**THE HON'BLE THE CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN**

**AND**

**THE HON'BLE DR. JUSTICE SHAMEEM AKTHER**

**WRIT PETITION (PIL) No. 81 OF 2019**

**ORDER:** (Per the Hon'ble the Chief Justice Raghvendra Singh Chauhan)

In this writ petition, the petitioner has sought three reliefs from this Court, which are as under:-

*(a) to declare the impugned Telangana Heritage Act 2017 as illegal, without jurisdiction and contrary to the enabling laws for protection and conservation of heritage monuments;*

*(b) declaring the action of the 1st respondent herein ordering the demolition of the 'Irrum Manzil' Heritage structure to make for the construct the new legislature complex in its place, as ultra vires and violative of the constitutional scheme, pertaining to protection and conservation of heritage monuments and buildings and the enabling laws made thereunder; and*

*(c) consequently direct the respondent No. 1 to protect and conserve the monuments set out under the Andhra Pradesh Ancient and Historical Monuments and Archaeological Sites and Remains Act, 1960 and the Rules made thereunder and also protect and conserve the heritage structures as set out in the HUDA Zoning Regulations until the Telangana Heritage Act, 2017 is judicially reviewed and the lacunae in it are cured by the legislature.*

2. The detailed facts of the case have already been narrated in Writ Petition (PIL) Nos.79 of 2019 and

86 of 2019. Therefore, they are not being recorded herein. Therefore, only the bare facts, essential for the understanding of the controversy involved in this case, are being narrated as under:

3. In 1870, Nawab Safdar Jung Musheer-ud-Daula Fakhrul-Mulk himself designed, and got constructed a 150 room palace for his family, popularly known as 'Irrum Manzil'. The palace is sprawled over 36 acres, 36 guntas, on top of a hillock known as "Erragadda" or "red hill" in the Telugu language. The word "Errum" means the colour 'red' in Telugu language. The controversy in the present case revolves around the proposed demolition of the said palace due to the Cabinet decision dated 18.06.2019 wherein the Council of Ministers has decided to construct a new legislative complex at the site of the palace.

4. Keeping in mind the twin aspects of preservation of historical monuments lying within the former State of Andhra Pradesh, the said State had enacted the Andhra Pradesh Ancient and Historical Monuments and Archaeological Sites and Remains Act, 1960 ("the Act, 1960", for short).

5. But simultaneously keeping in mind the need to regulate, supervise and control the development of

urban areas, the former State of Andhra Pradesh had enacted the Andhra Pradesh Urban Areas (Development) Act, 1975 ('the Urban Areas Act', for short). The Urban Areas Act not only prescribes the constitution of an Urban Art Commission, which would advice the government with regard to the preservation and conservation of "historical monuments", but also empowered the then Hyderabad Urban Development Authority ('HUDA'), to promulgate Regulations for urban development by invoking its power under Section 59 of the Urban Areas Act.

6. Consequently, on 14.12.1995, the HUDA framed and incorporated Regulation 13 within the Bhagyanagar Urban Development Zoning Regulations, 1981 ("the Zoning Regulations, 1981", for short). The said regulation was duly approved by the government by G.O. Ms. No. 542, dated 14.12.1995.

7. The said regulation was framed "*for the purpose of conserving the buildings, artefacts, structures and/or precincts off historical and/or aesthetical and/ or architectural and/or cultural value, which were referred to as "Heritage Buildings and Heritage Precincts*". The said regulation further prescribed that the government should constitute a Heritage Conservation Committee ('the

Committee', for short). The Committee was imposed with a duty to identity "heritage buildings" which need to be protected by the government. Upon the recommendation of the Committee, by G. O. Ms. No. 102, dated 23.03.1998, the Government had notified and declared 137 buildings lying within Hyderabad as "*heritage buildings*". One of the buildings, so notified and protected as "heritage buildings", is the Irrum Manzil, shown at serial No.47 of the list attached to the said notification. Subsequently, by G. O. Ms. No.185, dated 22.04.2006, fourteen more buildings were added to the list. Thus, in total, 151 buildings were declared as "*protected heritage buildings*" within Hyderabad.

8. Moreover, Regulation 13(2) of the Zoning Regulations, 1981 restricted the demolition of the "heritage buildings", without the prior written permission of the Vice-Chairman, HUDA (presently, the Commissioner, Hyderabad Metropolitan Development Authority, 'the HMDA', for short). According to the said Regulation, the vice-chairman, HUDA (presently, the Commissioner of Hyderabad Metropolitan Development Authority, "the HMDA", for short) has to act on the advice of the Committee. Therefore, Regulation 13(2) of the

Zoning Regulations, 1981 prescribes the procedure, established by law, for demolition of "a heritage building".

9. Subsequently, considering the fact that the city of Hyderabad had grown into Metropolitan City, the Hyderabad Metropolitan Development Authority Act, 2008 ('the HMDA Act', for short) was brought into force. With the HMDA coming into existence, HUDA was abolished. Moreover, under the HMDA Act, Section 57 empowered the HMDA to frame the regulations. In fact, Section 59 of the Urban Area Act, and Section 57 of the HMDA Act are identical in their contents. Hence, after 2008, the HMDA is empowered to frame the Master Plans, Zonal Plans, and the Zoning Regulations.

10. Consequently, in 2010, HMDA formulated the Metropolitan Development Plan along with the Land Use Zoning Regulations with regard to the core area of HMDA—that is the area within the Ring Road of the city. (Henceforth, while the Metropolitan Development Plan shall be referred to as "Plan, 2010", the regulations shall be referred to as "the Zoning Regulations, 2010", for short). On 21.8.2010, the government sanctioned the Zoning Regulations, 2010.

11. Regulation 2 of the Zoning Regulations, 2010 demarcated different zones of the Hyderabad city, e.g. the

residential, the commercial, the industrial zones etc. Interestingly, keeping in mind the existence of heritage buildings which were already declared to be protected by the government, Regulation 2 of the Zoning Regulations, 2010 created a particular zone, namely "*the Special Reservation Use Zone*". More pertinently, Regulation 9 (A)(ii) Zoning Regulations, 2010 provided that Regulation 13 of the Zoning Regulations, 1981 and other relevant orders or amendments issued by the government from time to time shall be applicable". Most importantly, the site of Irrum Manzil was earmarked in Master Plan, 2010 as falling within the Special Reservation Zone.

12. Regulation 9 of the Zoning Regulations, 2010 mentions the Regulation 13 of the Zoning Regulations, 1981 by its title, namely G.O. Ms. No. 542 MA, dated 14.12.1995. Therefore, Regulation 13 of the Zoning Regulations, 1981 has become part and parcel of the Zoning Regulations, 2010.

13. However, being of the opinion that Regulation 13 of the Zoning Regulations, 1981 is inconsistent with and *ultra vires* the Urban Areas Act, 1975, on 7.12.2015, by G.O.Ms. No.183 the government deleted Regulation 13 of Regulations, 1981 "from its very inception".

14. Moreover, being of the opinion that with the repeal of Regulation 13 of the Zoning Regulations, 1981, there was no law, which protected the "historical monuments", or "heritage buildings", "historical sites", or "heritage sites", and in order to protect such structures and sites, the State enacted the Telangana Heritage (Protection, Preservation, Conservation and Maintenance) Act, 2017 ('the Act, 2017', for short).

15. Furthermore, being of the view that with the repeal of Regulation 13 of the Zoning Regulations, 1981 in 2015, Irrum Manzil has lost its status as "a protected heritage building", and wanting to construct a new legislative complex for the new State of Telangana, on 18.06.2019, the Council of Ministers decided to construct the legislative complex at the Irrum Manzil. As mentioned above, the petitioner has not only challenged the Cabinet decision to demolish Irrum Manzil, but has also challenged the constitutional validity of the Act, 2017 before this Court.

16. Mr. P. Niroop Reddy, the learned counsel for the petitioner, has raised the following contentions before this Court:-

Firstly, Article 51 of the Constitution of India imposes a duty upon the State to foster respect for

international law and treaty obligations in the dealings of organized peoples with one another. Thus, it is the duty of the State to keep in mind the obligations it has undertaken under International Conventions.

Secondly, India is a signatory to the World Heritage Convention, 1972 ('Convention, 1972', for short), which it had ratified in 1977. Article 5 of Convention, 1972 imposes a duty upon the State "*to protect and conserve the cultural and natural heritage situated in its territory*". It is further required "*to adopt a general policy which aims to give the cultural and natural heritage a function in the life of the community and to integrate the protection of that heritage into comprehensive planning programmes*".

Thirdly, keeping in mind the duties prescribed by the Convention, 1972, keeping in mind that Entry 12, List-II of the Seventh Schedule of the Constitution of India permits the State to enact laws for ancient and historical monuments, the former State of Andhra Pradesh had enacted the Act, 1960. Moreover, under Section 39 of the Urban Areas Act, the State was required to constitute an Urban Art Commission whose duty it was to recommend the protection of historical monuments and historical sites to the government. Furthermore, even under Regulation 13 of the Zoning

Regulations, 1981, the government had constituted the Heritage Conservation Committee. Upon the recommendation of the said Committee, 151 buildings were declared as "protected heritage buildings". However, Act, 2017 has brought about a horde of confusion in the laws dealing with historical monuments and heritage buildings. In order to support this argument, the learned counsel has presented the following sub-arguments:-

(a) In its Statement of Objects and Reasons, the Act, 2017 has clearly stated that "*there is no other legislation to deal with heritage buildings, precincts including rock formation in other rural and urban areas of Telangana State outside the HMDA area*". Thus, the impression being created is that, but for the HMDA area, there is no legislation to deal with the preservation and conservation of heritage buildings, rock formations etc., in the rest of the State. Thus, it clearly reveals that the legislature was well aware of the existence of Regulation 13 of the Zoning Regulations, 1981 under which 151 "heritage buildings" were given the status of being "protected". And yet, Section 1(2) of the Act, 2017 claims that the Act extents to the "*whole of the State of*

*Telangana*". Thus, it is unclear whether the Act repeals Regulation 13 of the Zoning Regulations, 1981 or not?

(b) The Act further compounds confusion. For, the Act, 2017 repeals neither the Urban Areas Act, nor the Regulation 13 of the Zoning Regulations, 1981. Under Section 39 of the Urban Areas Act, the State is required to constitute an Urban Art Commission, yet under the Regulation 13 of the Zoning Regulations, 1981, the State is required to constitute the Committee. But under Section 6 of the Act, 2017, the State is required to constitute the "Telangana State Heritage Authority" ("the Authority", for short). Interestingly, "the Commission", "the Committee", and "the Authority" are bestowed with the same set of duties, namely to recommend the preservation, conservation of "historical monuments, archaeological sites, heritage buildings and heritage sites". Therefore, it is unclear as to which of these entities is required to recommend to the government? Furthermore, it is also unclear as to recommendations of which entity would be binding upon the government?

(c) According to Article 11(2) of the Convention, 1972, the State is required "to establish, to keep up to date, and to publish the list of 'World Heritage'". However, under the Act, 2017, no such list exists. In the

absence of proper list, being mentioned and published, the very purpose of the Act, 2017 stands self-defeated.

(d) Even the Schedules, attached to the Act, 2017, have been drawn up without application of mind. For, important monuments from the ancient and medieval periods have been included. However, the monuments created by the *Qutb Shahi* and the *Asaf Shahi* period (the *Nizam* period) have not been included in the Act, 2017. Thus, gapping holes exist in the Act, 2017. Most interestingly, Schedule-I of the Act, 2017 includes certain monuments, such as megalithic monuments, which no longer exist. Therefore, the Act, 2017 suffers from non-application of mind. Hence, the Act, 2017 is an unconstitutional one.

17. On the other hand, Mr. J. Ramchandra Rao, the learned Additional Advocate General has countered these arguments as under:-

Firstly, undoubtedly, under Article 51 of the Constitution of India, the State is under a legal duty to fulfill its obligations under Treaties and Conventions. However, the Act, 2017 is, in fact, enacted for the State to fulfill its duties under the Convention, 1972.

Secondly, the entire challenge to the constitutionality of the Act, 2017 is highly misplaced.

For, the petitioner has not challenged the validity of the Act, 2017 on the three well-known grounds, namely (i) lack of competency of the State to enact the laws; (ii) violation of fundamental rights mentioned in Part-III of the Constitution of India; and (iii) the Act being so manifestly absurd that the legislature could not have enacted the law. Therefore, the petition deserves to be dismissed.

Thirdly, since Regulation 13 of the Zoning Regulations, 1981 was already repealed on 7-12-2015, by G.O. Ms. No. 183, there was no occasion for the Act, 2017 to repeal the said regulation. Moreover, since the new State of Telangana was enacting a new law for the protection of "historical monuments", "heritage buildings", there was no need for the Act, 2017 to repeal the Act, 1960.

Fourthly, under Article 246(3) of the Constitution of India read with Entry 12, List-II of Seventh Schedule of the Constitution of India, the State is competent to enact a law for the protection of "ancient monuments" and "heritage buildings". Even if Entry 12 of the Seventh Schedule of the Constitution of India does not use the word "heritage building", even then, the "heritage building" is a species of "historical monuments". Hence,

the State legislature is competent to enact Act, 2017 dealing with "historical monuments" and "heritage buildings".

Fifthly, Act, 2017 does not violate the fundamental rights of the people. In fact, since "heritage" is part of the identity of an individual, by protecting "heritage buildings", the Act, 2017 enforces and protects the right to life. For, the right to life also includes the identity of an individual, and the dignity of an individual. Therefore, Act, 2017 *per se* promotes fundamental rights mentioned in Part-III of the Constitution of India. Moreover, Act, 2017 is also in consonance with the Directive Principles contained in Article 49 of the Constitution of India, whereby the State is duty bound "to protect every monument or place or object of artistic or historical interest".

Sixthly, the learned counsel for the petitioner has needlessly tried to create an impression that the Act, 2017 has ushered a plethora of confusion. However, no such confusion exists in reality. In order to support this argument, the learned counsel has raised the following sub-arguments before this Court:-

(a) Although Section 39 of the Urban Areas Act prescribes the constitution of the Urban Art Commission,

such a Commission was never established by the State. Therefore, there is no Commission, which was functional in the past, or is functioning in the present.

(b) Since Regulation 13 of the Zoning Regulations, 1981 has been repealed by the State the question of existence of the Committee does not even arise.

(c) Therefore, the Authority is the only entity, which is required to be created by the State. But even the said Authority has not been constituted, so far, by the State. Hence, the question of three different authorities working simultaneously in the same field does not even arise.

(d) Since Act, 2017 has been enacted within the competency of the State legislature it is for the State legislature to decide which monument needs protection, and which monuments need not be protected. Moreover, the Schedules attached with the Act, 2017 are not rigid. They are open to amendments, modifications, and alterations. Therefore, nothing precludes the government from incorporating other monuments, which have not been incorporated in the Schedules, so far. Thus, the learned counsel for the petitioner is unjustified in claiming that the Schedules attached to the Act, 2017 reveal non-application of mind.

(e) The learned counsel for the petitioner is simultaneously blowing hot and cold. For, on the one hand, he claims that the Schedules attached to the Act, 2017 suffer from non-application of mind. Yet, on the other hand, claims that "no list" exists in Act, 2017. Obviously, Schedules are the very "list" which are required to be declared and published under Article 11(2) of the Convention, 1972. Hence, Act, 2017 is not only in consonance with the Constitution of India, but is in compliance of the Convention, 1972. Thus, according to the learned Additional Advocate General the Act, 2017 is constitutionally valid.

18. Heard the learned counsel for the parties and considered the record.

19. It is, indeed, trite to state that there is a presumption in favor of the constitutional validity of an enactment. The burden of proof lies on the party who claims that the law is unconstitutional to establish the said claim. Thus, it is for the petitioner to discharge the burden of proof.

20. It is, indeed, trite to state that the constitutional validity of a provision of law can be challenged only on three grounds; (i) lack of competency of the legislature, (ii) violation of fundamental rights of

the people, and (iii) if the Act suffers from unreasonableness to the extent of being covered by Wednesbury principle of unreasonableness i.e. if the law is so absurd and unreasonable that a reasonable person could have never enacted such a law. Interestingly, in the present case, the learned counsel for the petitioner has frankly conceded that he is not challenging the constitutional validity of Act, 2017 on these three grounds. Instead, the challenge is on the ground that the Act, 2017 is in violation of Convention, 1972. And it has ushered a cornucopia of confusion in law. Thus, it is unreasonable. But, merely because a law may not be well drafted, and may be unclear, that itself would not make the law unconstitutional.

21. Statement of Objects and Reasons of Act, 2017 is as under:

> *According to Article 51A (f) under Part IV-A 'Fundamental Duties' of Constitution of India, it shall be the duty of every citizen of India to value and preserve the rich heritage of our composite culture.*
>
> *The Telangana Ancient and Historical Monuments and Archeological Sites and Remains Act, 1960 (Act VII of 1960) inter alia deals mainly with ancient, and historical monuments and antiquity, subject to certain conditions specified therein.*
>
> *Regulation 13 of Hyderabad Urban Development Authority Zoning Regulations 1981 as amended in 1995 made under the Telangana Urban Areas (Development) Act, 1975 dealt with the conservation of listed*

*building, areas, artefacts, structures and precincts of heritage and / or aesthetical and / or architectural and / or cultural value (heritage buildings & heritage precincts) including rock formation in HMDA area only. Further, the Regulation 13 was found to be inconsistent with the Telangana Urban Areas (Development) Act, 1975 and was deleted vide G.O. Ms No 183, MA dated 7.12.2015.*

*There is no other legislation to deal with heritage buildings precincts including rock formation in other rural and urban areas of Telangana State outside the HMDA area and for their conservation including rock formation and to protect heritage and culture of Telangana State which is a blend of Telugu and Persian culture. It has therefore been considered necessary and decided to undertake a separate legislation for conservation and preservation of heritage buildings and heritage precincts including rock formation and other heritage in the State of Telangana.*

*Hence a bill is proposed which seeks to give effect to the above.*

22. It is true that the Statement of Objects and Reasons clearly claims that "*there is no other legislation to deal with heritage buildings, precincts including rock formation in other rural and urban areas of Telangana State outside the HMDA area*". The use of the words, "outside the HMDA area" does create an impression that there is a law dealing with "*heritage buildings, precincts including rock formation*" within the HMDA area. However, considering the fact that the Statement of Objects and Reasons also notices that Regulation 13 of the Zoning Regulations, 1981 was repealed by G.O. Ms.

No. 183, dated 07.12.2015, the statement, quoted hereinabove, is merely an example of bad drafting.

23. Moreover, Section 1 (2) of the Act, 2017 unequivocally states that "*the Act shall extent to the whole of the State of Telangana*". Therefore, the scope of Section 1 (2) of the Act, 2017 cannot be cribbed, cabined, and confined by the bad drafting of the Statement of Objects and Reasons. Thus, the Act, 2017 does apply to the entire State of Telangana. To this extent, there is no confusion caused by the Act.

24. However, the issue which continues to exist is whether the mentioning of Regulation 13 of the Zoning Regulations, 1981 in Regulation 9(A)(ii) of the Zoning Regulations, 2010 is "legislation by incorporation" or "legislation by reference". This issue is no longer *res integra* as this issue has already been decided by this Court in W.P. (PIL) Nos. 79 and 86 of 2019. In the said writ petitions, this Court has concluded that the mentioning of Regulation 13 of the Zoning Regulations, 1981 in the Regulation 9(A) of the Zoning Regulations, 2010 is by way of "incorporation", and not by way of "reference".

25. Once it is held that the mentioning of Regulation 13 of the Zoning Regulations, 1981 is by

"incorporation", the subsequent repeal of Regulation 13 of the Zoning Regulations, 1981 by G.O. Ms. No. 183, dated 07.12.2015 would not obliterate, or extinguish the presence of Regulation 13 of the Zoning Regulations, 1981 within the Zoning Regulations of 2010. In fact, it is a settled principle of law that even if the parental Act dies, the incorporated part continues to survive. Moreover, a subsequent modification or repeal does not affect the incorporated portion. Hence, the protection given under Regulation 13 of the Zoning Regulations, 1981 would continue to survive within the protected arena of Zoning Regulations, 2010 and 2013.

26. Since Regulation 13 of the Zoning Regulations, 1981 continues to be alive, the only issue; that would arise would be whether the protection granted under Regulation 13 of the Zoning Regulations, 1981 can continue to exist while Act, 2017 holds the field. Even this issue is no longer *res integra*. For, in W.P. (PIL) Nos. 79 and 86 of 2019 this Court has already opined that while Regulation 13 of the Zoning Regulations, 1981 is a "local law", the Act, 2017 is a "special law". Therefore, while Regulation 13 of the Zoning Regulations, 1981 would continue to operate within Hyderabad Metropolitan Area, the Act, 2017 would cover the other

areas of the State. Thus, while the Committee created under Regulation 13 of the Zoning Regulations, 1981 would continue to function *qua* the Hyderabad Metropolitan Area, the Authority created under Act, 2017 would deal with the rest of the State. Hence, the territorial jurisdiction of the Committee and the Authority are well defined. Thus, there is no confusion as pleaded by the learned counsel for the petitioner. Moreover, as there is no contradiction between Regulation 13 of the Zoning Regulations, 1981, and the Act, 2017, both the provisions of law can peacefully co-exist. Therefore, there is no confusion that has been caused by the enactment of Act, 2017. Hence, the contentions raised by the learned counsel for the petitioner are clearly untenable. Therefore, this Court is of the opinion that Act, 2017 is constitutionally valid.

27. Of course, the learned Counsel for the petitioner has argued that the Act, 2017 does not contain any list. But the stand being taken by the learned Counsel is self-contradictory. For, simultaneously, the learned Counsel contends that the Schedules attached to the Act, 2017 are unreasonable as monuments of Qutb Shahi, and Asaf Shahi period have not been included in the Schedules. In fact, the Schedules are the “lists” which

the learned Counsel claims are non-existent. Hence, the learned Counsel is unjustified in claiming that the Act, 2017 is contrary to the Convention, 1972.

28. Moreover, it is for the government to modify the Schedules attached to the Act, 2017. Since the Act, 2017 empowers the government to modify the Schedules on the basis of the recommendation of the Authority, it is not for this court to direct the government to include the Qutb Shahi and the Asaf Shahi monuments within the purview of the Act, 2017.

29. Furthermore, this Court has already held in Writ Petition (PIL) No. 79 of 2019 and Writ Petition (PIL) No. 86 of 2019 that the protection once given to the heritage buildings under Regulation 13 of the Regulations, 1981 would continue under the protective shield of Regulation 9(A) (ii) of the Zoning Regulations, 2010, and under Regulation 1.11.1 of Zoning Regulations 2013. This Court has also held that the Regulation 13 of the Zoning Regulations, 1981 can co-exist with the Act, 2017. Hence, there is no need for this Court to direct the government to include the protected heritage buildings of the Qutb Shahi and the Asaf Shahi period within the Act, 2017.

30. But besides challenging the constitutional validity of the Act, the petitioner has also challenged the impugned Cabinet decision dated 18.06.2019, *inter alia* on the ground that the said decision is in violation of statutory provisions, hence arbitrary.

31. In W.P. (PIL) Nos. 79 and 86 of 2019, this Court has already held that the Cabinet decision dated 18.06.2019 is, indeed, arbitrary and has set aside the same. Therefore, this part of the relief, being prayed for by the petitioner, is allowed in the terms of the decision pronounced by this Court in W.P. (PIL) Nos. 79 and 86 of 2019.

32. For the reasons stated above, the present writ petition is partly allowed. No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

**(RAGHVENDRA SINGH CHAUHAN, CJ)**

**(DR. SHAMEEM AKTHER, J)**

16-09-2019

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**THE HON'BLE THE CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN**

**AND**

**THE HON'BLE JUSTICE DR. SHAMEEM AKTHER**

**WRIT PETITION (PIL) No. 81 OF 2019**

(Per the Hon'ble the Chief Justice Raghvendra Singh Chauhan)

Date: 16th September, 2019

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