Aurobindo Pharma Limited Vs State of A.P. and Another

Writ Petition MP No. 27196 of 1998 and W.V.M.P. No. 2499 of 1998

Court: Andhra Pradesh High Court

Date of Decision: Sept. 4, 1998

Acts Referred:
Andhra Pradesh (Andhra Area) Town Planning Act, 1920 â€" Section 14(3)#Andhra Pradesh Municipal Corporations Act, 1994 â€" Section 3#Andhra Pradesh Municipalities Act, 1965 â€" Section 208, 229, 230, 3#Andhra Pradesh Municipalities Buildings Rules â€" Rule 18, 3#Andhra Pradesh Urban Areas (Development) Act, 1975 â€" Section 34, 34(1), 59(1)#Constitution of India, 1950 â€" Article 226#Hyderabad Municipal Corporation Act, 1955 â€" Section 428, 429, 452, 453, 454#Hyderabad Urban Development Authority Zoning Regulations, 1981 â€" Regulation 12#Vijayawada Municipal Corporation Act, 1981 â€" Section 3

Citation: (1998) 5 ALD 647 : (1998) 5 ALT 580

Hon'ble Judges: Syed Saadatulla Hussaini, J

Bench: Single Bench

Advocate: Mr. M.L. Narasimham and A.G, for the Appellant;

Judgement

@JUDGMENTTAG-ORDER

1. Heard Mr.Venkata Ramanaiah, the learned Advocate-General.

2. The petitioner in the main writ petition obtained permission from the Municipal Corporation of Hyderabad for construction of ground floor and

upper three floors vide permit No.38/44 on 23rd October, 1996 and constructed the building. As admitted, the petitioner constructed fourth and

fifth floors without permission from the Municipality. He has filed the writ petition seeking a direction from this Court that the two floors which he

has constructed without getting sanction from the concerned authorities should be regularised in terms of G.O. Ms. No.419, MA, dated 30th July,

1998, by which a scheme has been framed by the Government for regularisation of unauthorized constructions made upto 30th June, 1998.

3. The petitioner in the writ petition has not challenged the validity of G.O. Ms. No.419, MA, dated 30th July 1998. My learned brother Justice

Bilal Nazki before whom the writ petition came up for admission held that,

Now, it is well settled that the Court cannot grant directions which are contrary to law. Prima facie, this Court is of the view that the Government

has no power which renders a statute invalid by ordering wholesale regularisation of illegal constructions. Therefore, before any direction is issued

that the constructions which have been made by the petitioner admittedly without seeking any permission be regularised, this Court is duty bound

to see whether the Government order No.419 MA, dated 30th July, 1998 is intra vires the Municipal Act and allied laws.

4. For the said reasons, he stayed the operation of the G.O. Ms. No.419, MA, dated 30th July, 1998 until further orders from this Court and

further observed that if the respondents have any objection for continuation of this order, they shall be at liberty to approach this Court and that

since the writ petition raises some important questions, let a notice be sent to the learned Advocate-General also.

5. As against the above said order dated 10th, August, 1998, the respondents have filed the above vacate stay petition.

6. The first respondent has filed the counter-affidavit. In the counter, it is stated that the Hyderabad Municipal Corporation is a statutory body

constituted u/s 3 of the Hyderabad Municipal Corporation Act, 1955. Similarly, the Visakhapatnam Municipal Corporation is a statutory body

constituted u/s 3 of the Visakhapatnam Municipal Corporation Act, 1979 and the Vijayawada Corporation is a statutory body constituted u/s 3 of

the Vijayawada Municipal Corporation Act, 1981. The other Municipal Corporations in the State of A.P. are the statutory bodies constituted u/s 3

of the A.P. Municipal Corporations Act, 1994. Similarly, various Municipalities in the State of Andhra Pradesh are constiluted u/s 3 of the A.P.

Municipalities Act, 1965. All these Municipal Corporations or the Municipalities are governed by the respective statutes as the case may be.

7. It is also stated that the State Legislature has also enacted Act 1 of 1975 viz., the A.P. Urban Areas" (Development) Act, 1975 to provide for

systematic development of Urban Areas in the State of Andhra Pradesh and for matters ancillary thereto. Apart from the Acts mentioned above,

there is another Act called ""the A.P. Town Planning Act, 1920"" which provides for development of towns. The provisions of the above acts are

applicable to all the Urban Areas in the entire State. Various schemes have been formulated in consonance with the provisions of the above Acts

to develop the Urban areas in a planned and systematic manner and to provide better civic amenities to the public.

8. It is further stated that for effective implementation of the schemes and for speedy development of the Urban areas, the various

Rules/Regulations/Bye-laws were framed by the Government/Local bodies. Following are the Rules/Regulations/Bye-laws relevant for the present

purpose:

(i) The Hyderabad Municipal Corporation (Buildings) Bye-laws, 1972 were framed under various provisions of Hyderabad Municipal

Corporation Act as mentioned in the preamble of the said Bye-laws. The Bye-laws were notified vide G.O. Ms. No.1763, MA, dated 4-10-

1972. The said Bye-laws contain both the building Bye-laws as well as the Zoning Regulations. After promulgation of the A.P. Urban Areas

(Development) Act, 1975, keeping in view the provisions of the new enactment and to implement the schemes of development in a more effective

way, the building Bye-laws and the Zoning Regulations were bifurcated. In the process, Hyderabad Urban Developtnent Authority Zoning

Regulations 1981 were framed u/s 59(1) of the A.P. Urban Areas (Development) Act, 1975. These Regulations were notified vide G.O. Ms.

No.916, dated 11-8-1981. The Hyderabad Urban Development Authority Multi-Storeyed Building Regulations, 1981 were also framed u/s 59(1)

of the A.P. Urban Areas (Development) Act, 1975. These Regulations were notified vide G.O. Ms. No.917, HMA & U.D. Department, dated

11-8-1981. The Municipal Corporation Building Bye-laws 1981 were framed u/s 589 read with 586 of the Hyderabad Municipal Corporation

Act and were notified vide G.O. Ms. No.905, HMA & U.D Department, dated 7-8-1981.

(ii) Similar building rules were also framed under the provisions of the A.P Municipalities Act which .were appended as Schedule-III to the said

Act.

(iii) Similarly various Town planning Schemes have been framed by exercising the powers under A.P. Town Planning Act in respect of various

towns/municipalities which are called ""Town Planning Schemes (Master Plans)"" for the respective towns/ Municipalities by exercising powers u/s

14(3) of the A.P. Town Planning Act. The Zoning Regulations in respect of individual town/ municipality are appended to the said Town Planning

Scheme (Master Plan) itself.

9. It is also stated that Chapter XII of the Hyderabad Municipal Corporation Act provides for regularisation of construction/ erection of buildings,

notices regarding erection of buildings etc. Various provisions in this Chapter provide for application for building permission, the requirements to be

satisfied by the applicants, the consideration and sanction or rejection of the applications etc. Section 452 of the Hyderabad Municipal

Corporation Act prescribes the procedure to be followed in respect of building or works commenced contrary to the Act or Bye-laws. Section

461 empowers the Commissioner to direct removal of person directing unlawful work. Section 462 empowers the Commissioner to cause any

building to be vacated in certain circumstances. Section 463 empowers to regulate further constructions of certain class of buildings in particular

streets or localities. u/s 586 of the Act, the Municipal Corporation of Hyderabad is empowered to make Bye-laws and u/s 589, the Government is

competent to confirm the Bye-laws framed by the Corporation u/s 586 of the Act. Similar provisions are also available in the A.P. Municipalities

Act, enabling the Government as well as the concerned Municipalities to carry out the purposes of the Act in a more effective manner.

10. It is further stated lhat Chapter XVII deals with the offences and penalties thereto. Section 596 provides for compounding of certain offences

by imposing fine for contravention of any of the provisions of the Act or sub-sections or clauses or Bye-laws as mentioned in the first column of

schedule ""U"" appended to the Act. Chapter XXI deals with the administrative control of the Government over the Municipal Corporation of

Hyderabad. Section 675 deals with the Government''s power to call for records. Section 676 provides for inspection to be made by the

Government. Section 677 deals with the Government''s power to require the performance of duties. Section 678 deals with the Government''s

power to appoint a person to take action in default. Section 679 confers the power of revision on the Government and Section 679(a) deals with

the Government''s power to cancel or suspend the resolutions etc., passed by the Municipal Corporation. Another important provision is Section

679(E) under which the Government can issue directions to the Corporation for carrying out the purposes of the Act in more effective manner.

11. It is also stated that u/s 34 of the A.P. Urban Areas (Development) Act, 1975 the Government is empowered to issue suitable directions to the

Urban Development Authorities from time to time for effective and efficient administration of the Act. Section 56 of the said Act deals with the

delegation of powers.

12. It is further stated that for effective and speedy implementation and to carry out . the purpose of the Act, various regulations/ Bye-laws/Rules

were framed by the Government/Local Body and following are the important Regulations/Rules/Bye-laws relevant for the purpose of the present

writ petition:

(i) Under the Regulation 12 of the Zoning Regulations 1981 the Government either suo-motu or on an application exempt any proposal for

development of any site, sub-division lay out from any of the provisions of these Regulations.

(ii) Under Regulation 19 of the Multi-Storied Building Regulations, 1981, the Government on an application, exempt certain buildings from the

operation of the regulations as mentioned therein.

(iii) Similar power of exemption is available to the Government in the Zoning Regulations appended to the Master Plans prepared in respect of

various individual towns/Municipalities under the Town Planning Act. Under these provisions, the Government on an application and basing on the

merits of the each case, exempt or relax wholly or partially from any of the regulations subject to the payment of penal amount as indicated therein.

(iv) Similar power of exemption is available to the Government under Rule 18 of the Building Rules framed under A.P. Municipalities Act. Under

the said Rule, the Government either suo-motu, or on an application exempt any class of building or buildings from the operation of all or any of the

provisions of the building rules.

(v) In exercise of the powers vested with the Government under various Acts the Government has been issuing orders from time to time either in

individual cases or general in nature, exempting various building or class of buildings as the case may be. These powers of exemption of relaxation

are being exercised by the Government, keeping in view the public interest and to avoid undue hardship to the general public.

13. It is also stated that under Regulation 12 ofZoning Regulations 1981 and under Regulation 19 of Multi-storeyed Building Regulations 1981, the

Government may either suo-motu or on an application exempt any proposal for development of any site, subdivision of lay out or from any other

provisions of these Regulations i.e., Zoning Regulations 1981. While making this provision, no penal amount was specified earlier for relaxation of

Zoning Regulations and Regularisation of Unauthorised Constructions.

14. It is further stated that the Government took a decision to fix up compounding charges and penalties on the buildings constructed

unauthorisedly and in violation of rules/regulations. Therefore, in exercise of the powers conferred under subsection (1) of Section 59 of A.P.

Urban Authority (Development) Act, 1975, the Zoning Regulations were amended vide G.O. Ms. No.683, MA, dated 30-7-1987 incorporating a

provision for levy of penal amount for according exemption/relaxation from Regulations. The penal rates were further modified by G.O. Ms.

No.54, MA, dated 29-1-1988. While doing so, the degree of violations were not categorised. Hence in order to rationalise the penalty structure,

the Government issued G.O. Ms. No.313, MA, dated 11-5-1993 revising the rates of penal amount according to the intensity of violations and

type of violation i.e., either FAR converage, Parking, covering tot-lot, open spaces etc.

15. It is further stated that earlier, for obtaining relaxation/regularisation of unauthorised constructions, each and every individual was required to

submit applications to the Government. After obtaining the remarks of the concerned local Authority in such cases, the matter was to be placed

before a Committee for its recommendation. The Government after considering recommendations of the Committee used to pass appropriate

orders in the matter.

16. It is also stated that it was brought to the notice of the Government that the above procedure and the process of granting relaxation and

regularisation of unauthorised constructions was very cumbersome and time consuming as such and every individual from all the parts of the State

had to approach the Government seeking relaxation/regularisation. Keeping in view the practical difficulties expressed by general public,

Government have taken a decision for the first time in 1992 authorising the local bodies/UDAs. to regularise unauthorised construction on plot

areas upto 200 sq.mtrs. Accordingly, orders were issued in G.O. Ms. No.87, MA, dated 12-2-1992 and G.O. Ms. No. 1235, MA, dated 14-8-

1992. The Government have extended the period of regularisation of unauthorised constructions from time to time. In these G.Os. lumpsum

amount was fixed depending upon plot area and location and the same were being disposed off at local authority level. The latest extension for

such regularisation was upto 31-7-1998 in (G.O. Ms. No.289, MA, dated 25-5-1998).

17. It is also stated that with regard to the Building Regulations, the Government have issued various orders fixing FAR and standards of building

requirements from time to time. The multiplicity of various Government orders prescribing FAR and other standards of Building requirements was

creating confusion in the minds of general public for interpretation of various orders. Therefore, Government decided to rationalise the FAR policy

and Group Housing Regulations in the State. The draft policy prepared by the Government was extensively published and discussed at various

Fora, meetings were held with all groups like Architects, Builders Fora, Floor Leaders, Elected Representatives etc. The draft policy was also

placed on the Floor of the House. As stated above, after wide ranging discussions at various levels, the new policy of FAR and Group Housing

Regulations was approved by the Cabinet on 1-7-1998.

18. It is further stated that one of the main features of the policy is that Government have decided not to exercise their discretionary powers in

future to relax Zoning Regulations in individual cases in the larger interest of public. Henceforth, the Government will not entertain any request from

anybody for relaxation of FAR and other Building requirements as contemplated in the new policy. However, keeping in view the hardship that will

be caused to the occupants/inmates of buildings, Government decided to evolve a simplified scheme of regularisation of such existing buildings

constructed unaulhorisedly by giving a one time opportunity to the owners, to voluntarily come forward and declare the unauthorised construction

made by them before the local authority concerned and get them regularised by paying the penal amount. Accordingly, orders were issued vide

G.O. Ms. No.373, MA, dated 1-7-1998 enabling to file declarations along with 20% self assessed penal amount before 31-7-1998 on certain

terms and conditions enumerated therein.

19. It is further stated that after issue of the said G.O. number of representations were received from various Fora requesting for extension of time

limit and declaration and reduction of penal amount prescribed in the said G.O. and for simplification of procedure. These issues were again

discussed at length with the Architects, Builders Associations, Floor Leaders; Government after examining the views expressed by various groups

have decided to further simplify the system and to reduce the penal rates for regularisation and to extend the time for filing declarations.

Accordingly, orders were issued in G.O. Ms. No.419, MA, dated 30-7-1998. While issuing the said orders, necessary precautions were taken

not to regularise the buildings constructed in the following areas which affect the public interest and safety.

(a) Government/Municipal/Local Body land;

(b) Surplus land declared under ULC/Agrl. Land Ceiling Act;

(c) Sites affected under the alignment of MP/ZDP and other public roads;

(d) Tank bed and Shikam lands;

(e) Lay out open spaces meant for public use;

(f) Parking spaces;

(g) Areas earmarked for recreational use in M.P/ZDP.

(h) In case of multi-storeyed buildings the aspects of fire safety, N.O.C. from Airport Authority and structural stability etc. will have to be

considered by the Competent Authority before regularisation of such structures.

(i) Subject to resolution of legal issues, if any.

20. It is further submitted that the Government has imposed a ban on regularisation of any unauthorised construction in future i.e., the unauthorized

construction raised after 30-6-1998. While doing so, the Government have streamlined the procedure to be followed in respect of regularisation of

existing unauthorised constructions by giving one time opportunity. The procedure prescribed in the year 1992 and extended subsequently, has

now been consolidated and simplified. It may here be stated that the penal amount prescribed earlier has also been reduced in the latest orders.

The latest order also provides for consideration of the applications for regularisation/relaxation on certain terms and conditions mentioned therein.

Powers were given to the local bodies and the Urban Development Authorities to consider the Applications on merit and pass appropriate orders.

It is always open to the local bodies and Urban Development Authorities to reject an application which is not in conformity with the norms

prescribed under G.O. Ms. No.419 MA, dated 30-7-1998.

21. It is further stated that the orders issued by the Government under G.O Ms. No.419, MA, dated 30-7-1998 are legal, valid and within its

jurisdiction. The Government issued these orders by exercising its powers under various provisions of law and regulations/rules made thereunder.

The intention of the Government in issuing the latest orders in G.O. Ms. No.419, MA, dated 30-7-1998 is not to discriminate any class of

buildings and to streamline the procedure in respect of the existing structures and not to grant any sort of exemption/relaxation in future. While

doing so, in view of various representations received and with a view not to cause hardship to the buildings already in existence, a cut off date has

now been fixed as 30-6-1998. Therefore, no shelter can be taken by any builder who made unauthorized constructions subsequent to 30-6-1998

under G.O. Ms. No.419, MA, dated 30-7-1998. While issuing the said Government orders, necessary precautionary measures were indicated in

para-11 of the G.O. to protect the public interest and safety.

22. It is further stated that for effective implementation of the scheme contemplated under G.O. Ms. No.419, MA, dated 30-7-1998, the

Government authorised the Commissioners of Municipal Corporations and Municipalities and Vice-Chairman of Urban Development Authorities

to pass appropriate orders under para-12 of Govt. Order G.O. Ms. No.419. It is also stated that mere filing a declaration will not entitle the

declarant for automatic regularisation. The concerned authority i.e. either the Commissioner of Municipal , Corporation or the Municipality or the

Vice-Chairman of the Urban Development Authority have to consider the respective cases on the basis of the evidence available and the material

produced before them with regard to date of construction/completion of construction etc., and whether they are satisfying the requirements as

contemplated under the new G.O. and then only, they will have to pass appropriate orders either by granting or rejecting their applications.

23. It is further stated that the scheme contemplated under the present Government order is a time bound programme. The unauthorised

constructions which were made upto 30-6-1998 alone are eligible for regularisation and such declarations have to be filed on or before 31-8-

1998. Thereafter, the concerned authorities have to take appropriate steps and consider the same. As a part of implementation of the scheme,

various photographs and videographs have already been taken by the local bodies to identify the unauthorised structures which were in existence

upto 30-6-1998 and further steps have to be taken. If the implementation of the scheme is not commenced within the time stipulated, there is every

possibility of its being misused by several people by making further unauthorised constructions and claiming the benefits under the scheme as if they

were in existence prior to the cut off date. Unless the interim orders are vacated, the respondents will suffer serious administrative inconvenience

apart from the prejudice that will be caused to the public interest.

24. It is also stated that regarding the so-called construction made by the petitioner prior to 30-6-1998, this respondent is not aware and the

second respondent will file its counter regarding the factual aspects relating to the petitioner''s application for building permission, its sanction by the

second respondent and the constructions made by the petitioners etc. This respondent is also not aware whether the 4th and 5th floors alleged to

have been constructed are prior to 30-6-1998 or not and a counter-affidavit will be filed by the second respondent in this regard. If,,any illegal or

unauthorised construction is made subsequent to 30-6-1998, the petitioner is not entitled to the benefits under the G.O.Ms.No.419 MA, dated

30-7-1998. The respondent is not aware as to whether the petitioner had even applied for such regularisation or not. The petitioner has no valid

cause of action to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. There are no merits in the writ

petition. The petitioner is not entitled for any relief prayed for. As such, the interim stay orders dated 10-8-1998 granted in WP No.22613 of

1998 may be vacated and the writ petition be dismissed.

25. The learned Advocate General appearing for the 1st respondent submitted that the Building Regulation scheme was formulated by the

Government for regularisation of unauthorised constructions made upto 30th June, 1998 in the areas of Municipal Corporation, Urban

Development Authorities and Municipalities and issued G.O. Ms. No.419, MA, dated 30-7-1998. The Government took a decision after taking

note of unauthorised constructions in Urban area without following the prescribed rules and regulations, to give a one time opportunity to the

individuals lo come forward and declare voluntarily the unauthorised constructions made by them and to get them regularised by paying the penal

amount. Accordingly, orders were issued in G.O. Ms. No.373, MA, dated 1-7-1998 giving several concessions thereby facilitating the individuals

to get the unauthorised constructions made upto 30-6-1998 regularised by paying the penal amount prescribed therein.

26. He further submitted that earlier, the Government had issued orders for regularisation of unauthorised constructions in small plots of 200 sq.

mtrs and an opportunity was given to the individuals to get it regularised and time was also extended from time to time, lastly upto 31st July, 1998.

27. He also submitted that the Government further received representations from various forums requesting for extension of time limit and reduction

of penal amount and simplification of procedure and that the Government after careful examination of the views expressed during the discussions,

have decided to simplify the system and reduce the rates for regularisation.

28. He further submitted that the scheme is applicable where the title vests with the plot-holders and where such constructions do not affect any

public interest or interfere with public activity. The scheme is applicable throughout the State in all the Municipal Corporations, Municipalities and

Urban Development areas. Referring to the various enactments mentioned below, he submits that the State Government has the power for granting

relaxation of application of Rules, Regulations and Bye-laws in individual cases on their merits.

29. He further submits that the Hyderabad Municipal Corporation is a statutory body constituted u/s 3 of the Hyderabad Municipal Corporation

Act, 1955, similarly, the Visakhapatnam Municipal Corporation is a statutory body constituted under. Section 3 of the Visakhapatnam Municipal

Corporation Act, 1979 and the Vijayawada Municipal Corporation is a statutory body constituted u/s 3 of the Vijayawada Municipal Corporation

Act, 1981. The other Municipal Corporations in the State of A.P. are the statutory bodies constituted u/s 3 of the A.P. Municipal Corporations

Act, 1994. Similarly, various Municipalities in the State of Andhra Pradesh are constituted u/s 3 of the A.P. Municipalities Act, 1965. All these

Municipal Corporations or the Municipalities are governed by the respective statutes as the case may be.

30. He further submits that the Legislature of the State has also enacted Act 1 of 1975 viz., the A.P. Urban Areas (Development) Act, 1975 to

provide for systematic development of Urban Areas in the State of Andhra Pradesh and for matters ancillary thereto. Apart from the Acts

mentioned above, there is another Act called ""the A.P. Town Planning Act, 1920"" which provides for development of towns.

31. The provisions of the above Acts are applicable to all the Urban Areas in the entire State. Various Schemes have been formulated in

consonance with the provisions of the above Acts to develop the Urban Areas in a planned and systematic manner and to provide better civic

amenities to the public. For effective implementation of the schemes and for speedy development of the Urban areas, the various

Rules/Regulations/Bye-laws have been framed by the Government/Local Bodies.

32. He submits that the Hyderabad Municipal Corporation (Buildings) Bye-laws, 1972 were framed u/s 589 read with Section 586 of the

Hyderabad Municipal Corporation Act. The said Bye-laws contain both the building Bye-laws as well as the Zoning Regulations.

33. It is submitted that after promulgation of the A.P. Urban Areas (Development) Act, 1975, keeping in view the provisions of the new enactment

and to implement the schemes of development in a more effective way, the Building Bye-laws and the Zoning Regulations were bifurcated. In the

process, Hyderabad Urban Development Authority Zoning Regulations, 1981 were framed u/s 59(1) of the A.P. Urban Areas (Development)

Act, 1975. The Hyderabad Urban Development Authority Multi-Storeyed Building Regulations, 1981 were also framed u/s 59(1) of the A.P.

Urban Areas (Development) Act, 1975. Building Rules were also framed under the provisions of the A,P. Municipalities Act which were

appended as Schedule-III to the said Act. Similarly, various Town Planning Schemes have been framed by exercising the powers under A.P.

Town Planning Act in respect of various towns/ Municipalities which are called ""Town Planning Schemes (Master Plans)"" for the respective

Towns/Municipalities by exercising powers u/s) 4(3) of the A.P. Town Planning Act. The Zoning Regulations in respect of individual

Town/Municipality are appended to the said Town Planning Scheme (Master Plan) itself.

34. In respect of the Hyderabad Municipal Corporation Act, he has invited my attention to Chapter-XII which deals with the building regulations

and notices regarding erection of buildings, while referring to Section 428 which deals with the notice to be given to Commissioner, of intention to

erect a building; Section 429 which deals that Commissioner may require plans and other documents to be furnished; Section 452 which deals with

the proceedings to be taken in respect of building or work commenced contrary to Act or bye-laws; Section 453 which deals with the Buildings or

works commenced contrary to Act may be cut into and laid open for purpose of inspection; Section 456 which deals with removal of structures,

trees, etc., which are in ruins or likely to fall; Section 463 which deals with the power to regulate future construction of certain classes of buildings

in particular streets or localities; Section 596 which deals with certain offences punishable with fine; Section 676 which deals with the

Government"s power to cause inspection to be made for contravention of any of the provisions of the Act or sub-sections or Bye-laws as

mentioned in first column of Schedule-U appended to the Act; Section 677 which deals with the Government"s power to require the performance

of duties; Section 679 which deals with the powers of revision; Section 679 (E) which deals with the power to give direction and Section 80 of the

Hyderabad Municipal Corporation (Buildings) Bye-laws, 1972 which deals with the power of Government to exempt buildings.

35. Insofar with regard to A.P. Municipalities Act, 1965, Section 229 deals with exemptions; Section 230 deals with application of Schedule-III -

The rules embodied in Schedule-III shall be read as part of this Chapter. Rule 18 of the Building Rules deals with the power of Government to

exempt buildings.

36. Section 34 of the A.P. Urban Areas (Development) Act, 1975 deals wilh the power of the Government to issue directions. Under Regulation

12 of Zoning Regulations, 1981, the Government has the power to exempt any proposal for development of any site, subdivision, layout-from any

of the provisions of these regulations. Under the Multi-storeyed Building Regulations, 1981, under Regulation 19, the Government has the power

to grant exemptions. Similar powers of exemptions are available to the Government in Zoning Regulation appended to the Master Plans prepared

in respect of Rule-3. He refers to Section 14(3) of the A.P. Town Planning Act, 1920 under which the Government sanction the General Town

Planning Scheme (Master Plan) of Bhongir.

37. He submits that under the Hyderabad Municipal Corporation (Buildings) Bye-laws, 1972, the Corporation has power to prevent the illegal

constructions, to alter or pull down the illegal constructions and also power to compound.

38. Placing reliance on the above provisions of the various Act, Bye-laws Rules and Regulations, he submits that the Government has the power to

grant exemption in specific cases or in general. With regard to the new provision -- Section 679-E which was introduced by Act No.20 of 1989

with effect from 1-11-1980, the Government may from time to time give such directions not inconsistent with the provisions of the Act or the rules

made thereunder to the Corporation as it may consider necessary for carrying out the purposes of the Act.

39. He submits across the Bar that no action is contemplated against the old constructions made in violation of bye-laws, rules or regulations

before 1-1-1985.

40. He further submits that the Building Regularisation Scheme has been adopted by the Government on rational basis exercising its powers of

granting exemptions or relaxations as referred to above; as the building activities in the State has increased manifold in these days, the Government

took a decision that the old buildings are exempted from the purview of this Regularisation policy and the regularisation procedure as detailed

below is applicable to all unauthorised buildings constructed after 1-1-1985 and before 30-6-1998 or from the date of formation of Municipal

local body Urban Development Authority or date of inclusion of a particular area in the local body whichever is the latest. Coupled with this

restricting the authorities to regularise the building, which comes within the sweep of clause-11 of the G.O. Ms.No.419, MA, dated 30-7-1998

i.e. regutarisation of unauthorised construction/buildings shall not be considered in the following cases where public interest and safety are likely to

be affected, viz.,--

(a) Government/Municipal/Local Body''s land.

(b) Surplus land declared under ULC and Agricultural Land Ceiling Act.

(c) Sites affected under the alignment of Master Plan Zonal Development Plan Roads/and other public roads.

(d) Tank bed and Shikam lands.

(e) Layout open spaces meant for public use.

(f) Parking spaces.

(g) Areas earmarked for Recreational use in Master Plan/Zonal Development plans.

(h) In case of multi-storeyed buildings the aspects of fire safety, NOC from Airport Authority and structural stability etc. will have to be considered

by the competent Authority before regularisation of such structures.

(i) Subject to resolution of legal issues, if any.

41. He submits that there is no wholesale or blanket authorisation for regularisation of the building - for they are restricted by clause 11 of the G.O.

referred to above.

42. Further he submits that the Government was conscious of the fact that the authorities have fai led in their attempts to check the unauthorised

constructions and the strict enforcement of the bye-laws, rules and regulations will result in mass demolitions of thousands of buildings cause undue

hardship to the general public and those who have afforded to construct houses, invested huge amounts and demolition of buildings would result in

wasteful expenditure. This has activated the Government to issue the Buildings regularisation scheme as one time concession, which the

Government has extended subject to public interest and safety and that there shall be no further regularisation of unauthorised constructions.

43. Placing reliance on clause 13 of the impugned G.O he submits that the penal amounts, so collected for regularisation of unauthorised

constructions, shall be kept in a separate head of account and shall be utilised for raising infrastructure for development works like widening of

roads, construction of bridges/flyovers, parks, playgrounds or any other work with the prior approval of the Government which will be beneficial

to the public at large.

44. While concluding the arguments, he submits that as the Government is vested with the power of granting exemptions/relaxations and to give

directions to the civic bodies under the various enactments and the statutory bye- laws and rules and regulations, the orders issued by the

Government in the impugned G.O. does not suffer from any legal infirmity; as such, he requests the Court to vacate the interim stay orders granted

by this Court on 10-8-1998.

45. The point that arises for consideration is whether the State Government has competence or power to issue the impugned G.O.Ms.No.419,

MA, dated 30th July, 1998 for regularisation of unauthorised constructions made upto 30th June, 1998 in the areas of Municipal Corporations,

Urban Development Authorities and Municipalities?

46. Point: The main plank of argument of Mr. Venkataramanaiah, the learned Advocate General, is that the State Government is vested with the

powers of granting exemptions or relaxations under the various Statutes and issue directions to the Municipal statutory authorities and local bodies.

47. In order to appreciate his submissions, it is necessary to analyse the various provisions under the statutes whereunder the Government has the

power to grant exemptions or relaxations and issue directions.

1. The Hyderabad Municipal Corporation Act, 1955

Chapter XII of the Act deals with the Building Regulations.

Section 428 of the Act enjoins that Notice to be given to Commissioner of intention to erect a building.

Under Section 429, Commissioner may require plans and other documents to be furnished.

Under Section 452, the Commissioner has the power to initiate proceedings to be taken in respect of building or work commenced contrary to

Act or bye-laws.

Section 453 deals with the Buildings or works commenced contrary to Act may be cut into and laid open for purpose of inspection.

Section 454 gives the power to the Commissioner for enforcements of provisions concerning buildings and works.

Section 456 gives the power for removal of structures, trees etc., which are in ruins or likely to fall.

Section 463 deals with the power to regulate future construction of certain classes of buildings in particular streets or localities.

Chapter XVII Section 596 - deals with certain offences punishable with fine.

Under Chapter XXI, Section 675 deals with the power of the Government to call for the records.

Section 676 deals with the Government''s power to cause inspection to be made for contravention of any of the provisions of the Act or sub-

sections or Bye-laws as mentioned in first column of Schedule-U appended to the Act.

Under Section 677, the Government has power to require the performance of duties, which is to the following effect:

If on receipt of any information or report obtained u/s 675 or 676, the Government if of opinion-

(a) that any duty imposed or any Municipal Authority by or under this Act has not been performed or has been performed in an imperfect,

inefficient or unsuitable manner, or

(b) that adequate financial provision has not been made for the performance of any such duty, the Government may by an order direct the

Corporation or Commissioner within a period to be specified in the order to make arrangements for the proper performance of the duty or to

make financial provision for the performance of the duty as the case may be to the satisfaction of the Government:

Provided that unless in the opinion of the Government the immediate execution of such order is necessary, the Government shall before making an

order under this section give the Corporation an opportunity of showing cause why such order should not be made.

Section 679 (1) which deals with the power of Revision reads as under:

The Government may at any time for the purposes of satisfying itself as to the correctness, legality, property or regularity of any proceeding of or

order passed by the Commissioner or any officer subordinate to him call for and examine the record shall pass such orders with reference thereto

as it thinks fit.

Section 676-E which deals with the power to give direction, reads as under:

The Government may from time to time give such directions not inconsistent with the provisions of the Act or the rules made thereunder to the

Corporations as it may consider necessary for carrying out the purposes of this Act.

2. The Hyderabad Municipal Corporation (Buildings) Bye-Laws, 1972

Section 80 which deals with the power of Government to exempt Buildings, reads as under:

The Government either suo-motu or on an application exempt any building or class of buildings from the operation of all or any of the provisions

of these bye-laws.

3. Andhra Pradesh Municipalities Act, 1965

Under Chapter IV deals with Building Regulations, Section 229 which deals with the exemptions, reads as under:

(1) Any building constructed and used, or intended to be constructed and used, exclusively for the purpose of a plant-house, summer-house, not

being a dwelling house, poultry house or aviary shall be exempted from the provisions of this chapter other than Section 208 provided the building

by wholly detached from, and situated at a distance of atleast three metres from the nearest adjacent building.

(2) The Commissioner may grant permission at his discretion on such terms as he may decide in each case to erect for a specified period

temporary huts or sheds for stabling, for watching crops, for storing tools or materials, or for other similar purposes. On expiry of the period

specified, the Chairperson may, by notice, require the owner of such hut or shed to demolish it.

Section 230 which deals with application of Schedule III, reads as under:

The rules embodied in Schedule III shall be read as part of this chapter.

4. Building Rules

Rule 18 which deals with the power of Government to exempt buildings, reads as under:

The Government may, either suo motu or on an application, exempt any class of building or buildings of any institution or organisation from the

operation of all or any of the provisions of these rules.

5. The Andhra Pradesh Urban Areas (Development) Act, 1975

Section 34(1) which deals with the control of the Government to issue directions, reads as under:

The Authority shall carry out such directions as may be issued to it, from time to time by the Government for the efficient administration of this Act.

6. Bhagyanagar Urban Development Authority, Zoning Regulations, 1981

Amended Regulation 12 which deals with the power of Government to exempt, reads as under:

(1) No Regulation shall be relaxed and applications or representations for the grant of relaxations from any of these regulations received by the

Government after the 31st May, 1987 shall not be considered by the Government.

12(2) Notwithstanding anything in Regulation No.12.1 it shall be lawful for the Government to consider wholly or partially on the merits of each

case, the applications or representations for the grant of relaxations from the provisions of any of these regulations received prior to the 31st May,

1987 in respect of the cases of unauthorised constructions made in violation of these regulations before the 31st May, 1987 and detected either

before or after the said date or the applications or representations for the grant of relaxations from these regulations received with reference to the

directions from the Courts or the applications or representations in respect of the properties affected by the road widening schemes undertaken by

the Municipal Corporation of Hyderabad, the Hyderabad Urban Development Authority or any other Government agency subject to the payment

of the compounding fees to the Authority.

7. Bhagyanager Urban Development Authority Multi-Storeyed Buildings Regulations, 1981

Regulation 19 which deals with the power of Government to exempt, reads as under:

(1) No regulation shall be relaxed and applications or representations for the grant of relaxations from any of these regulations received by the

Government after the 31st May, 1987 shall not be considered.

(2) Notwithstanding anything in Regulation No.19.1 it shall be lawful for the Government to consider wholly or partially on the merits of each case,

the applications or representations for the grant of relaxations from the provisions of any of these regulations received prior to the 31st May, 1987

in respect of the cases of unauthorised constructions made in violation of these regulations before the 31st May, 1987 and detected either before

or after the said date or the applications or representations for the grant of relaxations from these regulations received with reference to the

directions from the Courts or the applications or representations in respect of the properties affected by the road widening schemes undertaken by

the Municipal Corporation of Hyderabad, the Hyderabad Urban Development Authority or any other Government agency subject to the payment

of the compounding fees to the Authority.

8. Zoning Regulations of Bhongir Town

Under Schedule II, Regulation 3.0.2 which deals with the power of Government to accord exemptions and relaxations of regulations, reads as

under:

The Government may on an application and basing on merits of each case accord exemption and relaxation wholly or partially from any of these

regulations subject to the payment of penal amounts to the Government.

48. A close scrutiny of the above provisions reflects that the State Government is vested with the powers of granting exemptions and relaxations to

the individuals or in general with regard to the construction of the buildings from application of Rules, Bye-laws and Regulations and to issue

directions to the civic authorities.

49. It has to be seen whether the Building Regularisation Scheme issued in the impugned G.O. is based on rationals and this power of granting

exemptions is not tainted with capricious exercise of authority?

50. It is stated, that in exercise of the powers vested with the Government under various Acts, the Government has been issuing orders from time

to time either in individual cases or general in nature exempting various buildings or class of buildings as the case may be. These powers of

exemption or relaxation are being exercised by the Government keeping in view the public interest and to avoid undue hardship to the general

public.

51. The Government took a decision of compounding charges and penalties on the buildings constructed unauthorisediy and in violation of rules

and regulations incorporating a provision for levy of penal amount for according exemption and relaxation from Regulations. It also rationalises the

penalty structure according to the intensity of violations and type of violation i.e., either FAR, Coverage, Parking, covering tot-lot, open spaces

etc.

52. Earlier, for obtaining relaxation and regularisation of unauthorised constructions, each and every individual was required to submit applications

to the Government and after obtaining the remarks of the concerned local Authority, the matter was to be placed before a Committee for its

recommendation. The Government after considering the recommendations of the Committee used to pass appropriate orders in the matter.

53. Against this procedure, representations were received by the Government and the Government keeping in view the practical difficulties

expressed by the General public, took a decision and evolved a policy to avoid hardship to the general public and the Government decided to

rationalise the FAR policy and Group Housing Regulations in the State. The draft policy prepared by the Government was extensively published

and discussed at various fora. It is also stated that meetings were held with all groups like Architects, Builders Fora, Floor leaders, Elected

representatives etc. and this policy was also placed on the Floor of the House and after various discussions, the new policy of FAR and Group

Housing Regulations was approved by the Cabinet on 1-7-1998 and the Government have decided not to exercise their discretionary powers in

future to relax Zoning Regulations in individual cases in the larger interest of public.

54. It is stated that the Government will not entertain any request from anybody for relaxation of FAR and other building requirements as

contemplated in the new policy. However, keeping in view the hardship that will be caused to the occupants/inmates of buildings, Government

decided to evolve a simplified scheme of regularisation of such existing buildings constructed unauthorised!)" by giving a one time opportunity to

the owners, to voluntarily come forward and declare the unauthorised construction made by them before the local authority concerned and get

them regularised by paying the penal amount.

55. It is stated that the Government will not in future regularise any unauthorised constructions and that the intention of the Government to issue the

impugned G.O. is not to discriminate any class of buildings and streamline all existing structures and not to grant any sort of exemption and

relaxation in future and not to cause any hardship to the buildings already in existence. The cut off date has been fixed as 30th June, 1998.

56. As can be seen from the impugned G.O. the Government taking note of increased unauthorised constructions in Urban areas without following

the prescribed rules and regulations, took a decision to give a one time opportunity to the individuals to come forward and declare voluntarily the

unauthorised constructions made by them and to get them regularised by paying the penal amount as specified in clause 4 of the G.O.

57. Clause 10 of the impugned G.O. states that the old buildings are exempted from the purview of this Regularisation policy and the impugned

G.O. is applicable to the buildings constructed during the interregnum period from 1-1-1985 to30-6-l998.

58. Clause 11 of the impugned G.O. states that the benefit of regularisation of unauthorised construction shall not be applied to cases where public

interest and safety arc likely to be affected viz.

(a) Govemment/Municipal/Local Body''s land.

(b) Surplus land declared under ULC and Agricultural Land Ceiling Act.

(c) Sites affected under the alignment of Master Plan/Zonal Development Plan Roads/and other Public roads.

(d) Tank bed and Shikam lands.

(e) Layout open spaces meant for public use.

(f) Parking spaces.

(g) Areas earmarked for recreational use in Master Plan/Zonal Development plans.

(h) In case of multi-storeyed buildings the aspects of fire safety, N.O.C.from Airport Authority and structural stability etc. will have to be

considered by the Competent Authority before regularisation of such structure.

(i) Subject to resolution of legal issues, if any.

59. Clause 13 of the impugned G.O. provides that the penal amount so collected from the regularisation of such unauthorised constructions shall be

kept in a separate head of account and shall be utilised for the specific purposes of developmental words like widening of roads, construction of

bridges/ fly overs/parks and play grounds or any other work with the prior approval of the Government.

60. These days, we cannot loose sight of the fact that the spiralling cost of the land and the construction had made the common man"s dream of

owning a house a distant one and that to take action against the unauthorised construction, the Civic authorities had two options viz., to demolish

the unauthorised constructions or to regularise them. As demolition of thousands of buildings will result in wasteful expenditure of capital investment

and hardship to general public, the Government have chosen the second option to give one time opportunity to the general public to regularise the

buildings by payment of penal amounts which would be utilised for development of civic infrastructure.

61. In the view which I have expressed above, I hold that the regularisation ofunauthorised constructions under the impugned G.O. is based on

sound rationale and is not actuated by profit making motive or raising revenue to the State, but in the interest of general public and for public

benefit and also to avoid undue hardship to the general public.

62. When the Government has exercised its vested powers of exemptions, relaxations and directions under various statutes, there is no substance

or merit in the view that they are contrary to law or invalidate the statutes by regularisation of unauthorised or illegal constructions. As the

Government"s policy is based keeping in view, the interests of the general public and to avoid hardship to it, there is ample justification in issuing

the impugned G.O. Apart from that, while issuing the G.O. the Government has taken care not to exercise the said power in respect of the

unauthorised constructions which come within the teeth of clause-11 of the G.O. and not to exercise its power for the buildings which were

constructed after 30-6-1998.

63. In the light of the above facts, I am not inclined to continue the stay of operation of G.O.Ms.No.4!9, MA, dated 30-7-1998 and the direction

issued to the authorities.

64. In the result, the order of stay of operation of the impugned G.O. and the directions issued to the authorities, dated 10-8-1998, is vacated and

the WV MP No.2499 of 1998 is allowed.

I may add here that as the last date for filing of the application forms for regularisation of the unauthorised constructions under the impugned G.O.

was fixed as 31st August, 1998 and the operation of the said G.O. was stayed by this Court on 10-8-1998, however, it is for the Government to

consider the said aspect and extend the date for submission of the applications for regularisation of unauthorised constructions.