

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.Nos.766 and 8928 of 2011 and 9664 of 2017

COMMON ORDER:

In all these Writ petitions, the subject land is one and the same and the parties are common. So they are being disposed off by this Common order.

W.P.No.766 of 2011

2. In W.P.No.766 of 2011, the validity of exercise of power of the No Objection Certificate (NOC) Committee constituted by the then State Government of Andhra Pradesh vide G.O.Ms.No.1133 Revenue (Assn.III) Department dt.13-06-2005 as modified by G.O.Ms.No.2111 Revenue (Assn.III) Department dt.05-12-2005 and G.O.Ms.No.93 Revenue (Assn.III) Department dt.28-01-2006, is in question.

3. The petitioner in W.P.No.766 of 2011 claims to be the owner of 5262 sq yds forming part of Sy. No.284/6 corresponding to T.S.No.15, Block-B, Ward No.21, Nanal Nagar, Gudimalkapur, Hyderabad. This land was originally evacuee property. It is part of 10,525 sq yds purchased by one Smt.Prem Malhotra in an auction conducted by the Managing Officer, Regional Settlement Commission, Bombay to whom a certificate dt.26.9.1961 was issued under Sec.20 of the Displaced Persons (Compensation and rehabilitation) Act,1954. This land was sold by Smt. Prem Malhotra in three bits to three persons by name, P.Varalakshmi, C.Venkatarama

and U.Bangarraju of 4120 sq yds, 4120 sq yds and 2105 sq yds respectively. C.Venkata Raju and U.Bangarraju sold 3157 sq yds and 2105 sq yds respectively to Smt. K.Devi and one Basanth Devi under two separate registered sale deeds Doc. Nos.2540/1965 and Doc. No.2539/1965. The petitioner purchased these two bits totalling 5262 sq yds from Smt. K.Devi and Basanth Devi.

4. Petitioner alleges that respondent Nos.13 to 15 in W.P.No.766 of 2011 started constructing a shed in an extent of 500 sq yds out of the above land claimed by the petitioner; that she came to know, on enquiry that three No Objection Certificates being No.N1/1069/2009, N1/1070/2009 and N1/1071/2009 were issued on 08-12-2009 in favour of respondent Nos.13 to 15 for 1086 sq meters each by the NOC Committee consisting of respondent Nos.6 to 10 on recommendation of respondent Nos.11 and 12. She alleged that in the said proceedings, the respondent Nos.6 to 10 had:

- (i) gone into issue of title to the property;
- (ii) gone into the question whether the land was originally evacuee property or not;
- (iii) claimed to have considered objections filed by the petitioner (which the petitioner never filed);
- (iv) accepted as genuine certain sale deeds produced by respondent Nos.13 to 15 which were fabricated without verifying the same with the concerned Sub Registrar of Assurances; and

(v) accepted the title of respondent Nos.13 to 15 while rejecting the petitioner's title to the land

and on the basis of the proceedings dt.08-12-2009 issued by the respondent Nos.6 to 10, the respondent Nos.13 to 15 grabbed the land of the petitioner.

5. I am not going to decide in these Writ Petitions whether the petitioner has title to the above land or respondent Nos.13 to 15, and I will only consider the legality and propriety of action of respondent Nos.6 to 9, who were members of the NOC Committee, in issuing the impugned endorsements.

THE NOC COMMITTEE's ORIGIN

6. Before going into the said aspect, it is important to consider what G.O.Ms.No.1133 Revenue (Assn.III) Department dt.13-06-2005, G.O.Ms.No.2111 Revenue (Assn.III) Department dt.05-12-2005 and G.O.Ms.No.93 Revenue (Assn.III) Department dt.28-01-2006 deal with.

7. G.O.Ms.No.1133 Revenue (Assn.III) Department dt.13-06-2005 was issued by the State Government of Andhra Pradesh in exercise of its executive power under Article 162 of the Constitution of India for issuance of "No Objection Certificate" for construction of houses and apartments and issue of Town Survey Land Register in

continuation of the then existing system of issuing NOC for building permission by constituting a Committee consisting of (a) Special Chief Secretary (Revenue), (b) Commissioner of Municipal Corporation of Hyderabad, (c) Vice Chairman, Hyderabad Urban Development Authority and (d) Commissioner, Survey, Settlement and Land Records. It was to meet once in 15 days and dispose of all pending cases.

8. This was modified vide G.O.Ms.No.2111 Revenue (Assn.III) Department dt.05-12-2005 by reconstituting the NOC Committee with the (a) District Collector, Hyderabad as Convenor, (b) Commissioner, Municipal Corporation of Hyderabad, (c) Vice Chairman, Urban Development Authority, (d) Dy. Director, Survey, Settlement and Land Records, Hyderabad and (e) Special Officer, Urban Land Ceiling, Hyderabad as members.

9. There was a further modification made by the State Government to the NOC Committee constitution by including the Joint Collector, Hyderabad as Member-Convenor and designating the Collector, Hyderabad as the Chairman of the Committee vide G.O.Ms.No.93 Revenue (Assn.III) Department dt.28-01-2006.

10. It is pertinent to note that no guidelines were laid down by the Government as to how this NOC committee was to exercise its power.

11. It is not in dispute that the NOC Committee, which passed the NOC Endorsements dt.08-12-2009 granting NOCs to respondent Nos.13 to 15 vide proceedings No.N1/1069/2009 to N1/1071/2009, consisted of respondent Nos.6 to 9 of whom respondent No.6/District Collector, Hyderabad was the Chairman, respondent No.7/Joint Collector, Hyderabad was the Member Convenor and respondent No.8/Special Tahsildar, O/o.Special Officer and Competent Authority, ULC and respondent No.9/Senior Draftsman, O/o.Deputy Director, Survey and Land Records, Hyderabad were members.

12. According to the counter-affidavit filed on behalf of respondent Nos.1 to 4 in W.P.No.766 of 2011 by the then Collector, Hyderabad, the above NOC Committee was constituted by the Government to examine any requests for issuance of NOCs to be forwarded to the Greater Hyderabad Municipal Corporation before whom applications seeking permission for construction are made by individuals.

13. According to the 6th respondent in W.P.No.766 of 2011, who was the District Collector, Hyderabad and who was the Chairman of the NOC Committee which issued the endorsements

Nos.N1/1069/2009, N1/1070/2009 and N1/1071/2009 dt.08-12-2009, which are impugned in W.P.No.766 of 2011, consideration of issuance of NOC is only to look into the aspect of the Government interest with respect to any immovable property for which NOC is asked for.

PROVISIONS OF THE GREATER HYDERABAD MUNICIPAL CORPORATION ACT, 1955:

14. Every person who intends to erect a building is required to give to the Commissioner of the Hyderabad Municipal Corporation a notice under Section 428 of the Act of his intention to do so specifying the position of the building intended to be erected, the description of the building, the purpose for which it is intended, its dimensions and the name of the person whom he intends to employ to supervise its erection. Under Section 429 of the Act, the Commissioner may ask him to furnish documents mentioned in clauses (a) to (d) of the said provisions. Clause (a) of Section 429 empowers the Commissioner to ask the applicant to produce copy of title deed of the land duly attested by the Gazetted Officer of the Government together with an Urban Land Ceiling Clearance Certificate or as the case may be an affidavit referred to in Section 388.

15. The Urban Land (Ceiling and Regulation) Act, 1973 was repealed by the Urban Land (Ceiling and Regulation) Repeal Act,

1999 and the said Repeal Act was adopted by the then State Government of Andhra Pradesh vide G.O.Ms.No.615 Revenue (UC-I) Department dt.26-04-2008 w.e.f. 27-03-2008. Thus after this date, there is no question of getting any clearance certificate from the Government that the land is non-surplus Ceiling land under the Act.

16. Bye law No.4 (2) of the Municipal Corporation Building Byelaws, 1981 enjoins every application for building permission to be accompanied by documents in proof of ownership such as attested copy of original sale/lease deed, attested copy of the Revenue Survey Sheet/Municipal Survey Sheet with mutation record number or affidavit or other document acceptable to the Commissioner.

THE DECISION IN HYDERABAD POTTERIES CASE

17. In **Hyderabad Potteries Pvt. Ltd Vs. Collector, Hyderabad¹**, a learned Single Judge of this Court held that the Municipal Commissioner is required to make pragmatic assessment of the material available on record and decide the question of *prima facie* title and lawful possession of the applicant, that applications for grant of permission to build cannot be rejected solely on the basis of Town Survey Land Record entries, and that though the Government of Andhra Pradesh had constituted a Committee to examine and process building plans vide G.O.Ms.No.582 Municipal Administration dt.21-

¹ 2001 (3) ALD 600

05-1993 and recommend to the Commissioner for according building permission, its recommendations were only advisory and any objection raised by a member of the committee is not a ground to reject the application for grant of permission. The Court held that decision to grant permission itself would not confer any title upon the applicant, nor it would take away the rights of the objector to such permission, be it Government or any individual, for asserting their right, title and interest in the land in respect of which permission has been granted and dispute the title in any manner known to law. It held that the Commissioner is not entitled to decide any disputed questions of title or ownership and that all he is required to do is to find out *prima facie* title and lawful possession of the applicant. This decision was approved by order dt.24-12-2001 in W.A.No.1096 of 2001 and in **State of A.P. Vs. Pramila Modi and others²**, it is stated that the decision in **Hyderabad Potteries** (1 supra) was also confirmed in Supreme Court. The said decision has been followed in several cases by this Court.

THE DECISION IN N.KRISHNA MOHAN

18. In **District Collector, Hyderabad and another Vs. N.Krishna Mohan and others³**, a Division Bench of this Court held:

“15. when once the petitioners established their possession and enjoyment of the land in question, the 2nd respondent-MCH should have granted permission in favour of the petitioners for construction of buildings instead of driving them to 1st respondent-Collector to

² 2005 (4) ALD 105 (DB)

³ 2000(4) ALD 126 (DB)

obtain No Objection Certificate. Obtaining of No Objection Certificate arises only when any law presupposes. Mere circular or an executive order informing the petitioners to obtain No Objection Certificate before asking for conversion of land etc., have no legal sanctity, because there is no such statutory provision which compels the MCH to insist a person seeking permission to construct a building to obtain and produce No Objection Certificate from the Collector. The 2nd respondent when directed the petitioners to obtain No Objection Certificate, failed to exercise its power conferred on it. Earlier orders passed by the Director of Settlements, Board of Revenue and also the Commissioner of Survey, Settlement and Land Record should not have been lightly brushed aside by the District Collector. Further he has no appellate powers to comment upon the correctness of the orders passed by the other authorities. He is not a civil Court to give a finding on the title to the property. If he had doubted the petitioners' title to the property, nothing prevented him to initiate proceedings before appropriate forum. The act of the District Collector refusing to issue No Objection Certificate to the petitioners is quite arbitrary and illegal”

19. An appeal against the above judgment filed in S.L.P.No.12103 of 2003 by the District Collector and Commissioner of Survey, Settlement and Land Records before the Supreme Court was dismissed on 18-08-2000⁴.

20. Having regard to the above decisions, any circular or executive order requiring a party to obtain NOC from the Government as a precondition for securing permission for making construction from the Municipal Corporation has no legal sanctity since there is no statutory provision which empowers the Municipal Corporation of Hyderabad

⁴ See para 15 in State of AP Vs. Pramila Modi (2 supra)

to insist that a person seeking permission to construct a building must obtain and produce a No Objection Certificate from the Collector.

21. Notwithstanding the above Division Bench decision in **N.Krishna Mohan** (3 supra), it is surprising that the G.O.Ms.No.1133 Revenue (Assn.III) Department dt.13-06-2005, G.O.Ms.No.2111 Revenue (Assn.III) Department dt.05-12-2005 and G.O.Ms.No.93 Revenue (Assn.III) Department dt.28-01-2006 were issued in regard to issuance of building permissions by empowering the NOC Committee to issue NOCs. In view of the decision in **N.Krishna Mohan** (3 supra), the State Government could not have issued the above referred G.Os. at all.

THE ARBITRARY EXERCISE OF POWER BY THE NOC COMMITTEE

22. Assuming there is some logic in issuing said G.Os., at best the NOC Committee, when approached by a person for issuance of NOC in order to apply for building permission, ought to confine itself to considering whether such land could be Government land or not and cannot venture to decide whether title to the land for which the applicant (respondent Nos.13 to 15 in W.P.No.766 of 2011 in the instant case) had sought NOC lies with such applicant or somebody else (like petitioner in W.P.No.766 of 2011).

23. But even in the counter affidavit filed by respondent Nos.1 to 4 in W.P.No.766 of 2011, there is no whisper that Government had any interest in the land for which the NOC was sought for by respondent Nos.13 to 15.

24. Though the Special Government Pleader sought to contend that the land vests in the State Government under the Administration of Evacuee Property Act, 1950 before it is distributed to displaced persons under the Displaced Persons (Compensation and Rehabilitation) Act, 1954, no provision in the said statutes has been brought to the notice of the Court by him. Therefore, this plea raised by him is rejected.

25. A reading of the impugned NOC endorsements issued on 08-12-2009 by the NOC Committee consisting of respondent Nos.6 to 10 shows that the said Committee did not consider the question whether the land for which NOC is sought belongs to the Government or not, the only question which it was probably intended that it should decide. But it considered whether the said land is evacuee property notified under the Administration of Evacuee Property Act, 1950 or not. It held that Smt. Dilawar Unnisa Begum, through whom respondent Nos.13 to 15 claim title to the land, was not an evacuee.

No jurisdiction under any law had been conferred either on the District Collector or the Joint Collector or the NOC Committee to

decide whether the property in question is evacuee property or not or to certify the title of respondent Nos.13 to 15 in respect of the said property.

It is thus clear that the NOC Committee has arrogated to itself power to decide title and abdicated its primary responsibility to consider whether there is any Government interest in the land for which NOC is applied by respondent Nos.13 to 15 in W.P.No.766 of 2011.

26. The more disturbing part is that the NOC Certificates dt.08-12-2009 issued by NOC Committee refer to objections allegedly filed by the petitioner and one Umakanth Chemicals and records that such objections are rejected.

However, the petitioner contended that she never filed any objection before the NOC Committee objecting to the grant of NOC to respondent Nos.13 to 15 as no notice was issued to her by the said committee.

This is corroborated by a reply given by the Public Information Officer and District Revenue Officer, Hyderabad District in reference No.E2/2775/2014 dt.29-11-2014 under the Right to Information Act, 2005 that objections allegedly filed by petitioner were not found in the file.

If the petitioner had not filed any written objections, it is not known how they could be considered and rejected by NOC

Committee. Thus it is clear that on the basis of conjectures and surmises, the NOC Committee issued the NOC endorsements.

27. Another shocking aspect is that respondent Nos.13 to 15 allegedly produced before the NOC Committee, three sale deeds i.e Doc. No.312/1341 fasli dt.30th Khurdath, 1341 Fasli, Doc. No. 2471/1344 Fasli dt.03-01-1344 and Doc. No.4346/1980 dt.14-05-1980.

In the counter affidavit dt.19-11-2011 filed by the District Collector, Hyderabad in W.P.No.766 of 2011, it is admitted that the Joint Sub Registrar, Hyderabad had addressed a letter dt.03-09-2011 stating that Doc. Nos.2471/1344 and 4346/1980 do not tally with their records.

Even in the order in proceeding No.E2/7034/2014 dt.07-11-2015 passed by the District Collector, Hyderabad cancelling the NOC endorsements (which will be discussed separately below) it is recorded that the Deputy Registrar reported that doc. No. 2471/1344 and 4346/1980 do not tally with their records.

Obviously the NOC Committee did not bother to verify whether the above sale deeds produced before it by respondent no.s 13-15 were genuine or not by cross checking the same with Registration Department of the State Government.

This shows how the NOC Committee which issued the impugned NOCs functioned.

In my opinion, the members of the NOC Committee, which issued the impugned NOCs, clearly did not act in a *bona fide* manner and seemed to believe that they have no responsibility to check even the genuineness of the documents produced before them by the applicant for NOC.

W.P.M.PNo.44705 of 2015

28. The petitioner in W.P.No.766 of 2011 filed W.P.M.PNo.44705 of 2015 to prosecute respondent Nos.13 to 15 for producing fabricated documents, criminal conspiracy and criminal trespass etc. In the said application, it is contended by the petitioner that she had applied for certified copy for document bearing No.2471/1344 Fasli produced by respondent Nos.13 to 15 before the NOC Committee to the concerned officer Sub Registrar, and he furnished her copy of a document executed by one Ruqiya Bee in relation to a house No.6-9-63 situated at Yakutpura, Hyderabad of extent 432 sq yds; that even the document 4346/1980 produced by respondent Nos.13 to 15 before the NOC Committee is a forged and fabricated document and that as per the actual record available with the concerned Sub Registrar, it relates to plot of 244 sq yds at A.G. Colony, Hyderabad purchased by one Narasimhulu. She has filed copies of both the documents as supplied to her by the Sub Registrar concerned. She contended that the document No.2471/1344 Fasli and document 4346/1980 produced by the respondent Nos.13 to 15 before the NOC Committee are proved to be fabricated documents, and the 6th respondent and other respondent

Nos.7 to 10, without verifying the same, have granted NOC Certificate in collusion and in conspiracy with respondent Nos.13 to 15 and that they have all committed offences punishable under Sections 191, 192, 198, 199 and 200 IPC. It is further stated that the respondent Nos.13 to 15 after obtaining the NOC Certificates, secured permission from GHMC and dispossessed her.

29. Counter affidavit was filed by respondent Nos.13 to 15 in this W.P.M.P. disputing the title of the petitioner and denying fabricating and forging any document. They denied that the petitioner was ever in possession of the property and contended that she should approach the competent Civil Court to prove her title and possession.

30. However respondent Nos.13 to 15 did not produce the originals or copies of the above documents before this Court along with their counter affidavit in spite of their counsel being asked by the Court to produce the originals. Therefore adverse inference is drawn against respondent Nos.13 to 15 that they did fabricate the said documents and produced them before the NOC Committee. So they cannot be allowed to retain any benefit they secured by virtue of the said act of fraud.

31. In **A.V. Papayya Sastry v. Govt. of A.P⁵**, the Supreme court declared:

“39.Once it is established that the order was obtained by a successful party by practising or playing fraud, it is vitiated. Such order cannot be held legal, valid or in consonance with law. It is non-existent and non est and cannot

⁵ (2007) 4 SCC 221

be allowed to stand. This is the fundamental principle of law and needs no further elaboration. Therefore, it has been said that a judgment, decree or order obtained by fraud has to be treated as a nullity, whether by the court of first instance or by the final court. And it has to be treated as non est by every court, superior or inferior.”

32. The principle in this judgment aptly applies to the instant case.

THE ROLE OF RESPONDENT NOS.6 TO 9, AND 11

33. Sri C.Hanumantha Rao, learned counsel for 6th respondent sought to contend that his client, the then District Collector, Hyderabad who was Chairman of the NOC Committee, did not issue the impugned endorsements but merely relied upon the documents placed before the Committee by the 7th respondent/the Joint Collector, Hyderabad. This contention cannot be countenanced since the impugned endorsements dt.08-12-2009 were issued by his Office and he was the Chairman of the NOC Committee which considered the application of respondent Nos.13 to 15 and granted the NOC endorsement to them.

34. In the impugned NOC endorsements, claims of respondent Nos.13 to 15 with reference to contentions advanced by them are discussed in detail and conclusions as to whether land in sy. No.284/6 was evacuee property or not were drawn.

35. The Special Government Pleader produced the file relating to the issuance of the impugned NOC endorsements which shows that the District Collector posted the matter for hearing on 23-09-2009 and then made endorsement as under:

“Heard the matter. The party has given relevant papers supporting their claim. Hence, place before NOC Committee for further orders.”

36. Though the file reveals that several officials in the Collector’s office starting from the Superintendent to the Joint Collector made remarks therein before it reached the District Collector, that does not mean that the District Collector and Members of the NOC Committee including the Joint Collector and respondent Nos.8 and 9 can blame the lower officials conveniently and wriggle out of any responsibility, since ultimately it is the NOC Committee in which they are members, which issued the impugned NOC endorsements.

37. Sri C. Hanumantha Rao, learned counsel for 6th respondent sought to contend that an Inspector of Police certified documents of title produced by respondent Nos.13 to 15 and so they were believed by 6th respondent.

This defense is untenable since, instead of verifying the documents produced by respondent Nos.13 to 15 from the Registration Department, it is unfortunate that certification by Police Department is sought to be relied upon by 6th respondent to justify his action.

Though Sri C. Hanumantha Rao sought to contend that the 6th respondent only considered the Government’s interest in the land, the same is not reflected in the file or in the impugned NOC endorsements.

38. He further sought to contend that in the impugned NOC endorsements, it is mentioned in the end that the said endorsements are subject to third party claim and do not constitute any title or right over the land and therefore it cannot be construed that any expression of opinion regarding title therein would have any value. I do not agree.

The impugned NOC endorsements are issued by a committee of high officials including the District Collector and they reject the objections allegedly filed by the petitioner and uphold the claim of respondent Nos.13 to 15. Any revenue or police official in the District would go by the contents of the main body of the NOC endorsements and would not doubt the findings recorded therein notwithstanding what was stated at the end of the NOC endorsements.

Also other third parties may not be bound by the NOC endorsements, but the petitioner will be held bound by it by the revenue and police officials since her alleged claim was considered and rejected by the NOC Committee.

39. As regards respondent Nos.10 and 12 are concerned, respondent No.10 is not a member of the building committee and he had no role to play in its decision. Further, respondent Nos.12 gave a report in March 2009 to the Revenue Divisional Officer, Hyderabad asserting that the property is evacuee property. Therefore, they cannot in any way be held responsible for the decision of respondent Nos.6 to 9.

40. Coming to the respondent No.11, he is the Special Deputy Collector, Land Protection and he was involved in preparing the note file which went to the NOC Committee. He definitely contributed in a big way to the decision of the NOC committee.

He ought to have verified the material produced by respondent Nos.13 to 15 carefully and ought not to have expressed any view as to whether the property was evacuee property or not, but the note file reveals that he did express opinion that property is not evacuee property.

The note prepared by him was placed before the NOC Committee of which the District Collector was the Chairman and it was approved by the Committee. This was communicated under the signature of the 7th respondent.

41. In my opinion, the instant case is an illustration of fraud on power where a power not conferred is exercised under the cloak of power conferred. (See **Makhan Singh v. State of Punjab**⁶ ; **Uddar Gagan Properties Ltd v. Sant Singh**⁷...)

42. In **State of Punjab v. Gurdial Singh**⁸, the Supreme Court held:

“ 9. The question, then, is what is mala fides in the jurisprudence of power? Legal malice is gibberish unless juristic clarity keeps it separate from the popular concept of personal vice.

⁶ AIR 1964 SC 381

⁷ (2016) 11 SCC 378

⁸ (1980) 2 SCC 471

Pithily put, bad faith which invalidates the exercise of power — sometimes called colourable exercise or fraud on power and oftentimes overlaps motives, passions and satisfactions — is the attainment of ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal. If the use of the power is for the fulfilment of a legitimate object the actuation or catalysation by malice is not legicidal. The action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous considerations, good or bad, but irrelevant to the entrustment. When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the court calls it a colourable exercise and is undeceived by illusion. In a broad, blurred sense, Benjamin Disraeli was not off the mark even in law when he stated: “I repeat . . . that all power is a trust — that we are accountable for its exercise — that, from the people, and for the people, all springs, and all must exist”. Fraud on power voids the order if it is not exercised bona fide for the end designed. Fraud in this context is not equal to moral turpitude and embraces all cases in which the action impugned is to effect some object which is beyond the purpose and intent of the power, whether this be malice-laden or even benign. If the purpose is corrupt the resultant act is bad. If considerations, foreign to the scope of the power or extraneous to the statute, enter the verdict or impel the action, mala fides or fraud on power vitiates the acquisition or other official act.”

43. The District Collector cannot escape the blame for the manner in which the Committee dealt with the application of respondent Nos. 13-15 or contents thereof and every member of the Committee is equally responsible for the same for they committed a fraud on the power conferred on them by the State to issue NOCs.

44. The conduct of the NOC Committee members and that of respondent no.11 requires to be probed by the 1st respondent and

appropriate disciplinary action needs to be initiated against them for their acts.

45. Accordingly, W.P.No.766 of 2011 is allowed with costs of Rs.25,000/- to be paid by respondent Nos.6 to 9 jointly and a further sum of Rs.25,000/- to be paid by respondent Nos.13 to 15 jointly to the petitioner; the NOC endorsements N1/1069/2009 to N1/1071/2009 dt.08-12-2009 issued by the NOC Committee consisting of respondent Nos.5 to 9 are set aside and declared to be null and void; and the 1st respondent is directed to initiate disciplinary proceedings against respondent Nos.6 to 9 and 11 for the manner in which they performed the entire exercise leading to the issuance of the said NOC endorsements and take appropriate action in accordance with law against them. The respondent Nos.1 and 2 shall also initiate prosecution against respondent Nos.13 to 15 for producing fabricated/forged documents doc. No. 2471/1344 and 4346/1980 before the NOC Committee claiming that they relate to land in Sy. No.284/6 corresponding to TS.No.15, Block B, Ward 21 of Nanalnagar, Gudimalkapur, Hyderabad.

THE PROCEEDINGS OF THE DISTRICT COLLECTOR DT.07-11-2015
CANCELLING THE NOC ENDORSEMENTS AND W.P.No.9664 of 2017
CHALLENGING THE SAME

46. It is not in dispute that vide memo No.E2/7034/2010, the Joint Collector, Hyderabad kept in abeyance the NOC endorsements dt.08.12.2009 issued by the NOC Committee to respondents 13 to 15 in W.P.No.766 of 2011 on the basis of the application filed by the writ

petitioner therein on 16.08.2010 to recall the said endorsements and to initiate action against the petitioners who played fraud, cheated and forged/fabricated the documents. The Joint Collector also asked respondents 13 to 15 to submit all original documents in respect of the land in question for verification within 10 days from the date of receipt of the said memo.

47. Later a detailed order in proceedings No.E2/7034/2014 dt.07.11.2015 was passed by the District Collector, Hyderabad District cancelling the endorsements dt.08.12.2009 issued by the NOC Committee to respondents 13 to 15. He stated that respondents 13 to 15 were directed to submit originals of the copies of sale deeds in respect of the land for which NOC was claimed by them in the memo dt.09.12.2010 referred to above, that they did not produce any documents as directed, and the District Registrar, Hyderabad who was asked to confirm the genuineness of the sale deeds submitted by respondents 13 to 15, stated on verification of his record that document No.2471/1344 Fasli dt 30.01.1344 Fasli and document No.4346/1980 dt.14.05.1980 did not tally with the records available in his office.

48. This order dt 07.11.2015 in proceedings No.E2/7034/2014 of the District Collector, Hyderabad is assailed in W.P.No.9664 of 2017 by purchasers from respondents 13 to 15 of various extents in Survey No.284/6.

49. They contended that the 3rd respondent in the said writ petition/the petitioner in W.P.No.766 of 2011 was hand in glove with the District Collector, Hyderabad; that she was falsely claiming 5262 sq. yards in Survey No.285/6; that she should approach the Civil Court to establish her right; that she applied for NOC to the District Collector and the same had been rejected on 05.05.2005 in proceedings No.N1/F1/5068/2002; and so she cannot dispute the claim of the petitioners in W.P.No.9664 of 2017 or their vendors. It is also contended that without issuing notice to them, the District Collector had cancelled the endorsements dt 08.12.2009.

50. In fact the petitioners in W.P.No.9664 of 2017 had filed W.P.No.19467 of 2011 seeking police aid to protect their alleged possession of the land claimed by them, but the said writ petition was withdrawn on 14.03.2017. This fact is suppressed by them in the affidavit filed in support of W.P.No.9664 of 2017. In fact, the withdrawal of W.P.No.19467 of 2011 was during the course of hearing of W.P.No.766 of 2011 and W.P.No.8928 of 2011 since W.P.No.19467 of 2011 was listed along with the said two writ petitions.

51. Also petitioners 9 and 10 and one Mohd. Abdul Jabbar Khan, father of petitioners 2 to 8 in W.P.No.9664 of 2017 are parties to the proceedings No.N1/1071/2009 dt.08.12.2009 of the NOC Committee and they informed the NOC Committee that they had transferred their interests in favour of respondents 13 to 15 who applied for the NOC.

If they had transferred their interest to respondent no.13 to 15, they cannot challenge the order dt.7.11.2015 of the District collector. They suppressed this fact in the affidavit filed by them in W.P.No.9664 of 2017.

52. It is contended by the petitioners in W.P.No.9664 of 2017 that the District Collector alone cannot cancel the impugned NOC endorsements issued by the NOC Committee, that there is no notice given to the petitioners and so the order dt.07-11-2015 of the District Collector ought to be set aside.

53. The said contention, if accepted, would revive the NOC endorsements dt.08-12-2009 which are found to have been issued by the NOC committee committing fraud on its power and without verifying the documents produced by respondent Nos.13 to 15 in W.P.No.766 of 2011. In view of the decision in **Hyderabad Potteries** (1 supra) and **N.Krishnamohan** (2 supra), such NOC Committees have no jurisdiction to certify title of anybody. Thus allowing the W.P.No.9664 of 2017 would revive the totally illegal NOC endorsements dt.08-12-2009.

54. In **Gadde Venkateswara Rao v. Govt. of A.P.**,⁹ the Supreme Court held:

“The Primary Health Centre was not permanently located at Dharmajigudem. The representatives of the said village did not comply with the necessary conditions for such location. The Panchayat Samithi finally cancelled its earlier

⁹ AIR 1966 S.C. 828

resolutions which they were entitled to do and passed a resolution for locating the Primary Health Centre permanently at Lingapalem. Both the orders of the Government, namely, the order dated March 7, 1962, and that dated April 18, 1963, were not legally passed: the former, because it was made without giving notice to the Panchayat Samithi, and the latter, because the Government had no power under Section 72 of the Act to review an order made under Section 62 of the Act and also because it did not give notice to the representatives of Dharmajigudem village. In those circumstances, was it a case for the High Court to interfere in its discretion and quash the order of the Government dated April 18, 1963? If the High Court had quashed the said order, it would have restored an illegal order — it would have given the Health Centre to a village contrary to the valid resolutions passed by the Panchayat Samithi. The High Court, therefore, in our view, rightly refused to exercise its extraordinary discretionary power in the circumstances of the case.”

55. Therefore W.P.No.9664 of 2017 deserves to be dismissed and is accordingly dismissed.

W.P.No.8928 Of 2011

56. This Writ Petition is also filed by the petitioner in W.P.No.766 of 2011.

57. She contended that that she and other owners of the land admeasuring 5262 sq. yards in Sy.No.284/6 of Gudimalkapur village had given a complaint to the police against respondent Nos.5 to 7 (respondent Nos.13 to 15 in W.P.No.766 of 2011 and others) on the basis of which proceedings under Section 145 Cr.P.C. in Case No.B-180/78 were initiated by the Special Executive Magistrate-cum-

District Collector, Hyderabad (4th respondent); that in those proceedings on 15-03-1982, he held that petitioner is entitled to maintain her possession over the disputed land under clause (4) of Section 145 Cr.P.C. until evicted under due process of law; that on 09-08-2010, certain third parties trespassed into the land admeasuring 400 sq. yards abutting to main road and damaged her compound wall, filled up bunds and erected sheds without permission of MCH; that she lodged a complaint on 11-08-2010 before 4th respondent; he then issued proceedings under Section 145 Cr.P.C. on 25-08-2010 in proceedings No.B/397/2010 in M.C.No.B/180/1978 dt.15-03-1982; that one Abdul Azeez and Abdul Shukur challenged the same in Crl.R.C.No.2018/2010 in this Court and on 11-02-2011, the order dt.25-08-2010 of 4th respondent was set aside on the ground that the 4th respondent cannot reopen the proceedings attained finality on 15-03-1982; but the Court made clear that it is open to the 4th respondent to initiate fresh proceedings and also recorded that such proceedings had already been initiated; on 28-02-2011, the 4th respondent issued proceedings M.C.No.B/397/2010 authorising the Station House Officer, P.S. Langer House, Hyderabad (3rd respondent) to attach the property in Sy.No.284/6 immediately under sub-Section (1) of Section 146 Cr.P.C. and hold the same under attachment since a dispute was likely to occur between petitioner and respondents herein; and that the 3rd respondent did not take any action pursuant to the directive of the 4th respondent dt.28-02-2011. She therefore

challenged the inaction of the 3rd respondent and sought a direction to respondent Nos.1 to 3 in this Writ Petition and take appropriate action.

58. Counter affidavit was filed on behalf of 3rd respondent stating that petitioner challenged in S.L.P. (Crl.) No.6395 of 2011, the order dt.11-02-2011 in Crl.R.C.No.2018 of 2010, but she withdrew the same on 20-07-2012 with liberty to take proceedings including proceedings under Section 107 Cr.P.C.; and that the proceedings dt.28-02-2011 of the 4th respondent stood closed pursuant to the orders of the Supreme Court. He contended that thereafter she filed an application under Section 107 Cr.P.C. before the 4th respondent who called for a report from the Police and Revenue authorities and closed the matter on 07-09-2015 stating that there is no law and order problem with breach of peace and tranquility and there is a long standing civil dispute which is unresolved. He stated that petitioner did not mention about the Supreme Court order or the order dt.07-09-2015 of the 4th respondent.

59. Learned Special Government Pleader appearing for respondent Nos.1 to 3 also contended alternatively that since the order dt.25-08-2010 of the 4th respondent in proceedings No.B/397/2010 in M.C.No.B/180/1978 dt.15-03-1982 was set aside in Crl.R.C.No.2018 of 2010, the 3rd respondent did not think that it was necessary to implement the warrant of attachment issued under sub-Section (1) of

Section 146 Cr.P.C. in proceedings dt.28-02-2011 in M.C.No.B/397/2010.

60. It is pertinent to note that though the order dt.11-02-2011 in Crl.R.C.No.2018 of 2010 did set aside the order dt.25-08-2010 of the 4th respondent in proceedings No.B/397/2010 in M.C.No.B/180/1978 dt.15-03-1982 (and the said order was confirmed by the Supreme Court when the petitioner withdrew the S.L.P.), this Court had only noted that the order dt.15-03-1982 in M.C.No.B/180/1978 was a final order and was even confirmed in Revision and so the 4th respondent had become *functus officio* and could not have reopened the same by proceedings dt.24-11-2010 in M.C.No.B/397/2010. In the said order itself this Court noted that fresh proceedings had already been initiated by the petitioner under Section 145 Cr.P.C.

61. The order dt.28-02-2011 issued by the 4th respondent under sub-Section (1) of Section 146 Cr.P.C. in proceedings under Section 145 Cr.P.C. is subsequent to the order passed in the Crl.R.C.No.2018 of 2010.

62. Merely because the 4th respondent gave the same reference No.M.C.No.B/397/2010 to his order dt.28-02-2011, it cannot be construed that this order is a continuation of the said M.C. It has to be taken to be part of the fresh Section 145 Cr.P.C. proceedings initiated by petitioner and which were pending as on the date of disposal of Crl.R.C.No.2018 of 2010.

63. The reliance placed by the respondent Nos.1 to 3 on the order in Ref.No.M.C.No.B/141/2012 of the 3rd respondent dt.07-09-2015 is also without any merit because that proceeding was initiated under Section 107 Cr.P.C. by the petitioner and the same was not a proceeding under Section 145 Cr.P.C.

64. Even in the said order dt.07-09-2015 the 4th respondent directed the 3rd respondent to ensure the law and order and status remain intact in the land with peace and tranquility between the contesting parties until the civil dispute is conclusively resolved between them. Therefore it cannot be said that the fresh proceeding in which the order dt.28-02-2011 was issued by the 4th respondent is closed or that the order dt.28-02-2011 need not be implemented in view of the order dt.07-09-2015 of the 4th respondent.

65. Even the stand of respondent Nos.1 to 3 that since order dt.11-02-2011 was passed in CrI.R.C.No.2018 of 2010, there is no need to give effect to the warrant of attachment dt.28-02-2011, is untenable.

66. If the warrant of attachment dt.28-02-2011 is part of a new proceeding initiated by the petitioner, in view of the liberty granted in CrI.R.C.No.2018 of 2010 to petitioner to pursue the new proceeding and for the 4th respondent to pass orders in accordance with law in that proceeding, the 3rd respondent cannot ignore the directive in the

proceedings dt.28-02-2011 of the 4th respondent which was issued after the disposal of the CrI.R.C.No.2018 of 2010.

67. Therefore this Writ Petition is also allowed and respondent No.3 is directed to implement the warrant dt.28-02-2011 issued by 4th respondent in M.C.No.B/397/2010. No costs.

THE CONCLUSION

68. Accordingly,

- (a) W.P.No.766 of 2011 is allowed with costs of Rs.25,000/- to be paid by respondent Nos.6 to 9 jointly and a further sum of Rs.25,000/- to be paid by respondent Nos.13 to 15 jointly to the petitioner; the NOC endorsements N1/1069/2009 to N1/1071/2009 dt.08-12-2009 issued by the NOC Committee consisting of respondent Nos.5 to 9 are set aside and declared to be null and void; and the 1st respondent is directed to initiate disciplinary proceedings against respondent Nos.6 to 9 and 11 for the manner in which they performed the entire exercise leading to the issuance of the said NOC endorsements and take appropriate action in accordance with law against them. The respondent Nos.1 and 2 shall also initiate prosecution against respondent Nos.13 to 15 for producing fabricated/forged documents doc. No. 2471/1344 and 4346/1980 before the NOC Committee claiming that they relate to land in Sy. No.284/6

corresponding to TS.No.15, Block B, Ward 21 of Nanalnagar,
Gudimalkapur, Hyderabad;

(b) W.P.No.8928 of 2011 is allowed and respondent no. 3 therein is directed to implement order dt. 28-02-2011 of the 4th respondent issued proceedings M.C.No.B/397/2010 and attach the property in Sy.No.284/6 immediately under sub-Section (1) of Section 146 Cr.P.C. and hold the same under attachment till the dispute between the petitioner and the respondent no.s 13-15 in W.P.No.766 of 1981 and petitioners in W.P.No.9664 of 2017 is resolved;

(c) W.P.9664 of 2017 is dismissed with costs of Rs.10,000/- (Rupees Ten Thousand only) to be paid by petitioners therein to 3rd respondent therein.

As a sequel, the miscellaneous petitions, if any pending in these Writ Petitions, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 25-04-2017

Vsv/kvr