

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELENGANA AND THE STATE OF
ANDHARA PRADESH**

WRIT PETITION No.26405 of 2012

Between:

Syed Jahangir, S/o.Late Naseeruddin
and others

... Petitioners

And

The District Collector, Hyderabad,
Hyderabad District and others.

... Respondents

Judgment pronounced on : 17-08-2016

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

1. Whether Reporters of Local newspapers : No
may be allowed to see the judgments?
2. Whether the copies of judgment may be marked : **Yes**
to Law Reporters/Journals?
3. Whether their Lordship wish to see the fair copy : No
of the Judgment?

THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

WRIT PETITION No.26405 of 2012

% 17-08-2016

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and others

... Petitioners

Versus

\$ The District Collector, Hyderabad,
Hyderabad District and others.

... Respondents

< GIST:

> HEAD NOTE:

!Counsel for the petitioners : Sri E. Manohar, Senior
Counsel
Appearing for Sri A.
Prabhakar Rao.

^Counsel for the respondents : Sri B. Mahender
Reddy, Special
Government Pleader
attached to the
Office of the Advocate-
General.

? Cases referred

1. (2003) 4 SCC 21
2. (2013) 4 SCC 690
3. (2011) 1 SCC 484
4. (2005) 3 ALD 105 (DB)
5. (2013) 4 SCC 280
6. (2001) 6 SCC 496
7. (1995) 1 SCC 47
8. (2007) 8 SCC 705
9. (2007) 8 SCC 748
10. State of U.P. v Jagdish Sharan Agarwal ... (2009) 1 SCC 689.

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Writ Petition No.26405 of 2012

ORDER :

This Writ Petition is filed by petitioners to declare the action of respondents in seeking to interfere with the possession of petitioners in respect of land admeasuring 988.49 sq.mtrs., 983.70 sq.mtrs., and 1025.98 sq.mtrs in survey No.563/1 of Bagh Amberpet, Hyderabad as illegal and without jurisdiction, and to pass such other order or orders as this Court deems fit and proper.

CONTENTIONS OF PETITIONERS

2. The petitioners' mother is Smt Yousufunnisa Begum, and their father is late Naseeruddin. Smt Yousufunnisa Begum is the daughter of one Syed Aziz.

3. Petitioners contend that an extent of 988.49 sq.mtrs., 983.70 sq.mtrs., and 1025.98 sq.mtrs in survey No.563/1 of Bagh Amberpet, Hyderabad was acquired by them under a Gift Deed dt.21.01.2000 executed by their mother Smt Yousufunnisa Begum. She died on 26.2.2003.

4. According to the petitioners, Syed Aziz acquired Acs.299.11 guntas at Bagh Amberpet, Hyderabad under registered sale deed No.49/1946 from late Pingili Venkata Rami Reddy and others. Syed Aziz died in 1960 leaving behind his wife Smt. Fatima Begum and five sons by name Syed Azam, Syed Afzal, Syed Omer, Syed Ali and Syed Amza and three daughters by name

Mahamadunnisa Begum, Hafeezunnisa Begum and Yousufunnisa Begum (mother of the petitioners).

5. According to the petitioners, Smt Yousufunnisa Begum along with other legal heirs of Syed Aziz filed declaration under the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 before the Competent Authority under the Act. He issued Draft Statement on 26.05.1980 under Section 8(4) of the Act and also a notice under Section 9 of the Act on 12.6.2003 determining that the family members of Syed Aziz hold land in excess of permissible limit under the Act admeasuring 86,422 sq. mtrs., by including other lands also in computation of holding of the family members of Syed Aziz. Notice under Section 10(5) of the Act was issued on 05.02.2004.

6. Sri Syed Azam, who is the son of Syed Aziz, filed W.P.No.3499 of 2004 questioning the notice under Section 10(5) of the Act and obtained an order of *status quo*. Petitioners allege that therefore the respondents did not take possession of the land in survey No.563/1 and other survey numbers referred in the said notice in view of the above interim order.

7. Subsequently, the Urban Land (Ceiling & Regulation) Repeal Act, 1999 (for short 'the Repeal Act') was adopted by the State Government w.e.f. 27.03.2008 and by virtue of the Repeal Act, all cases in which

possession was not taken and where proceedings did not culminate in action under Section 10(6) of the Act abated.

8. Petitioners contend that they continued to be in possession of the lands in survey No.563/1 and that W.P.No.3499 of 2004 was dismissed as infructuous on 09.07.2012 in view of the repeal of the Urban Land (Ceiling & Regulation) Repeal Act, 1999 w.e.f. 27.03.2008.

9. Petitioners contend that petitioner nos.1 and 2 applied to the Government of A.P. under G.O.Ms.No.455 and 456 dt.29.07.2002 seeking regularization of the land in their occupation i.e., 988.49 sq.mtrs., 983.70 sq.mtrs., and 1025.98 sq.mtrs in survey No.563/1; that the Special Officer and Competent Authority, by proceedings No.H2/456/08 and 17/06 dt.24.03.2011, stated that the amounts paid by them for regularization of the land in their occupation was to be returned to them in view of the repeal of principal Act, particularly since possession was not taken; and the State Government had even issued G.O.Ms.No.605, Revenue (UC.IV) Department, dt.15.06.2009 exempting the land measuring 1025.98 Sq.Mts., in survey No.563/1 belonging to 3rd petitioner under the provisions of the Act.

10. They contend that the 3rd petitioner even submitted an application to the Commissioner of Greater Hyderabad Municipal Corporation, Hyderabad **[for short,**

‘GHMC’] for regularization of this plot under G.O.Ms.No.902 Municipal Administration dt.31.12.2007, and by proceedings dt.29.06.2011 in reference No.LRS/17745/CR-9/CentralZone/ GHMC/2010, the Commissioner regularized the land of an extent of 1025.98 sq.mtrs. in survey No.563/1 belonging to 3rd petitioner by collecting a sum of Rs.45,70,072/-.

11. Petitioners contend that that petitioner nos.1 and 2 also applied to the Commissioner, GHMC for regularization of their respective extents under the same G.O., that he processed petitioners’ application and issued intimation letter dt.04.04.2010 and proceeding No.LRS/17944/C/9/C/ Z/TPS/HO/GHMC/2010 asking both petitioners to pay Rs.1,04,53,440/-.

12. Petitioners contend that in spite of the fact that the possession of petitioners was thus recognized by the State Government the 3rd respondent was visiting the site frequently and interfering with petitioners’ peaceful possession and enjoyment of the same without having any authority to do so.

13. They therefore prayed for a declaration to declare the action of respondents in seeking to interfere with their peaceful possession and enjoyment of the above extent of land in survey No.563/1 of Bagh Amberpet, Hyderabad as illegal, arbitrary and without jurisdiction and for such other order or orders as this Court deems fit and proper.

STAND OF RESPONDENTS IN THE COUNTER AFFIDAVITS

14. The 1st respondent filed a counter affidavit stating that the lands claimed by petitioners fall in T.S.No.70/2, 71/1, Block-A, Ward No.163 of Amberpet Village of Amberpet Mandal and the said T.S. number is recorded as "Syed Azam" in column No.10 and column No.20 in the TSLR. However, it is stated that as per Kandem Land Register of column No.23 which is meant for describing the field status, it is mentioned as 'Bathukammacheruvu" (water body). It is asserted that the subject land therefore forms part of the old water body by the above name located in survey No.563/1 of Amberpet Mandal, irrespective of its classification in the records. While admitting that the land in survey No.563/1 is shown in revenue records as belonging to private persons, it is asserted that there is material to prove that there has been a water body in it since time immemorial.

15. The 1st respondent states that the local residents demanded protection of the said water body from encroachments and that the water body is being utilized by the residents of surrounding colonies every year to celebrate Bathukamma festival.

16. It is stated that G.O.Ms.No.605 dt15.06.2009 and the proceedings of the Commissioner, GHMC dt.29.06.2011 were issued in the absence of the true facts

to the notice of the authorities and they do not confer any rights on petitioners. It is stated that proposals were sent to the Government by letter No.LP1/F5/1377/1999 dt.17.09.2012 to cancel G.O.Ms.No.605, Revenue (UC.IV) Department, dt.15.06.2009 explaining that the said G.O. will come in the way of protecting the water body, and that Government orders are awaited. It is alleged that respondents, in coordination with GHMC, for several years were taking action to protect the 'Bathukamma Cheruvu' (Water body), and that under the proceedings dt.16.10.2012 the authorities in GHMC informed that the subject land which is in survey No.563/1 is earmarked as water body, and requested to take action for its protection.

17. Reference is also made to the letter dt.15.05.2004 of the Commissioner, Town Planning Section, GHMC informing the 1st respondent that the Municipal Corporation of Hyderabad had taken over certain water bodies and *kuntas* from Collector, Hyderabad for developing the same under the "*Neeru-Meeru Programme*" and that even G.O.Ms.No.120, Irrigation and CAD (M I II) Department dt.02.12.2010 was issued ordering transfer of all water bodies from the Irrigation and CAD Department to the Municipal Administration, Urban Development Department.

18. It is admitted that the lands claimed by petitioners fall in the vacant portion in survey No.563/1, that it is a low

lying area which during rainy season gets inundated by water. It is contended that the land is vacant on the ground and the contention of petitioners that they are in possession of it is denied.

19. According to 1st respondent, even the map of Survey of India confirms that it is water body which requires protection in the interest of public, and the Commissioner, Hyderabad Metropolitan Development Authority [**for short, 'HMDA'**] had requested by letter No.LP1/F5/1377/1999, dt.17.09.2012 to send proposals to the Government to change the land use from residential use zone to conservational use zone in the Master Plan of HMDA. It is alleged that petitioners are trying to change the nature of the land by leveling it with debris and waste material, and the revenue authorities prevented them in order to protect the water bodies. He therefore sought for dismissal of the writ petition.

20. In the counter affidavit of other respondents, basically these contentions are reiterated.

21. The 3rd respondent filed a counter and an additional counter stating that petitioners are not in physical possession and enjoyment of land in Sy.No.563/1. He contended that this land is classified as per pahani as "Errakunta patta" which is popularly known as "Batukamma Kunta", that all Kuntas are water bodies which cannot be altered and put for residential use as per

decision of this Court dt.18-03-2011 in W.P.No.7043 of 2011. It is stated that as per pahani for 1962, the land bearing Sy.No.563/1 admeasuring Ac.9.19 gts is recorded as "Errakunta" (water body) and that Sy.No.563/1 is correlated to T.S.No.71/1 and 70/2, Block-A, Ward No.163 of Amberpet village; that T.S.No.71/1 is recorded in the name of Syed Azam; and as per Town Survey Land Records [**for short, 'TSLR'**], in Column No.10 it is recorded as patta land of total extent 24,532 sq.mts. It is admitted that the Layout Regularization Scheme [**for short, 'the LRS'**] proceeding dt.04.04.2010 was issued for plot Nos.1 and 2 of extent 1025.98 sq. m. in Sy.No.563/1 and that it is contrary to the counter-affidavit filed by the then Additional Commissioner, Municipal Corporation of Hyderabad [**for short, 'MCH'**], in W.P.No.12358 of 2003 filed by Syed Azam wherein the Commissioner had stated that there is a tank in Sy.No. 563/1. It is stated that on the ground the land is vacant and since it was declared under Section 10(3) of the Urban Land Ceiling and Regulation Act, 1976, it is protected by M.C.H. since 1999. It is stated that the 3rd respondent had issued notice under Section 23 of the A.P.Water, Land and Trees Act, 2002 on 12-01-2005 to Syed Azam when he allegedly attempted to alter the water body, that he filed W.P.No.3499 of 2004 and obtained *status quo* order in W.P.M.P.No.4601 of 2004 and further action under the said Act could not be initiated. It is stated

that the 3rd respondent is protecting “Batukamma kunta” property and since the petitioners are not in physical possession, there was no question of interference with their physical possession.

22. In the additional counter, the 3rd respondent stated that the land is in possession of GHMC with compound wall, that it is under maintenance of GHMC and that as per certain decisions of the Supreme Court as well as this Court, the respondents have a duty to protect water bodies.

23. The 4th respondent filed a counter stating that the relief stated in the Writ Petition is declaratory in nature and without seeking consequential relief petitioner cannot succeed. It is stated that it cannot be granted in summary Writ jurisdiction, that petitioners have to establish their title and possession to the property and disputed questions of fact cannot be adjudicated under Article 226 of the Constitution of India. It is stated that the schedule property is a low lying area, wherein water gets logged in the rainy season and it is considered to be an age-old water body which needs protection in public interest. It is stated that when petitioners tried to change the nature of the land by leveling it with debris and waste material, this was prevented by Revenue authorities. It is stated that the G.H.M.C. had taken over the water bodies and kuntas located within its jurisdiction for development under the

“Neeru Meeru” programme in 2004 and the same was informed to 1st respondent by a letter No.113/ACP/C3/TPS/CCP/03 dt.15-05-2004; that Irrigation Department identified 399 tanks, lakes and water bodies falling in jurisdiction of erstwhile H.U.D.A. and issued G.O.Ms.No.120, Irrigation and CAD Department dt.02-12-2010 ordering transfer of all the said water bodies from the said Department to the Municipal Administration and Urban Development Department and Batukamma Kunta is also mentioned in the list annexed to it. It is contended that as per provisions of A.P. (Telangana Area) Irrigation Act, 1357 fasli, the construction and maintenance of tanks, lakes and water bodies is the duty of the 4th respondent. It is also stated that under Section 24 of the A.P. (Telangana Area) Land Revenue Act, 1317 Fasli, all tanks/kuntas are the property of the Government except to the extent of rights established by persons claiming the same. Reference is made to W.P.No.12358 of 2003 filed by Syed Azam and W.P.No.18235 of 2012 filed by petitioners which was dismissed on 26-06-2015 and it is contended that in view of its dismissal, this Writ Petition is not maintainable. It is stated in para-14 that petitioners applied for exemption of surplus land taken possession under the Urban Land Ceiling and Regulation Act, 1976, which is a water body, that the land in Sy.No.563/1 is vacant land and as per the notified Zonal Development Plan, the tank therein and the

surrounding place was earmarked for allotment as park and construction of building is not permissible in tank/kunta under the Zoning Regulations.

REPLY AFFIDAVITS FILED BY PETITIONERS TO THE COUNTER AFFIDAVITS FILED BY RESPONDENTS

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24. To each of the Counter affidavits/additional counter affidavit filed by respondents, petitioners filed reply affidavits reiterating their claim to title and possession of land in Sy.No.563/1 and disputing contentions of respondents.

25. Heard Sri E. Manohar, Senior Counsel for Sri A. Prabhakar Rao, for petitioners; Sri B. Mahender Reddy, Special Government Pleader attached to the Office of the Advocate-General, for all respondents.

THE POINTS FOR CONSIDERATION

26. From the above pleadings, the following points for consideration arise:

- (a) *Whether the prayer in the Writ Petition is defective and should petitioners be denied relief on that ground?*
- (b) *How is the nature, title and possession of the land in Sy.No.563/1 described in the pahanis and Sethwar prepared by the Revenue authorities?*
- (c) *Whether the description of land in Sy.No.563/1 as "Errakunta patta" can be construed to mean that the said land contains a tank/water body?*

- (d) *To what Town Survey Numbers is land in Sy.No.563/1 of Amberpet village correlated in the Town Survey Land Records?*
- (e) *Whether Syed Azam and his family members including petitioners' mother filed declarations under the Urban Land Ceiling and Regulation Act, 1976 in respect of land in Sy.No.563/1?*
- (f) *Whether the Special Officer and Competent authority under the said Act took actual physical possession of the land in Sy.No.563/1 from Syed Azam and his family members or not?*
- (g) *Did the respondents acquire possession of land in Sy.No.563/1 by any valid and legal means to enable them to handover the same to the Greater Hyderabad Municipal Corporation?*
- (h) *If the land in Sy.No.563/1 is private land, even if there is a water body in it, would it, on that count, become Government land and can the petitioners' possession be interfered with by respondents?*
- (i) *What is the effect of Section 24 of the A.P. (Telangana Area) Land Revenue Act, 1317 fasli?*
- (j) *What is the effect of dismissal of W.P.No.18235 of 2012 filed by petitioners on 26-06-2015? and*
- (k) *To what relief?*

THE CONSIDERATION BY THE COURT

Point (a):

27. The prayer in this Writ Petition is “to declare the action of respondents in seeking to interfere with the possession of petitioners in respect of land admeasuring

988.49 sq.mtrs., 983.70 sq.mtrs., and 1025.98 sq.mtrs in survey No.563/1 of Bagh Amberpet, Hyderabad as illegal and without jurisdiction, and to pass such other order or orders as this Court deems fit and proper.” No doubt this discloses only a declaratory prayer and not a specific consequent prayer.

28. In **Justice S.K. Ray v. State of Orissa**^[1], the Supreme Court has held that a Writ Petition, which is filed under Article 226 of the Constitution, sets out the facts and the claims arising thereto, that maybe, in a given case, the reliefs set forth may not clearly set out the reliefs arising out of the facts and circumstances of the case, but, the courts always have the power to mould the reliefs and grant the same.

29. In **Rajesh Kumar v. State of Bihar**^[2], this was reiterated in the following manner by the Supreme Court:

“There is, in our view, no merit in that contention of Mr Rao. The reasons are not far to seek. It is true that the writ petitioners had not impleaded the selected candidates as party-respondents to the case. But it is wholly incorrect to say that the relief prayed for by the petitioners could not be granted to them simply because there was no prayer for the same. The writ petitioners, it is evident, on a plain reading of the writ petition questioned not only the process of evaluation of the answer scripts by the Commission but specifically averred that the “model answer key” which formed the basis for such evaluation was erroneous. One of the questions that, therefore, fell for consideration by the High Court directly was whether the “model answer key” was correct. The High Court had aptly referred that question to experts in the field who, as already noticed above, found

the “model answer key” to be erroneous in regard to as many as 45 questions out of a total of 100 questions contained in ‘A’ series question paper. Other errors were also found to which we have referred earlier. If the key which was used for evaluating the answer sheets was itself defective the result prepared on the basis of the same could be no different. The Division Bench of the High Court was, therefore, perfectly justified in holding that the result of the examination insofar as the same pertained to ‘A’ series question paper was vitiated. This was bound to affect the result of the entire examination qua every candidate whether or not he was a party to the proceedings. It also goes without saying that if the result was vitiated by the application of a wrong key, any appointment made on the basis thereof would also be rendered unsustainable. The High Court was, in that view, entitled to mould the relief prayed for in the writ petition and issue directions considered necessary not only to maintain the purity of the selection process but also to ensure that no candidate earned an undeserved advantage over others by application of an erroneous key. (emphasis supplied)

30. Similar view was taken in **M. Sudakar v. V.**

Manoharan^[3] where the Court declared:

“The power to mould relief is always available to the court possessed with the power to issue high prerogative writs. In order to do complete justice it can mould the relief, depending upon the facts and circumstances of the case. In the facts of a given case a writ petitioner may not be entitled to the specific relief claimed by him but this itself will not preclude the writ court to grant such other relief which he is otherwise entitled.”

31. In the present case, merely because the consequential relief is not specifically mentioned and the first part of the prayer mentions the declaratory relief only, the Writ petition cannot be rejected. This Court, if convinced about the merits of claim of petitioners, is

entitled to mould the relief in the facts and circumstances of the case and grant consequent relief also. In any event, since the existing prayer also contains words “*and to pass such other order or orders as this Court deems fit and proper*”, the Court can grant appropriate consequential relief, if it desires.

32. Therefore, this point is answered against the respondents and in favor of petitioners.

Point (b) :

33. The petitioners claim to be owners of 988.49 sq. m., 983.70 sq.m., and 1025.98 sq. m., which falls in Sy.No.563/1 of Bagh Amberpet, Hyderabad. Petitioners claim that this land was gifted to them on 21-01-2000 by their mother Smt.Yousufunnissa Begum.

34. The 3rd respondent in para 4 of his counter states that as per pahani of 1962, the land of Ac.9.19 gts in Sy.No.563/1 is recorded as “Errakunta” (water body). Photocopy of the pahani of 1962 filed by 3rd respondent however shows that in column 2 thereof under the figures 563/1, though it is written as “Errakunta”, **below the said words the word “patta” is also written.** For reasons best known to 3rd respondent, he deliberately omitted mention of the word “patta” in his counter-affidavit. He also did not mention that in column 11, the name of Venkat Reddy and others is mentioned as pattadar.

35. Pahani for 1974-75 filed by 3rd respondent for land in Sy.No.563/1 mentions possession of Syed Azam of Ac.5.29 gts. and that of B.Venkat Reddy and others of Ac.3.30 gts. Pahani for 1980-81 filed by 3rd respondent for land in Sy.No.563/1 also mentions in the khatadar (column 11) as “Syed Azam” and in column 16 that he is in possession of Ac.5.29 gts. and B.Venkat Reddy and others are in possession of Ac.3.30 gts. No reference is made in the counter-affidavit of 3rd respondent to the pahanis of 1974-75 and 1980-81.

36. Along with the counter-affidavit of 4th respondent, pahanis for 1967-68 and 1972-73 were filed, which also show the word “patta” below the word “Errakunta” in column No.2 in relation to Sy.No.563/1. Pahani for 1967-68 shows in Column No.11, the name of the account holder as “B.Venkat Reddy”, nature of possession as “pattadar” and name of the person actually cultivating as “Syed Azam”. Pahani for 1972-73 also shows in Column No.11, the name of the account holder as “Syed Azam and others”, nature of possession as “as shown in Sy.No.2/1” and name of the person actually cultivating as “Syed Azam”.

37. No explanation is forthcoming from the Special Government Pleader attached to Office of the Advocate General appearing for respondent Nos.1 to 4 about the fact that the Revenue records do not show any water

body in Sy.No.563/1 nor do they show it as Government land, and in fact show that it is patta land in the cultivation of Syed Azam.

38. The petitioners filed copy of *Sethwar* of Amberpet Village prepared in 1352 Fasli, true copy of which was issued on 13.11.2008 by the Inspector, Survey and Land Records, Hyderabad District, in respect of the land in Survey No.563 / 1. It shows that extent Ac.9.19 guntas exists in Survey No.563 /1, and one Bolepally Venkat Reddy was shown as account holder. This document is not disputed by respondents. It does not show land in question is Government land nor does it indicate existence of a water tank or water body therein. It indicates that the land is patta land.

39. In **State of Andhra Pradesh v. Pramila Modi**^[4], this Court held that entries in *Sethwar* prepared and maintained under the provisions of the A.P. (Telangana) Land Revenue Act, 1317 Fasli cannot be equated with mere revenue entries for purpose of collection of revenue and that the entry therein recognizing a person as “*pattadar*” cannot be treated as a mere entry in ordinary revenue record and *patta* itself is evidence of title. It held that it indicates the right, title of the pattadar mentioned therein

40. Thus there is no basis for the plea of respondents that there was a water body since time immemorial in

Survey No.563 / 1 or that it is Government land, since the Revenue Records do not support this stand of respondents. It is clear that it is *patta* land i.e., private land.

41. The 1st respondent refers to Kandem Land Register and states that in Column 23 thereof, which is meant for describing the field status, this land is shown as '*Batukamma Cheruvu*' and contends that even though land in Sy.No.563/1 is shown in the revenue records in the name of private persons, since there is proof that there is a water body in it since time immemorial and since local residents want it to be protected from encroachment, it was handed over to the G.H.M.C. for protection. He refers to letter dt.16-12-2012 of the G.H.M.C. addressed to 3rd respondent wherein it is stated that, as per the Master Plan sanctioned vide G.O.Ms.No.363 dt.21-08-2010, the land in Sy.No.563/1 is earmarked as Water Body and a letter dt.17-09-2012 addressed by 1st respondent to 4th respondent and Commissioner, H.M.D.A. seeking conversion of extent of Ac.6.05 gts in Sy.No.563/1 to recreational/conservation use from "residential use zone" mentioned in the Master Plan of H.M.D.A. According to him, the land claimed by petitioners falls in the vacant portion of Sy.No.563/1 admeasuring Ac.5.31 gts, that it is a low lying area and during rainy season it gets inundated by water, and therefore the petitioners are not in possession of the same.

42. Reliance by respondents on Kadam Land Register which allegedly showed land in T.S.No.71/1 as Cheruvu, cannot be accepted. What is the evidentiary value of the said Register in the light of the recitals in the Sethwar which is considered to be more authentic as per the decision in **Pramila Modi** (4 supra), has not been explained by the respondents.

43. This point is accordingly answered holding that land in Sy.No.563/1 is patta land, and not Government land, that it is in occupation of Syed Azam and others and it does not disclose that since times immemorial, there was a water body therein as is alleged by respondents.

Point (c) :

44. The Special Government Pleader however insisted that the word “Errakunta” means water body which is popularly known as “Batukamma Kunta” locally and that this is the specific plea in the counter filed by 1st respondent, 3rd respondent and 4th respondent.

45. This contention cannot be accepted for the reason that the word “Errakunta” is followed by the word “patta” in column No.2 in all the above referred pahanis. It is not open to respondents to simply rely on the first part mentioning “Errakunta” and ignore the word “patta” and the other recitals in column No.11, 12 and 16 of the above pahanis. In my considered opinion, the word “Errakunta”

is just a description to the land like “Nallakunta”, a busy residential locality in Hyderabad city, and there is no water body therein since time immemorial as is alleged in the counter-affidavits of respondents.

Point (d) :

46. According to the extract of Town Survey Land Register filed by petitioners along with their reply affidavit dt.14.10.2012, the land in Sy.No.563/1 co-relates to T.S.No.71/1, Ward No.163, Block-A of Amberpet and is shown as the property of Pingali Venkatarami Reddy and others. According to it, land in 564/1, 578/7 and 563/2 co-relate to T.S.No.71/2 and is described as ‘*Batukamma Cheruvu*’. This document is not disputed by respondents.

47. The respondent Nos.1, 3 and 4 however contend that the land in Sy.No.563/1 co-relates to T.S.No.71/1 and 70/2, Block-A, Ward No.163 of Amberpet Village.

48. The 1st respondent states in para-7 that the T.S.Nos.70/2 and 71/1 are recorded as land of Syed Azam (the brother of Smt.Yousufunnissa Begum) in Column 10 and in Column 20 of the T.S.L.R. The respondent nos.3 and 4 agree with this and 3rd respondent also states that it is recorded as patta land of extent 24,532 Sq.Mts.

49. So it can safely be taken that land in Sy.No.563/1 correlates to T.S.No.70/2 and 71/1 in the Town Survey

land register. Point (d) is answered accordingly.

Points (e), (f) and (g)

50. While the petitioners assert that they are in possession of the lands claimed by them, the respondent nos.1, 3 and 4 deny the same.

51. None of the pahanies relied upon by respondent nos.1, 3 and 4 shows that the land in Survey No.563 / 1 is in possession of the State or any Department of the State.

52. In the counter-affidavits filed by respondents it is not disputed that petitioners' mother Smt. Yousufunnisa Begum is the sister of Syed Azam and that Smt. Yousufunnisa Begum and Syed Azam are children of Syed Aziz who was the owner of Acs.299.11 guntas situated at Bagh Amberpet having purchased the same under registered sale deed [Document No.49/1946, dt.7th Azur 1356 Fasli].

53. The 3rd respondent admits that Smt. Yousufunnisa Begum along with other legal heirs of Syed Aziz including Syed Azam filed declaration under the provisions of the Urban Land (Ceiling and Regulation) Act, 1976; that it was determined under Section 8 (4) of the Act that the family members of late Syed Aziz were holding excess urban land of 86,422 Sq.Mts.; that proceedings under Section 10 (5) of the Act were issued on 05.02.2004; they were questioned in W.P.No.3499 of

2004 by Syed Azam and in WPMP.No.4601/2004 in W.P.No.3499 of 2004, this Court directed maintenance of *status quo*. So it has to be held on point(e) that declaration under the Urban Land (Ceiling and Regulation) Act, 1976 was filed by petitioners' mother Smt. Yousufunnisa Begum and Syed Azam, her brother along with other family members.

54. Thereafter, the Urban Land (Ceiling and Regulation) Repeal Act, 1999 was adopted by the State Legislature and came into effect in the erstwhile State of Andhra Pradesh w.e.f. 27.03.2008.

55. Sec.3 of the Repeal Act states:

“3. Savings.—(1) *The repeal of the principal Act shall not affect*

—
(a) the vesting of any vacant land under sub-section (3) of Section 10, possession of which has been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority;

(b) the validity of any order granting exemption under sub-section (1) of Section 20 or any action taken thereunder, notwithstanding any judgment of any court to the contrary;

(c) any payment made to the State Government as a condition for granting exemption under sub-section (1) of Section 20.

(2) Where—

(a) any land is deemed to have vested in the State Government under sub-section (3) of Section 10 of the principal Act but possession of which has not been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority; and

*(b) any amount has been paid by the State Government with respect to such land,
then such land shall not be restored unless the amount paid, if any, has been refunded to the State Government.”*

56. Since the proceedings under the Urban Land (Ceiling and Regulation) Act, 1976 did not reach upto Section 10 (6) stage, the proceedings stood abated. It is also not disputed that on 09.07.2012, the said Writ Petition came to be dismissed as infructuous having regard to the provisions of the Urban Land (Ceiling and Regulation) Repeal Act, 1999.

57. The petitioners have filed proceedings issued by Office of Special Officer and Competent Authority, Urban Land Ceiling, Hyderabad in L.R.No.A4/RTA/3982/2010 dt.15.11.2010 stating as under :

“Sri Syed Azam and (9) others filed statement in Form-I U/s.6(1) of the Act declaring Sy.No.4, 8, 3, 5, 6, 286, 287, 288, 461/1, 78/1, 78 30, 368/1, 368/3, 29/1, 22/2, 21/2, 19, 522, 495, 496, 487, 520, 22/3, 439, 528/2, 483 (old Nos.) corresponding to New Sy.No.563/1, 564, 565, 566, 567/1, 568, 569, 570/1, 611, 613 and 615 situated at Bagh Amberpet, Amberpet Village and Mandal, Hyderabad District. The land in Sy.No.563/1 at Amberpet Vg was not taken possession under U.L. (C &R) Act, because of status quo granted by the Hon’ble High Court in W.P.M.P.No.4601/2004 in W.P.No.3499/2004 was in force until repeal of the UL (C&R) Act.” (emphasis supplied)

58. But strangely in para.14 of its counter, the 4th respondent states that possession was taken under the provisions of the Urban Land (Ceiling and Regulation) Act,

1976 without placing any material in support of the said plea. No alleged date of taking of possession is mentioned by it in order to know whether such alleged possession was taken before the repeal of the same w.e.f. 27.03.2008 by the Urban Land Ceiling Repeal Act, 1999 or not. This statement in para.14 of the counter of 1st respondent cannot be accepted as correct in the light of the proceedings of the Special Officer and Competent Authority, Urban Land Ceiling, Hyderabad in Lr.No.A4/R.T.I./3982/2010 stating clearly that his Office did not take possession of the vacant land in Survey No.563/1 for which declaration was filed by Syed Azam and nine others including Smt.Yousufunnisa Begum, mother of petitioners.

59. In **State of Uttar Pradesh v. Hari Ram**^[5], the Supreme Court held that sub-Section (3) of Section 10 takes in only *de jure* possession and not *de facto* possession, and if the land owner is not surrendering possession voluntarily under sub-Section (3) of Section 10, or surrendering or delivering possession after notice, under Section 10 (5) or dispossessed by use of force, it cannot be said that the State Government has taken possession of the vacant land. The Court held that mere vesting of land under sub-Section (3) of Section 10 would not confer any right on the State Government to have *de facto* possession of the vacant land unless there has

been a voluntary surrender of the vacant land before the coming into force of the Urban Land (Ceiling and Regulation) Repeal Act, 1999. It held that the State has to establish that there has been a voluntary surrender of vacant land or surrender and delivery of peaceful possession under sub-Section (5) of Section 10 or forceful dispossession under sub-Section (6) of Section 10. On failure to establish any of those situations, the land owner or holder can claim the benefit of Section 4 of the Repeal Act.

60. In the present case, therefore, there is admittedly no taking over of possession by the Special Officer during the subsistence of the said Act and before its repeal, and there is no other material placed by respondents as to how they got possession of the land of the petitioners in Sy.No.563/1 of Bagh Amberpet. So point (f) is answered in favor of petitioners.

61. The 3rd respondent however states that the Urban Land Ceiling Act, 1976 has been repealed, that on ground, the land claimed by petitioners is vacant land and since it is declared under Section 10 (3) of the Act, it is protected by the Municipal Corporation of Hyderabad since 1999. He does not state how the Municipal Corporation of Hyderabad got possession of the land and does not place any material in support of the said assertion. Unless somebody has taken possession in a

manner known to law from petitioners under valid authority, title and possession are presumed to be with petitioners, since admittedly the land is vacant land even now.

62. The 1st respondent states merely that petitioners cannot take advantage of proceedings under the Urban Land Ceiling Act, 1976.

63. The proceedings No.H2/456/08 and 17/06 dt.24.03.2011 of the Special Officer and Competent Authority, U.L.C., Hyderabad specifically referred to the request of petitioner nos.1 and 2 with regard to their applications under G.O.Ms.No.456 Revenue (U.C.I) Department dt.29.07.2002 seeking allotment / exemption of surplus lands and recorded that possession was not taken under the Urban Land Ceiling and Regulation Act, 1976, that the land claimed by them is not attracted under the said Act and accorded permission for refund of the amounts paid by them. This document is not denied by respondent nos.1, 3 and 4.

64. The Special Government Pleader however points out that in the proceedings No.H2/456/08 and 17/06 dt.24.03.2011 of the Special Officer and Competent Authority, U.L.C., Hyderabad, it is mentioned that the land claimed by petitioner nos.1 and 2 of 988.49 Sq.Mts. and 983.70 Sq.Mts. in Survey No.563 / 1 falls in T.S.No.70 / 1, Ward No.163, Block A of Amberpet Village and Mandal,

that the land in Survey No.563 / 1 in fact falls in T.S.No.71 / 1 and not T.S.No.70 / 1, and therefore petitioners cannot rely on it since T.S.No.70 / 1 is located far away and correlates to old Survey No.565 / 1.

65. I am of the opinion that the said proceeding refers to the land claimed by petitioner nos.1 and 2 in Survey No.563 / 1. Merely because there is a typographical error in mentioning T.S.No.70 / 1 instead of T.S.No.71 / 1, the respondents cannot take advantage of it and seek to defeat the claim of petitioners.

66. The respondents have also not denied the fact that in respect of 3rd petitioner, the 4th respondent had issued G.O.Ms.No.605 Revenue (U.C.IV) Department, dt.15.06.2009 exempting 1025.98 Sq.Mts. in Survey No.563 / 1 of Bagh Amberpet from the provisions of the Urban Land (Ceiling and Regulation) Act, 1976, and thereafter demarcated and fixed the boundaries vide panchanama dt.13.10.2009.

67. Strangely, the 4th respondent states that this G.O. was issued in the absence of information that the land sought for regularization is part of Bathukamma Kunta (water body) and that 1st respondent addressed a detailed letter dt.17.09.2012 to 4th respondent recommending for cancellation of the said G.O. This cannot be

countenanced since the said G.O. refers to correspondence with the Special Officer, Urban Land Ceiling and also states that it was issued after careful examination of the proposals.

68. Therefore, I am of the considered opinion that the land claimed by petitioners continued to be in their possession, that they were never dispossessed by any of the respondents, that there is no water body in the land claimed by them since time immemorial, and their title to the said land was never extinguished in a manner known to law by the respondents. Point (g) is answered accordingly.

Point (h):

69. The next question would be *“whether presence of water body in the land claimed by petitioners disentitles them to claim any right, title or interest in the said land and vests the said land in the respondents ?”*

70. The 1st respondent states that residents of surrounding colonies celebrate *Bathukamma* festival in the water collected in the land in Sy.No.563/1 claimed by petitioners, that in proceedings Letter No.9/TPS/C9/CZ/GHMC/2012, dt.16.10.2012, the Greater Hyderabad Municipal Corporation had informed the 3rd respondent that as per Master plan sanctioned vide G.O.Ms.No.363 M.A. dt.21.08.2010, the land in Survey

No.563 / 1 is earmarked as 'water body' and that he should protect the same. The respondents also refer to G.O.Ms.No.120 Irrigation and C.A.D. (MI II) Department dt.02.12.2010 and contend that Government ordered transfer of 399 tanks, lakes, water bodies falling in erstwhile Hyderabad Urban Development Authority area including the Bathukamma Kunta in Amberpet Village from Irrigation and Command Area Development Department to Municipal Administration and Urban Development Department so that the latter would control and manage the same.

71. The petitioners however contend that as per *Sethwar* of Amberpet Village prepared in 1352 Fasli, true copy of which was issued on 13.11.2008 by the Inspector, Survey and Land Records, Hyderabad District, in respect of the land in Survey No.563 / 1 of extent Ac.9.19 guntas, one Bolepally Venkat Reddy was shown as account holder. They also filed TSLR Register of Amberpet Village which showed that Survey No. 563 / 1 was correlated to T.S.No.71 and showed it to be in the enjoyment of Syed Azam and others. This document also showed that Bathukamma Cheruvu is in T.S.No.71/2 correlated to Old Survey Nos.578/7 and 563/2. According to petitioners, this clearly shows that in Survey No.563/1, land in which is claimed by petitioners, there is no Bathukamma Cheruvu and the said Cheruvu (tank) is located in Survey No.563 / 2 and 578 / 7 correlated to T.S.No.71 / 2. These

documents are not disputed by respondents.

72. Therefore, it is clear that there is no water tank as claimed by respondents in Survey No.563/1 correlated to T.S.No.71/1 and T.S.No.70/2 at any point of time, and such water tank by name Bathukamma Cheruvu is in Survey No.563/2 and in 578/7 correlated to T.S.No.71/2.

73. Reference is also made to the decision of the Supreme Court in **Hinch Lal Tiwari v. Kamala Devi and others** ^[6] by the learned Government Pleader wherein the Supreme Court opined that tanks, ponds require protection in order to maintain delicate ecological balance and even if they fall in disuse, they should be developed, protected and maintained. Since the Bathukamma Cheruvu tank is not in Sy.No.563/1 as alleged by respondents as held supra, this decision cannot help the respondents.

74. Now I will deal with contention of respondents that there is a water body in the land claimed by petitioners as per the master Plan/Zonal Development Plan notified under the A.P. Urban Areas (Development) Act, 1975, and that no permission for construction of a building can be allowed in such property.

75. This plea is raised in para.15 of the counter filed by 4th respondent wherein it is stated that the land in Survey No.563/1 of Bagh Amberpet is a water tank as per notified

Zonal Development Plan and the surrounding place was earmarked as park therein. In para.16 it is stated that construction of building is not permissible in tank / kunta under the zoning regulation. In a letter dt.08.11.2004 addressed by the then Commissioner of Hyderabad Municipal Corporation to the 1st respondent also it is stated that the notified Zonal Development Plan, Zone IV shows that a major portion of the land covered in Survey No.563/1 is earmarked as a park and that the said Corporation has proposed to develop a water body along with park therein.

76. The said Zonal Development Plan has not been filed in the court by any of the respondents.

77. However it cannot be disputed that the said Zonal Development Plan would have been issued in exercise of the powers conferred under Sec.7 of A.P. Urban Areas (Development) Act, 1975 by the erstwhile Govt. of Andhra Pradesh.

78. The said statute was enacted by the then Andhra Pradesh State Legislature for constitution of Urban Development Authorities including the Hyderabad Urban Development Authority for the purposes of planning, coordination, supervising/promoting and securing the planned development of the Hyderabad Development area as notified under Sec. 13(1) of the Act. The said Legislation therefore is in the nature of the regulatory

statute which restricts the right of an owner of property to use and develop his land in larger public interest. It therefore requires strict construction and such restrictions must be reasonable restrictions. In any event it is not an expropriatory statute.

79. The two competing interests i.e. the interest of the State vis-à-vis the general public to have better living conditions and the right of property of an individual, though not a fundamental right, but which is still a constitutional and human right, need to be balanced. Therefore enforcement of the provisions of the said Act including the regulations framed under Section 59 of the said Act should be done in such a way that a citizen is not deprived of his property save in accordance with law. If a zoning classification imposes unreasonable restrictions, it cannot be sustained.

80. In **Pt. Chet Ram Vashist v. Municipal Corpn. Of Delhi**^[7], the Supreme Court had to consider whether the Municipal Corporation of Delhi, in the absence of any provision in the Delhi Municipal Corporation Act, 1957, was entitled to sanction a plan for building activities by imposing a condition that the open space for parks and schools be transferred to it free of cost. Section 313 of the said Act entitled the Standing Committee of the said Corporation to accord sanction to a layout plan on such conditions as it may think fit. The Supreme Court held that

the expression such condition has to be understood so as to advance the objective of the provision and the purpose for which it has been enacted. It held that the Corporation has been given the right to examine that the layout plan is not contrary to any provision of the Act or the Rules framed by it and therefore it may direct a person seeking a layout plan to leave certain open space, or to adhere to the length and width of the rooms of particular dimensions, or it may direct him to provide certain amenities and facilities to those who purchase land or buildings in its colony. It held that such power cannot be construed to mean that in exercise of placing restriction or imposing conditions before sanctioning a layout plan, it can also claim that it shall be sanctioned only if the owner surrenders a portion of the land and transfers it in favour of the Corporation free of cost. It held that this would be contrary to the language used in the Section and violative of civil rights which vest in every owner to hold his land and transfer it in accordance with law. It therefore held that the resolution passed by the Corporation directing the appellant to transfer the space reserved for tube-wells, school and park in its favour free of cost was depriving the owner of its property and vesting it in the Corporation against the law. It rejected the finding of the High Court that such a condition did not amount to transfer of ownership but it was only a transfer of the right of management. It observed:

“6. Reserving any site for any street, open space, park, school etc. in a layout plan is normally a public purpose as it is inherent in such reservation that it shall be used by the public in general. The effect of such reservation is that the owner ceases to be a legal owner of the land in dispute and he holds the land for the benefit of the society or the public in general. It may result in creating an obligation in nature of trust and may preclude the owner from transferring or selling his interest in it. It may be true as held by the High Court that the interest which is left in the owner is a residuary interest which may be nothing more than a right to hold this land in trust for the specific purpose specified by the coloniser in the sanctioned layout plan. But the question is, does it entitle the Corporation to claim that the land so specified should be transferred to the authority free of cost. That is not made out from any provision in the Act or on any principle of law. The Corporation by virtue of the land specified as open space may get a right as a custody an of public interest to manage it in the interest of the society in general. But the right to manage as a local body is not the same thing as to claim transfer of the property to itself. The effect of transfer of the property is that the transferor ceases to be owner of it and the ownership stands transferred to the person in whose favour it is transferred. The resolution of the Committee to transfer land in the colony for park and school was an order for transfer without there being any sanction for the same in law.

81. This decision was followed in **Chairman, Indore Vikas Pradhikaran Vs. Pure Industrial Coke & Chemicals Ltd. and others**^[8] and the latter judgment was followed in **M. Naga Venkata Lakshmi v. Visakhapatnam Municipal Corporation and another**^[9].

82. In **M. Naga Venkata Lakshmi** (9 supra), the appellant before the Supreme Court had purchased a plot in a layout in Visakhapatnam under a sale deed dt.08-07-

1982. At that time the said layout was not an approved layout. The competent authority to approve a layout plan was the Visakhapatnam Urban Development Authority (for short VUDA) constituted under the Andhra Pradesh Urban Areas (Development) Act, 1975. A revised plan was prepared in 1989 changing the name of the locality and regularizing the plots of others in the area but not the appellant's plot. The appellant's representation to VUDA was not responded to and the appellant's application for sanction of a building plan was rejected by the Visakhapatnam Municipal Corporation on the ground that the proposed constructions fell in a reserved open space of the layout as per the revised plan of 1989. Her Writ Petition was dismissed by the High Court and was confirmed in the Writ Appeal. She then approached the Supreme Court. The Supreme Court held that this action of the VUDA and the Visakhapatnam Municipal Corporation amounts to depriving the appellant of a valuable right of property without payment of compensation. It observed that the appellant should have been informed that her land had been earmarked for providing an open space to the other owners of the layout. It therefore found fault with the orders passed by the High Court, set aside the said orders and remitted the matter back to the Single Judge for fresh consideration.

83. In 2008, the Andhra Pradesh State Legislature enacted the Hyderabad Metropolitan Development

Authority Act, 2008 [for short, 'HMDA Act, 2008'] constituting the Hyderabad Metropolitan Development Authority.

84. Section 54 of the HMDA Act, 2008 provides that any master plan prepared under the provisions of the Andhra Pradesh Urban Areas (Development) Act, 1975 already prepared and published by the Hyderabad Urban Development Authority concerned, and sanctioned by the Government before the commencement of this Act shall continue to be in force unless prepared afresh and superseded or revised under this Act. Thus the Zonal Development plan notified continues to be in force.

85. Section 32 of the HMDA Act, 2008 contains provisions for acquisition of land of a citizen required, reserved or designated in the Master Plan for a public purpose by the Government on request by the Metropolitan Development Authority or the local authority or other authority.

86. Section 32 of the HMDA Act, 2008 states as follows:

“Section 32. Power to acquire land under the Land Acquisition Act, 1984:-

Any land required, reserved or designated in the Metropolitan Development Plan and Investment Plan or a Development Scheme or a Land Pooling Layout Scheme shall be deemed to be land needed for a public purpose within the meaning of the Land Acquisition Act, 1894 (Central Act 1 of 1894) and may be acquired by the Government on request by the Metropolitan Development

Authority or local authority or other authority.”

87. In my considered opinion, if the respondents intend to compel the petitioners to let go of the land in Sy.No.563/1 in Bagh Amberpet claimed by them without putting it to any use or making construction therein, and allow it to be used as a water tank, they have no option but to acquire the same under Section 18 of the said Act read with Section 32 of the Hyderabad Metropolitan Development Authority Act, 2008 in accordance with the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and pay compensation to petitioners for the said land. If not, it would be unjust and the petitioner would be deprived of valuable property without compensation and would amount to legitimising the arbitrary and expropriatory action of respondents contrary to the provisions of the Act and the law declared by the Supreme Court in the above decisions.

88. So the respondents shall not interfere with the possession and enjoyment of petitioners of the land claimed by them in Sy.No.563/1, Bagh Amberpet in any manner unless and until the respondents initiate proceedings under Section 32 of the HMDA Act, 2008 in accordance with the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 for acquisition of the lands of petitioners and pay compensation to the

petitioner.

89. Point (h) is answered accordingly in favor of the petitioners and against the respondents.

Point (i):

90. The Government Pleader also referred to Section 24 of the A.P. (Telangana Area) Land Revenue Act, 1317 Fasli which provides that tanks and ponds wherever situated are property of Government.

91. The said provision states:

*“Section 24. **All lands etc, are property of Government** : All public roads, lanes, paths, bridges, ditches, dikes, rivers, streams, tanks, ponds, canals, lakes, and flowing water and all lands, wherever situated, together with all rights appertaining thereto are the property of the Government excepting :*

(a) those belonging to persons or class legally capable of holding property and to the extent so far as their such rights are established;

(b) those in respect of which any other order under any law may have been given.

It shall be lawful for the Collector or other officer appointed by the Government for this purpose subject to rules sanctioned by the Government and contained in notification and the order of the Board of Revenue, to dispose of them in his discretion; but the right of way or other right legally vesting in any person or the public shall subsist.”

92. So if the public roads, lanes, tanks, lakes etc belong to persons capable of holding property and their title thereto is established, they do not vest in the

Government. In the present case there is overwhelming material in the form of *Sethwar* and *Pahanis* to conclude that the family of Syed Azam to which the petitioners belong are owners of land in Sy.No.563/1, that there is no tank therein and declarations of their family members including the said land have been accepted by the authorities under the Urban land (Ceiling and Regulation) Act, 1976. Therefore, this provision of law also does not help the respondents. Point (i) is answered accordingly against the respondents and in favor of the petitioners.

Point (j) :

93. Now I will consider the effect of dismissal of W.P.No.18235 of 2012 filed by petitioners on 26-06-2015.

94. The said Writ Petition had been filed by petitioners to declare the inaction of respondents therein in not providing protection to them in respect of their possession of their plots in Sy.No.563/1 of Bagh Amberpet village.

Admittedly, the said Writ petition was dismissed for non prosecution but no decision on merits was rendered. It is settled law that where no decision on merits was rendered, the order dismissing a Writ Petition for default does not operate as *res judicata* and bar a second Writ petition^[10]. So this contention of the respondents has no merit.

Point (k) :

95. For the aforesaid reasons, I hold that the Writ Petition is not defective on the ground that there is no specific consequential prayer made by the petitioners; the Sethwar and Pahanies filed by both parties indicate that the land in Survey No.563 / 1 of Bagh Amberpet Village is patta land, that it is not Government land, and there is no water tank from time immemorial therein; merely because the land in Survey No.563/1 is described as "*Errakunta Patta*", it cannot be construed that there is a water body in it and the term "*Errakunta*" is merely a local name given to the patta land and nothing more; the land in Survey No.563 / 1 is correlated to T.S.No.70 / 2 and 71 / 1 in the Town Survey Land Records; the mother of petitioners and other family members including Syed Azam declared land in Survey No.563 / 1 under the Urban Land Ceiling and Regulation Act, 1976; physical possession of land in Survey No.563 / 1 was not taken by the Special Officer and Competent Authority, Urban Land Ceiling, Hyderabad from Syed Azam and his family members in view of the *status quo* order granted in WPMP.No.4601 of 2004 in WP.No.3499 of 2004 as admitted in the proceedings in L.R.No.A4/RTA/3982/2010 dt.15.11.2010 issued by Office of Special Officer and Competent Authority, Urban Land Ceiling, Hyderabad; the plea of the respondents that possession of the land in Survey NO.563 / 1 was taken from the petitioners is not supported by any material evidence; consequent on the repeal of the Urban Land

Ceiling and Regulation Act, 1976 by the Urban Land Ceiling and Regulation Repeal Act, 1999 and its adoption in the State of Andhra Pradesh from 27.03.2008, all proceedings under the said Act abated; this was accepted by 4th respondent in G.O.Ms.No.605 Revenue (UC.IV) Department dt.15.06.2009 issued in respect of the 3rd petitioner exempting his land from the operation of the Act and in proceedings No.H2/456/08 and 17/06 dt.24.03.2011 of the Special Officer and Competent Authority in regard to petitioner nos.1 and 2; assuming that there is a water body in the land in Survey No.563/1, the land therein does not become Government land and vest in it under Section 24 of the A.P. (Telagana Area) Land Revenue Act, 1317 Fasli.

96. Accordingly, the Writ Petition is allowed and the action of the respondents in seeking to interfere with the possession of the petitioners in respect of land admeasuring 988.49 Sq.Mts, 983.70 Sq.Mts., 1025.98 Sq.Mts. covered by Survey No.563 / 1 situated at Bagh Amberpet, Hyderabad as illegal, arbitrary and violative of Article 14 and 300-A of the Constitution of India; and if the respondents intend the said land to be used as a water body for the benefit of local people to perform Bathukamma festival, they shall acquire the same under Section 32 of the Hyderabad Metropolitan Development Authority Act, 2008 in accordance with the provisions of the Right to Fair Compensation and Transparency in Land

Acquisition, Rehabilitation and Resettlement Act, 2013 and pay compensation to the petitioners. Mere mention of the Bathukamma cheruvu either in the master plan / zonal development plan or in G.O.Ms.No.120 Irrigation and C.A.D. (MI.II) Department, dt.02.12.2010 does not in any way abridge or take away the right, title or interest of the petitioners in the land in Survey No.563 / 1 claimed by them and they continue to be owners thereof and their possession of the same shall not be interfered with by the respondents in any manner. Consequently, the 4th respondent is directed to have the compound wall, if any, erected in the land in Survey No.563/1 by the Greater Hyderabad Municipal Corporation or Hyderabad Metropolitan Development Authority forthwith dismantled and the petitioners shall be allowed to enjoy the land claimed by them in Survey No.563 / 1 without any interruption or interference by any of the respondents. The 4th respondent shall also pay costs of Rs.10,000/- (Rupees Ten Thousand only) to the petitioners.

97. As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S. RAMACHANDRA RAO

Date : 17.08.2016

Note :-

L.R. Copy to be marked : Yes

B/o.

Gra/vsv/ndr

- [\[1\]](#) (2003) 4 SCC 21
- [\[2\]](#) (2013) 4 SCC 690
- [\[3\]](#) (2011) 1 SCC 484
- [\[4\]](#) (2005) 3 ALD 105 (DB)
- [\[5\]](#) (2013) 4 SCC 280
- [\[6\]](#) (2001) 6 SCC 496
- [\[7\]](#) (1995) 1 SCC 47
- [\[8\]](#) (2007) 8 SCC 705
- [\[9\]](#) (2007) 8 SCC 748
- [\[10\]](#) State of U.P. v Jagdish Sharan Agarwal ... (2009) 1 SCC 689;