

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Writ Petition Nos.4509 of 2017 & 1238 of 2018

COMMON ORDER:

W.P.No.1238 of 2018, under Article 226 of the Constitution of India, is filed by the petitioners requesting to issue a Writ of Certiorari quashing the proceedings, dated 05.01.2018, in B.A.No.1086/3673/B/Z4/ART/2016 of the Commissioner of Greater Visakhapatnam Municipal Corporation (GVMC), after calling for the record related to the said proceedings and set aside the said proceedings whereby the building permit, dated 07.06.2017, in B.A.No.1086/3673/B/Z4/ART/2016, obtained by the petitioner for construction of stilt floor for parking, ground plus four upper floors at door no.45-25-3 in S.No.43P of Akkayyapalem, Dondaparthi Village, Ward no.33, Visakhapatnam, was revoked.

1.1 In W.P.No.4509 of 2017, the grievance of the very same petitioners is related to non receipt of deed of gift settlement, dated 30.10.2016, executed by the petitioners in favour of GVMC for an extent of 215.82 Square yards for its due registration.

2. I have heard the submissions of Sri Ghanta Sridhar, learned senior counsel representing Sri P. Durga Prasad, learned counsel appearing for the petitioners; of the learned Government Pleader for Revenue, appearing for the respondents 1 to 7 in WP.no.4509 of 2017; of Sri S. Laxminarayana Reddy, learned standing counsel appearing for GVMC; of Sri P. Balaji Varma, learned counsel for the impleaded non official respondent; and, of Sri C.V.Rajeeva Reddy, learned standing counsel for Railways.

3. I have perused the material record.

4. To begin with, the introductory facts may be stated as follows: -

‘The petitioners obtained the building permit in question for construction of apartment building in the site stated above. It appears that the said permission was obtained by online process (without manual intervention). However, on post verification and in view of the remarks of the Town Surveyor, dated 05.09.2017, it came to the notice of the Commissioner, GVMC, that the apartment building is being constructed by occupying the land covered by ULC land published by the District Collector *vide* Rc.No.44/2016/D, dated 04.06.2016, and the land of the Railways, which vested in the Railways as per Award No.4/67, dated 22.02.1967, that is, the land covered by Sy.nos.43/3B1(P) and 43/3B2(P) of Dondaparthi village. On the said facts coming to the notice of the Commissioner, GVMC, he issued a show cause notice, dated 09.09.2017, under Section 450 of the Hyderabad Municipal Corporation Act, 1955, [‘the Act’, for short] calling upon the petitioners to show cause within seven days from the date of receipt of the said notice as to why the permission obtained for construction of the residential apartment building shall not be canceled as the petitioners made material misrepresentation of facts and as it was reported that the land belongs to Indian Railways and is also an ULC land. In reply to the show cause notice, the petitioners submitted their explanation, dated 10.10.2017. The same was received by the Commissioner, GVMC, on 13.10.2017. Even before a decision was arrived at by the Commissioner, GVMC, the petitioners filed WP.No.34734 of 2017 challenging the said show cause notice, dated

09.09.2017. However, this Court, by an order, dated 26.10.2017, dismissed the writ petition leaving it open to the petitioners to work out their remedies as available in law, if any adverse decision is made by the Commissioner pursuant to the afore-stated show cause notice. Further, this Court directed the Commissioner, GVMC, to pass final orders within four weeks from the date of receipt of a copy of the order in the said writ petition. Thereafter, the Commissioner passed the impugned order, on 05.01.2018, revoking the subject building permission granted to the petitioners for construction of the apartment building over the subject land. Aggrieved thereof, the petitioners filed WP.No.1238 of 2018 to quash and set aside the said proceedings.'

4.1 This Court, on 11.01.2018, passed the following order:

'It is submitted by learned counsel, Sri T. Balaji Rao, that he filed caveat and without serving papers on him, the present Writ Petition is filed.

Sri C. Rajeev Reddy, learned counsel states that the construction took place in the land belonging to the railways and railways is also not made as a party.

Learned Senior Counsel Sri Ganta Rama Rao appearing for the petitioners submits that caveat papers are not received and without affording appropriate opportunity, the impugned order was passed.

In the circumstances, *status quo* obtaining as today shall be maintained for a period of ten (10) days from today, including further construction by the petitioners.'

The said order was extended from time to time; and, on 21.03.2018 while admitting the writ petition, the interim order was extended until further orders.

4.2 At this stage itself, it is necessary to state that WP.No.4509 of 2017 relates to refusal of the sub-registrar to register a gift deed by the writ petitioners in favour of GVMC in respect of the property which is to be

compulsorily be gifted to GVMC by the petitioners as a condition precedent for approval of the building permit.

4.3 On 07.02.2017, this Court, while ordering notice before admission, granted the following interim order in WPMP.nos.5448 & 5449 of 2017:

“It is the case of the petitioners that one Sri Molleti Venkata Ramana was the absolute owner of the land to an extent of Ac.2.80 cents in Sy.No.43 part, situated at Akkayyapalem Dondaparthi Village, Visakhapatnam District, having purchased the same by way of registered sale deed dated 30.12.1964 from Boddeti Appala Naidu. Subsequently, said Molleti Venkata Ramana submitted a declaration to the Urban Land Ceiling Authorities, which in turn issued proceedings in CC No.8(4)/6(1)/1673/76/B1, dated 22.09.1989 categorically stating that the family members of Sri Molleti Venkata Raman is the owner and demarcated the extent of Ac.2.80 cents belonging to Sri Molleti Venkata Ramana forms a part and parcel while subdividing the Sy.No.43 as Sy.No.43/3B2. The said property is devolved upon Molleti Venkata Ramana and his family members. The petitioner purchased 500 sq.yds, which was fell to the share of Smt.Karri Satyavathi, the daughter of Molleti Venkata Ramana, through registered sale deed dated 01.12.1989, which is earmarked as Plot No.1 in Sy.No.43 part. Sri Saras Tarapurevala purchased an extent of 500 sq.yds from the said Karri Satyavathi on 01.12.1989, which is earmarked as plot No.1A. The said sales were effected after duly taking permission from the Special Officer, Urban Land Ceiling, Visakhapatnam on 09.11.1989. Sri Sairas Tarapurevala executed a Will on 07.08.2011 bequeathing the said property in favour of the 2nd petitioner. After her death on 24.10.2012, the 2nd petitioner succeeded the said property. The petitioners constructed a small rooms in the said property and have also paid municipal taxes. The petitioners applied for permission to construct residential building in the said premises before the 8th respondent. The 8th respondent issued a check list to comply the formalities stating that a notarized affidavit with SRO Stamped or registered mortgage deed handing over 10% of B.U.A in the ground/first/second floors and clearly marking the same in the drawing and gift deed to an extent of 158.69 sq.yds in favour of GVMC for road widening purpose for free of cost.

Though the petitioners submitted draft gift deed before the 7th respondent, the 7th respondent is not received stating that the subject property is included in ULC prohibitory list as per G.O.Ms.No.1370, dated 28.11.2008. Aggrieved by the same, present writ petition is filed.

Learned counsel for the petitioners submits that the petitioners' property falls under Sy.No.43 part (43/3B20 and said survey number is not included in the prohibited properties, even as per the notification issued by the respondents. In spite of the same, the 7th respondent is not receiving and registering the documents presented by the petitioners i.e., Gift Deed in favour of the Corporation. He also submits that the respondents are also interfering with the possession of the petitioners, without following due process of law, though the petitioners are having valid documents.

As per Section 71 of the Registration Act, 1908, the 7th respondent is bound to receive the documents presented by the petitioners, if the same are otherwise in order as per the Stamps and Registration Act and register the same. If he wants to refuse registration of the same, he has to furnish reasons as per Section 71 of the Registration act. In the present case, it is the assertion of the petitioners that the subject property is not included in the prohibitory list.

In view of the same, the 7th respondent is directed to verify whether the subject property is included in the prohibitory list or not and then take action for registration, if the same is otherwise in order as per the provisions of Stamps and Registration Act.

The respondents 2 to 5 are directed not to interfere with the possession and enjoyment of the petitioners over the subject property."

It is stated that pursuant to the afore-said interim order, the gift deed was registered.

5. Both the writ petitions are heard together.
6. The principal contentions of the petitioners in support of the request in WP.no.1238 of 2018, in brief, are as follows: - "The exercise of powers by the

Commissioner under Section 450 of HMC Act is illegal, arbitrary, unconstitutional and without jurisdiction. The grounds urged in the explanation offered to the show cause notice were not considered by the Commissioner while issuing the impugned proceedings. In the impugned proceedings new grounds were mentioned. There was no opportunity to the petitioners to meet such new grounds and make clear their stand on the said grounds. Therefore, the impugned proceedings issued based on new grounds are liable to be set aside being violative of the principles of natural justice. The Commissioner granted building permit in question having been satisfied with the documents furnished by the petitioners and also about their *prima facie* title & possession. The petitioners never misrepresented any facts or played fraud on GVMC. The petitioners' old building existed on the subject property for over 25 years and has been assessed to house tax and vacant land tax. Hence, the Commissioner ought not to have revoked the building permit granted to the petitioners. The entire exercise leading to the revoking of building permission is based upon the report said to have been sent by the 3rd respondent – Tahasildar. Copy of the said report is not furnished to the petitioners. The Tahasildar also did not give any opportunity to the petitioners before making a report and furnishing the same to the Commissioner, GVMC. The petitioners purchased the subject property under a registered sale deed in the year 1989. Their vendor purchased the property in the year 1964 under a registered sale deed. Originally, their vendor was in possession since 1964; and, later the petitioners continued in possession and enjoyment of the property from the date of the purchase of the property by them. Even if there is any semblance of title dispute, the Commissioner of GVMC is not competent

authority to go into the issue of title and decide title to the property of any of the parties by adjudicating the issue of title. As such, the impugned proceedings revoking the building permit are unsustainable. Previously, when Railway authorities sought to interfere with the possession and enjoyment of the subject property, the vendor of the 1st petitioner, Moleti Satyavathi (Satyavathamma), along with other family members filed W.P.No.17272 of 1990 before this Court for a direction to the railway authorities not to disturb their possession over the land in Sy.no.43/3 B2 except the extent which was acquired, that is, Ac.0.16 cents. The said writ petition was accordingly disposed of. Thereafter, Railway authorities did not choose to proceed against the said vendor of the 1st petitioner in respect of the subject land. Pursuant to the direction in WP.No.17272 of 1990, no land was acquired by the railway authorities from Moleti Venkata Ramana, who is the owner of the subject land. The land of Mantena Venkata Ramana situated in this particular survey number was acquired by the railway authorities, that is, Ac.0.16 cents only. Therefore, the claim of the railway authorities against the petitioners is untenable. When the sub-registrar, Akkayyapalem, failed to receive the gift deed executed by the petitioners in favour of GVMC for registration, the petitioners filed WP.No.4509 of 2017 before this Court. In pursuance of the interim direction granted in the said writ petition, the concerned sub-registrar, after being satisfied that the subject land is not in the prohibitory list, registered the said gift deed. The GVMC acted upon the gift deed and took possession of the land covered by the gift deed. The gift deed was executed as per one of the conditions prescribed by GVMC for granting building permit. In any view of the matter, revoking of permission under Section 450 of the Act based upon

the rival claim of title with regard to part of the subject property almost after completion of the construction of the building by adjudicating the title by the Commissioner of GVMC is unknown to law. Hence, the impugned proceedings are liable to be set aside. Commissioner, GVMC is attempting to take coercive action for removing of the structure by treating the same as unauthorized construction though it was constructed strictly in accordance with the plan. The construction is completed upto the level of first and second floors in all aspects. The impugned action was initiated, at the behest of some persons who are behind the scene and for reasons best known to them, after long lapse of time and almost after the completion of the building. It is mentioned in the impugned order that the proceedings of the Special Officer, ULC, dated 22.09.1989, were not enclosed with the explanation of the petitioners though in-fact the said proceedings along with other proceedings were enclosed to the explanation submitted by the petitioners in person on 10.10.2017. Even otherwise it is always open to the Commissioner, who issued the impugned proceedings, to ask the petitioners to furnish a copy of the said proceedings; and, he ought to have given an opportunity to explain the said aspect. The permission was granted, on 07.06.2017, pursuant to the application made in the year 2016. It is not open to issue a show cause notice, dated 09.09.2017, after lapse of 3 ½ months, merely on the ground of post verification report which is illegal and contrary to the Government memo in No.800211/H2/2017 as per the term of which post verification shall be made within ten days from the date of approval of the plan. Hence, the writ petition is filed.'

7. Before proceeding further, it is to be noted that Union of India represented by General Manager, East Coast Railway, Chandrashekapur, Bhubaneswar, Odissa State, along with Senior Divisional Engineer (HQ), East Coast Railway, Dondaparthi, filed WPMP.No.4448 of 2017 in WPno.4509 of 2017 and IA.No.4 of 2018 in WP.no.1238 of 2018 for their impleadment as party respondents in the writ petitions. One Manthena Kruthik Varma filed WPMP.No.30790 of 2017 in WP.No.4509 of 2017 and IA.No.3 of 2018 in WP.No.1238 of 2018 for his impleadment as party respondent in the writ petitions, claiming right and interest in the subject property. Since the subject building permit was revoked by the impugned proceedings alleging *inter alia* that a part of the land belongs to Indian Railways and that the land is ULC land, this Court is of the considered view that for effective adjudication of the writ petitions, the impleadment of the said respondents is necessary. Hence, while hearing the submissions of the learned counsel for the petitioners and the learned standing counsel for GVMC in the writ petitions, submissions of the learned standing counsel for Indian Railways and the learned counsel for the proposed non official respondent are also heard, as desired by both the sides. Therefore, the afore-said petitions/applications are ordered and the aforesaid Kruthik Varma is impleaded as party respondent no.4 in WP.no.1238 of 2017 & respondent no.9 in WP.no.4509 of 2017; and, the Railways is impleaded as respondents 5 & 6 in WP.no.1238 of 2018 and respondents 10 & 11 in WP.no.4509 of 2017.

8. The parties shall hereinafter be referred to as the writ petitioners, GVMC, Tahasildar, Railways and the impleaded non official respondent for convenience and clarity.

9. Requesting to vacate the afore-said interim order, dated 07.02.2017, passed in WPMP.nos.5448 & 5449 of 2017 in WP.No.4509 of 2017, WVMP.No.4960 of 2017 is filed by the respondents 1 to 5; WVMP(SR).No.201944 of 2017 is filed by the Railways; and, WVMP(SR).No.142680 of 2017 is filed by the impleaded unofficial respondent.

9.1 Similarly, requesting to vacate the interim order, dated 11.01.2018, passed in WP.No.1238 of 2018, IA.No.5 of 2018 is filed by the Railway; and, IA.no.1 of 2018 is filed by the impleaded non official respondent

10. The case of the Commissioner of the GVMC as stated in the counter affidavit filed, in brief, is this: -

The petitioners have obtained online building permit for construction of stilt for parking, ground plus four upper floors in Sy.no.43P of Akkayyapalem, Dondaparthi village, Visakhapatnam *vide* the building permit dated 07.06.2017, in B.A.No.1086/3673/B/Z4/ART/2016. While so, the Senior Divisional Engineer, East Coast Railway, has addressed a letter, dated 07.08.2017, to the District Collector, Visakhapatnam, stating that part of the proposed site belongs to the Railways and that it is a railway land covered by Award no.4/67, dated 22.2.1967. During the course of post verification, it is also revealed from the report of the town surveyor of the GVMC that the proposed site has been declared as surplus land under the provisions of ULC Act and that the same has been published by the District Collector *vide* proceedings in R.C.No.44/2016, dated 4.6.2016, wherein it is stated that 04168 square meters was declared as surplus land in Sy.No.43/3B2 of Dondaparti village *vide* C.C.no.2198 of 1976 by Malleti Venkataramna as surplus land holder and that

part of the land in Sy.No.43/3B2 was acquired by the railway department *vide* award no.4/62. Hence, the show cause notice was issued; the explanation was received; and, as per the orders of the Court to pass final orders, the impugned final order was passed revoking the subject building permit, which was obtained online by suppression of facts. The 3rd respondent, that is, the Tahasildar also addressed a letter, dated 02.11.2017, stating that there is no 43 part in existence in Dondaparthi village as claimed by the petitioners and that the site being claimed by the writ petitioners partly falls in Sy.No.43/3B1 which belongs to ULC land and partly falls in Sy.No.43/3B2 which belongs to railway department. The petitioners, without having any title and possession over the proposed site in Sy.No.43/3B1 & 43/3B2 obtained online building permission suppressing the said fact. Hence, the writ petition is liable to be dismissed.

11. The case of the Railways is as follows:

Under Award no.4/67, the Railways have acquired the following lands at Dondaparthi.

Survey no	Sub division	Extent Ac – cents
43	1A1	1.32
43	3B2	0.16
43	5B2	1.26
43	6B	1.40
Total		4.14

The sub divisions were approved and sanctioned under the said Award. The above mentioned lands vested with the Railways with absolute rights as per the said acquisition. A copy of the Award and approved sub division FMB are filed with the pleadings of the railways. The writ petitioners to substantiate their claim are relying upon the report submitted by the District Collector,

dated 17.12.2002, in WP.No.17272 of 1990. A perusal of the report would go to show that the entire land in Sy.Nos.43/1 to 6 consists of Ac.11.42 cents and that Ac.4.14 cents was acquired by railways under Award 4/67, which includes Ac.0.16 cents in Sy.No.43/3B2. The said report also would reveal that the larger Sy.No.43/3B consists of Ac.1.40 cents only as per the settlement fair adangal. The report nowhere indicates that Sy.No.43/3B2 covers the alleged extent of Ac.2.80 cents and that no land in Sy.No.43/1 to 6 either belongs to the writ petitioners or their alleged predecessors. The right, title and possession of the railways over an extent of Ac.0.16 cents in Sy.No.43/3B2 has been confirmed, in WP.no.17272 of 1990, which was filed by the predecessors in interest of the writ petitioners. The said order has become final and binding. The report of the District Collector, dated 17.12.2002, categorically states that larger survey no.43/3 consists of Ac.1.40 cents only and that Sy.No.43/3B2 consists of Ac.0.16 cents only. Molleti Venkataramana and his family members have obtained orders under ULC in CC.no.8(4)/6(1)/7673/76/B1, dated 22.09.1989, with regard to Sy.No.43/3B2 over an extent of 9348 sq.mts showing an extent of 348 sq.mts as surplus. Thereafter, on verification of the record, it is revealed that Sy.No.43/3 consists of an extent of Ac.1.58 cents only out of which the extent of Ac.0.39 cents was acquired by NH5 and subdivision was made as 43/3A in favour of NH5. Subsequently, it was further sub divided into 43/3B2 of an extent of Ac.0.16 cents in favour of the railways under Award no.4/67. Consequently, the extent of Ac.1.03 cents left was sub divided as Sy.No.43/3B1. In the circumstances, the proceedings in 8(4)/6(1)/7673/76/B1, dated 22.09.1989, treating an extent of Ac.2.80 cents in Sy.no.43/3B2 is illegal and void. In furtherance of the said proceedings, the

Spl. Officer, ULC, created tentative subdivision of 43/3B2 showing an extent of Ac.2.80 cents as against Ac.0.16 cents by adding and upon deletion of entire approved Sy.No.43/5B2 (Ac.1.26 cents) and Sy.No.43/6B (Ac.1.04 cents) thereby tampering the approved subdivisions under award 4/67 of Sy.No.43/3B2. A representation is filed by the railways bringing the above facts to the notice of the Joint Collector cum Spl.Officer *vide* letter, dated 13.7.2006 and a request was made to recall the orders in 8(4)/6(1)/7673/76/B1, dated 22.9.1989. Manthena Kruthik Varma, impleaded non official respondent, filed WP.no.18683 of 2016 and arraigned the writ petitioners as party respondents. The Joint Collector cum special Officer, ULC has filed counter in the said writ petition stating as follows: -

'The special officer has failed to note that the land shown as in possession of Molleti Venkataramana has already been acquired for Railways as per the statement given below.. (the table reflected the subdivision 43/3B2 as consisting of only 0.16 cents).. the same sub-division no.43/3B2 which was acquired for Railways has been shown as surplus of Molleti Venkataramana which is a serious fault.'

The 5th respondent in WP.no.4509 of 2017 categorically stated in the counter affidavit that the land in Sy.no.43/3B2 belongs to the railways and that the same was acquired by them *vide* award no.4/67. In the alleged sale deed filed by the writ petitioners, the schedule property is described as 43/part and not as 43/3B2. For the first time in WP.no.4509 of 2017 the writ petitioners while referring to Sy.No.43/part tried to equate it to 43/3B2. However, the record would go to show that Sy.No.43/3B2 consists of only Ac.0.16 cents and the same has been acquired and owned by the railways. The railways have already addressed a letter, dated 16.3.2017, to the District Collector and marked copies to the official respondents requesting to refrain from granting approval of plans and effecting registrations with reference to Sy.No.43/3B2. After coming to know of some constructions being taken up by the petitioners, a complaint has

been submitted to the police, on 28.09.2017, and a case in crime no.486 of 2017 was registered by the Station House Officer, IV Town police station, Visakhapatnam. The Commissioner, GVMC, has ample powers to revoke the building permit and the revocation order is sustainable.

12. The case of the impleaded non official respondent, in brief, is this: -

M. Ramanamma was the absolute owner of the entire property known as Mallawari Chilaka consisting of about Ac.33.00 guntas having purchased the same under a registered sale deed bearing document no.2335 of 1960, dated 02.08.1960, out of which an extent of Ac.11.42 cents of land is covered by Sy.No.43/1 to 43/6 of Dondaparthi village of Visakhapatnam Taluq. A copy of the said sale deed is filed along with the pleadings of this respondent. The subject land is an estate land and was under the administration of Government as per the provisions of AP (AA) Estates (Abolition & Conversion into Ryotwari) Act, 1948. M. Ramanamma was granted a ground rent patta under the provisions of the said Act *vide* orders in Rc.no.2748/1961, dated 24.3.1961, by the Settlement Officer, Visakhapatnam for the lands covered by T.S.nos.43/1 to 43/6. She is thus the absolute owner and continued to be the pattadar of the entire extent of Ac.11.42 cents of land covered by T.S.Nos.43/1 to 43/6 of Dondaparthi village, Visakhapatnam. The said lands were acquired by various departments under Land Acquisition Act by separate approved subdivisions and compensation thereto was paid to the said Ramanamma. The lands acquired and balance left with Ramanamma are shown in the table below.

S.no.	Sub divisions owned by Ramanamma	Acquisition NH5 1966 sub divisions Award 3/1966	Acquisition Railways 1967 sub divisions Award 4/1967	Balance sub-division as declared in ULC by late Ramanamma in CC.no.2198/1976.
	1	1B	1A1	1A2
	2	2B	-	2A & 2C
	3	3A	3B2	3B1
	4	4B	-	4A & 4C
	5	5A	5B2	5B1
	6	--	6B	6A
Total	Ac.11.42	Ac.3.62	Ac.4.14	Ac.3.66
Compensation		Ramanamma received amounts u/sec 30 ref in OP15/1969	Ramanamma received amounts u/sec.30 ref OP113/1967	

Copies of Award 3/1966, dated 29.3.1966, order in OP.no.15/1969 dated 24.6.1971, Award no.4/67, dated 22.2.1967, along with approved subdivision FMB plan, order in OP.113/1967, dated 23.4.1977, are filed with the pleadings of this respondent. Out of the entire extent of land about Ac.11.42 cents in Sy.No.43/1 to 43/6 either was acquired or belongs to late M. Ramanamma and none others. Therefore, the claim of the writ petitioners is based on falsity. The said Ramanamma executed a Will, dated 04.07.2005, registered as document no.2436/2005 in the office of sub-registrar, Sanjeevareddy Nagar, Hyderabad. This respondent succeeded to the property, which was bequeathed to him under the said Will of Ramanamma. The District Collector's report, dated 17.12.2002, submitted in WP.no.17272 of 1990 is in conformity with the facts and the case of this respondent. M. Ramanamma, after acquisition, was left with Ac.3.66 cents in specific sub divisions in Sy.No.43/1 to 43/6, which includes an extent of Ac.1.22 cents in Sy.No.43/3B1 for which she filed a declaration under ULC Act as CC.no.2198

of 1976. The ULC declaration filed by Ramanamma in the said case culminated in the orders passed by this Court in WP.no.9017 of 2005, dated 30.06.2009, and WP.No.13073 of 2002, dated 10.06.2009, wherein it was held that the proceedings initiated against M. Ramanamma under the ULC Act were stated to be pending at the stage of section 8(1) of the Act and the same stood abated. During the pendency of the said proceedings, Ramanamma passed away on 22.4.2009. Thereafter, this respondent was brought on record as her legal heir. This respondent as successor of Ramanamma continues to be the owner of the land covered by ULC proceedings including the extent of Ac.1.22 cents in Sy.No.43/3B1. ULC authorities are highhandedly claiming possession of the land covered by ULC proceedings, that is, lands in Sy.Nos.43/1A2, 2A, 2C, 3B1, 4A, 4C, 5B1 & 6A. Hence, this respondent filed WP.no.18683 of 2016. In the said writ petition, by orders, dated 20.06.2016, this Court granted a direction to the respondents therein not to create any third party rights over the subject matter lands therein. Hence, this respondent is the owner of Ac.1.22 cents in Sy.No.43/3B1, apart from other lands of Ramanamma and he has got absolute title over the lands in Sy.No.43/3B1 apart from other lands in the sub divisions of survey no.43. The writ petitioners are claiming ownership in respect of part of the subject matter property as beneficiaries under Will, dated 07.08.2011, said to have been executed by Sairas Tarapurevala, who was said to have died on 24.10.2012. The writ petitioners filed the death certificate of Sairas Tarapurevala, dated 02.11.2012, said to have been issued by the Gram Panchayat, Keesara, which disclose that his death was recorded at sl.no.98, book no.1, dated 29.10.2012, and that he was a Muslim and that he died at door no.3-88, Keesara and the receiver of the certificate was T. Venkata Rao, 2nd writ

petitioner and that the 2nd writ petitioner is the guardian of said Tarapurevala. The writ petitioners in their representation made to the District Collector, dated 12.01.2017, mentioned that the said Tarapuravala is their family member. Since he is a Muslim (dudekula), the said fact gives raise to suspicion as to how Tarapurevala could be a family member of the writ petitioners who are Hindus. This respondent having invoked the provisions of RTI Act sought for issuance of death certificate of Tarapurevala alleged to have been issued, on 02.11.2012. The gram panchayat *vide* letter, dated 28.11.2017, informed that the copy of the death certificate cannot be provided as it is not available with them. However, a photostat copy of the relevant page of gram panchayat record was given to this respondent. The same shows that in the register of death, the name of Sairas Tarapurevala was interpolated at sl.no.98 in the place of the name of Gundu Pramila, which was already existing. So far as the recording of the name of Gundu Pramila, there was an endorsement, dated 13.12.2012, by the Sub-Registrar. However, insofar as the interpolation of the name of Sairas Tarapurevala is concerned, no endorsement has been made by the Sub-Registrar. As such, the death of Sairas Tarapurevala is not registered in the said Register of Deaths. The said register was tampered with and a fabricated document was brought into existence. In the Will of Tarapurevala, it is stated that Thotappali Venkata Rao is his friend and that Tarapurevala was sick and old and for his medical treatment expenses were born by Venkata Rao, 2nd writ petitioner, all along his life. In the representation, dated 12.01.2017, made to the authorities, signed by both the writ petitioners, they claim that they are family members of Tarapurevala. It shows that the writ petitioners conspired with a common object of grabbing the lands belonging to others by fabricating,

creating and introducing false documents. The writ petitioners are relying upon municipal tax receipts said to have been issued by GVMC in the name of so called Sairas Taraporevala for door no.45-1-8/18/3. However, the enquiry of this respondent revealed that the assessment record pertaining to the said door number has been assigned in the name of M. Mani Lakshmi at Ramchandra Nagar. All these facts go to show that the so called Taraporevala is a non existing fictitious person and the Will was brought into existence for the purpose of creation of records and thereby laying fraudulent claims over the subject property. Accordingly, the sale deed, dated 01.12.1989, was got executed in the name of so called non existent Sairas Taraporevala with vague address. The claim of the writ petitioners is founded on the said sale deed, alleged Will, fake and fabricated death certificate and municipal tax receipts with the name of non existent fictitious person. This respondent is given to understand that the petitioners are only name lenders to one J.R. Anand, retired IAS Officer, who has been actively involved in this case and has been constantly trying to influence the concerned Government Officials through his mobile phones. The writ petitioners being backed by the said Anand, are committing various illegal and criminal acts. The petitioners have not come to Court with clean hands.

13. Learned counsel for the writ petitioners placed reliance on the following decisions:

- 1. M/s.Annapurna Builders, Partnership Firm represented by its Managing Partner v. the Municipal Corporation of Hyderabad and another¹.**

¹ 1987 (1) ALT 644

2. **Hyderabad Potteries Pvt.Ltd., v. Collector, Hyderabad District and another²**
 3. **Dr. G. Ananda Kumar Reddy and another v. Municipal Corporation of Hyderabad and another³**
 4. **K. Manemma v. Municipal Commissioner of Hyderabad and another⁴**
 5. **Mirza Khusru Ali Baig and others v. GHMC, Hyderabad and another.⁵**
14. Learned counsel for the parties made submissions in line with the pleadings.
15. I have given earnest consideration to the pleadings and submissions.
16. The question for determination is – ‘whether the order passed by the Commissioner, GVMC, which is impugned in W.P.No.1238 of 2018, is sustainable under facts and in law?’
- 16.1 From the above narration adverted, in detail, to the pleadings of the parties, it is very clear that there is a serious dispute with regard to title to the property in respect of which the petitioners building permit was revoked by the impugned proceedings and also in respect of the property where actually the petitioners are carrying on construction activity pursuant to the subject building permit. A perusal of the subject building permit of the petitioners (since revoked) would show that they sought sanction of the building permit for the premises no.45-25-3 with TS/RS.no.43P. They did not specifically mention the sub division number except the no.43P. The sale deed, dated 01.12.1989, executed by Karri Satyavathi in favour of the 1st writ petitioner on a perusal

² 2001 (3) ALT 200

³ 2006(4) ALD 657

⁴ 2006(5) ALD 295

⁵ 2013(2) ALD 785

shows that a site of an extent of 500 square yards in plot no.1 part in Sy.No.43 part was the subject matter of the said sale deed and its Northern boundary is NH5 road. The copy of the Will, dated 07.08.2011, said to have been executed by Tarapurevala in favour of the 2nd petitioner shows that the subject matter is plot no.1 part presently called GVMC Allipuram Extension Ward, survey no.43 part admeasuring 500 Square yards at Akkayyapalem, Dondaparthi village. The Northern boundary of the said plot is also NH5 road. Now it is to be next noted that the execution of the gift deed for a part of the property in favour of GVMC is a condition precedent for approval of the building permit for making the desired construction on the property. Therefore, according to the petitioners, a gift deed, dated 30.10.2016, which is the subject matter in WP.No.4509 of 2017, was executed by the writ petitioners in favour of GVMC for an extent of 215.82 square yards in Sy.No.43 part of Dondaparthi village and that as the said document was refused to be registered by the sub-registrar, the above said writ petition was filed to direct the sub registrar to register the said gift deed. This Court granted interim order afore-stated. In the said interim order, the 7th respondent in the said writ petition was directed to verify whether the subject land is included in the prohibitory list and then take action for registration if the said gift deed is otherwise in order as per the provisions of Stamps and Registration Act. Later the gift deed was registered. After the registration of the said Gift Deed, the building permit in question, which was since revoked by the impugned proceedings, was obtained by the petitioners. Even in the said gift deed the no.43P was mentioned. *Prima facie*, it appears that there is no sub division survey number with the number 43P in survey no.43. The petitioners could not produce any official records to show the existence of

the said number 43P. In none of their documents there is reference to any of the sub division numbers of Sy.No.43, which are in existence. Sy.No.43P, which is mentioned all through in the documents of the petitioners is a non existent number according to the statement of the Tahasildar, the competent officer of the revenue Department. Though the petitioners' documents do contain only the no.43P, the petitioners are now claiming that the property in respect of which they have obtained building permit and the property over which they are making constructions is the property in sub division no.43/3B2 of Sy.No.43. Therefore, they are equating the survey no.43P to 43/3B2 only after the dispute has arisen. As per the field plan, which is not disputed before this Court, the Sy.No.43/3B2 is a triangular piece of land and hence, it has no four sides. Therefore, one of the contentions of the impleaded non official respondent is that the property where constructions are being made is some other property and not the property for which the petitioners allegedly obtained the building permit. One more aspect of the dispute, which needs an appropriate mention, is in regard to the extent of the Sy.No.43/3B2. The petitioners on one hand are claiming that the Urban Development Authority, Visakhapatnam, issued proceedings, dated 16.02.1991, after due survey, categorically stating that the land belonging to Ramanamma is covered by Sy.no.43/3B2 of Dondaparthi village measuring Ac.2.31 cents is not under acquisition by any authority and that the same is evident from the order of this Court in WP.no.17272 of 1990 dated 10.02.2003. Therefore, the contention of the petitioners obviously is that the extent of land in Sy.No.43/3B2 is Ac.2.31 cents. Whereas all other proceedings/documents including the earliest award no.4/67, dated 22.2.1967, related to acquisition of lands for the Indian Railways

for construction of staff quarters to the SE Railway in S.Nos.5,9,20 and 43 etcetera would disclose that the Sy.No.43/3B2 is of an extent of Ac.0.16 cents only. The documents filed by the Railways and the other material documents, which are relevant, would show that the entire land in Sy.no.43/1 consists of Ac.11.42 cents and that out of the said extent, Ac.3.72 cents was acquired for formation of NH road *vide* Award no.3 of 1966, dated 24.03.1966, leaving a balance extent of Ac.7.72 cents and that out of the said extent, Ac.3.50 cents was left for green belt area along the National Highway road and that the remaining balance of Ac.4.14 cents was acquired *vide* Award no.4/67, dated 22.6.1967. Thus, it appears *prima facie* that Ac.1.32 cents is in Sy.no.43/1A1 and Ac.0.16 cents is in Sy.no.43/3B2 and Ac.1.26 cents is in Sy.no.43/5B2 and Ac.1.40 cents is in Sy.no.43/6B making a total of Ac.4.14 cents. It is also borne out *prima facie* by the material record that Sy.no.43/3B before its further sub division was of an extent of Ac.1.40 cents as per the settlement fair adangal, which is a part of the award file, and that as per the award no.4/67, land admeasuring Ac.0.16 cents was acquired from the said sub division no.43/3B and that at that time it was assigned sy.no.43/3B2 and the remaining extent in 43/3B was assigned the sub division no.43/3B1. Therefore, it appears *prima facie* that Ac.4.14 cents was acquired by Railways under award no.4/67, dated 22.2.1967, which includes Ac.0.16 cents in Sy.No.43/3B2 and that the larger survey no.43/3B consists of Ac.1.40 cents only as per settlement fair adangal and that after Ac.0.16 cents was acquired for Railways, Sy.No43/3B was sub divided into 43/3B2 covering Ac.0.16 cents acquired for the Railways and the remaining extent in Sy.No.43/3B is carved out as 43/3B1 and that the extent of Sy.No.43/3B1 is the left out extent of Ac.1.24 cents

originally of 43/3B. It is also borne out by record including field map that Sy.No.43 consists of following sub division numbers with respective extents: S.No.43/1A1 – Ac.1.32 cents; S.No.43/3B2 – Ac.0.16 cents; S.No.43/5B2 – Ac.1.26 cents; and, S.No.43/6B – Ac.1.40 cents. The acquisition of land for Railways way back in the year 1967 is not in dispute. Thus, the land acquired by the Railways under Award no.4/67 so far as the present context is concerned covers the extent of Ac.0.16 cents in Sy.no.43/3B2. The impleaded non official respondent also contends that the entire extent of Ac.0.16 cents in Sy.no.43/3B2 was acquired for Railways and that out of the total extent of Ac.11.42 cents, Ac.3.62 cents covered by Sy.no.43/1B, 2B, 3A, 4B, 5A was acquired for NH5 in the year 1966 under Award no.3/1966 and that under Award 4/67, Ac.4.14 cents covered by Sy.nos.43/1A1, 43/3B2, 43/5B2 and 43/6B was acquired for the Railways *vide* Award 4/67 and that the balance extent of Ac.3.66 cents in sub divisions in 43/1A2, 43/2A & 2C, 43/3B1, 43/4A & 4C/43/5B1 and 43/6A belongs to late Ramanamma *vide* ULC. 2198/96. Therefore, it is obvious, *prima facie*, that there is a serious title dispute and that there is also a serious dispute about the petitioners' right to make constructions in the very property where the constructions are going on, much less, in the property in Sy.No.43/3B2, as their documents including the building permit do not show the said survey number 43/3B2 and as it is also borne out by record and is also undisputed that after the disputes had arisen, the petitioners are equating the no. 43P mentioned in their records (title documents and building permit) to Sy.No.43/3B2, the extent of which also is seriously in dispute. During post verification by the Commissioner, GVMC, it appears that it came to light that the property for which building permit is

granted is covered partly by the land acquired for the railways, that is, Ac.0.16 cents in Sy.No.43/3B2 and partly by ULC surplus lands. In that view of the matter, going by the fact that there is a complex dispute, which has to be resolved by a competent civil Court, it is apposite to hold that the Commissioner, GVMC is justified in passing the impugned order revoking the building permit, which was obtained online.

16.2 There is one more aspect to be dealt with. Learned counsel for the petitioners strongly contended that under Section 450 of the Act, the Commissioner has no power to revoke the permission that was once granted and that in the case on hand, though the permission for grant of building permit was sought online, certain objections were raised before the building permit was issued and that only after such objections were complied with, the building permit was granted, and that, therefore, it cannot be said that the permission was granted through online. It is not in dispute that only after the building permit was granted, the factual dispute related to the title to the property surfaced and not before. It is not the case of the petitioners that the objections taken and complied with, before the online permit was granted, related to serious title dispute. The principal submission of the learned counsel for the petitioners is that when the building permit was once granted, the Commissioner, GVMC, has no jurisdiction or power to revoke the same by invoking the provision under Section 450 of the Act and also on the grounds which are new and which are not mentioned in the show cause notice. He further submits that the Commissioner's act of consideration of new grounds, i.e., the grounds which are not mentioned in the show cause notice, while revoking the building permit is violative of the principles of natural justice.

However, learned standing counsel appearing for GVMC and Railways and the learned counsel appearing for the impleaded non official respondent strongly contended as follows: “There is a serious title dispute. The petitioners have no *prima facie* case. The record that was made available to the Commissioner, GVMC, clearly reflects that the building permission was obtained by gross misrepresentation. In such circumstances he has got power to revoke the building permit to remedy the injustice being suffered by the rival claimants. The petitioners are required under facts and in law to first establish their title to the property over which the constructions are being made. Unless the petitioners establish their title and right to make constructions over the property being claimed by them, they are not entitled to seek any orders for setting aside the revocation orders passed by the Commissioner, GVMC. The petitioners, who misrepresented the facts and obtained building permit, are not entitled to invoke equitable jurisdiction and seek the discretionary relief in the writ proceedings.”

16.3 In this backdrop, it is profitable to refer to Section 450 of the Act, which reads as under:

“**450.** Power of Commissioner to cancel permission on the ground of material misrepresentation by applicant: If at any time after permission to proceed with any building or work has been given, the Commissioner is satisfied that such permission was granted in consequence of any material misrepresentation or fraudulent statement contained in the notice given or information furnished under Section 428 or 433 or if the further information if any, furnished, he may cancel such permission and any work done thereunder shall be deemed to have been done without his permission.”

16.4 It is apt also to note that sections 428 and 433, read as under:

428: Notice to be given to commissioner of intention to erect a building:

(1) Every person who intends to erect a building shall give to the commissioner notice of his said intention in a form, obtained for his purpose under Section 432, specifying the position of the building intended to be erected, the description of 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.

(2) In this Chapter and wherever occurring in this Act “to erect or re-erect a building” means –

- (i) any material alteration or enlargement of any building;
- (ii) the conversion by structural alteration into a place for human habitation of any building not originally constructed for human habitation;
- (iii) the conversion of one or more places of human habitation into a greater number of such places;
- (iv) the conversion of two or more places of human habitation into a lesser number of such places;
- (v) such alteration of a building as would effect a change in its drainage or sanitary arrangements or materially effect its security;
- (vi) the addition of any rooms, buildings, outhouses or other structures to any building;
- (vii) conversion by any structural alteration into a place of religious worship or into a sacred building, any place or building not originally meant or constructed for such purpose;
- (viii) to roof or cover an open space between walls or buildings as regards the structure which is formed by roofing or covering such space;
- (ix) to convert into a stall, shop, warehouse or godown, any building not originally constructed for use as such or *vice versa*.

433: Notice to be given to the Commissioner of intention to make additions, etc: Every person who shall intend.

- (a) to make any additional to a building; or
- (b) to make any alteration or repairs to a building; not being a frame building, involving the removal or re-erection of any external or party-wall thereof or of any wall which supports the roof thereof, to an extent exceeding one-half of such wall above the plinth level, such half to be measured in superficial feet; or
- (c) to make any alteration or repairs to a frame-building, involving the removal or re-erection of more than one-half of the posts in any such wall thereof as aforesaid or involving the removal or re-erection of any such wall thereof as aforesaid to an extent exceeding one-half such wall above the plinth level, such half to be measured in superficial feet; or
- (d) to make any alteration in a building involving: -

(i) the sub-division of any room in such building so as to convert the same into two or more separate rooms.

(ii) The conversion of any passage or space in such building into a room or rooms; or

(e) to remove or reconstruct any portion of a building abutting on a street which stands within the regular line of such street; shall give to the Commissioner in a form obtained for the purpose under Section 435 notice of his intention, specifying the portion of the building in which such work is to be executed, the nature and extent of the intended work, the particular part or parts, if any, of such work which is or, are intended to be used for human habitation and the name of the person whom he intends to employ to supervise its execution.

16.5 In the back drop of contentions and the provisions of law referred to supra, it is crucial to note that in the show cause notice which was issued to the petitioner by the Commissioner, GVMC, it is stated as follows: 'During the course of post verification and as per remarks of the town surveyor it is reported that the construction of the apartment building is taking place by the building duly occupying ULC property published by the District Collector vide Rc./No.44/2016/D, dated 4.6.2016 and Railway Land vested with Indian Railways as per Award no.4/67, dated 22.6.1967, covered by S.No.43/31(P) and 43/3B2(P) of Dondaparthi village.' It is further stated in the show cause notice that the petitioners are required to show within the time specified therein as to why permission obtained by them for construction shall not be cancelled under Section 450 of the Act as there are material misrepresentation of facts and as the site belongs to Indian Railways and ULC land. In the order revoking permission, there is not only a reference to the aspects mentioned in the show cause notice but also additionally to the letter, dated 2.11.2017, addressed to the office of the Commissioner by the Tahasildar, Visakhapatnam, wherein it is stated that the petitioners referred to a non existing 43part in their sale document; that survey number 43/3 of Dondaparthi village consists of

Ac.1.77 cents out of which Ac.0.39 cents was acquired for NH-16 with S/No.43/3A vide award no.3/66, dated 29.3.1966; and another Ac.0.16 cents was acquired for Railways in Sy.no.43/3B2 vide award no.4/67, dated 22.2.1967. The specific contention of the petitioners is that this is one of the grounds for revocation of the building permit and that the said aspect being not part of the show cause notice and as they were not supplied with the report of the Tahasildar, they are handicapped, and that therefore, the principles of natural justice are violated. The decision in *Mirza Khusru Ali Baig* [5 supra] is relied upon in support of the propositions that while taking punitive action, the Corporation is bound to adhere to the principles of natural justice and that while passing orders revoking a building permit, the principles of natural justice have to be followed as by such order the permit holder would be adversely affected. In this decision, the act of cancellation of a building permit was appears to have been done on a complaint of encroachment made by the Wakf Board, however, without furnishing such complaint to the permit holder. However, in the considered view of this Court, the contention of the writ petitioners is merit-less since the building permit was revoked not only on the grounds now being pointed out by the writ petitioners but also on other sustainable grounds in respect of which the petitioners were asked to show cause and explain. Thus, in the case on hand, the building permit was revoked on certain grounds in respect of which the petitioners were afforded an opportunity of offering their explanation. Therefore, and as the revocation proceedings are otherwise sustainable this contention, in the considered view of this Court, needs no countenance.

16.6 I have gone through the other decisions cited by the learned counsel for the writ petitioners.

16.6.1 The decision in M/s.Annapurna Builders, Partnership Firm represented by its Managing Partner [1 supra] was relied upon in support of the propositions that the Commissioner of the Corporation is competent to ask a person to produce documents of title before considering his application for construction but he cannot insist on production of clearance certificate of Urban Ceiling Authority. Placing reliance on this decision, it is contended that the petitioners are not required to produce any clearance certificates and, therefore, there is no misrepresentation by them.

16.6.2 The decision in Hyderabad Potteries Pvt.Ltd., [2 supra] is relied upon in support of the contention that this Court held that permission to construct building cannot be refused solely on the ground that the land in question was recorded in Town Survey Land record as Government land and that entry in TSLR is not conclusive in dealing with applications for building permission and that the said entry has to be considered along with the other documents produced by the applicant.

16.6.3 The decision in Dr. G. Ananda Kumar Reddy and another [3 supra] is relied upon in support of the proposition that Municipal Corporation cannot insist on No Objection Certificate and cannot refuse to receive the building application on ground that such a certificate has not been obtained from the Collector concerned and is not enclosed to the application.

16.6.4 The decision in K. Manemma [4 supra] is relied upon in support of the propositions that refusal to receive or entertain the application merely on

the ground of TSLR entries is not sustainable in the event of the applicant being able to satisfy ownership, title and legal position in relation to the property in question.

16.6.5 Having gone through all the decisions and having regard to the facts of the case and the reasons assigned in support of the conclusions supra, this Court finds that the decisions relied upon do not advance the case of the writ petitioners any further.

16.6 Dealing further with the contentions with regard to the jurisdiction and the power of the Commissioner, in the considered view of this Court, having regard to the facts and circumstances, the said contentions require a mention only to be rejected. When, on facts of a case, it is, *prima facie*, found by the Commissioner that there is a serious dispute of title to the property and when the Commissioner's action appears to be justified, the petitioners cannot be heard to say that the Commissioner has no jurisdiction to revoke the permission since the Commissioner has the power and jurisdiction to incidentally examine the title and the question of entitlement of the person to continue to have the building permit which according to him was obtained by misrepresentation. Thus, it is trite to note that the Commissioner is entitled under law to refuse to grant building permission or revoke the same and direct the parties to resolve the civil dispute with regard to title in cases of title dispute. Such action of the Commissioner is in deed justifiable as he is only entitled to summarily examine the title and as it is beyond his power to adjudicate title of the parties to the property in dispute. This Court thus finds

that the issue being a complex issue of fact, it requires determination by a civil Court in an appropriate proceeding, after full-fledged trial.

16.7 On a careful consideration of the facts and circumstances of the case, and for the reasons aforesaid, this Court accordingly holds that this Court need not interfere with the impugned order, which appears to be just, fair and sustainable.

16.8 Dealing further with the contention of the sustainability or otherwise of the order impugned, it is profitable to refer to the Article 226 and the scope and ambit of the said power.

Article 226:

226. Power of High Courts to issue certain writs. - (1) Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority including in appropriate cases, any government, within those territories directions, orders and writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

16.9 Reverting to the case facts, in the conspectus of the whole matter involving a serious title dispute in respect of the property, and in view of the facts that property/land in Sy.No.43/3B2 is a triangular piece of land situated away from the road and whereas the land in Sy.No.43P being claimed by the writ petitioners, has boundaries on all four sides, and that there is a serious dispute even about the extent of land available in the said survey number 43/3B2, this Court holds that any interference with the order impugned would give undue advantage to the writ petitioners to proceed with further constructions without the resolution of serious disputes involved in the *lis*. The

documents of the petitioners do not at all refer to the survey no.43/3B2; and, their documents refer to no.43P; and they could not show the existence of the said survey number by producing any public document. They could not also produce any document to show that the land they purchased in Sy.No.43P if in existence is equatable to the land in Sy.No43/3B2, which according to the Railways is its property having been acquired for its use under award no.4/67 way back in the year 1967.

16.10 When a person approaches a Court of Equity in exercise of its extraordinary jurisdiction under Article 226 of the Constitution, he should approach the Court not only with clean hands but also with clean mind, clean heart and clean objective. Equally, the judicial process should never become an instrument of oppression or abuse or a means in the process of the Court to subvert justice. He who seeks equity must do equity. The legal maxim "*Jure naturae aequum est nemini cum alterius detrimento et injuria fieri locupletiores*", means that it is a law of nature that one should not be enriched by the loss or injury to another. [vide: The Ramjas Foundation and Ors. v. Union of India and Ors: AIR 1993 SC 852; K.P. Srinivas v. R.M. Premchand and Ors.: (1994) 6 SCC 620 and Nooruddin v. (Dr.) K.L. Anand (1995) 1 SCC 242)]. Similarly in the decision in Ramniklal N. Bhutta and Anr. v. State of Maharashtra and Ors. [AIR 1997 SC 1236], the Supreme Court observed as under:

“The power under Article 226 is discretionary. It will be exercised only in furtherance of interest of justice and not merely on the making out of a legal point...the interest of justice and the public interest coalesce. They are very often one and the same....”

The Courts have to weigh the public interest *vis-à-vis* the private interest while exercising any of their discretionary powers. Since the land in 43/3B2 is being claimed to be the land of Railways and as the part of the land over which construction is going on is being claimed as ULC land of the Government, and for all the reasons afore-stated, this Court is of the considered view that this is not a fit case to exercise discretionary jurisdiction in favour of the writ petitioners. The point is accordingly answered holding that the order impugned does not brook interference.

16.11 On the above analysis, this Court holds that W.P.No.1238 of 2018 is liable to be dismissed.

17. The said writ petition is dismissed accordingly.

18. As a sequel, the W.P.No.4509 of 2017 is disposed of leaving open the question of the validity of the gift deed, which was registered pursuant to the interim orders of this Court, as the said question stands resolved incidentally on the resolution of the dispute of title in respect of the whole of the property being claimed by the petitioners.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

M.SEETHARAMA MURTI, J

26.09.2018

Vjl