



## **...RESPONDENTS**

### **1. Particulars of the cause / order against which the Petition is made:**

The above Writ Petition is being filed in larger Public Interest against the scheme notified under G. O. Ms. No. 152 MA & UD (M1) Department dated 02.11.2015 proposing to regularize the illegal and unauthorized constructions that have been raised within the limits of the 2<sup>nd</sup> Respondent up to 28.10.2015 by making amendment to Section 455 AA of the Greater Hyderabad Municipal Corporation Act, 1955 vide Section 11 of the Greater Hyderabad Municipal Corporation (Amendment) Act, 2016 published in the State Gazette No. 5, dated 19.04.2016 and by giving effect to the amendment retrospectively w.e.f 02.11.2015 as provided under section 1 (2) (v) of the Amendment Act, 2016.

### **2. Particulars of the Petitioner(s):**

1. The Petitioner organization is a nonprofit organization registered vide Registration No. 653 on 19-10-2009 founded by a few retired All India Service Officers and social activists who have all come together under the President-ship of a Retired High Court Judge, with an objective to secure good governance at all levels, to resist the state abdicating its primary responsibility in providing good quality education and health services for all, build public opinion for the overdue electoral reforms, strive for enabling the various constitutional and autonomous institutions of the State to function effectively, campaign for the much-needed decentralization and reforms in administration etc. The organization runs on the contributions from its founder members and other persons interested in furthering the cause of the Forum.

2. The Petitioner is not involved in any civil or criminal or revenue litigation before any Court or Tribunal or any other cases other than those that were filed in Public Interest, listed herein.

**3. Declaration and understanding of the Petitioner:**

I, M. Padmanabha Reddy, S/O Sri M Ganga Reddy, aged about 74 years, Occ: Retired Government Officer, and presently functioning as the Secretary of the Petitioner organization, resident of Flat No. 204, G. K. R. Mansion, Lakdi – Ka – Pul, Hyderabad do hereby swear under oath and sincerely affirm as follows:

- 3.1. That the present Petition is being filed by way of Public Interest Litigation and the Petitioners do not have any personal interest in the matter. This Petition is being filed in the larger and long term interest of the residents within the jurisdiction the 2<sup>nd</sup> Respondent Corporation.
- 3.2. That the entire litigation costs including the Advocate's Fees is being borne by the Petitioner Society and its Members. The PAN Number of the Petitioner Society is AAAAF1653M.
- 3.3. That a thorough research has been conducted in the matter raised through the Petition. All the relevant documents pertinent to the subject as discovered by the Petitioner Society are annexed to the Petition.
- 3.4. That to the best of Petitioner's knowledge and research, the issue raised was not dealt with or decided and that a similar or identical petition was not filed earlier by us other than W.P. (PIL) No. 361 of 2015 which was filed prior to the legislation of the Greater Hyderabad Municipal Corporation (Amendment) Act, 2016, which is being withdrawn for filing of this Writ Petition on account of the need to file this Comprehensive Writ Petition assailing the Section 11 of the Amendment Act, 2016 as well.
- 3.5. That the Petitioner understood that in the course of hearing of this petition the Court may require any security to be furnished towards

costs or any other charges and the petitioner society shall comply with such requirements.

3.6. That the Petitioner has been filing Writ Petitions in larger Public Interest and a list of the cases filed by the Petitioner together with the present stage that they are in, is being furnished herein as follows:

3.6.1. **PIL No.:25998 of 2010**: Seeking a direction for holding elections to the Municipalities and Municipal Corporation in the State of Andhra Pradesh. Disposed of vide an order dated 29.02.2012 by recording the submission made by the state that elections shall be conducted in four months.

3.6.2. **PIL No. 39 of 2012**: Challenging the action of the Respondents in increase of water tariff supplied by HMWS & SB. Notices ordered and the case is pending as on date.

3.6.3. **PIL No. 132 of 2012**: Seeking a direction to the GHMC and HMWS & SB to construct Rain Water Harvesting Structure in the GHMC area. Disposed of by Order dated 10.09.2012, recording the Status Report filed and noticing that the work for construction has been commenced and would be completed in two months.

3.6.4. **PIL No. 236 of 2013**: Seeking a direction to the HMWS & SB to replace all damaged and rusted pipelines for preventing contamination and leakage of drinking water. Notices ordered and case pending.

3.6.5. **PIL No. 3 of 2015**: Seeking a direction to conduct elections to GHMC. Interim orders passed directing the completion of elections by 31<sup>st</sup> January 2016. Case pending.

3.6.6. **PIL No. 155 of 2015**: Seeking a direction to the State of Telangana to fill up vacancies of Vice Chancellors in the State of Telangana. Disposed of with directions dated 06.08.2015 by taking on record the statement of the Learned Advocate General that appointments shall be made within 3 to 4 months.

- 3.6.7. **PIL No. 233/2015**: Seeking a direction to complete all the incomplete houses whose construction has been taken up but not completed. Notices ordered and case pending.
- 3.6.8. **W.P. (P.I.L) No. 361 of 2015**: Challenging the G.O. Ms No. 146 MA & UD (M1) Department dated 31.10.2015 by which executive order an attempt was made by the 1<sup>st</sup> Respondent State to amend Section 455 AA of the Greater Hyderabad Municipal Corporation Act, 1955 and the consequential scheme for regularization of illegal and unauthorized constructions vide G. O. Ms. No. 152 MA & UD (M1) Department dated 02.11.2015. Interim orders were granted by this Honorable Court on 22.12.2015 directing that no final orders of regularization be passed by the authorities. However, on account of subsequent legislation of the Greater Hyderabad Municipal Corporation (Amendment) Act, 2016 amending Section 455 AA of the 1955 Act, steps are being taken to withdraw the Writ Petition on account of filing of this Writ Petition assailing the Amendment Act of 2016.
- 3.6.9. **W.P. (P.I.L.) No. 3 of 2016**: Challenging the Amendment of Section 5 ( 1- A) of the Greater Hyderabad Municipality Act, 1955 thereby making persons elected as MLCs while being registered as voters in constituencies outside the jurisdiction of the Greater Hyderabad Municipal Corporation for the sole purpose of enabling them to be ex – officio members in the Greater Hyderabad Municipal Corporation, by way of issuing executive orders in G. O. Ms. No. 207 M A & U D (F) Department dated 30.12.2015 on the principal ground that a Statute cannot be amended by way of an executive order. The Writ Petition was subsequently withdrawn on 29.02.2016 on account of the Ordinance issued by the 1<sup>st</sup> Respondent State, amending the Section 5 ( 1 – A) of the GHMC Act.

#### **4. Facts in brief:**

- 4.1. The Hyderabad Municipality was first constituted in the year 1869, with an area of about 55 Sq. KMs and a population of about 3.5 Lakh people. At present, Hyderabad is one of the largest cities in India, which enjoys a status of a Metropolis and is known to be a hub of Information Technology, Education and health care. The Greater Hyderabad Municipal Corporation was initially formed based on the approval of the Cabinet of Ministers in its meeting held on 01.07.2005 by merger of about 12 Municipalities and about 8 Gram Panchayats, abutting the city of Hyderabad with the erstwhile city of Hyderabad and vide Act 13 of 2008 the erstwhile Hyderabad Municipal Corporations Act, 1955 has been amended as The Greater Hyderabad Municipal Corporation Act, 1955. This Honorable Court in its orders passed in Mohd. Moazam Khan and others Vs. Government of Andhra Pradesh, reported in 2008 (5) ALD 585 (D.B.), had approved the merger of all the 20 local bodies with the erstwhile Municipal Corporation of Hyderabad.
- 4.2. As per the Census figures of 2011, published by the Respondents there are about 70 Lakh people living in the twin cities of Hyderabad and Secunderabad in the territorial jurisdiction of the 2<sup>nd</sup> Respondent Corporation. The 2<sup>nd</sup> Respondent Corporation is a statutory local body, with the powers and the responsibilities of regulating the Construction activity that is taken up within its jurisdiction. The powers and responsibilities of the 2<sup>nd</sup> Respondent include the powers to stop any illegal or unauthorized construction activities and also powers to demolish such construction as well, after following the due process of law.
- 4.3. The Construction Activity within the limits of the 2<sup>nd</sup> Respondent is regulated under the Building Rules, which are issued from time to time by the Respondents. As on date, the Rules, notified under G O Ms No. 168 dated 07.04.2012 are in force. It may be relevant to state that the Rule 4 and Table II of the Rules regulate the road width required for various heights permissible in buildings, Rule 5 and Table III regulate

the mandatory Set backs to be left and Rule 15 mandates that the constructions made shall be compliant of the National Building Code provisions for amenities and facilities, which in turn mandate that the construction is carried out by qualified persons or under the supervision of such persons and that the same shall have certain minimum standards with respect to sanitation, parking, common areas, rain water harvesting etc.. Thus, the rules notified regulate all construction activities that may be undertaken and prescribe certain minimum standards therein.

4.4. The main purpose of these Rules and the need for regulation of the construction activities is to essentially provide a reasonable, if not good quality life to the residents of the Twin Cities by ensuring that there is no strain on the infrastructure and support services like Water, Sewage, Electricity etc. to the citizens provided by the 2<sup>nd</sup> Respondent and other State Owned undertakings.

4.5. Unfortunately, it is a well known fact that illegal and unauthorized constructions are presently growing to menacing proportions in various towns and cities across India and despite consecutive judgments passed by this Honorable Court and the Apex Court, scant regard is given to the same and the Authorities continue to support the persons who indulge in such illegal activities. The observations of the Honorable Supreme Court of India in its judgment rendered in the case of Dipak Kumar Mukherjee Vs Kolkata Municipal Corporation, reported in (2013) 5 SCC 357 may be relevant in this regard.

4.6. The erstwhile State of Andhra Pradesh in the year 2008 had recognized the need to curb the illegal construction and also the requirement to balance the interests of the gullible purchasers of small flats and apartments and has introduced Sections 455 – A and 455 AA to the GHMC Act, 1955 amongst others. Section 455 – A empowers the Commissioner to regularize constructions made without obtaining sanctioned plan subject to certain conditions prescribed therein. Section

455 – AA however, vide a non – obstante clause, imposes a restriction of said the powers of the Commissioner to regulate and penalize by imposing a condition that only the buildings constructed till the date of commencement of Act No. 9 of 2008, being 15.12.2007 may be regularized as a one-time measure. Section 455 AA is being extracted herewith:

**Section 455-AA.** Notwithstanding anything in the Act, the Municipal Commissioner may regulate and penalize the constructions of buildings, made by the owner, or by an individual as the case may be, unauthorizably or in deviation of the sanctioned plan as on the date of commencement of the Andhra Pradesh Municipal Laws and Urban Areas (Development) (Second Amendment) Act, 2008 as a one time measure, as per the procedure and by levying such penal amount as may be prescribed and upon payment of such amount all pending or contemplated proceedings and action of enforcement shall be deemed to have been withdrawn and the competent authority shall issue necessary Occupancy Certificate to the owner or the individual as the case may be.

4.7. It may be relevant to note that as can be seen from a plain reading of the provision, the Regularization of illegal and unauthorized has been permitted as a One Time Measure only and therefore all construction made subsequent to 15.12.2007 would have to be made in strict accordance with the Building Rules. A natural corollary to this would also be that all constructions raised without a sanctioned plan and in violation of building rules should have been demolished by using the powers available to the 2<sup>nd</sup> Respondent.

4.8. It may also be relevant to note that by exercising powers under Section 455 – AA, a scheme for regularization of illegal and unauthorized



constructions had been notified as a one time measure under G O Ms No. 901 M A & UD Department dated 31.12.2007 and accordingly applications had been received and about 2.03 Lakh Applications have been considered and the Respondents had passed favorable orders in about 1.75 Lakh applications, thereby regularizing 1,75,000 illegal and unauthorized constructions by penalizing them.

4.9. It can therefore be safely concluded that the purpose of introducing Section 455 – AA by the State has been served and pursuant to the scheme of regularization being wound up, the Section 455 – AA has become redundant automatically.

4.10. The Respondents had also introduced more stringent building rules at that time, while giving more than adequate publicity to the new rules apparently with the objective to dissuade persons and businesses from taking up any illegal and unauthorized constructions from the cut off date provided under Section 455 AA. In fact, a few of the new rules that have been introduced included the requirement of virtually mortgaging 10% of the constructed area in a newly constructed building to the 2<sup>nd</sup> Respondent has been provided under Rule 25 (d) by handing over the possession over the same by way of a notarized affidavit as an assurance that there would be no deviation from the sanctioned plan, which has been made a pre-requisite to releasing the plan sanction itself. The 2<sup>nd</sup> Respondent's officers were expected to conduct periodic inspections and monitor constructions to ensure that there are no deviations and after the completion of the construction, a final inspection is to be conducted and then the Mortgage is released after ascertaining that the construction is strictly in accordance with the construction. A new concept of obtaining an Occupancy Certificate has also been created under Rule 26, which contemplates that unless the same is produced water and electricity connections by the 4<sup>th</sup> and 5<sup>th</sup> Respondents are not given to the building and even if given, the tariff is three times over and above the normal tariff.

- 4.11. It can be seen that thus at least from 2008, the officers of the Respondents have acknowledged the requirement of strict enforcement of the building rules and their duty to take positive steps towards implementation of the same.
- 4.12. However, it is an acknowledged fact that illegal and unauthorized constructions continued in the twin cities even after the new rules have been enforced. There have been several cases on the file of this Honorable Court complaining of illegal constructions by neighboring property owners. This Honorable Court has been consistently passing orders directing the authorities to demolish illegal constructions or to prevent illegal and unauthorized constructions beyond the sanctioned plans.
- 4.13. It is in this backdrop that the Respondents have issued orders in G O Ms No. 146 MA & UD (M1) Department dated 31.10.2015 amending Section 455 AA of the GHMC Act, 1955 by substituting the words “as on the date of commencement of the Andhra Pradesh Municipal Laws and Urban Areas (Development) Second Amendment Act, 2008” with the words “as on 28.10.2015”. Peculiarly, the only justification that can be found in the said GO for causing the amendment is that “it has become necessary to amend Greater Hyderabad Municipal Corporation Act, 1955 2015 to facilitate regularization of unauthorized building / buildings constructed in deviation of sanctioned plan”.
- 4.14. It is submitted that subsequently, vide orders in G O Ms No. 152 MA & UD (M1) dated 03.11.2015, the Respondents have notified the ‘Telangana Regularization of Unauthorizedly Constructed buildings and building constructed in deviation of the sanctioned plan Rules, 2015’, proposing to regularize all the illegal and unauthorized constructions made as on 28.10.2015.
- 4.15. It appears that by virtue of extending the cut off date to 28.10.2015, the specific intent of the legislature in promulgating Act No. 9 of 2008 that restricted the regularizations to illegal and unauthorized

constructions raised prior to 15.12.2007 alone, is clearly defeated. In any event, by extending the cut off date for over 8 years, the Respondents appear to be trying to blow a fresh lease of life to Section 455 – AA which has served its purpose after the Regularization scheme notified in G O Ms No. 901 dated 31.12.2007 has been closed.

4.16. It is submitted that the Petitioner herein has filed W.P. (P.I.L) No. 361 of 2015 assailing the orders of the Government in G. O. Ms. No. 146 dated 31.10.2015 and also the scheme of regularization issued under G. O. Ms No. 152 dated 02.11.2015.

4.17. It is submitted that the said Writ Petition in W.P. (P.I.L.) No. 361 of 2015 was taken up for admission by this Honorable Court on 27.12.2015 and this Honorable Court, after hearing the matter, had been pleased to pass interim orders directing the Respondents not to pass any final orders of regularization of any illegal and unauthorized constructions, while permitting them to receive applications.

4.18. It is submitted that in the meanwhile the Respondent State issued an Ordinance in Telangana Ordinance No. 1 of 2016, The Greater Hyderabad Municipal Corporation (Amendment) Ordinance, 2016 wherein and where under Section 455 AA of the 1955 GHMC Act was amended under Section 10 in a vain attempt to rectify the defects committed by issuing G. O. Ms. No. 146 dated 31.10.2015. This Ordinance has been replaced by a legislation called the Greater Hyderabad Municipal Corporation (Amendment) Act, 2016 passed by the Telangana Legislature. The Amendment Act of 2016 was notified in Telangana Gazette Extraordinary No. 5 dated 19.04.2016.

4.19. It is submitted that during the course of hearing of the above mentioned W.P. (P.I.L) No. 361 of 2015 on 25.04.2016, this Honorable Court was pleased to observe that on account of the Amendment Act of 2016 having been notified on 19.04.2016, the Petitioner herein may examine the requirement of filing a new Writ Petition comprehensively assailing Section 11 of the Amendment Act, 2016 and the Petitioners

having been advised that it would indeed be more desirable to institute a fresh Writ Petition, are herewith instituting the present Writ Petition.

4.20. It is submitted that while the manner in which the amendment has been carried out to Section 455 AA of the 1955 Act for the purpose of amending the cut off date contained therein and effectively proposing to extend the date from 15.12.2007 to 28.10.2016 leaves much to be desired, in this Writ Petition, there are two limbs of challenge being mounted by the Petitioner. One, the very Section 11 of the Greater Hyderabad Municipal Corporation (Amendment) Act, 2016 is being assailed on the ground that it amounts to violating the fundamental right to life guaranteed under Article 21 of the Constitution of India. Secondly, the very scheme notified under G. O. Ms. No. 152 M A & U D Department dated 02.11.2015 on the ground that it is in violation of Articles 14 and 21 of the Constitution of India. It is respectfully submitted that both the challenges being are being mounted without prejudice to each other.

4.21. It is submitted that it is a settled position of law that a legislation is usually not interfered with by the Honorable Courts. However, the two grounds that have been declared as permissive for judicial review are the grounds of jurisdiction and that of a violation to any of the Part III rights guaranteed under the Constitution of India. In view of the same, this Honorable Court would be well justified in subjecting the Amendment Act of 2016 for judicial review as to whether or not the same would constitute a violation to the Part III rights guaranteed under the Constitution of India.

4.22. It is also now a well settled proposition of law that Right to Life guaranteed under Article 21 includes a right to live a healthy and a happy life. It is for this very reason that the Honorable Supreme Court and the various Honorable High Courts across the country have time and again held that unauthorized and illegal constructions have an adverse impact not only on the public infrastructure and amenities like

Roads, Water, Sewage, Electricity etc but also on the ecological balance that is the basis of preparing Master Plans and Building Rules. The pollution caused on account of the strain on the infrastructure significantly affects the common man and such constructions put unbearable burden on the public facilities / amenities apart from creating chaos on the roads and thereby cause an increase in the number of people affected by skin diseases of different types, asthma, allergies and even more dreaded diseases like cancer. It is therefore submitted that on account of the fact that Section 11 of the Amendment Act of 2016 proposes to enlarge the powers to regularize illegal and unauthorized constructions raised between 15.12.2007 to 28.10.2015, Section 11 is a definite infringement of the Right to Life, as guaranteed under Article 21 of the Constitution of India. Also, right to life enshrined in Article 21 of the Constitution includes the right to safety on public roads, as has been held by the Honorable Supreme Court in the case of Save Life Foundation &anrVs Union of India &anr. Even on this ground, the empowerment of the power to regularization of illegal and unauthorized constructions

4.23. It is submitted without prejudice to the above, and in the unlikely event that this Honorable Court comes to a conclusion that there is no merit in the contention of the Petitioner regarding the Section 11 of the Amendment Act of 2016 being unconstitutional, it is submitted that the very scheme for regularization suffers from the vices of arbitrariness and lack of application of mind.

4.24. It may be highly relevant to note that apart from a cursory restriction placed on buildings more than 18 M of height, making it necessary for them to obtain an NOC from the Fire Department no other major restrictions are placed, for rendering the illegal and unauthorized constructions being eligible for regularization. For example if there is a building consisting of a ground plus four floors constructed on a 400 Sq Yard plot, without leaving any setbacks whatsoever, about 18,000 Sq

feet can be constructed which can accommodate about 20 Apartments of 900 Sq Ft each. Thus about 80 to 100 persons can be accommodated in the said building at an average of 4 to 5 persons per household. This would virtually become a firetrap in case of an accident. Similarly, the road width would be totally encroached by the vehicles of the residents on account of lack of parking facilities. The children of the residents would be more or less compelled to play on the road, thereby posing a major risk to themselves and the commuters. There cannot be adequate drinking water supplied to this building and the sewage pipes are required to take the stress of this increased number of persons which is going to result in clogging and thereby have an adverse impact on the health and hygiene of the entire locality. Further, the amount of solid waste that is generated without there being adequate means to dispose of or treat the same would also enhance the risks of pollution which could cause severe ailments to the citizens.

4.25. The recent Floods in Chennai last year have demonstrated the potential havoc that can be caused in the event of incessant rains coming in a deluge for about a week without adequate storm drain facility. There does not appear to be any material to indicate that the authorities have applied their minds to such potential hazards that may have an exponentially adverse impact on the entire city and its infrastructure.

4.26. It is submitted that as stated above, ever since 2008, when the 2<sup>nd</sup> Respondent and its officers have been given more powers which included causing a mortgage of a floor in the new constructions for the purpose of ensuring adherence to the building rules and regulations and withholding of occupancy certificates in cases of violations and imposing penal tariffs in essential services, the question of there being illegal constructions raised in deviation to the sanctioned plan ought not arise in the first place. In the event of there being any such illegal and unauthorized constructions, despite the stringent rules, the same must

be dealt with, with the proverbial iron hand, failing which the entire purpose of introducing the stringent rules is lost.

- 4.27. If it is the contention of the Respondent State that there have been several illegal and unauthorized constructions that have been raised that it is in larger public interest that they are regularized, there is a responsibility of the State to also point out the lapses on behalf of its officers in regulating the construction activity in time and before they are raised. Then, the State is also liable to initiate appropriate steps against its officers and proceed against them departmentally. Ironically, as recently as in 2014 several disciplinary proceedings that were initiated against the purportedly errant officers who were alleged to be responsible for the illegal constructions being raised in the first instance have been dropped, for reasons best known to the Respondents.
- 4.28. That being so, by a bald statement that it has become necessary, the Respondents seem to be proposing to regularize illegal and unauthorized constructions which are raised in a brazen disregard to the rules, for the private and illegal gain of a handful few.
- 4.29. The very insertion of Section 455 AA was as a 'one time measure' and the objective at that time was apparently to migrate into a more stringent rules' regime from the date of the Second Amendment Act in 2008 and that being so, the very purpose and objective of the Section 455 AA stood extinguished once the application for regularization of the illegal and unauthorized constructions were invited and acted upon by the Respondents and therefore Section 455 AA has been rendered nugatory.
- 4.30. It may be relevant to state that the Act 9 of 2008 under which Sections 455 A and 455 AA have been inserted had been assailed in a batch of Writ Petitions filed by various persons, both in Private and Public interest. The entire batch of cases stood disposed of by the orders of this Honorable Court in W. P. No. 1069 of 2008 and Batch dated 08.06.2009. This Honorable Court, while upholding the validity of

Section 455 AA had also examined the Rules issued under GO Ms. No 901 dated 31.12.2007 and had made certain observations while disposing of the cases. Important of the said observations would be that the restriction up to a height of 15 Meters and above, with respect to the need for a structural stability certificate that has been held to be bad and similarly the exemption granted to the buildings which are not in conformity with the land use and zoning regulations has also been held illegal. Further, instead of making available the remedy of Appeal to the applicants alone, it has been made available to any person who may be aggrieved by an order of regularization.

4.31. It may further be relevant to mention that in the present Rules issued under G O Ms No. 152 dated 02.11.2015, the requirement of a Structural Stability Certificate has been made mandatory to all buildings irrespective of the height and similarly under the excluded category, buildings in violation of the land use and zoning laws have been included. However, in so far as the Appeal provision is concerned, the same is restricted to the Applicants alone.

4.32. In any event, it is also necessary to state that the challenge in the present Writ Petition is to the extent of extending the Cut off date for the buildings constructed up to 15.12.2007 to those constructed up to 28.10.2015 and hence this issue has not fallen for consideration in the earlier round of litigation.

4.33. In view of the above, the very amendment to the Section 455 AA issued vide orders under G O Ms. NO. 146 dated 31.10.2015 and as amended retrospectively vide the Greater Hyderabad Municipal Corporation (Amendment) Act, 2016 under Section 11 and the consequential Rules notified under G O Ms No. 152 dated 03.11.2015 are illegal, arbitrary and liable to be quashed for the following amongst other

### **GROUND**



1. The amendment to Section 455 AA extending the cut off date from 15.12.2007 to 28.10.2015 is not supported by any reasoning, much less a valid reasoning and hence is arbitrary and therefore illegal.
2. The amendment to Section 455 AA has been brought in with retrospective effect w.e.f. 02.11.2015, without there being any justification or reasoning and hence is arbitrary and therefore illegal.
3. The extension of life of a provisions that has been otherwise rendered nugatory by extending the cut – off date after more than 7 years without adequate reasoning or justification is illegal and arbitrary and in violation of Article 14 of the Constitution of India, apart from being in violation to Article 21 as well.
4. The regularization of illegal and unauthorized constructions instead of demolition of the same has the effect of adversely affecting the rights of the citizens of Greater Hyderabad guaranteed under Article 21 of the Constitution of India, as it amounts to depriving the quality of life by compelling the citizens to live in an inadequate infrastructure and support services and polluted environment that can cause several diseased and ailments.
5. The regularization of illegal and unauthorized construction would have an adverse impact on the basic and essential services to be provided by the Respondents like Water, Electricity, Sewage and Solid Waste Treatment capacities etc. and nothing is available on record to show if the impact has been appropriately considered or not and even on this count, the impugned orders are in violation to Articles 14 and 21 of the Constitution of India.
6. The impugned orders are liable to be set aside for the reason that the Rules notified under G O Ms No. 152 dated 02.11.2015 do not adequately distinguish between severity of the violations to the FSI norms under the building rules in as much as the contemplate regularization of all kinds of illegal and unauthorized constructions

irrespective of the extent of deviation and hence to be declared as arbitrary and hence illegal and unconstitutional.

7. The Rules notified under the impugned orders are liable to be declared as illegal and arbitrary as they have not classified the severity in deviations in the form of setbacks by appropriately prescribing at least some minimum basic standards in setbacks and therefore have the effect of regularizing constructions which virtually encroach into neighboring properties, apart from being a fire hazard and hence to be declared as arbitrary and hence illegal.
8. The impugned orders are liable to be declared as illegal and arbitrary as they do not classify between minor and major violations to the height restrictions existing under the building Rules and as they enable regularization of any height, by a mere production of the building structural safety compliance certificate from any licensed structural engineer or a licensed engineer, which in other words would enable regularizing even 5, 7 or 10 floors constructed over a mere 400 Sq Yards of Plot size, which is highly arbitrary and hence illegal and unconstitutional.
9. The Respondents have clearly issued the impugned orders notifying the 2015 rules, without any classification between permissive and prohibitive violations or minor and major violations or violations that have a minimal impact and those which have a major impact and hence the impugned orders are liable to be declared illegal and unconstitutional.
10. There is no material available to reflect the extent of the violations that have occurred and the impact on critical essentialities like water, electricity or sewage etcon account of regularization of the violations and even on this count, the impugned orders are liable to be quashed as illegal and arbitrary and unconstitutional.
11. There is nothing to show as to if and whether appropriate disciplinary proceedings have been initiated against the officers of the 2<sup>nd</sup> Respondent who have failed to stop the illegal and unauthorized

constructions between 2008 to 2015 and who are clearly responsible for the present predicament and therefore the impugned orders are liable to be quashed as illegal and arbitrary.

12. Frequent and periodic regularizations have the effect of acting as an incentive to the persons who have brazenly disregarded the existing rules and if the action of the Respondents in issuing the impugned orders is not deprecated by this Honorable Court, it would further embolden the persons and companies in the construction and real estate industry which would lead to further and repeated violations and even on this count, the impugned orders are liable to be quashed.

13. Any other grounds that may be urged during the course of hearing.

5. **Source of information:** The information furnished by us in the Petition has been gathered from various Government Orders and orders of this Honorable Court that have been hosted on the Website of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents and this that of this Honorable Court and the websites of the Honorable Bombay High Court apart from other legal journals and therefore we believe it to be true.

6. **Nature and extent of injury caused / apprehended:** Repeated Regularization Schemes that are formulated for regularization of illegal constructions under the guise of policy decision of the 1<sup>st</sup> Respondent State are likely to cause an adverse impact on the infrastructure and support services that are to be provided by the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondent Corporations and other allied State owned undertakings in term of providing essential services like Water, Sewage, Electricity, Solid Waste treatment plants, Roads, Green Cover, Parks & Recreational Areas, etc., apart from having an adverse impact on the safety and convenience of the people living in such illegal and unauthorized buildings and thereby affect the Right to Quality Life of the citizens living within the territorial jurisdiction of the 2<sup>nd</sup> Respondent Corporation.

7. **Any Representation made:** No representations have been made as the orders impugned have been already notified without there being any invitation for objections or suggestions.
8. **Delay, if any:** The cause of action arose on 31.10.2015 being the date of issuance of the impugned orders in GO Ms No. 146 dated 31.10.2015 and further cause of action arose on 02.11.2015 when the respondents issued the regularization rules under G O Ms No. 152 dated 02.11.2015 and on 19.04.2016 when the 1<sup>st</sup> Respondent State notified the Greater Hyderabad Municipal Corporation (Amendment) Act, 2016 and finally on 25.04.2016, when this Honorable Court had taken a view that the Petitioners should examine the need for filing a more comprehensive Writ Petition and therefore there is no delay, as such.

**9. Documents relied upon:**

- 9.1. Copy of Certificate of Registration No. 653 dated 19-10-2009
- 9.2. Copy of Pan Card of the Petitioner Society
- 9.3. Copy of G O Ms No. 901 dated 31.12.2007
- 9.4. Copy of relevant excerpts from the judgment passed by this Honorable Court in W. P. No. 1069 of 2008 & Batch dated 08.06.2009
- 9.5. Copy of G O Ms. No. 168 dated 07.04.2012
- 9.6. Copy of G O Ms. No 134 dated 13.10.2015
- 9.7. Copy of G O Ms No. 146 dated 31.10.2015
- 9.8. Copy of GO Ms No. 152 dated 02.11.2015
- 9.9. Copy of the Greater Hyderabad Municipal Corporation (Amendment) Act, 2016 published in the State Gazette No. 5, dated 19.04.2016.
- 9.10. Copy of the interim orders passed by this Honorable Court in W.P. (P.I.L) No. 316 of 2015 dated 22.12.2015

9.11. Copies of the orders passed by this Honorable Court in the various Writ Petitions filed in Public Interest, by the Petitioner.

**10. Relief prayed for:**

It is respectfully prayed that this Honorable Court, in the interests of justice be pleased to issue a Writ, Order or a Direction, one more in the nature of a Writ of Mandamus declaring

- i. the action of the Respondents in proposing to extend the cut off date from 15.12.2007 to 28.10.2015 by way of an amendment to Section 455 – AA of the GHMC Act, 1955 for the purpose of regularizing illegal constructions made within the territorial jurisdiction of the Greater Hyderabad Municipal Corporation vide Section 11 of the Greater Hyderabad Municipal Corporation (Amendment) Act, 2016 published in the State Gazette No. 5, dated 19.04.2016 as illegal, arbitrary and unconstitutional being in violation of Articles 14 and 21 of the Constitution of India; and
- ii. the action of the Respondents in proposing to regularize illegal constructions made within the territorial jurisdiction of the Greater Hyderabad Municipal Corporation by issuing orders in G. O. Ms No. 152 M A & UD (M1) Department dated 02.11.2015 as illegal, arbitrary and unconstitutional being in violation of Articles 14 and 21 of the Constitution of India; and
- iii. consequently quash Section 11 of the Greater Hyderabad Municipal Corporation (Amendment) Act, 2016 published in the State Gazette No. 5, dated 19.04.2016; and

- iv. further consequently quash the Rules in G. O. Ms No. 152 M A & UD (M1) Department dated 02.11.2015; and
- v. pass such other order or orders as may be deemed fit and proper in the interests of justice.

**11. Interim order prayed for:**

It is further prayed that pending the above Writ Petition, this Honorable Court be pleased to suspend the orders in G. O. Ms No. 152 M A & UD (M1) Department dated 02.11.2015 and pass such other order or orders as may be deemed fit and proper, in the interests of justice.

It is further prayed that pending the above Writ Petition, this Honorable Court be pleased to suspend the operation of Section 11 of the Greater Hyderabad Municipal Corporation (Amendment) Act, 2016 published in the State Gazette No. 5, dated 19.04.2016 and pass such other order or orders as may be deemed fit and proper, in the interests of justice.

It is also prayed that pending the above Writ Petition, this Honorable Court be pleased to direct the Respondents to initiate and complete a drive to cause demolition of all the illegal structures constructed without permission or authorization or in deviation with the sanctioned plan in accordance with law within a period of 3 Months and file an action taken report before this Honorable Court and pass such other order or orders as may be deemed fit and proper in the interests of justice.

It is respectfully prayed that pending the above Writ Petition, this Honorable Court may be pleased to direct the Respondents 4 and 5 not to give regular connections or in the alternative to levy the penal tariffs on all such constructions, that do not have Occupancy Certificate as contemplated under Rule 26 (g) of the Andhra Pradesh Building Rules,

2012 notified under G.O. Ms No. 168 dated 07.04.2012 and pass such other order or orders as may be deemed fit and proper in the interests of justice.

12. **Caveat:** That no notice has been received by the Petitioner of lodging a caveat by the opposite party.

**Place: Hyderabad**

**Date: 31.05.2016**

**FOR Forum for Good Governance**

### **VERIFICATION**

I, M. Padmanabha Reddy, S/O Sri M Ganga Reddy, aged about 73 years, Occ: Retired Government Officer, and presently functioning as the Secretary of the Petitioner organization, resident of Flat No. 204, G. K. R. Mansion, Lakdi – Ka – Pul, Hyderabad do hereby on solemn affirmation state and declare that what is stated in the paragraphs 1 to 4.32 and 5 to 12 are true to my own knowledge and belief and what has been stated in paragraph 4.33 is based on the information and legal advise which I believe to be true and correct.

Verified before me at Hyderabad on this the 31<sup>st</sup>day of May 2016.

**Place: Hyderabad**

**Date: 31.05.2016**

**Advocate for Petitioner**

**FOR Forum for Good Governance**