

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

WRIT PETITION NO.20597 OF 2000

ORDER:

This writ petition was originally filed, in the year 2000 and after a prolonged period of 18 years it has come up for disposal in the year 2018, with following prayer:

“...to issue a writ or order or direction more particularly one in the nature of Writ of Mandamus declaring that the action of the respondents in constructing the compound wall blocking the ingress and egress to the petitioners main palace to road No.2 which is the ingress and egress to the area of 6400 sq.mts which is an integral part of a protected property as illegal, arbitrary and constitutional and further directions to the respondent No.1 to entertain the revision already filed and pending before the first respondent government and decide the same taking into the consideration of the factual aspects and also the legal issues by following the law declared by the Hon'ble Supreme Court in Smt.Meera Gupta V/s State of West Bengal and others reported in AIR 1992 supreme Court page 1567 and the orders of the Government Memorandum No.73489/UCL/934 dt.15.2.1994 and the law declared by the Hon'ble Supreme Court in Smt.Meera Gupta Vs. State of West Bengal and others reported in AIR 1992 SC 1567 and the orders of the Government Memorandum No.73489/UC1/93-4, dt.15.2.1994 and the law declared by the Hon'ble Supreme Court in Smt.Atia Mohammedi Begum V/s. State of U.P and the law declared by the Hon'ble Supreme Court and W.P.No.20029/93, dt: 22.7.1998 in P.S. Rao V/s. Special Officer and Competent Authority, Urban Land Ceiling, Hyderabad upheld in W.A.No.1696/98, dt: 8.6.1999 and confirmed by the Hon'ble Supreme Court in SLP No.1662 of 2000, dt: 17.1.2000 and further clarified in I.A.No.2 of 2000...”

2. Later, the petitioner filed an application in WPMP.No.920 of 2009 seeking to amend the prayer. In the said application, the third respondent filed counter affidavit and sought to dismiss the same. This Court, by order dated 01.02.2017, allowed the said petition, by virtue of which, the prayer in the writ petition reads as under:

“...to issue a writ or order or direction more particularly one in the nature of Writ of Mandamus declaring that the action of the respondents without serving the alleged 10(5) notice Dt.14-3-1983 and 10(6) proceedings Dt.25.03.1991 and the preparation of panchanama dt.25.03.1991 and issuance of G.O.Ms.No.957 of Rev.UC-I Dept., 25.10.1991 and G.O.Ms.No.22 Energy Forest III, dt.3.4.1994 are illegal and declare that the panchanama is illegal, null and void in view of the repeal Act 33 of 1976 all the proceedings covered in the declaration are abated and consequentially the action of the respondents in constructing the compound wall blocking the ingress and egress to the petitioners main palace to road No.2 which is the ingress and egress to the petitioner properties at Chiran Palace as illegal, arbitrary and unconstitutional duly taking into the consideration of the factual aspects and also the legal issues by following the law declared by the Hon’ble Supreme Court in Smt.Meera Gupta Vs. State of West Bengal and others reported in AIR 1992 SC 1567 and the orders of the Government Memorandum No.73489/UC1/93-4, dt.15.2.1994 and the law declared by the Hon’ble Supreme Court in Smt.Atia Mohammedi Begum V/s. State of U.P and the law declared by the Hon’ble Supreme Court and W.P.No.20029/93, dt: 22.7.1998 in P.S. Rao V/s. Special Officer and Competent Authority, Urban Land Ceiling, Hyderabad upheld in W.A.No.1696/98, dt: 8.6.1999 and confirmed by the Hon’ble Supreme Court in SLP No.1662 of 2000, dt: 17.1.2000 and further clarified in I.A.No.2 of 2000...”

3. The case of the petitioner which led to file the present writ petition is as follows:

(i) The earlier GPA Holder of the writ petitioner filed a declaration under Section 6(1) of the Urban Land (Ceiling and Regulation) Act, 1976 (for short, the Act) declaring the properties held by the petitioner without actually having knowledge about the provisions of the Act. The Special Officer and Competent Authority, third respondent herein, had not properly enquired the nature of the properties declared by the GPA Holder of the petitioner and prepared a draft statement without deleting the non-vacant lands which are outside the purview of the Act viz., land occupied by the roads, water tanks, etc. Accordingly, the third respondent passed

orders under Section 8(4) and issued final statement under Section 9 of the Act in CC.No.E/10122/76, dated 08.04.1982, determining an aggregate extent of 2201537.56 square meters as vacant in excess of the ceiling area from and out of the following properties.

1.	Chiraan Palace	-	1773603.98 sq. mtrs
2.	Falaknuma Palace	-	837077.80 sq. mtrs
3.	Bagh-e-Ahmed Doula, Saroornagar	-	103902.00 sq. mtrs
4.	Bagh-e-Sirajunnisa, Karmanghat	-	25489.00 sq. mtrs
5.	Zeba Bagh	-	55968.74 sq. mtrs
6.	Chow Mohalla Palace	-	1497.04 sq. mtrs
Total -			2201537.56 sq. mtrs

(ii) The petitioner's earlier GPA Holder, instead of seeking for deletion of the non-vacant lands, the protected properties and for exclusion of agricultural lands and the garden in Chiran Palace, which is meant for horticulture, had applied to the Government for exemption of Chiran Palace. As per the version of the petitioner, as the Chiran Palace is a garden and is earmarked for recreational purpose, the same would not come under the purview of the Act. Apart from the same, Falaknuma Palace, Bagh-e-Sirajunnissa and Bagh-e-Ahmed Doula were situated in the peripheral area of Hyderabad Urban Agglomeration and the same were to be excluded from the computations of the holdings of the petitioner and relied upon the decision of the Hon'ble Supreme Court in **Atia Mohammadi Begum Vs. State of U.P¹**.

¹ AIR 1993 SC 2465

(iii) The State Government in exercise of the powers conferred under Section 20 of the Act have granted general exemption to each of the land holder for a gross extent of Ac.8.30 guntas or a net extent of Ac.5.00 guntas in respect of the lands situated in the peripheral area of Hyderabad Urban Agglomeration vide G.O.Ms.No.733 (Revenue) UC-I, Department, dated 31.10.1988. As the properties of the petitioner at Karmanghat and Saroornagar are situated within the peripheral area of Hyderabad Urban Agglomeration, by virtue of the exemption granted, an extent of Ac.5.00 guntas each is liable for exclusion from the holdings of the petitioner and consequently the extent of vacant land in excess of the ceiling area would be reduced to that extent.

(iv) Chiran Palace is surrounded by a compound wall having a length of 5 kilometers, which was constructed long before the commencement of the Act. The compound wall comes within the definitions of 'building' and 'land' under Sections 2(2) and 2(28) of the Hyderabad Municipal Corporation Act, 1955 (for short, HMC Act). As per Section 2(q)(ii) of the Act, the land occupied by the building which was constructed prior to the Act, is not the vacant land. The scope and ambit of the Act is mainly to determine the extent of vacant land held by a declarant and take away the vacant land in excess of the ceiling area. Since the land surrendered by the compound wall constructed prior to the Act is not vacant land, the same is outside the purview of the Act and it ought to have been excluded from the holdings of the petitioner. If the total

extent occupied by the compound wall is calculated, it comes to nearly more than Ac.25-00 which ought to have been excluded while determining the holdings of the petitioner. Apart from the same, there is a water tank admeasuring about Ac.5-00 guntas and also a water body admeasuring about Ac.5-00 guntas and the same ought to have been excluded from the holdings of the petitioner. A substantial portion of Chiran Palace was earmarked in the master plan for recreation purpose. As per the building rules, construction of the buildings over the land earmarked for the recreation part or playground purpose in the master plan is not permissible. Therefore, the extent earmarked for recreation purpose in the master plan is not vacant land as per Section 2(q)(i) of the Act. Therefore, the said extent is outside the scope and ambit of the Act and the third respondent had no jurisdiction to declare the said land as vacant and to take over possession of the same into the custody of the Government.

(v) As the earlier GPA Holder could not pursue the matter effectively, the petitioner appointed the present GPA Holder. Challenging the order dated 08.04.1982 of the third respondent, the petitioner preferred a revision before the first respondent and the same is pending.

(vi) In the order of the third respondent under Section 8(4), final statement under Section 9 of the Act and in the sub-division sketch of Chiran Palace, there were several protected non-vacant lands, non-dwelling units and dwelling units and the same are outside the

purview of the Act. The main palace of the petitioner along with the other houses are facing road No.2 and the ingress and egress to the main palace i.e., dwelling unit No.1, as shown in the sub-division map prepared and certified by the third respondent, would indicate that an extent of 6400 sq. meters is being used by the petitioner only for ingress and egress for his main palace so as to link the main palace to road No.2 and the said area was made as integral part of the protected area permissible to him. Therefore, the respondents have no right or authority to prevent the petitioner from using and enjoying the said extent of land.

(vii) The Government, without following due process of law, started demolishing the compound wall for the purpose of widening the road.

4. The third respondent filed a counter-affidavit stating that the GPA Holder of the petitioner filed a statement in Form-I under Section 6(1) of the Act declaring the following properties held by him in Hyderabad Urban Agglomeration.

Sl. No.	Item, Building, Vacant land, Plot Number, Survey Number	Village, Ward, Locality	Extent in Sq. Mtrs.
1	King Koti	King Koti, Hyderabad	61057.00
2	Nazri Bagh	King Koti, Hyderabad	22506.00
3	Falakunuma Palace	Bandlaguda, Hyderabad	494166.80
4	Chow Mahalla Palace	Motigalli, Hyderabad	19163.00
5	Zeba Bagh	Asif Nagar, Hyderabad	62215.00
6	Cheeran Palace	H.No.8-2-293/82, Banjara Hills	1221964.00
7	Bel View	H.No.8-2-248, Panjagutta	32453.00
8	Land opposite to King Koti	King Koti	--
9	Chashm-e-Bum	--	97474.00
10	Bagh Ahmed Bowla	Saroornagar, Hyderabad	101642.00

11	Lingampally House	Barkatpura, Hyderabad	3294.00
12	Bandlaguda	Hyderabad, Urban	1108872.00
13	Saroornagar Old Fort	Saroornagar	164904.00
14	Bagh-e-Sirajunnisa Begum	--	24277.00
15	Lalapet	--	28324.00
16	Pahadi Shareef	Hyderabad Urban	12139.00

5. After due enquiry, the petitioner was declared as surplus vacant landholder under Section 8(4) and final statement under Section 9 of the Act was issued vide proceedings of the third respondent dated 08.04.1982 over the following properties.

Sl. No.	Description of the property	Area declared as excess in Sq. Mtrs.
1	Falaknuma Palace	8,37,077.80
2	Chow Mohalla	1,497.04
3	Zeba Bagh	55,968.74
4	Cheeran Palace	11,77,603.98
5	K.Bagh-e-Ahmed Bowla (Saroornagar)	1,03,092.00
6	Bagh-e-Sirajunnisa (Karmanghat)	25,489.00
Total		22,01,537.56

6. Thereafter, a notification under Section 10(1) of the Act was issued and published in the A.P.Gazette No.29, dated 22.07.1982, showing the particulars of the land held by the petitioner and called for objections from general public, but no one including the petitioner filed any objections. Therefore, a declaration under Section 10(3) of the Act was issued and the same was published in the A.P. Gazette No.91, dated 23.02.1983, stating that the excess vacant land to an extent of 1177603.98 sq. meters known as Chiran Palace of Shaikpet Village along with other properties are deemed to have been vested with the Government free from all encumbrances with effect from 23.02.1983. After completing all formalities, the Enquiry Officer has taken over the possession of

the surplus land and handed over the same to the Mandal Revenue Officer, Golkonda on 25.03.1991. Subsequently, the Government in G.O.Ms.No.957, Revenue (UC-I) Department, dated 25.10.1991, issued orders directing the Collector, Hyderabad, the fourth respondent herein, to handover the said surplus land to the Andhra Pradesh Forest Department for development of National Park, which is presently known as Kasu Brahmananda Reddy National Park.

7. It is further stated in the counter that G.O.Ms.No.957, dated 25.10.1991, was challenged in WP.No.4513 of 1991 and this Court in WPMP.No.17955/1991, granted *status quo* order on 30.10.1991. Against the said order, the Government filed W.A.No.1220/1991 and a Division Bench of this Court allowed the same. Against the same, the H.E.H. the Nizam, filed S.L.P.No.17192/1991 and the Hon'ble Supreme Court disposed of the same on 22.11.1991 with a direction to maintain *status quo* pending disposal of W.P.No.4513 of 1991. The said writ petition was rejected by the Division Bench of this Court and made it clear that the Government could proceed with their plan of action for development of the area as National Park. Thereafter, the entire surplus land of 290 acres was handed over to the Forest Department on 01.19.1992. Against the same, the H.E.H., the Nizam, filed S.L.P.No.13815 of 1992 and the Hon'ble Supreme Court dismissed the same on 23.11.1992. Subsequently, the Government vide G.O.Ms.No.22, Energy Forests (For-III) Department, dated 03.02.1994, issued a notification under

Section 24 of the A.P. Forest Act, 1967, declaring an extent of 142.50 hectares excluding 13.8 hectares for road widening around the park as protected forest and the same was notified in the A.P. Gazette No.56, dated 15.01.1994 and in Hyderabad District Gazette No.6, dated 10.05.1994. Therefore, he sought to dismiss the writ petition.

8. Sri C.Hanumantha Rao, learned counsel for the petitioner, argued that there is no clarity in the Act with regard to the definition of 'buildings' and hence the order passed under Section 8(4) dated 08.04.1982 is erroneous.

9. He further argued that when a specific piece of land shown in the master plan, the same would bind on the State as well as the citizen/individual. The Act has no application to the lands which are not covered by the master plan and admittedly in the case on hand, the master plan came into force on 29.09.1980. In this regard, he relied on **Audikesava Reddy Vs. State of A.P.**², wherein it has been held that the master plan prepared as per law in force even subsequent to enforcement of the Act is to be taken into consideration to determine whether a particular piece of land is vacant land.

10. He further argued that as the subject lands are situated outside the master plan, the Act is not applicable. In this regard, he relied on **Atia Mohammadi Begum's** case (1 supra), wherein the question was regarding the quantification of vacant land in excess

² 2002(1) SCC 227

of ceiling limit. The competent authority had declared that the appellant therein was holding 19813.83 sq. mts. of vacant land in Aligarh in excess of the ceiling limit but the District Judge reduced the area of the excess land to 6738.23 sq. mts. The order of the District Judge was challenged by the owner and also the State by filing writ petitions before the High Court of Uttar Pradesh. The owner's writ petition was dismissed and the State's writ petition was partly allowed. In appeal before the Hon'ble Supreme Court, the owner sought restoration of the order of the District Judge which had been set aside by the High Court upon interpretation of the provisions of the Act. The Act came into force in the State of Uttar Pradesh on 17th February, 1976. At that time, there was no master plan for the area of Aligarh. The master plan for Aligarh was made on 24th February, 1980. In that master plan, the land in dispute was shown as vacant land. The Uttar Pradesh High Court was of the view that by virtue of explanation (c) of Section 2(o) defining 'urban land', the land of the appellant could not be treated as mainly used for the purpose of agriculture because it was shown in the master plan made on 24th February, 1980.

11. Learned counsel further argued that in view of G.O.Ms.No.733, dated 28.08.1988, the petitioner is entitled for the benefit of exempting his three lands in peripheral area from the ambit of Chapter III of the Act. The Chiran Palace (item No.6) at Banjara Hills (now, popularly known as KBR Park) is spread in 499 acres with full of trees and though the said land is categorized as

garden land, the same was also treated as excess land by exempting only the Palace. In this regard, he also relied on a decision of the Hon'ble Supreme Court in **P.S. Rao Vs. Special Officer and Competent Authority, Urban Land Ceiling, Hyd.**³.

12. He further argued that the land of Acs.499-00 guntas under Chiran Palace is not the vacant land, but the same is garden land. The draft declaration was prepared under Section 8(1) and order was passed under Section 8(4) and final statement was issued under Section 9 of the Act. Thereafter, the respondents issued the proceedings straight away under Section 10(6) by avoiding notice under Section 10(5) and the same is in gross violation of principles of natural justice and contrary to the provisions of the Act.

13. He further argued that insofar as item Nos.10 and 13 is concerned, i.e., the lands situated at Saroor Nagar, they were acquired by the Government long back for the purpose of allotment of house sites to the homeless poor persons. Thereafter, compensation has been paid by the Government in pursuance of the judgment of the Hon'ble Supreme Court in the year 1996. Thus, the lands affected under acquisition are not liable for computation for the purpose of declaring as excess lands within the meaning of the Act.

14. He further argued that insofar as item No.3 is concerned, i.e., Falaknuma Palace, it is not just a single dwelling property, but there are number of houses in and around it and that it cannot be

³ 1998 (4) ALD 697

construed as vacant land for the purpose of declaring as excess lands within the meaning of the Act.

15. He further argued that insofar as the lands covered by items Nos.12 and 14 are concerned, the same are not in master plan. The original master plan was confined to the Hyderabad City Municipal limits and the extended plan came into force from 29.09.1980 and hence the lands covered by items Nos.12 and 14 are liable for exemption as the same does not fall within the Chapter III of the Act. The properties under exemption cannot be included for the purpose of computation, and the Government under the garb of ex-proprietary legislation, cannot enrich itself. He further argued that panchanama was done, after concluding the proceedings under Section 10 of the Act, only in respect of Chiran Palace and with regard to other declared properties, there was no panchanama. In this regard, he placed reliance upon the judgment in **State of U.P. Vs. Hari Ram**⁴. He further argued that the notification issued under Section 10(5) of the Act was not served upon the petitioner and hence, for non-compliance of Section 10(3), the notification dated 14.03.1983 cannot be sustained and it is contrary to law. The proceedings under Section 10(6) were issued without serving any notice to the petitioner under Section 10(5). Order under Section 10(6) was passed only in respect of Chiran Palace, and that once the land is exempted, the same cannot be reverted for the purpose of computing as excess land under the Act.

⁴ 2013(4) SCC 280

16. He further argued that by virtue of the repeal Act, since the possession of the properties has not been physically taken over and final orders were not passed in respect of other properties, the proceedings have to be abated and the subject lands have to be resumed in favour of the petitioner. In this regard, he relied on the Larger Decision Bench of the Hon'ble Supreme Court in **Smt.Angoori Devi Vs. State of U.P.**⁵. He also relied on the Hon'ble Supreme Court judgments in **Siemens Engineering And Mfg. Co. Vs. Union of India**⁶, **Devinder Singh Vs. State of Punjab**⁷, **State of A.P. Vs. V.Venkateswara Rao (Dead) by L.R**⁸, **State of Assam Vs. Bhaskar Jyoti Sarma**⁹, **D.R. Somayajulu Secretary, D.S. Vs. Attili Appala Swamy**¹⁰, **Baru Ram (Shri) Vs. Shrimati Prasanni**¹¹, **Smt.Shyam Kishori Devi Vs. Patna Municipal Corporation**¹², **Ashutosh Gupta Vs. State of Rajasthan**¹³, **Common Cause a Registered Society Vs. Union of India**¹⁴, **Urban Improvement Trust, Bikaner Vs. Mohan Lal**¹⁵, **Vipinchandra Vadilal Bavishi Vs. State of Gujarat**¹⁶, **Usha Mehta Vs. Government of Andhra Pradesh**¹⁷, **Chief Justice of A.P. Vs. L.V.A. Dikshitulu**¹⁸ and **Kalabharati Advertising Vs. Hemant**

⁵ 2001 AIR (SC2) 5128

⁶ (1976) 2 SCC 981

⁷ AIR 2008 SC 261(1)

⁸ AIR 2004 SC 2900

⁹ (2015) 5 SCC 321

¹⁰ 2015 (1) ALD 151 (SC)

¹¹ AIR 1959 SC 93

¹² (1966) AIR (SC) 1678

¹³ (2002) AIR (SC) 1533

¹⁴ (1996) AIR (SC) 3538

¹⁵ 2010 AIR SC2 1612

¹⁶ (2016) AIR (SC) 626

¹⁷ (2013) AIR (SC) 132

¹⁸ AIR 1979 SC 193(1)

Vimalnath Narichania¹⁹ and also this Court in **Government of A.P. Vs. A.V.Papayya Sastry²⁰, P.Laxmi Kantha Rao and Others Vs. Government of Andhra Pradesh²¹** and **D.Tara Bai and Others Vs. Government of Andhra Pradesh²²**.

17. Sri B.S.Prasad, learned Advocate General of State of Telangana, submitted that there is no violation of law and no contravention in passing the impugned order and the respondents have followed due process of law meticulously while dealing with the properties of the petitioner. The declaration was filed on 15.09.1976 by the GPA Holder of the petitioner and the order was passed on 08.04.1992 declaring the lands covered by Chiran Palace along with other properties as surplus. Notification under Section 10 was issued vide Gazette dated 22.07.1982. He further submitted that the petitioner, having pleaded exemption on the earlier occasion, is estopped from finding vires in the impugned GOs and the Act. He further submitted that the petitioner earlier filed W.P.No.4650 of 2001 with similar prayer as that of the present writ petition. For the benefit of claiming relief, the petitioner twisted the prayer in the present writ petition and hence it can be said that the petitioner suppressed the material facts, but it is of no help to the petitioner and that reopening the arguments cannot be permitted. The GOs issued by the Government in respect of Chiran Palace lands attained finality and he cannot once again agitate the

¹⁹ AIR 2010 SC 3745

²⁰ (2000) 4 ALT 69

²¹ 2015 (3) ALD 248

²² 2013 (2) ALD 334

same. The petitioner did not make the Forest Department as the party to this writ petition, and in the absence of Forest Department, the writ petition is bad for non-joinder of necessary party and is liable to be dismissed on that ground also. He further submitted that the petitioner in his representation to the Government sought exemption on the ground of vacant land, but now again sought for interference of this Court on the ground of 'garden land' and therefore the writ petition cannot be entertained. The petitioner filed W.P.No.4513 of 1991 questioning G.O.Ms.No.957, dated 25.10.1991, but the same was dismissed and the said GO has attained finality, as the Hon'ble Supreme Court declined to interfere.

18. He further submitted that the Government stands saved under the repeal Act with regard to vesting of land and its possession under Section 10(3) of the Act. As the possession of the subject lands was taken over by the Government, the petitioner cannot be granted any relief at this belated stage. Insofar as prayer in the writ petition regarding construction of compound wall and restraining the petitioner from exercising his right to ingress and egress, are all baseless, as his easementary rights have been protected and there is no cause of action to file the present writ petition. He further submitted that in support of amended prayer, the petitioner did not raise any valid contentions in the writ affidavit, and in the absence of the same, the relief in the writ

petition cannot be granted and the writ petition is devoid of merits and prayed to dismiss the writ petition.

19. In reply, Sri C.Hanumantha Rao, learned counsel for the petitioner, contended that the arguments of the learned Advocate General are incorrect on facts and the law and the judgments referred by the learned Advocate General cannot be looked into as the same are erroneous and not applicable to the present facts of the case and reiterated his arguments as aforestated and prayed to allow the writ petition.

20. In order to decide the litigation in this writ petition, it is necessary to bear in mind the meaning of expressions "Master Plan", "Urban Land", "Vacant Land" occurring in Sections 2(h), 2(o), 2(q) respectively in the Act and they read as under:

"2(h) 'master plan', in relation to an area within an urban agglomeration or any part thereof, means the plan (by whatever name called) prepared under any law for the time being in force or in pursuance of an order made by the State Government for the development of such area or part thereof and providing for the stages by which such development shall be carried out;

2(o) "urban land" means,-

- (i) any land situated within the limits of an urban agglomeration and referred to as such in the master plan; or
- (ii) in a case where there is no master plan, or where the master plan does not refer to any land as urban land, any land within the limits of an urban agglomeration and situated in any area included within the local limits of a municipality (by whatever name called), a notified area committee, a town area committee, a city and town committee, a small town committee, a cantonment board or a panchayat,

but does not include any such land which is mainly used for the purpose of agriculture.

Explanation.-For the purpose of this clause and clause (q),-

(A) "agriculture" includes horticulture, but does not include:-

- (i) raising of grass,
- (ii) dairy farming,
- (iii) poultry farming,
- (iv) breeding of live-stock, and
- (v) such cultivation, or the growing of such plant, as may be prescribed;

(B) land shall not be deemed to be used mainly for the purpose of agriculture, if such land is not entered in the revenue or land records before the appointed day as for the purpose of agriculture:

Provided that where on any land which is entered in the revenue or land records before the appointed day as for the purpose of agriculture, there is a building which is not in the nature of a farm-house, then, so much of the extent of such land as is occupied by the building shall not be deemed to be used mainly for the purpose of agriculture:

Provided further that if any question arises whether any building is in the nature of a farm-house, such question shall be referred to the State Government and the decision of the State Government thereon shall be final;

(C) Notwithstanding anything contained in clause (B) of this Explanation, land shall not be deemed to be mainly used for the purpose of agriculture if the land has been specified in the master plan for a purpose other than agriculture;

2(q) "vacant land" means land, not being land mainly used for the purpose of agriculture, in an urban agglomeration, but does not include-

- (i) land on which construction of a building is not permissible under the building regulations in force in the area in which such land is situated;
- (ii) in an area where there are building regulations, the land occupied by any building which has been constructed before, or is being constructed on, the appointed day with the approval of the appropriate authority and the land appurtenant to such building; and
- (iii) in an area where there are no building regulations, the land occupied by any building which has been constructed before, or is being constructed on, the appointed day and the land appurtenant to such building:

Provided that where any person ordinarily keeps his cattle, other than for the purpose of dairy farming or for the purpose of breeding of live-stock, on any land situated in a village within an urban agglomeration (described as a village in the revenue records), then, so much extent of the land as has been ordinarily used for the keeping of such cattle immediately

before the appointed day shall not be deemed to be vacant land for the purposes of this clause.”

21. It is also necessary to refer to Sections 6, 8, 9, 10 and 20 of the Act and they read as under:

“6. Persons holding vacant land in excess of ceiling limit to file statement.— (1) Every person holding vacant land in excess of the ceiling limit at the commencement of this Act shall, within such period as may be prescribed, file a statement before the competent authority having Jurisdiction specifying the location, extent, value and such other particulars as may be prescribed of all vacant land and of any other land on which there is a building, whether or not with a dwelling unit therein, held by him (including the nature of his right, title or interest therein) and also specifying the vacant land within the ceiling limit which he desires to retain:

Provided that in relation to any State to which this Act applies in the first instance, the provisions of this sub-section shall have effect as if for the words “Every person holding vacant land in excess of the ceiling limit and the commencement of this Act”, the words, figures and letters “Every person who held vacant land in excess of the ceiling limit on or after the 17th day of February, 1975 and before the commencement of this Act and every person holding vacant land in excess of the ceiling limit at such commencement” had been substituted.

Explanation.— In this section, “commencement of this Act” means,—

- (i) the date on which this Act comes into force in any State;
- (ii) where any land, not being vacant land, situated in a State in which this Act is in force has become vacant land by any reason whatsoever, the date on which such land becomes vacant land;
- (iii) where any notification has been issued under clause (n) of section 2 in respect of any area in a State in which this Act is in force, the date of publication of such notification.

(2) to (4) ...

8. Preparation of draft statement as regards vacant land held in excess of ceiling limit.— (1) On the basis of the statement filed under section 6 and after such inquiry as the competent authority may deem fit to make the competent authority shall prepare a draft statement in respect of the person who has filed the statement under section 6.

(2) Every statement prepared under sub-section (1) shall contain the following particulars, namely:-

- (i) the name and address of the person;
- (ii) the particulars of all vacant land and of any other land on which there is a building, whether or not with a dwelling unit therein, held by such person;
- (iii) the particulars of the vacant lands which such person desires to retain within the ceiling limit;
- (iv) the particulars of the right, title or interest of the person in the vacant land; and
- (v) such other particulars as may be prescribed.

(3) The draft statement shall be served in such manner as may be prescribed on the person concerned together with a notice stating that any objection to the draft statement shall be preferred within thirty days of the service thereof.

(4) The competent authority shall duly consider any objection received, within the period specified in the notice referred to in sub-section (3) or within such further period as may be specified by the competent authority for any good and sufficient reason, from the person whom a copy of the draft statement has been served under that sub-section and the competent authority shall, after giving the objector a reasonable opportunity of being heard, pass such orders as it deems fit.

9. Final statement.- After the disposal of the objections, if any, received under sub-section (4) of section 8, the competent authority shall make the necessary alterations in the draft statement in accordance with the orders passed on the objections aforesaid and shall determine the vacant land held by the person concerned in excess of the ceiling limit and cause a copy of the draft statement as so altered to be served in the manner referred to in sub-section (3) of section 8 on the person concerned and where such vacant land is held under a lease, or a mortgage, or a hire-purchase agreement, or an irrevocable power of attorney, also on the owner of such vacant land.

10. Acquisition of vacant land in excess of ceiling limit.

(1) to (4) ...

(5) Where any vacant land is vested in the State Government under sub-section (3), the competent authority may, by notice in writing, order any person who may be in possession of it to surrender or deliver possession thereof to the State Government or to any person duly authorised by the State Government in this behalf within thirty days of the service of the notice.

(6) If any person refuses or fails to comply with an order made under sub-section (5), the competent authority may take possession of the vacant land or cause it to be given to the concerned State Government or to any person duly authorised by such State Government in this behalf and may for that purpose use such force as may be necessary.

Explanation : In this section, in sub-section (1) of section 11 and in sections 14 and 23, "State Government", in relation to—

- (a) any vacant land owned by the Central Government, means the Central Government;
- (b) any vacant land owned by any State Government and situated in a Union territory or within the local limits of a cantonment declared as such under section 3 of the Cantonments Act, 1924 (2 of 1924), means that State Government.

20. Power to exempt:- (1) Notwithstanding anything contained in any of the foregoing exempt, provisions of this Chapter:-

- (a) where any person holds vacant land in excess of the ceiling limit and the State Government is satisfied, either on its own motion or otherwise, that, having regard to the location of such land, the purpose for which such land is being or is proposed to be used and such other relevant factors as the circumstances of the case may require, it is necessary or expedient in the public interest so to do, that Government may, by order, exempt, subject to such conditions, if any, as may be specified in the order, such vacant land from the provisions of this Chapter;
- (b) where any person holds vacant land in excess of the ceiling limit and the State Government, either on its own motion or otherwise, is satisfied that the application of the provisions of this Chapter would cause undue hardship to such person, that Government may, by order, exempt, subject to such conditions, if any, as may be specified in the order, such vacant land from the provisions of this Chapter:

Provided that no order under this clause shall be made unless the reasons for doing so are recorded in writing.

(2) If at any time the State Government is satisfied that any of the conditions subject to which any exemption under clause (a) or clause (b) of sub-section (1) is granted is not complied with by any person, it shall be competent for the State Government to withdraw, by order, such exemption after giving a reasonable opportunity to such person for making a representation against the proposed withdrawal and thereupon the provisions of this Chapter shall apply accordingly.”

22. It is also necessary to refer to Sections 2(3) and 2 (28) of the HMC Act, 1955 and they read as under:

“2(3) ‘building’ includes a house, out-house, stable, latrine, godown, shed, hut, wall fencing, platform and any other structure whether of masonry, bricks, wood, mud, metal or of any other material whatsoever;

2(28) 'land' includes land which is being built upon or covered with water, benefits to arise out of land, things attached to the earth or permanently fastened to anything attached to the earth and rights created by legislative enactment over any street."

23. The contention of the petitioner that earlier deponent, who was his GPA Holder, had no proper knowledge about the provisions of the Act, cannot be accepted on the maxim of 'ignorantia legis neminem excusat, which means 'ignorance of law excuses no one'. The earlier GPA Holder in spite of seeking for deletion of the non-vacant lands, the protected properties and for exclusion of agricultural lands and the garden in Chiran Palace, which is meant for horticulture, had applied to the Government for exemption of Chiran Palace and now cannot turn around and contend that his earlier GPA committed mistake, which is hit by principle of estoppel and the same cannot be entertained at this juncture. No notification or any kind of declaration issued by the competent authority has been placed before this Court to show that Chiran Palace has been earmarked for recreational purpose. The reliance placed upon **Atia Mohammadi Begum's** case (1 supra) cannot be appreciated in the light of the subsequent judgment of the Apex Court in **Audikesava Reddy's** case (2 supra).

24. In pursuance of the declaration filed by the petitioner, the Government has rightly considered for grant of exemption under Section 20 of the Act and accordingly land was exempted to an extent of Ac.5-00 guntas net or Ac.8.30 guntas gross in respect of the lands situated in the peripheral area of Hyderabad Urban Agglomeration vide G.O.Ms.No.733 (Revenue) UC-I, Department,

dated 31.10.1988. The petitioner has not filed any document to support his case that construction of compound wall is prior to the commencement of the Act and the same was constructed by duly obtaining permission from the Hyderabad Municipal Corporation to avail the benefit of the definition 'building' which includes compound wall as per Section 2(3) of the HMC Act. The laches said to have been committed by the erstwhile GPA Holder cannot be rectified by the subsequent GPA Holder in the present writ petition, as the subsequent GPA Holder is estopped from taking the above plea.

25. Coming to the aspect of pendency of revision, which is said to have been preferred against the order dated 08.04.1982 of the third respondent, it is not for this Court to go into the merits of the same, as the issue is not before this Court. The petitioner having got amended the cause title by filing WPMP.No.2927/2017, which was ordered on 30.01.2017, but has not chosen to implead the Forest Department and till date Forest Department is not a respondent to the present writ petition and hence it can be said that the amendment of cause title is not suitably done by the petitioner and, for non-joinder of proper party, the writ petition has to be dismissed. Though the prayer in the writ petition was amended by order of this Court dated 01.02.2017 in WPMP.No.920 of 2009, no proper pleadings have been filed by the petitioner in support of the amended prayer seeking to set aside the impugned

order. In this regard, it is necessary to refer to Order VI Rule 17 of CPC and it reads as follows:

“17. Amendment of pleadings:-

The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

26. The subject lands have been taken over by the Government long back as per the procedure laid down in the Act and the same was handed over to the Forest Department to develop it as a national park in the year 1991 vide G.O.Ms.No.957, Revenue (UC-I) Department, dated 25.10.1991. Thereafter, the petitioner challenged G.O.Ms.No.957, dated 25.10.1991 in WP.No.4513 of 1991 and this Court in WPMP.No.17955/1991, granted *status quo* order on 30.10.1991. Against the said order, the Government filed W.A.No.1220/1991 and a Division Bench of this Court allowed the same. Against the same, the H.E.H. the Nizam, filed S.L.P.No.17192/1991 and the Hon'ble Supreme Court disposed of the same on 22.11.1991 with a direction to maintain *status quo* pending disposal of W.P.No.4513 of 1991. The said writ petition was dismissed by the Division Bench of this Court making it clear that the Government could proceed with their plan of action for development of the area as National Park. Thereafter, the entire

surplus land of Ac.290-00 guntas was handed over to the Forest Department on 01.19.1992. Against the same, the H.E.H., the Nizam, filed S.L.P.No.13815 of 1992 and the Hon'ble Supreme Court dismissed the same on 23.11.1992. Subsequently, the Government vide G.O.Ms.No.22, Energy Forests (For-III) Department, dated 03.02.1994, issued a notification under Section 24 of the A.P. Forest Act, 1967, declaring an extent of 142.50 hectares excluding 13.8 hectares for road widening around the park as protected forest and the same was notified in the A.P. Gazette No.56, dated 15.01.1994 and in Hyderabad District Gazette No.6, dated 10.05.1994.

27. The repeated attempts made by the petitioner to change the relief by artistic drafting of the prayer resulting to the same relief cannot be appreciated as the same would hit by doctrine of *res judicata*. The orders of exemption dated 16.03.1991 passed under Section 20 of the Act have attained finality and the Government have taken possession under Section 10(6) vide proceedings dated 21.03.1991 and the same has been handed over to the MRO, Golkonda, on 25.03.1991 and subsequently it vested with the Forest Department.

28. It is to be noted that the cause of action arose in this case when land was taken over by the Government in the year 1991 itself, but the petitioner filed this writ petition in the year 2000 and he did not state the reasons for the laches. The issue raised by the petitioner that he is in possession of the subject land is concerned,

this fact-finding cannot be gone into by this Court in this writ petition sitting under Article 226 of the Constitution of India. Moreover, as per the ratio laid down by the Hon'ble Supreme Court in **Satendra Prasad Jain Vs. State of U.P**²³, once the land vests in the State free from all encumbrances, it cannot be divested. The Hon'ble Supreme Court reiterated the said ratio in many of the subsequent judgments.

29. Insofar as the grievance of the petitioner to the extent of constructing compound wall by the respondents by blocking the ingress and egress to the petitioner's main palace to road No.2 is concerned, the learned Advocate General stated that the easementary right of ingress and egress to the petitioner has been taken care of and the same has not been obstructed by way of raising the compound wall. In view of the above submission, no cause of action survives in this regard.

30. After amendment of prayer, there are no specific pleadings to nullify G.O.Ms.No.957, Revenue (UC-I) Department, dated 25.10.1991 and G.O.Ms.No.22, Energy Forests (For-III) Department, dated 03.02.1994. Insofar as alleged violations under Sections 10(5), 10(6) and the panachanamas conducted under the Act are concerned, there are no specific pleadings to establish the irregularities, if any, committed by the respondents. This Court cannot appreciate the legal aspects and the citations referred by the learned counsel for the petitioner as they can be easily

²³ AIR 1993 SC 2517

distinguished on facts and hence no relief can be granted to the petitioner.

31. For the reasons stated above, the writ petition is liable to be dismissed and it is accordingly dismissed. Miscellaneous petitions pending, if any, shall also stand dismissed. No costs.

T.AMARNATH GOUD, J

Date:12-10-2018
TJMR

