not intend thereby to limit the power of High Court to allow the production any such further material as the High Court may think fit. The matters are disposed of without expressing any view on the merits.

The interim order as granted by this Court will continue during the pendency of the appeals by the High Court.

As far as the SLP (C) No. CC.7716-7717 of 2002 entitled Janakirama Enterprises (P) Ltd. is concerned no order is passed on this matter. The petitioner will be at liberty, if he is otherwise so entitled in law, to make an application for impleadment before the High Court.

The High Court is requested to dispose of the matters as expeditiously as possible.

12. In the aforesaid factual background, these writ petitions have arisen for our consideration.

(III) SUBMISSIONS OF PETITIONER IN W.P.No.12538 OF 1999:

13. Learned counsel for the petitioner in W.P. No.12538 of 1999 submitted that the Hyderabad Urban Development Authority (HUDA) is competent authority to alter the layout, but the same has not altered the layout. It is further submitted that APHB has no authority in law to alter the layout. It is contended that the land in question was earmarked for the purpose of park in the original layout and the commercial complex, could not have been constructed on the aforesaid land in contravention of the layout plan. It is pointed out that even the official respondents namely, APHB, MCH and HUDA have taken a stand in their counter affidavits that the land in question was earmarked for the purpose of the park.

14. It is also contended that the respondent Nos.7 and 8 had no authority to execute the sale deeds on behalf of APHB in favour of the respondent Nos.5 and 6. It is, therefore, submitted that unauthorised construction raised by the respondent Nos.5 and 6 is liable to be demolished. In support of the aforesaid submissions, the learned counsel for the petitioner has placed reliance on the decisions of the Hon'ble Supreme Court in **Bangalore Medical Trust vs. B.S. Muddappa**[2], **M.I. Builders Private Limited vs. Radhey Shyam Sahu**[3], **Dr. G.N. Khajuria vs. Delhi Development Authority**[4], **Lal Bahadur vs. State of U.P.**[5], **Municipal Corporation of Greater Mumbai vs. Hiraman Sitaram Deorukhar**[6], **Dipak Kumar Mukherjee vs. Kolkata Municipal Corporation**[7] and **Kerala State Coastal Zone Management Authority vs. State of Kerala**[8].

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[2] (1991) 4 SCC 54
[3] (1999) 6 SCC 464
[4] (1995) 5 SCC 762
[5] (2018) 15 SCC 407
[6] (2019) 14 SCC 411
[7] (2013) 5 SCC 336
[8] (2019) 7 SCC 248

(IV) SUBMISSIONS ON BEHALF OF PETITIONER IN W.P.No.25738 OF 1997:

15. Learned counsel for the petitioner in W.P. No.25738 of 1997 has adopted the submissions made by the learned counsel for the petitioner in W.P.No.12538 of 1999.

(V) SUBMISSIONS ON BEHALF OF RESPONDENT Nos.1 TO 4 IN W.P.No.12538 OF 1999:

16. Learned counsel for the respondent Nos.1 to 4, namely, Government of Andhra Pradesh, APHB, HUDA and MCH have supported the submissions made on behalf of the petitioners in both the writ petitions. Learned Senior Counsel for APHB has submitted that APHB did not authorise to erect a commercial complex on the subject land. It is further submitted that open spaces and parks are properties of APHB and no one can deal with them.

(VI) SUBMISSIONS ON BEHALF OF RESPONDENT Nos.5 AND 6 IN W.P.No.12538 OF 1999:

17. On the other hand, learned Senior Counsel for the respondent Nos.5 and 6 submitted that in view of the averments made in W.P.No.12538 of 1999 as Public Interest Litigation, the writ petition cannot be entertained as Public Interest Litigation. It is further submitted that earlier writ petitions, namely W.P.No.17494 of 1997 and W.P.No.2965 of 1998 claiming similar relief were either dismissed or withdrawn. It is further submitted that the construction of commercial complex has been made as per the revised layout. It is pointed out that the other constructions have also been made as per the revised layout and therefore, no interference is called for with the construction of commercial complex in the writ petition.

(VII) SUBMISSIONS ON BEHALF OF ANDHRA PRADESH HOUSING BOARD (APHB):

18. Learned Senior Counsel for APHB submits that the first layout was approved by HUDA and any alteration in the development plan can be approved by HUDA only. It is

further submitted that in the instant case, modification in the layout has not been approved by HUDA.

(VIII) SUBMISSIONS ON BEHALF OF RESPONDENT No.7 IN W.P.No.12538 OF 1999:

19. Learned counsel for the respondent No.7 in W.P.No.12538 of 1999 has adopted the submissions made by learned Senior Counsel for the respondent Nos.5 and 6.

(IX) RELEVANT STATUTORY PROVISIONS:

20. Part IV of the Constitution of India deals with Directive Principles of State Policy. Article 48A mandates the States to make an endeavour to protect and improve the environment and to safeguard the forests and the wild life of the country. Article 51A prescribes fundamental duties. Article 51A(g) provides that it shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures.

21. At this stage, we may take note of relevant statutory provisions. The Andhra Pradesh Housing Board Act, 1956 (hereinafter referred to as 'the 1956 Act') is an Act to provide for measures to be taken to deal with and satisfy the need of housing accommodation in the State, particularly for the weaker sections of the society. The APHB is a body incorporated under Section 3 of the 1956 Act. Chapter III of the 1956 Act deals with housing schemes. Section 21 provides that it shall be duty of the Board to undertake housing schemes. Section 22 enumerates the matters to be provided for by the housing schemes. The relevant extract of Section 22 reads as under:

> 22. Notwithstanding anything contained in any other law for the time being in force, a housing scheme may provide for all or any of the following matters, namely:-
>
> (a) to (i) xxx xxx
>
> (j) the provision of parks, play-fields and open spaces for the benefit of any area comprised in the scheme or any adjoining area and the enlargement of existing parks, play-fields, open spaces and approaches;

22. Section 23 of the 1956 Act provides that no housing scheme shall be made for area included in the improvement scheme and the same should not be inconsistent with town planning scheme unless the State Government by a general or special order otherwise directs.

23. The Telangana Housing Scheme (Acquisition of Land) Act, 1961 (hereinafter referred to as 'the 1961 Act') is an Act to provide for acquisition of certain lands required for purposes of executing housing schemes under 1946 Act. Section 4 of the 1961 Act deals with the transfer of land to Housing Board.

24. The State Legislature has enacted the Telangana Urban Areas (Development) Act, 1975 (hereinafter referred to as 'the 1975 Act, for brevity) with an object to provide for development of urban areas in the State, according to plan and matters ancillary thereto. Section 2(o) defines the expression 'urban areas' to mean the area comprised within the jurisdiction of Municipal Corporation of Hyderabad or of any Municipality constituted under the Telangana Municipalities Act, 1965 and also any such area

in the vicinity as the Government may, having regard to the extent of, and the scope for, the urbanization of that area or other relevant considerations, specify in this behalf, by notification; and such other area as the Government may, by notification, declare to be an urban area, which in the opinion of the Government, is likely to be urbanised.

25. Section 3 of the 1975 Act provides for Constitution of Urban Development Authority. Chapter III deals with Master Plan and Zonal Development Plans. Section 6 mandates the Urban Development Authority to carry out the civic survey of and prepare a master plan for the development area concerned. Section 8 prescribes the procedure to be followed in preparation and approval of plans. Section 11 provides that certain plans already prepared and sanctioned shall be deemed to have been prepared and sanctioned under the aforesaid Act. Section 12 deals with modification to the plan. Section 12 of the 1975 Act reads as under:

> **12. Modifications to plan:-** (1) The Authority may make such modifications to the plan as it thinks fit, being modifications which, in its

opinion, do not effect important alterations in the character of the plan and which do not relate to the extent of land uses or the standards of population density.

(2) The Government may *suo motu* or on a reference from the Authority make any modifications to the plan, whether such modifications are of the nature specified in sub-section (1) or otherwise.

(3) Before making any modifications to the plan, the Authority or, as the case may be, the Government shall publish a notice in such form and manner as may be prescribed inviting objections and suggestions from any person with respect to the proposed modifications before such date as may be specified in the notice and shall consider all objections and suggestions that may be received by the Authority or the Government.

(4) Every modification made under the provisions of this section shall be published in such manner as the Authority or the Government, as the case may be, may specify and the modifications shall come into operation either on the date of the publication or on such other date as the Authority or the Government may fix.

(5) When the Authority makes any modifications to the plan under sub-section (1), it shall report to the Government the full

particulars of such modifications within thirty days of the date on which such modifications come into operation.

(6) If any question arises whether the modifications proposed to be made by the Authority are modifications which effect important alterations in the character of the plan or whether they relate to the extent of land-uses or the standards of population density, it shall be referred to the Government whose decision thereon shall be final.

(7) Any reference in any other Chapter, except this Chapter, to the Master Plan or the Zonal Development Plan shall be construed as a reference to the Master Plan or the Zonal Development Plan as modified under the provisions of this section.

26. Section 13 provides for declaration of development areas and development of land in those and other areas. Section 13(4) of 1975 Act mandates that after commencement of the Act, no development of land within development area shall be undertaken or carried out by any person or body including any department of the Government, unless permission for such development has been obtained in writing from the Authority in accordance

with the provisions of the 1975 Act. Section 13 is extracted below for the facility of reference:

> **13. Declaration of development areas and development of land in those and other areas:-** (1) As soon as may be after the commencement of this Act, where Government consider it necessary to do so for purposes of proper development of any urban area or group of urban areas in this State they may, by notification, declare such urban area or group of urban areas to be a development area for the purposes of this Act.
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> (2) The Government may, by notification and in accordance with such rules as may be made in this behalf-
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> (a) Exclude from a development area any area comprised therein; or
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> (b) include in development area any other area.
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> (3) Save as otherwise provided in this Act, the Authority shall not undertake or carry out any development of land in any area which is not a development area.
>
> (4) After the commencement of this Act, no development of land within the development area shall be undertaken or carried out by any person or body including any department of the Government, unless permission for such

development has been obtained in writing from the Authority in accordance with the provisions of this Act.

(5) After the coming into operation of any of the plans in any area within the development area, no development shall be undertaken or carried out in that area unless such development is also in accordance with such plans.

(6) Notwithstanding anything in any other law or the provisions contained in sub-sections (4) and (5), development of any land undertaken in accordance with any law by any person or body including any department of the Government or any local authority before the commencement of this Act, may be completed without compliance with the requirements of those sub-sections:

Provided that such development of land shall be completed within one year from the date of commencement of this Act; unless the Authority for good and sufficient reason, extends the said period of one year for such further period as it deems fit.

(7) After the commencement of this Act, no development of land shall be undertaken or carried out by any person or body including any department of the Government in such area adjoining to or in the vicinity of the development

area, as may be notified by the Government unless approval of or sanction for such development has been obtained in writing from the local authority concerned, in accordance with the provisions of relevant law relating thereto, including the law relating to town planning for the time being in force and the rules and regulations made thereunder:

Provided that the local authority concerned may, in consultation with the Authority, frame or suitably amend its regulations in their application to such area adjoining to or in the vicinity of the development area.

(8) (a) Where any part of the area adjoining to or in the vicinity of the development area, as notified under sub-section (7), is in the process of rapid development or is likely to develop in the near future, the local authority concerned shall, either on the direction of the Government or on the advice of the Authority, prepare in consultation with the Authority, Town Planning Scheme under the law relating to Town Planning, for the time being in force, and publish the schemes as required under that law and submit them to the Government for sanction.

(b) Any development in the area covered by such Town Planning Schemes shall be in

accordance with the provisions of the schemes as sanctioned by the Government.

(c) Where in regard to the matters specified in sub-section (7) and of this sub-section there is a difference of opinion between the local authority concerned and the Authority, the matter shall be referred to the Government, whose decision thereon shall be final.

(9) In this section, and in Sections 14, 16 and 41 the expression 'Department of the Government' means any department, organisation or Public Undertaking of the State Government or of the Central Government.

27. Section 14 provides for the manner in which, application for permission referred to in Section 13 shall be dealt with. Section 15 of the 1975 Act prohibits the use of land and buildings in contravention of the plans. Section 15 reads as under:

15. Use of the land and buildings in contravention of plans:-

After the coming into operation of any of the plans in a zone, no person shall use or permit to be used any land or building in that zone otherwise than in conformity with such plan:

> Provided that it shall be lawful to continue to use upon such terms and conditions as may be determined by regulations made in this behalf, any land or building for the purpose for which, and to the extent to which, it is being used on the date on which such plan comes into force.

28. Section 41 of the 1975 Act which was in vogue at the relevant point of time, prior to its amendment by Act No.6 of 2008 reads as under:

> **41. Penalties:-** (1) Any person who, whether at his own instance or at the instance of any other person or any body including a department of the Government, undertakes or carries out development of any land in contravention of the Master Plan or Zonal Development Plan or without the permission, approval or sanction referred to in Section 13 or in contravention of any condition subject to which such permission, approval or sanction has been granted, shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to ten thousand rupees or with both, and in the case of a continuing offence, with further fine, which may extend to five hundred rupees for every day during which such offence continues after conviction for the first commission of the offence.

(2) Any person who uses any land or building in contravention of the provisions of Section 15 or in contravention of any terms and conditions determined by regulations under the proviso to that section shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to five thousand rupees or with both, and in the case of a continuing offence with further fine which may extend to two hundred and fifty rupees for every day during which such offence continues after conviction for the first commission of the offence.

(3) Any person who obstructs the entry of a person authorized under Section 40 to enter into or upon any land or building or molests such person after such entry, shall be punished with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both.

29. Section 42 of the 1975 Act provides for order of demolition of building. Section 42 reads as under:

42. Order of demolition of building:- (1) Where any development has been commenced or is being carried on or has been completed in contravention, of the Master Plan or Zonal Development Plan or without the permission, approval or sanction referred to in Section 13 in

contravention of any condition subject to which such permission, approval or sanction has been granted-

(i) in relation to a development area, any officer of the Authority empowered by it in this behalf;

(ii) in relation to any other area within the local limits of a local authority, the competent authority thereof, may in addition to any prosecution that may be instituted under this Act, make an order directing that such development shall be removed by demolition, felling or otherwise by the owner thereof or by the person at whose instance the development has been commenced or is being carried out or has been completed, within such period being not less than five days and not more than fifteen days from the date on which a copy of the order of removal, with a brief statement of the reasons therefor, has been delivered to the owner or that person as may be specified in the order, and on his failure to comply with the order, the officer of the Authority or, as the case may be, the competent authority may remove or cause to be removed the development and the expenses of such removal shall be recovered from the owner or the person at whose instance the development was commenced or was being carried out or was completed as arrears of land revenue:

Provided that no such order shall be made unless the owner or the person concerned has been given a reasonable opportunity to show-cause why the order should not be made.

(2) If any development in an area specified in sub-section (7) of Section 13 has been commenced or is being carried on or has been completed in contravention of the Master Plan or Zonal Development Plan or without the permission, approval or sanction referred to in Section 13 or in contravention of any condition subject to which permission, approval or sanction has been granted and the competent authority has failed to remove or cause to be removed the development within the time that may be specified in this behalf by the Director of Town Planning, the Director may, after observing such procedure as may be prescribed, direct any officer to remove or cause to be removed such development and that officer shall be bound to carry out such direction and any expenses of such removal may be recovered from the owner or the person at whose instance the development was commenced or was being carried out or was completed as arrears of land revenue.

(3) Any person aggrieved by an order under sub-section (1), may appeal to the Vice-Chairman

of the Authority against that order within thirty days from the date thereof, and the Vice-Chairman may after hearing the parties to the appeal either allow or dismiss the appeal or may reverse or vary any part of the order:

Provided that where the original order is passed by the Vice-Chairman himself the appeal shall lie to the Authority.

(4) Any person aggrieved by the direction of the Director under sub-section (2) may appeal to the Government within thirty days from the date thereof; and the Government may, after giving an opportunity of hearing to the person aggrieved, either allow or dismiss the appeal or may reverse or vary any part of the direction.

(5) The decision of the Vice-Chairman or the Authority or the Government and subject to any decision on appeal, the order under sub-section (1) or, as the case may be, the direction under sub-section (2), shall be final and shall not be questioned in any Court of law.

(6) The provisions of this section shall be in addition to, and not in derogation of, any other provisions relating to demolition of buildings contained in any other law for the time being in force.

(7) In this Section, and in Section 43, 'Competent Authority' in relation to a local authority means any authority or officer of that local authority empowered or authorised to order demolition of buildings or stoppage of building operations contained in any other law for the time being in force.

30. Section 43 of the 1975 Act deals with power to stop unauthorized development. Section 43 reads as under:

43. Power to stop unauthorised development:-
(1) Where any development in any area has been commenced in contravention of the provisions of Section 13 or without the permission, approval or sanction referred to in that section or in contravention of any condition subject to which such permission, approval or sanction has been granted-

(i) in relation to development area, the Authority or any officer of the authority empowered by it in this behalf;

(ii) in relation to any other area specified in sub-section (7) of Section 13 within the local limits of a local authority, the competent authority thereof; may in addition to any prosecution that may be instituted under this Act, make an order requiring the development to be discontinued on

and from the date of the service of the order, and such order shall be complied with accordingly.

(2) Where such development is not discontinued in pursuance of the order under sub-section (1), the Authority or the officer of the Authority or the competent authority, as the case may be, may require any police officer to remove the person by whom the development has been commenced and all his assistants and workmen from the place of development within such time as may be specified in the requisition and such police officer shall comply with the requisition accordingly.

(3) If any development in an area specified in sub-section (7) of Section 13 has been commenced in contravention of the Master Plan or Zonal Development Plan or without the permission, approval or sanction referred to in Section 13 or in contravention of any condition subject to which such permission, approval or sanction has been granted and the competent authority has failed to make an order under sub-section (1) or, as the case may be, a requisition under sub-section (2), within the time that may be specified in this behalf by the Director of Town Planning, the Director may, after observing such procedure as may be prescribed, direct any officer to make the order or requisition as the case may

be, and that officer shall be bound to carry out such direction; and the order or direction made by him in pursuance of the direction shall be complied with accordingly.

(4) After the requisition under sub-section (2) or sub-section (3) has been complied with, the Authority or the competent Authority or the officer to whom the direction was issued by the Director under sub-section (3), as the case may be, may depute, by a written order a police officer or employee of the Authority or local Authority concerned to watch the place, in order to ensure that the development is not continued.

(5) Any person failing to comply with an order under sub-section (1) or, under sub-section (3), as the case may be, shall be punished with fine which may extend to one percent of the value of the land, building in question for every day during which the non-compliance continues after the service of the order.

Provided that the fine imposed shall in no case be less than fifty percent of the fine proposed.

(6) No compensation shall be claimed by any person for any damage which he may sustain in consequence of the removal of any development under Section 42 after

discontinuance of the development under this section.

(7) The provisions of this section shall be in addition to, and not in derogation of any other provision relating to stoppage of building operations contained in any other law for the time being in force.

31. Section 57 of the 1975 Act deals with effect of other laws. Section 57 is extracted below for the facility of reference:

57. Effect of other laws:- (1) Nothing in this Act shall affect the operation of the Andhra Pradesh Slum Improvement (Acquisition of Land) Act, 1956.

(2) Save as otherwise provided in sub-section (6) of Section 42 or sub-section (7) of Section 43 or sub-section (1) of this section, the provision of this Act and the rules and regulations made thereunder shall have effect, notwithstanding anything inconsistent therewith contained in any other law.

(3) Notwithstanding anything in any other law-

> (a) when permission for development in respect of any land has been obtained under this Act, such development shall not be deemed to be unlawfully undertaken or carried out by reasons only of the fact that permission, approval or sanction required under such other law for such development has not been obtained.
>
> (b) when permission for such development has not been obtained under this Act, such development shall not be deemed to lawfully undertaken or carried out by reason only of the fact that permission, approval or sanction required under such other law for such development has not been obtained.

32. Section 58 of the 1975 Act deals with power of the State Government to frame rules to carry out the purposes of the Act. In exercise of powers under Section 58(1) of the 1975 Act, the Government has framed the Rules, namely the Urban Development Authority (Hyderabad) Rules, 1977 (for the sake of brevity, referred to as 'the 1977 Rules'). Rule 11 deals with procedure for preparation of present land use map, whereas Rule 12 prescribes the procedure for preparation and publication of master plan. Rules 11

and 12 of the 1977 Rules are reproduced below for the facility of reference:

11. Procedure for preparation of present Land Use Map:-

(1) The civic survey to be carried out by the Authority under sub-section (1) of Section 6 of the Act may include survey and analysis of the Hyderabad Development area and its vicinity areas with reference to physical and socio-economic aspects.

(2) As soon as may be, the Authority shall prepare a present Land Use Map and a Land Use Register in the form prescribed below indicating the present use of every piece of land in the development area.-

Sl No	Name of ward locality	Block No. Street	Survey No.	Nature of use	Approximate extent of land	Rem-arks
(1)	(2)	(3)	(4)	(5)	(6)	(7)

12. Procedure for preparation and publication of Master Plan:-

(1) As soon as may be, after the declaration of the development area, the Authority shall prepare a Master Plan for the development area or any part thereof.

(2) The Master Plan shall.--

(i) indicate broadly the manner in which the lands covered under development area are proposed to be used;

(ii) allocate areas or zones of land-

(a) for residential, commercial, industrial and agricultural use or purposes;

(b) for public and semi-public open spaces, parks and playgrounds;

(c) for such other purposes as the Authority may think fit;

(iii) indicate, define and provide for-

(a) the proposed National Highways, arterial roads, ring roads and major streets;

(b) other proposed lines of communication including railways, tramways, airports and canals;

(c) such other items, and purposes as the Authority may think fit.

(3) Any such plan shall include such maps and descriptive matter as may be necessary to explain and illustrate the proposals in the Master Plan and shall include a present Land Use Map referred to in Rule 12 above.

(4) Soon after the preparation of the draft (Master) Plan for the development area or any part thereof, the Authority shall publish a notice in Form No. 1 appended to these rules in a prominent place in at least three local daily newspapers inviting objections and suggestions allowing a period not less than 15 days from any person or local authority. The said notice shall also indicate the place and time where copies of the draft Master Plan may be inspected; any person residing or owning property within the inspected area or local Authority operating within the affected area will be entitled to represent in writing to the Authority any objections and suggestions which they may have in regard to the Land Use Map or the draft Master Plan.

(5) After expiry of the said period, the Authority shall prepare a list of objections and suggestions in Form No. 11 appended to these rules, to consider the representations so made within the time specified and any other information available to it, and finalize the present Land Use Map and the draft Master Plan as it thinks fit.

(6) The Authority will then submit the Land Use Map and the draft Master Plan to the Government, as required under Section 9 of the Act for their final approval.

(7) After the Government's approval, the Authority shall publish a notice in a prominent place in at least three local daily news papers indicating the fact of the final approval of the Land Use Map and the Master Plan and the place (s) and time (s) where a copy of each of the said Land Use Map and the Master Plan can be inspected.

(8) A land use Map and Master Plan published by the Authority under Section 10 of the Act shall be conclusive proof of their having been duly made and approved. Such land use map and Master Plan shall have effect from the date of publication of such notice and be conclusive proof of their contents. The execution of the plan shall be commenced forthwith.

33. Rule 13 deals with the power of the authority to modify the master plan, whereas Rule 13-A deals with power of the State Government to modify the master plan. Rules 13 and 13-A read as under:

13. Modifications to the Master Plan:-

(1) In case the Authority desires to make any modification in the Land Use Map or Master Plan under sub-section (1) of Section 12 of the Act, a public notice shall be issued in a prominent place in at least three local (Telugu, Urdu and English) newspapers by the Authority.

(2) The Authority shall invite, in Form No. III appended to these rules objections and suggestions to be given in Form No. IV appended to these rules from any person or local authority affected directly or indirectly with respect to the Master Plan, Land Use Map proposed to be modified.

(3) Soon after the objections and suggestions are received by the Authority, the Authority shall conduct local enquiries and other hearings, if necessary, and given an opportunity to the person affected (whether directly or otherwise) to be held on a specified date or dates before the modifications are finally approved.

13-A. Modifications to the Master Plan by the Government:-

(1) In case the Government desire to make any modification to the Master Plan under subsection (2) of Section 12 of the Act, a notification shall after consultation with the Authority be published in the Andhra Pradesh Gazette in such form as the Government may deem fit inviting objections and suggestions from any person or local authority affected directly or indirectly with respect to the Master Plan proposed to be modified giving Fifteen Days time in respect of lands proposed to be converted to other than

> Industrial use and Seven days time in respect of lands proposed to be converted from any use to 'Industrial use' for the receipt of such objections and suggestions.
>
> (2) Soon after the objections and suggestions are received by the Government, the Government may, if necessary, have local enquiries conducted and give an opportunity to the persons affected to state their objections before the modifications are approved and published in the Andhra Pradesh Gazette.

(X) JUDICIAL PRONOUNCEMENTS:

34. The Hon'ble Supreme Court in **Bangalore Medical Trust** (supra) dealt with the issue whether area having been reserved in the sanctioned scheme for public park can be allotted for construction of a hospital. The Hon'ble Supreme Court in paras 24 to 29 held as under:

> **24.** Protection of the environment, open spaces for recreation and fresh air, playgrounds for children, promenade for the residents, and other conveniences or amenities are matters of great public concern and of vital interest to be taken care of in a development scheme. It is that public interest which is sought to be promoted by the Act by establishing the BDA. The public

interest in the reservation and preservation of open spaces for parks and playgrounds cannot be sacrificed by leasing or selling such sites to private persons for conversion to some other user. Any such act would be contrary to the legislative intent and inconsistent with the statutory requirements. Furthermore, it would be in direct conflict with the constitutional mandate to ensure that any State action is inspired by the basic values of individual freedom and dignity and addressed to the attainment of a quality of life which makes the guaranteed rights a reality for all the citizens. [See *Kharak Singh* v. *State of U.P.*, (1964) 1 SCR 332 : AIR 1963 SC 1295 : (1963) 2 CriLJ 329; *Municipal Council, Ratlam* v. *Vardhichand*, (1980) 4 SCC 162 : 1980 SCC (Cri) 933 : (1981) 1 SCR 97; *Francis Coralie Mullin* v. *Administrator, Union Territory of Delhi*, (1981) 1 SCC 608 : 1981 SCC (Cri) 212 : (1981) 2 SCR 516; *Olga Tellis* v. *Bombay Municipal Corporation*, (1985) 3 SCC 545; *State of H.P.* v. *Umed Ram Sharma*, (1986) 2 SCC 68 : AIR 1986 SC 847 and *Vikram Deo Singh Tomar* v. *State of Bihar*, 1988 Supp SCC 734 : 1989 SCC (Cri) 66 : AIR 1988 SC 1782]

25. Reservation of open spaces for parks and playgrounds is universally recognised as a legitimate exercise of statutory power rationally related to the protection of the residents of the

locality from the ill-effects of urbanisation. [See for e.g : Karnataka Town and Country Planning Act, 1961; Maharashtra Regional and Town Planning Act, 1966; Bombay Town Planning Act, 1954; the Travancore Town and Country Planning Act, 1120; the Madras Town Planning Act, 1920; and the rules framed under these statutes; Town and Country Planning Act, 1971 (England and Wales); Encyclopaedia Americana, Volume 22, page 240; Encyclopaedia of the Social Sciences, Volume XII at page 161; Town Improvement Trusts in India, 1945 by Rai Sahib Om Prakash Aggarawala, p. 35 et seq.; Halsbury's Statutes, 4th edn., p. 17 et seq. and Journal of Planning and Environment Law, 1973, p. 130 et seq. See also : *Penn Central Transportation Company* v. *City of New York*, 57 L Ed 2d 631 : 438 US 104 (1978); *Village of Belle Terre* v. *Bruce Boraas*, 39 L Ed 2d 797 : 416 US 1 (1974); *Village of Euclid* v. *Ambler Realty Company*, 272 US 365 (1926); *Halsey* v. *Esso Petroleum Co. Ltd.*, (1961) 1 WLR 683].

26. In *Agins* v. *City of Tiburon* [447 US 255 (1980)] , the Supreme Court of the United States upheld a zoning ordinance which provided '... it is in the public interest to avoid unnecessary conversion of open space land to strictly urban uses, thereby protecting against the resultant

impacts, such as …. pollution, …. destruction of scenic beauty, disturbance of the ecology and the environment, hazards related to geology, fire and flood, and other demonstrated consequences of urban sprawl'. Upholding the ordinance, the Court said : (US pp. 261-62)

> "… The State of California has determined that the development of local open-space plans will discourage the 'premature and unnecessary conversion of open-space land to urban uses'…. The specific zoning regulations at issue are exercises of the city's police power to protect the residents of Tiburon from the ill effects of urbanization. Such governmental purposes long have been recognized as legitimate …. … The zoning ordinances benefit the appellants as well as the public by serving the city's interest in assuring careful and orderly development of residential property with provision for open-space areas." [See comments on this decision by Thomas J. Schoenbaum, Environmental Policy Law, (1985) p. 438 et seq. See also Summary and Comments, (1980) 10 ELR 10125 et seq.]

27. The statutes in force in India and abroad reserving open spaces for parks and playgrounds are the legislative attempt to eliminate the misery of disreputable housing condition caused by urbanisation. Crowded urban areas tend to spread disease, crime and immorality. As stated by the U.S. Supreme Court in *Samuel*

Berman v. *Andrew Parker* [99 L Ed 27 : 348 US 26] : (L Ed pp. 37-38 : US pp. 32-33)

> "… They may also suffocate the spirit by reducing the people who live there to the status of cattle. They may indeed make living an almost insufferable burden. They may also be an ugly sore, a blight on the community which robs it of charm, which makes it a place from which men turn. The misery of housing may despoil a community as an open sewer may ruin a river.
>
> … The concept of the public welfare is broad and inclusive …. The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled. In the present case, the Congress and its authorized agencies have made determinations that take into account a wide variety of values …." (*Per* Douglas, J.).

28. Any reasonable legislative attempt bearing a rational relationship to a permissible State objective in economic and social planning will be respected by the courts. A duly approved scheme prepared in accordance with the provisions of the Act is a legitimate attempt on the part of the government and the statutory authorities to ensure a quiet place free of dust and din where children can run about and the

aged and the infirm can rest, breathe fresh air and enjoy the beauty of nature. These provisions are meant to guarantee a quiet and healthy atmosphere to suit family needs of persons of all stations. Any action which tends to defeat that object is invalid. As stated by the U.S. Supreme Court in *Village of Belle Terre* v. *Bruce Boraas* [39 L Ed 2d 797 : 416 US 1] : (L Ed p. 804 : US p. 9)

> "… The police power is not confined to elimination of filth, stench, and unhealthy places. It is ample to lay out zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people."

See also *Village of Euclid* v. *Ambler Realty Company* [272 US 365 (1926)]. See the decision of the Andhra Pradesh High Court in *T. Damodhar Rao* v. *Special Officer, Municipal Corporation of Hyderabad* [AIR 1987 AP 171].

29. The residents of the locality are the persons intimately, vitally and adversely affected by any action of the BDA and the government which is destructive of the environment and which deprives them of facilities reserved for the enjoyment and protection of the health of the public at large. The residents of the locality, such as the writ petitioners, are naturally aggrieved by the impugned orders and they have, therefore, the necessary *locus standi*.

35. In **Dr. G.N.Khajuria** (supra), the Hon'ble Supreme Court held that the land reserved for park in a residential colony cannot be allotted for nursery school.

36. In **M.I.Builders Private Limited** (supra), the validity of the decision of Lucknow Mahanagar Palika in granting permission to a builder to construct an underground shopping complex in a park at Lucknow was examined. The Hon'ble Supreme Court held that *Public Trust Doctrine* applies to public property and has grown from Article 21 of the Constitution of India. In paras 51 and 52, it was held as under:

> **51.** In the treatise *Environmental Law and Policy: Nature, Law, and Society* by Plater Abrams Goldfarb (American Casebook Series, 1992) under the Chapter on Fundamental Environmental Rights, in Section 1 (*The Modern Rediscovery of the Public Trust Doctrine*) it has been noticed that "long ago there developed in the law of the Roman Empire a legal theory known as the 'doctrine of the public trust' ". In America public trust doctrine was applied to public properties, such as shore lands and parks. As to how that doctrine works it was stated:

> "The scattered evidence, taken together, suggests that the idea of a public trusteeship rests upon three related principles. First, that certain interests 'like the air and the sea' have such importance to the citizenry as a whole that it would be unwise to make them the subject of private ownership. Second, that they partake so much of the bounty of nature, rather than of individual enterprise, that they should be made freely available to the entire citizenry without regard to economic status. And, finally, that it is the principal purpose of a Government to promote the interests of the general public rather than to redistribute public goods from broad public uses to restricted private benefit…."

With reference to a decision in *Illinois Central Railroad Co.* v. *Illinois* [146 US 387 : 36 L Ed 1018 (1892)] it was stated that

> "the Court articulated in that case the principle that has become the central substantive thought in public trust litigation. When a State holds a resource which is available for the free use of the general public, a court will look with considerable scepticism upon any governmental conduct which is calculated either to reallocate the resource to more restricted uses or to subject public uses to the self-interest of private parties".

> This public trust doctrine in our country, it would appear, has grown from Article 21 of the Constitution.
>
> **52.** Thus by allowing construction of underground shopping complex in the park the Mahapalika has violated not only Section 114 of the Act but also the public trust doctrine.

37. In **Dipak Kumar Mukherjee** (supra), the Hon'ble Supreme Court noticed that menace of illegal and unauthorized construction of buildings and structures in different parts of the country has acquired monstrous proportion. Paras 8 and 9 of the aforesaid decision are extracted below for the facility of reference:

> **8.** What needs to be emphasised is that illegal and unauthorised constructions of buildings and other structures not only violate the municipal laws and the concept of planned development of the particular area but also affect various fundamental and constitutional rights of other persons. The common man feels cheated when he finds that those making illegal and unauthorised constructions are supported by the people entrusted with the duty of preparing and executing master plan/development plan/zonal plan. The reports of demolition of hutments and

jhuggi jhopris belonging to the poor and disadvantaged section of the society frequently appear in the print media but one seldom gets to read about demolition of illegally/unauthorisedly constructed multi-storeyed structures raised by economically affluent people. The failure of the State apparatus to take prompt action to demolish such illegal constructions has convinced the citizens that planning laws are enforced only against poor and all compromises are made by the State machinery when it is required to deal with those who have money power or unholy nexus with the power corridors.

9. We have prefaced disposal of this appeal by taking cognizance of the precedents in which this Court held that there should be no judicial tolerance of illegal and unauthorised constructions by those who treat the law to be their subservient, but are happy to note that the functionaries and officers of Kolkata Municipal Corporation (for short "the Corporation") have been extremely vigilant and taken steps for enforcing the provisions of the Calcutta Municipal Corporation Act, 1980 (for short "the 1980 Act") and the Rules framed thereunder for demolition of illegal construction raised by Respondent 7. This has given a ray of hope to the residents of Kolkata that there will be zero tolerance against

illegal and unauthorised constructions and those indulging in such activities will not be spared.

38. In **Lal Bahadur v. State of Uttar Pradesh**[9], the Hon'ble Supreme Court dealt with the issue whether an area which is earmarked as greenbelt/open spaces in a development plan could be reserved for development of residential colonies. It was held that it is the duty of the Government and the Court to protect the environment. The principles laid down in **Bangalore Medical Trust** (supra) were referred to with approval. The subsequent decision in **M.C.Mehta v. Kamal Nath**[10] was taken note of and the observation made therein that "public has a right to expect certain lands and natural areas to retain their natural characteristics in finding its way into the law of the land", was mentioned. The Hon'ble Supreme Court held that change of use of area in question from greenbelt to residential one is contrary to the *public trust doctrine*. It was further held that the land in future shall be used for the purposes of park only.

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[9] (2018) 15 SCC 407
[10] (1997) 1 SCC 388

39. In **M.C.Mehta v. Kamal Nath** (supra), the Hon'ble Supreme court in paragraphs 24 and 25 held as under:

> **24.** The ancient Roman Empire developed a legal theory known as the "Doctrine of the Public Trust". It was founded on the ideas that certain common properties such as rivers, seashore, forests and the air were held by Government in trusteeship for the free and unimpeded use of the general public. Our contemporary concern about "the environment" bear a very close conceptual relationship to this legal doctrine. Under the Roman law these resources were either owned by no one (*res nullious*) or by everyone in common (*res communious*). Under the English common law, however, the Sovereign could own these resources but the ownership was limited in nature, the Crown could not grant these properties to private owners if the effect was to interfere with the public interests in navigation or fishing. Resources that were suitable for these uses were deemed to be held in trust by the Crown for the benefit of the public. Joseph L. Sax, Professor of Law, University of Michigan — proponent of the Modern Public Trust Doctrine — in an erudite article "*Public Trust Doctrine in Natural Resource Law* : *Effective Judicial Intervention*", Michigan Law Review, Vol. 68, Part 1 p. 473, has given the historical

background of the Public Trust Doctrine as under:

> "The source of modern public trust law is found in a concept that received much attention in Roman and English law — the nature of property rights in rivers, the sea, and the seashore. That history has been given considerable attention in the legal literature, need not be repeated in detail here. But two points should be emphasized. First, certain interests, such as navigation and fishing, were sought to be preserved for the benefit of the public; accordingly, property used for those purposes was distinguished from general public property which the sovereign could routinely grant to private owners. Second, while it was understood that in certain common properties — such as the seashore, highways, and running water — 'perpetual use was dedicated to the public', it has never been clear whether the public had an enforceable right to prevent infringement of those interests. Although the State apparently did protect public uses, no evidence is available that public rights could be legally asserted against a recalcitrant government."

25. The Public Trust Doctrine primarily rests on the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life. The

doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. According to Professor Sax the Public Trust Doctrine imposes the following restrictions on governmental authority:

> "Three types of restrictions on governmental authority are often thought to be imposed by the public trust: first, the property subject to the trust must not only be used for a public purpose, but it must be held available for use by the general public; second, the property may not be sold, even for a fair cash equivalent; and third the property must be maintained for particular types of uses."

40. In **Kerala State Coastal Zone Management Authority** (supra), construction activity was undertaken on a part of tidal land which included a water body. The Hon'ble Supreme Court held that permission granted by gram panchayat was illegal and void and no development activity could have been undertaken in prohibited zone.

41. In **Municipal Corporation of Greater Mumbai v. Hiraman Sitaram Deorukhar**[11], it was held that once an

[11] (2019) 14 SCC 411

area is reserved as guardian in development plan cannot be converted for any other use. The previous decision of Hon'ble Supreme Court in **Bangalore Medical Trust** (supra) was quoted with approval and in paras 7 and 8, it was held as under:

> **7.** This Court has laid down that public interest requires some areas to be preserved by means of open spaces of parks and playgrounds, and that there cannot be any change or action contrary to legislative intent, as that would be an abuse of statutory powers vested in the authorities. Once the area had been reserved, the authorities are bound to take steps to preserve it in that method and manner only. These spaces are meant for the common man, and there is a duty cast upon the authorities to preserve such spaces. Such matters are of great public concern and vital interest to be taken care of in the development scheme. The public interest requires not only reservation but also preservation of such parks and open spaces. In our opinion, such spaces cannot be permitted, by an action or inaction or otherwise, to be converted for some other purpose, and no development contrary to plan can be permitted.

> **8.** The importance of open spaces for parks and playgrounds is of universal recognition, and reservation for such places in development scheme is a legitimate exercise of statutory power, with the rationale of protection of the environment and of reducing ill effects of urbanisation. It is in the public interest to avoid unnecessary conversion of "open spaces land" to strictly urban uses, for gardens provide fresh air, thereby protecting against the resultant impacts of urbanisation, such as pollution, etc. Once such a scheme had been prepared in accordance with the provisions of the MRTP Act, by inaction legislative intent could not be permitted to become a statutory mockery. The government authorities and officers were bound to preserve it and to take all steps envisaged for protection.

42. In **Supertech Limited v. Emerald Court Owner Resident Welfare Association**[12], the Hon'ble Supreme Court held that breach by the planning authority of its obligation to ensure compliance with building regulation is actionable at the instance of residents whose rights are infringed by violation of law. In paras 159, 161 to 164, 168 and 169 it was held as under:

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[12] (2021) 10 SCC 1

159. The rampant increase in unauthorised constructions across urban areas, particularly in metropolitan cities where soaring values of land place a premium on dubious dealings has been noticed in several decisions of this Court. This state of affairs has often come to pass in no small a measure because of the collusion between developers and planning authorities.

161. The judgments of this Court spanning the last four decades emphasise the duty of planning bodies, while sanctioning building plans and enforcing building regulations and bye-laws to conform to the norms by which they are governed. A breach by the planning authority of its obligation to ensure compliance with building regulations is actionable at the instance of residents whose rights are infringed by the violation of law. Their quality of life is directly affected by the failure of the planning authority to enforce compliance. Unfortunately, the diverse and unseen group of flat buyers suffers the impact of the unholy nexus between builders and planners. Their quality of life is affected the most. Yet, confronted with the economic might of developers and the might of legal authority wielded by planning bodies, the few who raise their voices have to pursue a long and expensive battle for rights with little certainty of outcomes.

As this case demonstrates, they are denied access to information and are victims of misinformation. Hence, the law must step in to protect their legitimate concerns.

162. In *K. Ramadas Shenoy* v. *Town Municipal Council, Udipi* [*K. Ramadas Shenoy* v. *Town Municipal Council, Udipi*, (1974) 2 SCC 506] , A.N. Ray, C.J. speaking for a two-Judge Bench of this Court observed that the municipality functions for public benefit and when it "acts in excess of the powers conferred by the Act or abuses those powers then in those cases it is not exercising its jurisdiction irregularly or wrongly but it is usurping powers which it does not possess". This Court also held : (SCC p. 513, para 27)

> "*27*.... The right to build on his own land is a right incidental to the ownership of that land. Within the Municipality the exercise of that right has been regulated in the interest of the community residing within the limits of the Municipal Committee. If under pretence of any authority which the law does give to the Municipality it goes beyond the line of its authority, and infringes or violates the rights of others, it becomes like all other individuals amenable to the jurisdiction of the courts. If sanction is given to build by contravening a bye-law the jurisdiction of the courts will be invoked on the ground that the approval by an authority of building plans which contravene the bye-laws made by that

> authority is illegal and inoperative. (See *Yabbicom* v. *R.* [*Yabbicom* v. *R.*, (1899) 1 QB 444])."

This Court held that an unregulated construction materially affects the right of enjoyment of property by persons residing in a residential area, and hence, it is the duty of the municipal authority to ensure that the area is not adversely affected by unauthorised construction.

163. These principles were re-affirmed by a two-Judge Bench in *G.N. Khajuria* v. *DDA* [*G.N. Khajuria* v. *DDA*, (1995) 5 SCC 762] where this Court held that it was not open to the Delhi Development Authority to carve out a space, which was meant for a park for a nursery school. B.L. Hansaria, J. speaking for the Court, observed : (SCC p. 766, para 10)

> "*10*. Before parting, we have an observation to make. The same is that a feeling is gathering ground that where unauthorised constructions are demolished on the force of the order of courts, the illegality is not taken care of fully inasmuch as the officers of the statutory body who had allowed the unauthorised construction to be made or make illegal allotments go scot free. This should not, however, have happened for two reasons. First, it is the illegal action/order of the officer which lies at the root of the unlawful act of the citizen concerned, because of

> which the officer is more to be blamed than the recipient of the illegal benefit. It is thus imperative, according to us, that while undoing the mischief which would require the demolition of the unauthorised construction, the delinquent officer has also to be punished in accordance with law. This, however, seldom happens. Secondly, to take care of the injustice completely, the officer who had misused his power has also to be properly punished. Otherwise, what happens is that the officer, who made the hay when the sun shined (*sic*), retains the hay, which tempts others to do the same. This really gives fillip to the commission of tainted acts, whereas the aim should be opposite."

164. In *Friends Colony Development Committee* v. *State of Orissa* [*Friends Colony Development Committee* v. *State of Orissa*, (2004) 8 SCC 733], this Court dealt with a case where the builder had exceeded the permissible construction under the sanctioned plan and had constructed an additional floor on the building, which was unauthorised. R.C. Lahoti, C.J., speaking for a two-Judge Bench, observed : (SCC p. 744, para 24)

> "*24*. Structural and lot area regulations authorise the municipal authorities to regulate and restrict the height, number of storeys and other structures; the percentage of a plot that may be occupied; the size of yards, courts and open spaces; the density of population; and the location and use of buildings

> and structures. All these have in our view and do achieve the larger purpose of the public health, safety or general welfare. So are front setback provisions, average alignments and structural alterations. Any violation of zoning and regulation laws takes the toll in terms of public welfare and convenience being sacrificed apart from the risk, inconvenience and hardship which is posed to the occupants of the building."

Noting that the private interest of landowners stands subordinate to the public good while enforcing building and municipal regulations, the Court issued a caution against the tendency to compound violations of building regulations : (*Friends Colony Development Committee case* [*Friends Colony Development Committee* v. *State of Orissa*, (2004) 8 SCC 733] , SCC p. 744, para 25)

> "*25*. … The cases of professional builders stand on a different footing from an individual constructing his own building. A professional builder is supposed to understand the laws better and deviations by such builders can safely be assumed to be deliberate and done with the intention of earning profits and hence deserve to be dealt with sternly so as to act as a deterrent for future. It is common knowledge that the builders enter into underhand dealings. Be that as it may, the State Governments should think of levying heavy penalties on such builders and therefrom develop a welfare fund which can be utilised for compensating and

> rehabilitating such innocent or unwary buyers who are displaced on account of demolition of illegal constructions."

168. Finally, the Court also observed that no case has been made out for directing the municipal corporation to regularise a construction which has been made in violation of the sanctioned plan and cautioned against doing so. In that context, it held : (*Esha Ekta Apartments case* [*Esha Ekta Apartments Coop. Housing Society Ltd.* v. *Municipal Corpn. of Mumbai*, (2013) 5 SCC 357 : (2013) 3 SCC (Civ) 89] , SCC pp. 394-95, para 56)

> "*56.* … We would like to reiterate that no authority administering municipal laws and other similar laws can encourage violation of the sanctioned plan. The courts are also expected to refrain from exercising equitable jurisdiction for regularisation of illegal and unauthorised constructions else it would encourage violators of the planning laws and destroy the very idea and concept of planned development of urban as well as rural areas."

169. These concerns have been reiterated in the more recent decisions of this Court in *Kerala State Coastal Zone Management Authority* v. *State of Kerala* [*Kerala State Coastal Zone Management Authority* v. *State of Kerala*, (2019) 7 SCC 248], *Kerala State Coastal Zone Management Authority* v. *Maradu Municipality* [*Kerala State*

Coastal Zone Management Authority v. *Maradu Municipality*, (2021) 16 SCC 822 : 2018 SCC OnLine SC 3352] and *Bikram Chatterji* v. *Union of India* [*Bikram Chatterji* v. *Union of India*, (2019) 19 SCC 161] .

43. The Hon'ble Supreme Court held that illegal constructions have to be dealt with strictly to ensure compliance with rule of law. The Hon'ble Supreme Court, therefore, directed demolition of illegal structures. The *Public Trust Doctrine* in **M.C.Mehta vs. Kamal Nath** (supra) was reiterated with approval in **T.N.Godavarman Thirumulpad, in Re vs. Union of India**[13].

(XI) SUMMARY:

44. From the aforesaid decisions, following propositions emerge:

1) Protection of the environment, open spaces for creation of fresh air, play grounds for children, promenade for residents are matters of great public concern and of vital interest to be taken care of in a development scheme.

[13] (2022) 10 SCC 544

2) Reservation of open spaces for parks and playgrounds is universally recognized as a legitimate exercise of statutory power to protect residents of locality from ill-effects of urbanization.

3) The Doctrine of Public Trust is founded on the idea that certain common properties such as rivers, seashore, forests and the air were held by the Government in trusteeship for the free and unimpeded use of general public.

4) The Public Trust Doctrine has grown from Article 21 of the Constitution of India applies to public properties. The Court will look at considerable skepticism upon any conduct which is calculated either to reallocate the resources to more restricted uses or to subject public uses to the self interest of private parties.

5) Illegal and unauthorized constructions of buildings and other structures not only violate municipal laws and concept of planned development of a particular

area but also affect valuable fundamental and constitutional rights of other persons.

6) There is a rampant increase in unauthorized constructions across urban area and particularly in metropolitan cities.

7) A breach by planning authority of its obligation to ensure compliance with building regulations is actionable at the instance of residents whose rights are infringed by violation of laws.

8) Illegal constructions have to be dealt with strictly to ensure rule of law.

(XII) ISSUES:

45. In these cases, the following issues arise for consideration:

(i) Whether the competent authority has changed the original layout plan?

(ii) Whether construction of shopping complex can be permitted on an area earmarked as a park in layout or development plan? and

(iii) The relief to which the petitioners are entitled?

Issue (i): Whether the competent authority has changed the original layout plan?

46. The development plan or master plan can be prepared and approved in accordance with Section 8 of the 1975 Act. In the light of mandate contained in Section 15 of the 1975 Act, no person can use or permit the use of the land or building in a zone in contravention of the plan. A modification to the plan can be made only by Hyderabad Urban Development Authority under Section 12 of the 1975 Act, which is the competent authority to modify the original development plan in the manner indicated under Section 12(3) to 12(5) and Rule 13 of the 1977 Rules.

47. In paras 34 and 43 of the Report of the Enquiry Officer dated 18.08.2001, which is submitted in pursuance

of the interim order dated 01.08.2000 passed in W.P.No.12538 of 1999, it has been stated as under:

> 34. POINT
>
> Practically there is no dispute with regard to a fact that the site in dispute was earmarked for park in the original/proposed layout. Ex.B.5 is the sketch pertaining to the proposed layout plan of the year 1984. This is the original plan. In this plan, the disputed site is the original plan. In this plan the disputed site is identified as 'ABCD' and it is noted as "Park". As already noted it is everybody's case that in the beginning i.e., in the year 1984 proposed layout plan, the disputed site was earmarked as "Park". It would not end with it if I say that the site in dispute was earmarked for a park in the year 1984 in the layout in question in the light of the subsequent developments and the contentions of the rival parties. I will discuss the contentions and controversies in the paragraphs to follow.
>
> 43. Let me now briefly discuss on Ex.B.47, the original of Ex.B.1 which is the vital and important document that would dispel the doubts in the minds of everybody. Ex.B.2 in Ex.B.1 which R.W.1 claims to be an interpolation, is also found in Ex.B47. Further, the disputed site is identified as S1 and S2 shops. There is no

mention of the word 'park'. Nowhere it is stated in this revised sketch that the disputed site has been earmarked for park even after revision of the layout dated 10.04.1987. As already noted that if there were to be any tampering, R.W.1 or as a matter of fact, the two writ petitioners could have pleaded and placed material in evidence of the same. None of them attribute anything against any of the individuals or authority in the above regard. The APHB who is the custodian of Ex.B47 failed to plead or prove that there was no revision in the year 1987 or that the words "S1 & S2 shops" have been subsequently interpolated by deleting the word 'park' at the disputed site. This Court really wonders as to how the APHB, the custodian of Ex.B.47 could themselves come out with a case that there were interpolations and tampering. The burden is very heavy on them to substantiate their allegations. However, they miserably failed to prove the same. This is unbecoming of a responsible institution and authority to give such a statement that the document in their custody was tampered with. It is significant to note that they did not come out with such a complaint on their own. None of their engineers could record or bring it to the notice of the higher ups about the alleged tampering at any point of time. For the first time they are coming out with such a case when they had to file the

> counter before the High Court in connection with these writ petitions. As already noted, the APHB as well as the petitioners miserably failed to prove that there was tampering with the Ex.B.47 plan. However, my opinion would not come in the way of the APHB authorities to probe into the matter and arrive at a 'just' conclusion as to whether there was any tampering or not by entrusting the matter to any investigating agency.

48. Thus, it is evident that the Enquiry Officer has found that area in dispute is earmarked as park in the original layout. However, the Enquiry Officer in para 43 himself has concluded that Housing Board Authorities can probe into the matter and arrive at a just conclusion as to whether there was any tampering or not by entrusting the matter to any investigation agency. Thus, the Enquiry Officer has not attached any finality to the finding of tampering. Therefore, the Report of the Enquiry Officer is of no assistance.

49. The stand of APHB, as is evident from paras 10 and 11 of the counter affidavit and counter affidavit dated 10.11.2003 filed in S.L.P. No.21351-52 and paras 5 to 12 and para 22 of material papers filed along with

W.P.M.P.No.10336 of 2007, with regard to modification of the plan can be summarized as under:

(i) In the layout sanctioned by Hyderabad Urban Development Authority, the area is earmarked for purposes of park.

(ii) The words "shops S1 and S2" are interpolated in a layout drawn on pressing paper and same is neither correct nor approved by APHB or HUDA on 10.04.1987.

50. From perusal of the averments made by Municipal Corporation of Hyderabad in the counter affidavit as well as the common counter filed in S.L.P. (Civil) Nos.21351 and 21352 of 2001, it is evident as follows:

(i) The permission for construction was accorded on the basis of document submitted by respondent No.1.

(ii) The permission contained a condition that if at a later date, it is found that land is reserved for purposes of park, the building permission shall be cancelled automatically.

(iii) The APHB is only a development agency and does not have any power to revise the layout without approval of HUDA.

51. The competent authority, namely HUDA in the counter affidavit in para 2 filed in W.P.No.12538 of 1999 has averred as under:

> 2. In the above writ petition, HUDA made as respondent No.3. The prayer in the writ petition is for a direction declaring the action of respondents 1 to 4 in permitting respondents 5 to 6 to construct commercial complex in land admeasuring 600 square yards in plot Nos. S.1 and S.4 in Indian Airlines Housing Colony in Sy.No.194/11, Begumpet Village, R.R.District as illegal, arbitrary and violative of Articles 14 and 21 of the Constitution of India and consequently directed respondents 3 and 4 to lay public park in the land as per sanction layout. It is submitted that after perused the petitioner affidavit, it is observed that the site under reference is earmarked as park in the sanctioned layout which is in favour of Indian Airlines Housing Colony at Begumpet. As this area falls within the jurisdiction of M.C.H. and the Commissioner and Special Officer, M.C.H is the competent authority to permit any building within the jurisdiction and

> also to take any action on the buildings which are constructed against the rules and regulations. It is submitted that the site under reference is a park and the M.C.H is the custodian of the areas earmarked as open space (park) within the layouts and as such there is no role of HUDA to initiate any action against violation/unauthorized constructions taken place within the jurisdiction of M.C.H. area.

Thus, it is evident that the stand of competent authority about modification of the layout plan is that the area in question is earmarked for the purposes of park in sanctioned layout.

52. Thus, it is evident that the competent authority namely HUDA has not changed the original layout plan. In any case, the respondent Nos.5 to 8 have not been able to establish that the plan was modified in accordance with the procedure prescribed under Section 12(3) and 12(4) of the 1975 Act and in accordance with Rules 12 and 13 of the 1977 Rules. Therefore, the issue (i) is answered in the negative by stating that the competent authority has not changed the original layout plan.

Issue (ii): Whether construction of shopping complex can be permitted on an area earmarked as a park in layout or development plan?

53. The Hon'ble Supreme Court in catena of decisions referred to supra has held that the planning authority is under an obligation to ensure development of the land in accordance with the development plan. In the instant cases, Section 15 of the 1975 Act casts a duty on the person not to use the land and building in contravention of the plan and provides for levy of penalty, including an order of demolition of building under Sections 41 and 42 of the 1975 Act. Therefore, it is axiomatic that the construction of shopping complex cannot be permitted in an area which is earmarked as a park. Accordingly, the issue (ii) is also answered in the negative by stating that construction of shopping complex cannot be permitted on an area which is earmarked as a park.

Issue (iii): The relief to which the petitioners are entitled?

54. In **S.R.Ramanujam v. Chief Secretary**[14], a Division Bench of this Court in para 14 held as under:

> 14. None of the respondents have been able to dispute the averment on behalf of the petitioners and interveners that the City's parks and other open spaces are hopelessly inadequate as per the standard in this behalf. The expanding urban agglomeration of the twin cities of Hyderabad and Secunderabad and the per capita recreational area in the city is less than 0.50 square metres as against the national standard of 3.00 square metres. The city is already breathing less than the required breath and further depletions by acts of the State of the lung space of the city will make the breathing more difficult. Although in the counter affidavits respondents have chosen to assert that while deciding to hold cremations, of course only in the case of late Dr. Channa Reddy and that also after protests were raised and this Court called upon the learned Advocate General to file a Memo in this behalf, they took the cause of environment into consideration and satisfied themselves that there was no likelihood of ecology being affected, the manner in which they have proceeded and the

[14] 1997 (2) ALT 512

hurry in which the decision has been taken, make us doubt the sincerity behind such statements. The Commissioner has acknowledged the influence of the decision of the Government of the State in his issuing orders and has thus admitted that his decision making in this behalf was influenced by the decision of the Government and the communications made by the Government to it. One of the settled principles of law is that if a person, who is empowered to decide a matter and in deciding the matter, takes into consideration irrelevant materials, he acts mala fide in law. The whole episode is so full of malice almost at every stage of decision making that everything that has been done with respect to the use of the parks as cremation grounds (according to the Commissioner's affidavit as a special case and as one time decision in the case of Dr. Channa Reddy) is without jurisdiction in all respects. The Government of the State has acted without any legal sanction and interfered with the constitutional and statutory power of the self-government and the Commissioner of the Corporation. The Commissioner of the Corporation has abdicated his jurisdiction and surrendered the self- government to the command of the State Government. A ruthless interference in the public interest by the welfare Governments, both the State Government and the

self-government, has left the citizens shocked and alarmed. When they have invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, will the Court fall in line with the Government or stand to the public interest? We have no hesitation, on the facts as aforementioned, to hold that the Government of the State has gone against the public interest in being influenced by the emotions and sentiments of people whose honoured leaders had died and failed in discharge of its sovereign duty assigned to it by the Constitution of India and gone beyond its powers under the Corporation Act. The rights of the petitioners and others similarly situated, of equal protection of law and equality before law are violated by the above interference in the matter by the State Government. Their right under Article 21 of the Constitution is violated, at least, in not taking into account the fact that any conversion of any open space of the city, which is available for public recreation, into any cremation ground or memorial, shall further reduce the open space in the city and thus violate the right under Article 21 of the Constitution of India. Corporation's failure in preventing the cremation of late Sri N.T. Rama Rao in one of the parks of the city and in not taking any action to remove any encroachments by any person including the

> Government of the State upon the lands belonging to the park, are glaring violations of Articles 14 and 21 of the Constitution of India and the provisions with respect to disposal of the dead in the Corporation Act. Repetition of the above for the cremation of the dead body of late Dr. Channa Reddy by the Government of the State and abdication of jurisdiction by the Commissioner and the Corporation is a repeat of the violation of the right of the petitioners as above.

Thus, the need to establish and maintain parks in the city of Hyderabad and Secunderabad does not need any emphasis.

55. The protection of environment is a duty cast on administration as well as the Court. The Hon'ble Supreme Court in **Supertech Limited** (supra) has held that inaction of the planning authorities of its obligation to ensure development of land in accordance with the plan results in infraction of the rights of the residents and their quality of life is directly affected. The decision of Hon'ble Supreme Court in **Priyanka Estates International Private Limited**

v. State of Assam[15] was taken note of in **Supertech Limited** (supra). In paras 165, 166, 167 and 172, the Hon'ble Supreme Court held as under:

> **165.** In *Priyanka Estates International (P) Ltd.* v. *State of Assam* [*Priyanka Estates International (P) Ltd.* v. *State of Assam*, (2010) 2 SCC 27 : (2010) 1 SCC (Civ) 283] , Deepak Verma, J. speaking for a two-Judge Bench, observed : (SCC p. 42, para 55)
>
> > "*55.* It is a matter of common knowledge that illegal and unauthorised constructions beyond the sanctioned plans are on rise, may be due to paucity of land in big cities. Such activities are required to be dealt with by firm hands otherwise builders/colonisers would continue to build or construct beyond the sanctioned and approved plans and would still go scot-free. Ultimately, it is the flat owners who fall prey to such activities as the ultimate desire of a common man is to have a shelter of his own. Such unlawful constructions are definitely against the public interest and hazardous to the safety of occupiers and residents of multi-storeyed buildings. To some extent both parties can be said to be equally responsible for this. Still the greater loss would be of those flat owners whose flats are to be demolished as compared to the builder."
>
> The Court lamented that the earlier decisions on the subject had not resulted in enhancing

[15] (2010) 2 SCC 27

compliance by developers with building regulations. Further, the Court noted that if unauthorised constructions were allowed to stand or are "given a seal of approval by Court", it was bound to affect the public at large. It also noted that the jurisdiction and power of courts to indemnify citizens who are affected by an unauthorised construction erected by a developer could be utilised to compensate ordinary citizens.

166. In *Esha Ekta Apartments Coop. Housing Society Ltd.* v. *Municipal Corpn. of Mumbai* [*Esha Ekta Apartments Coop. Housing Society Ltd.* v. *Municipal Corpn. of Mumbai*, (2013) 5 SCC 357 : (2013) 3 SCC (Civ) 89] , G.S. Singhvi, J., writing for a two-Judge Bench, reiterated the earlier decisions on this subject and observed : (SCC p. 369, para 8)

> "*8.* At the outset, we would like to observe that by rejecting the prayer for regularisation of the floors constructed in wanton violation of the sanctioned plan, the Deputy Chief Engineer and the appellate authority have demonstrated their determination to ensure planned development of the commercial capital of the country and the orders passed by them have given a hope to the law-abiding citizens that someone in the hierarchy of administration will not allow unscrupulous developers/builders to take law into their hands and get away with it."

167. The Court further observed that an unauthorised construction destroys the concept of planned development, and places an unbearable burden on basic amenities provided by public authorities. The Court held that it was imperative for the public authority to not only demolish such constructions but also to impose a penalty on the wrongdoers involved. This lament of this Court, over the brazen violation of building regulations by developers acting in collusion with planning bodies, was brought to the forefront when the Court prefaced its judgment with the following observations : (*Esha Ekta Apartments case* [*Esha Ekta Apartments Coop. Housing Society Ltd.* v. *Municipal Corpn. of Mumbai*, (2013) 5 SCC 357 : (2013) 3 SCC (Civ) 89] , SCC p. 363, para 1)

> "*1*. In the last five decades, the provisions contained in various municipal laws for planned development of the areas to which such laws are applicable have been violated with impunity in all the cities, big or small, and those entrusted with the task of ensuring implementation of the master plan, etc. have miserably failed to perform their duties. It is highly regrettable that this is so despite the fact that this Court has, keeping in view the imperatives of preserving the ecology and environment of the area and protecting the rights of the citizens, repeatedly cautioned the authorities concerned against arbitrary

> regularisation of illegal constructions by way of compounding and otherwise."

172. For the reasons which we have indicated above, we have come to the conclusion that:

172.1. The order [*Emerald Court Owner Resident Welfare Assn.* v. *State of U.P.*, 2014 SCC OnLine All 14817] passed by the High Court for the demolition of Apex and Ceyane (T-16 and T-17) does not warrant interference and the direction for demolition issued by the High Court is affirmed.

172.2. The work of demolition shall be carried out within a period of three months from the date of this judgment.

172.3. The work of demolition shall be carried out by the appellant at its own cost under the supervision of the officials of Noida. In order to ensure that the work of demolition is carried out in a safe manner without affecting the existing buildings, Noida shall consult its own experts and experts from Central Building Research Institute Roorkee ("CBRI").

172.4. The work of demolition shall be carried out under the overall supervision of CBRI. In the event that CBRI expresses its inability to do so, another expert agency shall be nominated by Noida.

172.5. The cost of demolition and all incidental expenses including the fees payable to the experts shall be borne by the appellant.

172.6. The appellant shall within a period of two months refund to all existing flat purchasers in Apex and Ceyane (T-16 and T-17), other than those to whom refunds have already been made, all the amounts invested for the allotted flats together with interest at the rate of twelve per cent per annum payable with effect from the date of the respective deposits until the date of refund in terms of Part H of this judgment.

172.7. The appellant shall pay to the RWA costs quantified at Rs 2 crores, to be paid in one month from the receipt of this judgment.

56. The Hon'ble Supreme Court upheld the directions of the High Court including the order of demolition and of sanctioning of prosecution under Section 49 of the U.P.I.A.V. Act, 1976 against the officers of the Noida for violation of U.P.I.A.V. Act, 1976 and U.P.Apartments Act, 2010.

57. In these cases, the respondent Nos.5 and 6 have utilized the land in violation of its use as indicated in the

layout development plan. The area earmarked for the purposes of park has been utilized by respondent Nos.5 and 6 for construction of a commercial complex which is impermissible in law and is violative of rights guaranteed to the petitioners who are residents of the locality. The Hyderabad Urban Development Authority has failed to discharge its statutory obligation to stop the unauthorised development at the initial stage and thereafter have derelicted their statutory duties in not imposing either any penalty or ordering demolition of the unauthorized construction, namely shopping complex.

58. Insofar as submission made on behalf of respondent Nos.5 and 6 that in view of dismissal of previous writ petition, namely W.P.No.17494 of 1997, vide order dated 01.10.1997, the instant writ petition cannot be maintained is concerned, suffice it to say that aforesaid writ petition was dismissed on the ground that the identity of the petitioner therein was not established. Similarly, W.P.No.2965 of 1998 was dismissed as withdrawn, vide order dated 24.08.1998. Admittedly, there is no

adjudication of the issue on merits either in W.P.No.17494 of 1997 and W.P.No.2965 of 1998. In any case, petitioners were neither parties in the said writ petitions nor the issue was adjudicated on merits. Therefore, the aforesaid orders have no application to the fact situation of these cases.

(XIII) DIRECTIONS:

59. In view of preceding analysis, the following directions are issued:

(i) Permit No.50/49 of 1996 dated 03.01.1997 granted in favour of Indian Airlines Employees Housing Society by the Municipal Corporation of Hyderabad in File No.10/TP7/CCP/96 for construction of commercial complex on the land reserved for park in survey No.194/11, Paigah Lands, Begumpet, Ranga Reddy District, is set aside and quashed.

(ii) The respondent Nos.5 and 6 in W.P.No.12538 of 1999 (Mr. P.Ravi Kumar and Mr. M.F.Peter) are directed to carry out the work of demolition of commercial complex constructed on land measuring 600 square yards in survey

No.194/11 in plot Nos.S1 and S2 in Indian Airlines Housing Colony, Begumpet, Ranga Reddy District.

(iii) The aforesaid demolition work shall be carried out by respondent Nos.5 and 6 in W.P.No.12538 of 1999 at their own cost under the supervision of officials of Telangana Housing Board and Hyderabad Metropolitan Development Authority (HMDA).

(iv) The Hyderabad Metropolitan Development Authority (HMDA) shall nominate an expert under whose overall supervision the demolition work shall be carried out by respondent Nos.5 and 6 in W.P.No.12538 of 1999.

(v) The entire expenses including the cost of demolition and incidental expenses including the fee payable to the expert nominated by the officials of HMDA shall be borne by respondent Nos.5 and 6.

(vi) The respondent Nos.5 and 6 in W.P.No.12538 of 1999 shall carry out the demolition work within a period of three months from the date of this order.

(vii) HMDA is directed to develop the land measuring 600 square yards in survey No.194/11 in plot Nos.S1 and S2 in Indian Airlines Housing Colony, Begumpet, Ranga Reddy District as a park, and

(viii) Needless to state that occupants, if any, of the building shall be at liberty to take recourse to the remedy available to them in law, with regard to their grievance against respondent Nos.5 and 6 in W.P.No.12538 of 1999.

(XIV) CONCLUSION:

57. In the result, the writ petitions are allowed.

Miscellaneous applications, pending if any, shall stand closed.

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ALOK ARADHE, CJ

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N.V.SHRAVAN KUMAR, J

04.10.2023
Note: LR copy to be marked.
(By order)
pln