

DECREE IN L.A.O.P.

**IN THE SPECIAL TRIBUNAL UNDER A.P. LAND GRABBING ACT
-CUM- CHIEF JUDGE: CITY CIVIL COURT, HYDERABAD.**

Dated: This the 3rd day of June, 2013.

PRESENT: Sri M. SEETHARAMA MURTI, B.Sc.,B.L.,
CHIEF JUDGE.

L.A.O.P. No.2440 of 2009

Between:

1. Smt. Dinmani K. Mehta, W/o late K.B. Mehta, aged about: 77 years, Occ: Household.
2. Girish K. Mehta, S/o late K.B. Mehta, aged about: 59 years, Occ: Business.
3. Subash K. Mehta, S/o late K.B. Mehta, aged about: 50 years, Occ: Business.
4. Balakrishna K. Mehta, S/o late K.B. Mehta, aged about: 39 years, Occ: Business.
Petitioners 1, 2 and 4 are represented by their GPA Holder, Subash K. Mehta, the petitioner No.3 herein.
All are R/o 3-6-456, Himayathnagar, Hyderabad.

.....Petitioners

And

1. Soham Modi, S/o Satish Modi, aged about: 47 years, R/o 5-4-187/3 & 4, 3rd Floor, M G Road, Secunderabad.
2. Sourabh Modi, S/o Satish Modi, aged about: 45 years, R/o 5-4-187/3 & 4, 3rd Floor, M G Road, Secunderabad.
3. M.B.S. Purushotham, S/o M V Subbarayudu, aged about: 80 years, R/o C-11, Vikrampuri Colony, Secunderabad - 500 003.
4. Anil Rupani, S/o Jai Rupani, aged about: 60 years, R/o H.No.1-8-142/143, P G Road, Secunderabad.
5. Ms. Yasmeen Asad, W/o Ajmal Asad, Age: Major, R/o H.No.19, Street No.3, Uma Nagar, Begumpet, Hyderabad.
6. Brig. SS Adikari, S/o not known, Age: Major, R/o H.No.1135, Road No.58, Jubilee Hills, Hyderabad.
7. M/s. Garden Silks Limited, having its Office at 2-4-33, Ground Floor, Rangopalpet, Secunderabad - 500 003, represented by its Managing Director.

The Special Deputy Collector, Land Acquisition, Greater Hyderabad Municipal Corporation, Tank Bund, Hyderabad.

..... Respondents

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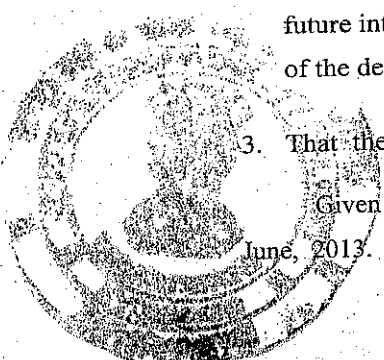
Claim: This petition is filed under Section 31 of the Land Acquisition Act by the petitioners requesting this Court to allow the present Claim Petition and consequently declaring that the petitioners are entitled to receive the compensation amount of Rs.92,82,777/- as awarded by the respondent No.8.

Valuation & Court Fee : O.P. is valued at Rs. 92,82,777/- and Court Fee of Rs.10/- is paid as per Orders dated 11.11.2009 of the Hon'ble Supreme Court in C A No.4482-4483/2001, LAOP 2440 of 2009 is numbered on 30.09.2009. As per docket order dated 05.01.2011 in OP 2440/2009 the Claim Petition is filed on 18.01.2011.

This petition coming on this day for disposal in the presence of Sri P. Shiv Kumar, Advocate for the petitioners, Sri P. Venkata Ramana, Advocate for the Respondents 1, 2, 5 and 6, Sri S. Balchand, Advocate for the 3rd Respondent, Sri S.S. Baria, Advocate for the 7th Respondent, Sri Balakrishna, Government Pleader for the 8th Respondent and 4th Respondent having remained ex parte and this Court doth Order and Decree as follows:

1. That the Petition is allowed in part, declaring that the petitioners are entitled to receive a compensation of Rs.45,00,000/- (Rupees Forty Five Lakhs only) from out of the compensation amount awarded under the award passed by the 8th respondent.
2. However, since the petitioners had already and admittedly received a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) from out of the above determined amount, the petitioners are now held entitled to receive only Rs.35,00,000/- (Rupees Thirty Five Lakhs only) from the respondents 1 to 7 jointly and severally with interest @12% per annum simple on the said amount of Rs.35,00,000/- (Rupees Thirty Five Lakhs Only) from 01.11.2008 till the date of the decree and future interest @ 6% per annum simple on the said sum from the date of the decree till the date of payment or realisation.
3. That there shall be no order as to costs.

Given under my hand and seal of the Court on this the 3rd day of June, 2013.



J. Srinivas
CHIEF JUDGE,
City Civil Court, Hyderabad.
Contd.....3

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MEMO OF COSTS

	For Petitioner	For Respondents				
		1, 2, 5 & 6	3	4	7	8
1. Stamp on Petition	Rs. 10-00	--	--	--	--	--
2. Stamp on Power	Rs. 2-00	2-00	2-00	Exp. 2-00	2-00	2-00
3. Stamp on Process	Rs. 500-00	--	--	--	--	--
4. Advocate Fee	Rs. F.C and M.C not filed	Fc	and	mc	not	filed
5. Commissioner's fee	Rs. ---	--	--	--	--	--
6. Publication fee	Rs. ---	--	--	--	--	--
	Rs. 512-00	2-00	2-00	--	2-00	2-00


CHIEF JUDGE,
City Civil Court, Hyderabad.

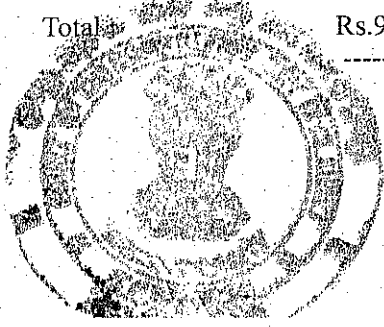
SCHEDULE OF PROPERTY

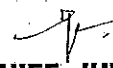
(1) All that the property bearing premises Nos. 1-10-72/2/3, 3A, 3B, 3C, covered by old Survey No.40, corresponding to Town Survey No.10, Ward No.94, Block-E, situated at Begumpet, Secunderabad, previously situated at Begumpet Village, Balanagar Mandal, R R District and bounded by:

- North : Begumpet Main Road (S P Road)
- South : D.No.1-10-72/2/2
- West : 15' Wide Road
- East : D.No.1-10-72/A2

(2) Details of the amounts received by the Respondents 1, 2 & 4 to 7

i) Respondent No.1	Rs.13,35,383/-
ii) Respondent No.2	Rs.13,35,382/-
iii) Respondent No.4	Rs. 4,62,680/-
iv) Respondent No.5	Rs. 1,28,571/-
v) Respondent No.6	Rs.29,54,533/-
vi) Respondent No.7	Rs.30,66,228/-
Total	Rs.92,82,777/-




CHIEF JUDGE,
City Civil Court, Hyderabad.
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COURT OF THE CHIEF JUDGE
CITY CIVIL COURT HYDERABAD
CENTRAL COPYIST ESTABLISHMENT

C.A. No. 1157/2013
Application made on 5-6-2013
Stamps Called on 25-7-2013
Charges Deposited on 26-7-2013
Stamps
Charges a Sum of Rs. 360/-
Deposited U/R 203 (A) (1) U/r No. 1276
Addl. Stamps Called on
Addl. Stamps Deposited on
Copy made ready on 13-8-2013
Copy Delivered on

SUPERINTENDENT
Central Copyist Establishment
City Civil Court, Hyderabad

[Handwritten signature]

IN THE COURT OF THE CHIEF JUDGE: CITY CIVIL COURT:

HYDERABAD

Monday, the 3rd day of June, 2013

Present: Sri M.SEETHARAMA MURTI, B.Sc., B.L.,

CHIEF JUDGE

L.A.O.P. No.2440 of 2009.

Between:

1. Dinmani K. Mehta, W/O Late K. B. Mehta,
Aged 77 years, Occ:Household.
2. Girish K. Mehta, S/O Late K. B. Mehta,
Aged 59 years, Occ:Business.
3. Subhsh K. Mehta, S/O Late KB Mehta,
Aged 50 years, Occ:Business.
4. Balakrishna K. Mehta, S/O Late KB Mehta,
Aged 39 years, Occ:Business.

[Petitioners 1, 2 and 4 are represented by their GPA Holder,

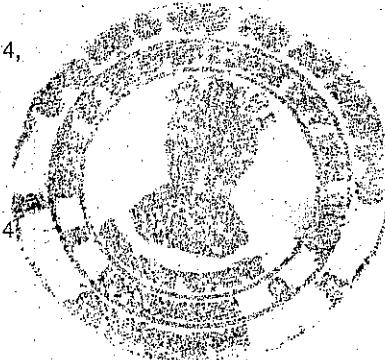
Subash K. Mehta, the 3rd petitioner herein.]

[All are R/O 3-6-456, Himayathnagar, Hyderabad.]

.... Petitioners

AND

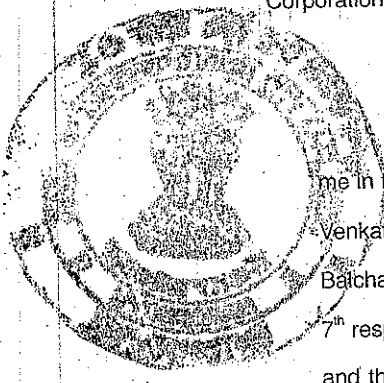
1. Soham Modi, S/O Satish Modi,
Aged about 47 years, R/O 5-4-187/3 & 4,
3rd Floor, M.G. Road, Secunderabad.
2. Sourabh Modi, S/O Satish Modi,
Aged about 45 years, R/O 5-4-187/3 & 4,
3rd Floor, M.G. Road, Secunderabad.



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3. M.B.S. Purushotham, S/O M. V. Subbarayudu,
Aged 80 years, R/O C-11, Vikrampuri Colony,
Secunderabad.
4. Anil Rupani, S/O Jai Rupani,
Aged about 60 years, R/O H.No.1-8-142/143,
P.G. Road, Secunderabad.
5. Ms. Yasmeen Asad, W/O Ajmal Asad, Major,
R/O H.No.19, St.No.3, Uma Nagar,
Begumpet, Hyderabad.
6. Brig. SS Adikari, S/O Not known, Major,
R/O H.No.1135, Road No.58, Jubilee Hills,
Hyderabad.
7. M/S Garden Silks Limited,
Having its Office at 2-4-33, Ground Floor,
Ramgopalpet, Secunderabad – 500 003,
Represented by its Managing Director.
8. The Special Deputy Collector,
Land Acquisition, Greater Hyderabad Municipal
Corporation, Tank Bund, Hyderabad.

.... Respondents



This Original Petition coming on 20.02.2013 for final hearing before me in the presence of Sri P. Shiv Kumar, Advocate for the petitioners, Sri P. Venkata Ramana, Advocate for the respondents 1, 2, 5 and 6, Sri S. Balchand, Advocate for the 3rd respondent, Sri S S Baria, Advocate for the 7th respondent, Sri. Balakrishna, Government Pleader for the 8th respondent and the 4th respondent having remained exparte and having stood over to this day for consideration, this court delivered the following:

ORDER

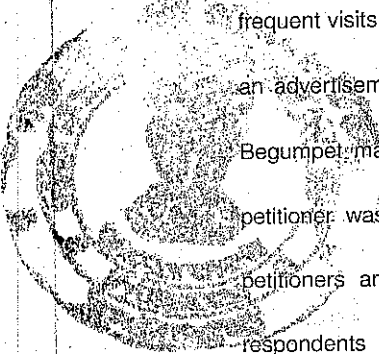
The claim petitioners filed this application requesting this Court to allow the instant claim petition and consequently declare that the claim petitioners are entitled to receive the compensation of Rs.92,82,777/- (Rupees ninety two lakhs eight two thousand seven hundred and seventy seven only) as awarded by the eight respondent / Special Deputy Collector, Land Acquisition, Greater Hyderabad Municipal Corporation.

2. The facts leading to the registration of this claim petition and the pleaded case of the petitioners, in brief, are as follows: "The subject matter of the instant application is a dry urban land of 605 square yards or Ac.0-5 Guntas said to have been owned and possessed by one late Chotalal Shivaram Vyas ('Vyas' for short). The first petitioner is his only daughter and the petitioners 2 to 4 are her sons and are the maternal grandsons of Vyas. Therefore, they are the only legal heirs who had inherited the above said property on the death of the said Vyas on 10.10.1983 at Rajkot, Gujarat. During his lifetime, the said Vyas instituted a suit in O.S. 36 of 1975 ('former suit' for short) in the Court of the learned I Additional Judge, City Civil Court, Hyderabad, against the third respondent herein and others for declaration that he is the exclusive owner and possessor of the said property in survey no. 40 situated at Begumpet. The said suit was decreed on 29.03.1980 declaring Vyas as the owner and possessor of the above said property.

However, while granting the said declaratory relief in favour of Vyas the Court had not granted the relief of Injunction sought for against the defendants therein in view of the fact that all the defendants had no right, title or interest in the said property and as they had pleaded that they were not in possession of the said property. The third respondent herein

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had assumed a stand in the former suit that he is in no way concerned with the land in survey no.40 and that he is the owner of only a portion of land in survey no. 41 and had claimed that he had purchased the said property on 09.07.1993 from defendants 1 to 3 in the former suit and that the identity of the plaint schedule property in the former suit was different from the identity and location of the property said to have been purchased by the 3rd respondent herein. Hence the said Vyas and the petitioners had no suspicion or knowledge that the schedule property would be grabbed by the respondents 1 to 7. Further the decree in the former suit declared the ownership and possession of the Vyas and the 3rd respondent had categorically admitted that he had no right in the schedule property. The petitioners saw no reason to execute the decree in the former suit as they were declared as owners and were in possession of entire survey no. 40 admeasuring 605 square yards at Begumpet, Hyderabad. The appeal preferred by the said Vyas vide CCA No.61 of 1981 before the Hon'ble High Court was dismissed on 11.04.1988 and thus, the decree in the former suit remains intact and binding on the 3rd respondent. In fact said Vyas died during the pendency of the said appeal. He did not devote his time and pay much attention for development of the said property except renovating the compound wall around the property. The petitioners also did not bother to develop the said property as they were busy in their avocations and were very often not in the station on account of frequent visits to Gujarat. On 20.01.1995 the 3rd petitioner herein by chance came to notice an advertisement in Deccan Chronicle Newspaper in regard to sale of office space on Begumpet main road. As suspicion arose investigation was made and on that the 3rd petitioner was shocked to see that the extent of 605 square yards belonging to the petitioners and which was surrounded by compound wall was encroached upon by respondents 1 to 3 herein and a commercial complex was constructed and that the



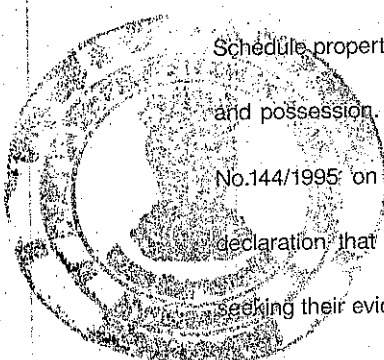
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respondents 1 to 3 had offered a portion of the same for sale by advertisement aforementioned. On further enquiries the 3rd petitioner came to know that the fourth respondent advertised a public notice in Deccan Chronicle dated 11.01.1995 indicating that he had entered into an agreement with respondents No. 1 and 2 for the purchase of undivided piece of land measuring 19.58 square meters with 350 square feet of structure which is a part of the commercial complex constructed illegally by the respondents 1 and 2 on the schedule property of the petitioners. From the records of Municipal Corporation of Hyderabad, Secunderabad Division it was disclosed that the 3rd respondent has misrepresented the schedule property as his property in survey no.41 and on the strength of such misrepresentation he had obtained building sanction for construction of commercial complex through respondents no.1 and 2 on the schedule of property. Respondents 1 and 2 are reported to be the builders/developers and the respondents 4 to 7 are the persons having concluded agreements for purchase or lease of office space constructed by respondents 1 and 2 on the said land comprised in survey no..40 belonging to the petitioners and which has been grabbed by respondents 1 to 3. The respondents No.1 to 3 have no lawful entitlement over the said land and the structures have been recently raised illegally and without any authority by making misrepresentation to departments concerned behind the back of the petitioners. The schedule property with its previous boundaries and corresponding existing boundaries was originally owned by Syed Mohd. Azam. He had sold it by a registered sale deed dated 27.05.1961 bearing document no.1674 of 1961 to A.R. Muraidhar under exhibit A5 in the former suit. Exhibit A 21 is the certified copy of the said exhibit A5. As per the findings in the judgment in the former suit O.S.No.36 of 1975, the origin of the schedule of property is not in dispute between the parties to the said suit. The Bahari Patrika of the years 1963-64, which was marked as



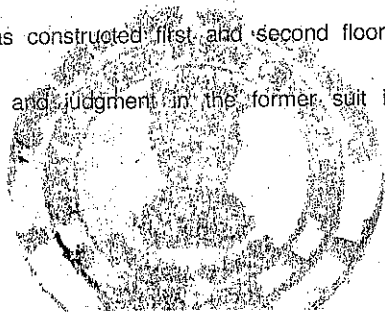
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exhibit A4, also corroborates the fact of ownership of schedule property originally sold by Syed Azam. According to exhibit A5 and A4 the extent of schedule property is 5 guntas [= 605 square yards]. The schedule property was sold by A.R. Muralidhar to the said Vyas vide registered sale deed dated 12.12.1964 bearing document No.2011 of 1964 which was marked as exhibit A1 in the said suit. The said Muralidhar has constructed a compound wall in the schedule property as per plan which was marked as exhibit A2 and A12 in the said suit. Thus the possession of the schedule property was retained by the said Muralidhar and the vacant possession of the same was handed over to said Vyas on the date of execution of sale deed and he was in possession till 10.10.83 and subsequently the petitioners who are his legal heirs were in possession till the respondents 1 to 3 without their knowledge or consent entered into possession and started raising illegal structures, which only came to the knowledge of the petitioner in January 1991. On coming to know the said encroachment, the petitioners got issued a lawyer's dated 24.01.1995 to respondents No.1 to 4 herein. The respondents received the said notice. A reply dated 02.03.1995 was given on behalf of respondents 1 to 2 only, wherein they have admitted their vendor was the third respondent. Respondents 1 and 2 had set up false allegations in the reply notice and made inconsistent pleas of ownership and adverse possession. The decree in the former suit clearly establishes the ownership and possession of the petition Schedule property with Vyas through whom the present petitioners are claiming ownership and possession. In the circumstances, the petitioners filed a land grabbing case in LGC No.144/1995 on the file of the special court against respondents 1 to 4 seeking a declaration that they are land grabbers in respect of the schedule property and also seeking their eviction and restoration of possession to the petitioners besides a direction to the respondents 1 to 4 to demolish and remove the unauthorized and illegal structure.



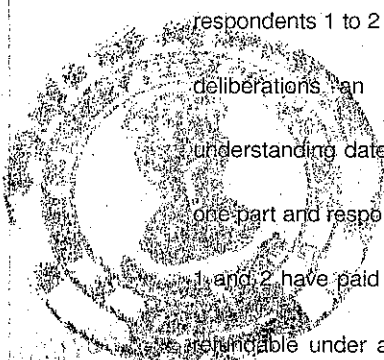
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Reliefs for payment of compensation of Rs.50,000/- per month for illegal occupation and construction of illegal construction thereon and also for launch of criminal proceedings and punishing them for the act of land grabbing were also sought. While raising their defence the respondents had pleaded that the third respondent purchased the property to an extent of 411 square meters equivalent to 491 square yards in survey no. 41 of Begumpet village under a registered sale deed dated 09.07.1973 from Sivagori Maisaiah and others who are the original owners. The respondents had inter alia raised contentions that assuming that the land in the possession of the 3rd respondent is covered by a portion of survey no. 40 claimed by the petitioners, still they had perfected title in respect of the schedule property by way of adverse possession as he has been in continuous and uninterrupted possession of the same right from the date of his purchase in 1973. The third respondent also contended in the said L.G.C. that he had obtained permission from MCH for construction of compound wall and that compensation was also paid in respect of 354 square yards in connection with the widening of Sardar Patel road and that MCH has also obtained consent dated 24.12.1981 for taking possession of the said extent of land for road widening and took possession of the demarcated portion on the same day from the third respondent. It was also stated in the defence that the State Government issued G. O. Ms. No.373 NA dated 19.04.1992 granting relaxation of zonal regulation for construction of shopping complex and that the ground floor construction was started in March, 1982 and was completed in the year 1983. Respondent No.3 also contended that he filed W.P No.16663 of 1986 challenging the action of MCH in refusing permission for first and second floors and the same was allowed on 23.03.1990 by the Hon'ble High Court and that thereafter he has constructed first and second floors. The 3rd Respondent had admitted the decree and judgment in the former suit in O.S.No.36 of 1975. The



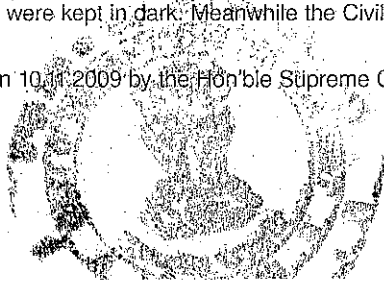
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respondents 1 to 2 being the purchasers from the third respondent have also filed counter on similar lines as that of the 3rd respondent herein. After full trial the Special Court vide judgment dated 19.12.1997 allowed the said LGC No.144 of 1995 declaring the respondents therein i.e., respondents 1 to 4 herein as land grabbers in respect of the schedule of property and directed them to deliver the vacant possession of the property to the petitioners. The claim of mesne profits was directed to be adjudicated on a separate application under Order XX Rule 12 of the Code of Civil Procedure. The Special Court came to a conclusion that the schedule property is situated in survey no.40 of Begumpet village. The third respondent on one hand and respondents no.1 and 2 on the other filed two petitions in W.P. Nos.137 and 8053 of 1998 challenging the said judgment of the special court and the Hon'ble High Court vide its common judgment dated 03.02.2000 allowed the writ petitions and thereby set aside the judgment of the Special court on the ground that the respondents 1 to 3 have perfected their title by adverse possession. Aggrieved by this common judgment made in the writ petitions, the petitioners herein preferred SLPs vide SLP Nos.10815 and 10816 of 2000. The Hon'ble Supreme Court by an order dated 24.07.2000 ordered status quo and later leave on SLP was granted on 20.07.2001 and consequently the cases were numbered as Civil Appeal Nos.4482 and 4483 of 2001. While the matters were pending before the Hon'ble Supreme Court, the respondents 1 to 2 approached the petitioners for settlement of the dispute and after some deliberations an understanding was reached and accordingly a memorandum of understanding dated 18.07.2001 (MOU) was executed by and between the petitioners on one part and respondents 1 and 2 on the other. In terms of the said document respondents 1 and 2 have paid a sum of Rs.10,00,000/- to the petitioners herein which amount is not refundable under any circumstances as per the memorandum of understanding. It was



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also agreed under the MOU that in the event of said SLPs being decided in favour of the petitioners, the respondents 1 and 2 would pay a further amount of Rs.35 lakhs within a period of 2 ½ months i.e., 75 days from the date of orders made in SLPS, for relinquishing all the rights in the said property. It was further agreed that in the event, if the orders are passed in favour of respondents 1 and 2, the petitioners shall not pursue their rights, claims, etcetera in respect of the said land and such rights shall stand extinguished in consideration of the amount of Rs.10,00,000/- so received by the petitioners. While matter stood thus, the schedule property to the extent of 242 square yard on which a building called Modi House was built by respondents 1 and 2 was acquired by GHMC and the respondents 1 and 2 and the other respondents claiming under them filed their respective claim petitions before the 8th respondent. Having come to know about such acquisition and the proceedings, the petitioners also filed their claim petition seeking compensation. During the course of hearing the said memorandum of understanding dated 18.07.2001 was produced before the 8th respondent. The 8th respondent passed an award dated 05.08.2008 in favour of respondents 1 to 7 adjudicating that they together are entitled for a sum of Rs.92,82,777/- in respect of the said extent of land of 242 square yards and the structures. It is worthy to note that in the award the schedule of property was stated to be situated in survey no.40/2 but in not in survey no.41 of Begumpet village as claimed by respondents 1 to 4 in LGC 144/1995 and also in the writ petitions before Hon'ble High Court of Andhra Pradesh. By the said award the 8th respondent had rejected the claim of the petitioners in terms of the memorandum of understanding and as the orders in SLPs are awaited. The order passed by the 8th respondent was not communicated to the petitioners and they were kept in dark. Meanwhile the Civil Appeal Nos 4482 4483 of 2001 were disposed off on 10.11.2009 by the Hon'ble Supreme Court of India, on the strength of



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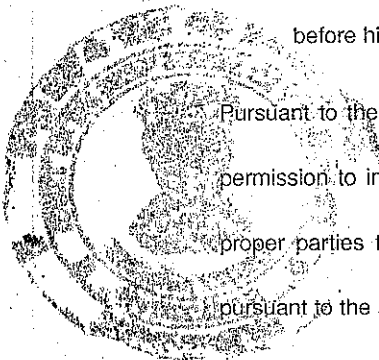
representation dated 29.10.2009 made by the counsel for respondent 3 herein that the land in question was acquired by the GHMC and the matter can be remanded to the District Judge, Hyderabad under Section 31 of the Land Acquisition Act for determination of the question as to who is entitled to the compensation. Consequently the matter was remanded to this Court by order dated 10.11.2009 passed by the Hon'ble Supreme Court of India in Civil Appeals No.4482-4483 of 2001 and the relevant portion of the order is as follows:

"Sri Nageshwar Rao, learned Senior Counsel appearing for the respondents very fairly stated that the matter can be remanded to the District Judge, Hyderabad under Section 31 of the Land Acquisition Act, who will determine the question as to who is entitled to the compensation. We direct accordingly,

"The District Judge, Hyderabad shall decide the question of title on its own merits in accordance with law, expeditiously preferably within four months from the date of receipt / production of a copy of this order and uninfluenced by this order, impugned judgment of the High Court and judgment of the Special Court.

Both the parties can place all material before the District Judge, Hyderabad and all questions are left open to the parties to be advanced before him".

Pursuant to the orders the Hon'ble Supreme Court, the petitioners filed petition seeking permission to implead the respondents 4 to 7 as respondents 4 to 7 as necessary and proper parties to the proceeding since respondents 1 to 7 received the compensation pursuant to the award of the 8th respondent. It was not brought to the notice of the Hon'ble

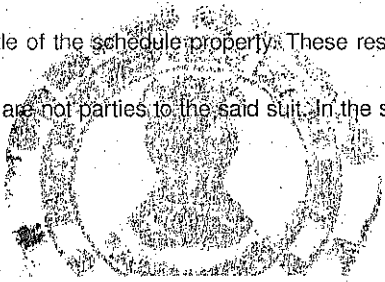


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Supreme Court that the compensation was already paid by the 8th respondent to the respondents 1 to 7. The petitioners first came to know on 27.10.2009 about the award and payment of compensation to the Respondents 1 to 7. Immediately the petitioners had obtained a copy of the award and there was no occasion for the petitioner to represent before the Hon'ble Supreme Court that the compensation was already paid by the 8th respondent to the respondents 1 to 7. Hence the petitioners are now claiming the compensation and are requesting this Court to allow the instant claim petition and consequently declare that the claim petitioners are entitled to receive the compensation of Rs.92,82,777/- (Rupees ninety two lakhs eight two thousand seven hundred and seventy seven only) as awarded by the 8th respondent / Special Deputy Collector, Land Acquisition, Greater Hyderabad Municipal Corporation.

3. The fourth respondent had remained ex parte. The respondents 1 to 3, 5, 6 and 7 are resisting the claim. As already noticed above, the 8th respondent is the officer who has passed the award. The sixth respondent adopted the counter of respondents No.1 and 2.

4. The respondents No.1 and 2 in their counter have denied all the material averments in the petition and contended that the claim petition is not maintainable. Apart from denials of the case of the petitioners their specific defence, in brief is as follows: "There is a memorandum of understanding between the petitioners and the respondents 1 and 2 regarding the compensation paid to the petitioners in the event of the petitioners succeeding to the title of the schedule property. These respondents are not aware of OS 36 of 1975 and they are not parties to the said suit. In the said suit only a declaration was

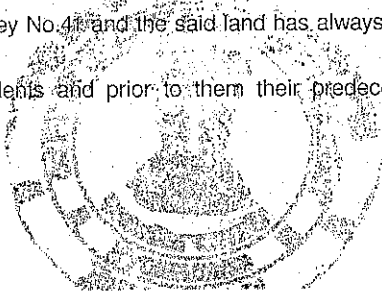


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granted in favour Vyas in respect of 5 guntas in survey No.40 within the boundaries mentioned therein and the said declaration was granted without there being any survey conducted over the property or report of the Survey commissioner in the said suit and only basing on the documents filed by the said Vyas. In fact the injunction sought for in the said suit against the defendants therein was not granted as Vyas could not prove that the defendants therein were in possession of any portion of any property claimed by Vyas or that they encroached into the schedule property covered by the said suit. Both parties are claiming independent title by virtue of their documents and these respondents and predecessors were in possession of the schedule property by virtue of their documents and title deeds. The 3rd respondent rightly contended that he is the owner of portion of survey No.41 having purchased the same under a registered sale deed dated 19-07-1973. Respondent No.3 and after him these respondents have been in enjoyment and possession of said land in survey No. 41 ever since the sale in 1973 in favour of respondent No.3. The respondents have grabbed the property of the petitioner or their predecessors as alleged are denied. These respondents No.1 and 2 and their predecessors were in possession of the property throughout from 1973 and prior to that the vendors of the third respondent were in possession in their own right and it is denied that Vyas has constructed a compound wall around the property. The petitioners were in possession of the schedule property. The alleged sale in favour of Vyas and his predecessor Muralidhar do not pertain to the land in possession and enjoyment of these respondents. A.R. Muralidhar had ever constructed any compound wall is denied. These respondents No. 1 and 2 purchased the property on the strength of the documents held by the third respondent. The averments that the respondent No.3 does not have any lawful entitlement over the land and that the structures have been built illegally without any

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authority or by making any misrepresentation to the concerned department is denied. The title of Vyas, Muralidhar and Syed Mohd. Azam over schedule property as claimed in the claim petition is denied. These respondents and their predecessors had entered into possession of the property illegally is denied. Documents relied upon by the petitioners do not confer title over the property in question. The land was originally purchased by the 3rd respondent from the pattedars in the year 1973. After sale in favour of the 3rd respondent he has constructed a compound wall obtaining due permission and also after obtaining permission for construction of ground floor. Thereafter the third respondent applied and had obtained permission for surrender of 355 square yards of land to the Municipal Corporation for widening of the road. The third respondent has executed an agreement in favour of MCH by and under which he had agreed to surrender the land as acquired by the corporation. Thereafter, he had delivered possession of remaining land to the builders for the purpose of constructing a shop. After obtaining necessary permission and zonal relaxation the construction of ground floor was completed in the year 1983. Thereafter the respondent No.3 requested for permission for constructing first and second floors but it was refused. The respondent No.3 therefore, filed a writ petition against the corporation. The said writ petition was allowed. Thereafter the Government of Andhra Pradesh granted permission for further construction and the first and second floors were completed. After completion of the floors these respondents purchased the said property through a registered sale deed dated 24-07-1993. Thus the allegation that there has been any surreptitious land grabbing or encroachment is absolutely false. The construction raised in the premises bearing No. 1-10-72/2/3, 1-10-72/2/3A, 1-10-72/2/3B, 1-10-72/2/3C is constructed in part of survey No.41 and the said land has always been in possession and enjoyment of the respondents and prior to them their predecessors in interest. Even

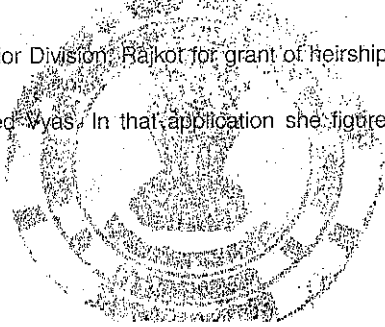


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assuming that the petitioners had any right in the land held by the respondents, Vyas was never shown as owner of land in survey No.40 before the town survey or even thereafter. The town survey of the land is not according to the village maps. There has been a manipulation of the official records, which has been evident from the fact that the extent of the land in survey no. 40 is varying from time to time. There has been clear manipulation, which these respondents would highlight at the relevant time. The claim petition is barred by time. Under Section 31 of the Act any claim has to be preferred within the prescribed time i.e., 60 days from the date of passing of award. These respondents are not parties to the suit OS 36 of 1975. Though the title of Vyas was declared in respect of 605 square yards in survey no. 40 it is not conclusive proof and it is nowhere proved that predecessors of these respondents had encroached into the said land or that constructions that were made by the predecessor of these respondents were in fact made in the said land. Mere mentioning of survey number 40 in the Gazette does not prove anything. The Assistant Director, Survey Settlements and Land Records, Ranga Reddy District, has filed report in L.G.C. 144/95 clearly stating that only 20 square yards of the schedule property falls i.e., open parking area falls in old survey No.40 of Begumpet Village and the commercial complex constructed by these respondents falls in survey No.39. In fact the survey commissioner's report in the LGC 144 of 1995 clearly states that no part of the building falls in S. No. 40 of Begum pet village except to an extent of 20 square yards and the claim of the petitioners that the land in question is in survey number 40 is totally incorrect. The claim petition is not maintainable. For the above mentioned reasons the claim petition may be dismissed.

The third respondent also filed a counter on the same lines as that of the counter of the respondents No.1, and 2. Apart from the common averments, the relevant

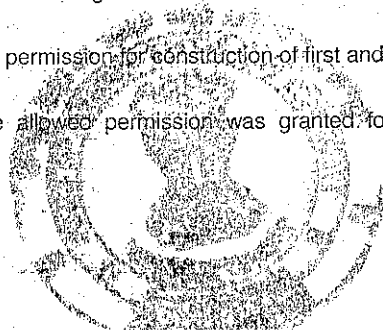
averments in the counter of the third respondent in brief, are as follows: "The petitioners herein had participated in the award enquiry conducted by the 8th respondent by filing their claim petition. After the award was passed they had not filed an application questioning the said award in spite of having knowledge of the award proceedings and the award. The claim petition is barred by law of limitation. The present application claiming title over the property is filed by the petitioners only to harass the respondents and to claim non-existent rights with a view to make easy money. The construction of the premises bearing Nos.1-10-72/2/3, 1-10-72/2/3A, 1-10-72/2/3B and 1-10-72/2/3C are made after grabbing the land of the petitioners or by making encroachments into the land of the petitioners as alleged is denied. This respondent and his successors were in illegal possession of the property or that the constructions were raised illegally by making false representations to the concerned authorities is denied. The petitioners 2 to 4 are the grandsons of Vyas or that they are the legal heirs of the said Vyas is denied for want of knowledge. Vyas owned and possessed 605 square yards in survey number 40 is denied. Vyas or his predecessors in title were the owners and possessors of the disputed land are denied. The property of Vyas on his death would devolve upon his heirs under the Hindu Succession Act depending upon the nature of the estate and his share in the partition of the joint family property. The petitioners are not the only legal heirs of the deceased Vyas. Under no circumstances, the petitioners No.2 to 4 are neither proper nor necessary parties to the present proceedings. Their names are liable to be deleted from the array of parties. There is no statutory provision for grant of heirship with regard to the estate of the deceased. It is learnt that Reva Kuwar filed miscellaneous application No.61 of 1984 on the file of the II Joint Civil Judge, Senior Division, Rajkot for grant of heirship certificate with regard to the estate of the deceased Vyas. In that application she figured as applicant without there



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being any respondent. The said heirship certificate is not mentioned in this proceeding. In the property details mentioned in the said certificate, this disputed property does not find place. Therefore, Vyas was not the owner and possessor of the property involved in the present proceedings. The said applicant Reva Kuwar Chotalal Vyas produced Estate Duty Certificate. At that time, Income Tax, Estate Duty Tax and Wealth Tax were in force and under these enactments the details of property would be required to be given. Reva Kuwar Chotalal Vyas was reported to have died on 11-02-1988 at Amar Hospital, Basheerbagh, Hyderabad. The legal heirs left by her are not known. The first petitioner is the legal heir to Smt. Reva Kuwar Chotalal Vyas or her estate is denied. The first petitioner filed O.P. No.74 of 1989 on the file of this Court seeking letters of administration to administer the property. No probate of Will was sought and no probate was granted. Mere annexing the copy of the Will to the letters of administration would not confer any ownership rights on the applicant in respect of the estate described therein. Even if the first petitioner has obtained said letter of administration the same would not entitle her to claim any rights, title or interest on the property on that basis. Reva Kuwar Chotalal Vyas has duly executed the alleged Will set up by the first petitioner herein while filing O.P. No.74 of 1989 is denied. Even at the time of filing of the said O.P. the first petitioner did not make a claim in respect of property involved in the present proceedings. Therefore, it is clear that Vyas was not the owner of the property. This respondent is not aware of death of Vyas on 10-10-1983 at Rajkot. It is true that this respondent is a party to the suit in O.S.No.36 of 1975 and in the said suit only a declaration is granted in favour of Chotalal Sivaram Vyas in respect of the property of A6-05 Guntas or 605 square yards in survey number 40 within the boundaries mentioned therein. This respondent or his predecessors made any encroachments into the petitioners' lands is denied. This respondent gave a proper reply to the notice of the

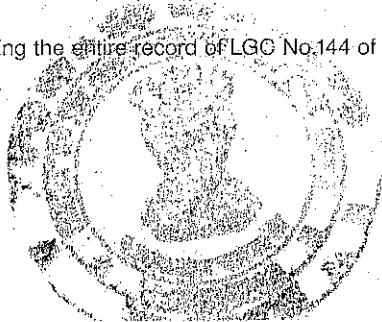
petitioners. The decree in the former suit establishes the ownership and possession of the petition schedule property is with Chotalal Sivaram Vyas is denied. The property in possession of this respondent is totally different from the one being claimed by the petitioners as the legal heirs of Vyas. Mentioning of the property in declaration filed before ULC authorities and in orders passed by the ULC authorities passed in said declaration do not confer title of the property on a particular person only by virtue of the said declaration or orders. The ULC proceedings have no bearing on the present case. The premises bearing Nos. 1-10-72/2/3, 1-10-72/2/3A, 1-10-72/2/3B and 1-10-72/2/3C, which is constructed forms part of survey number 41 and the said land has always been in possession and enjoyment of this respondent and prior to him the same was in possession of this respondent's predecessor in interest. This respondent purchased land under registered sale deed dated 19-07-1983 from Maisaiah and others and the extent of said land is 411 square meters which is equivalent to 493.2 square yards out of which the MCH had taken over large extent of more than 100 square meters but, granted permission to this respondent for construction with additional FSL. This respondent executed an agreement in favour of MCH and agreed to surrender the land as required by the corporation and no compensation for land was paid by the corporation or received by this respondent. After the sale in favour of this respondent, he had constructed a compound wall after obtaining permission from municipal authorities. Thereafter this respondent applied for and obtained permission for construction of ground and first floors and delivered the possession of the land to the builders for purpose of constructing shopping complex after obtaining necessary relaxation of zonal regulation. After construction was completed in the year 1983 and after refusal of permission for construction of first and second floors and after the writ petitions filed were allowed permission was granted for further construction and



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accordingly construction of first and second floors was completed. This respondent made construction of the building and ultimately sold away the same in favour of respondents No.1 and 2 separately under two sale deeds both dated 24-07-1993 for the extent of 315 square meters equivalent to 378 square yards. The construction of building comes roughly in 250 square yards and the remaining land area was lying open. There has been surreptitious land grabbing or encroachment is absolutely false. The right, if any, of the petitioners in the property has been extinguished by operation of law as they have lost possession for more than 22 years before filing LGC. Comparison of boundaries of the alleged land owned by Vyas as appearing in the sale deed in favour of his vendor and as appearing in the deed in favour of Vyas would reveal uncertainty of the location of the land. The extent of survey number 40 has been varying from time to time. The land in survey No.40 has been claimed by the family of Cheekoti Veeranna and he has sold the said land in favour of Samanthakamani and she had subdivided the land into plots and obtained sanction of layout. Therefore, the land in survey No.40 forms part of layout of the land prepared by Samanthakamani, which is now known as Cheekoti Gardens at Begumpet. Vyas was never shown as the owner or possessor of the land bearing survey No.40 before the town survey was prepared or thereafter. The Memorandum of Understanding dated 01.07.2001 was between the petitioners and the respondents No.1 and 2. The petitioners relied upon it and admittedly in part performance and pursuant to the said Memorandum of Understanding the petitioners have received from the respondents No.1 and 2 is Rs.10,00,000/- Thus, notwithstanding of the dispute, the petitioners on one hand and the respondents No.1 and 2 on the other hand have entered into a memorandum of understanding resulting into a compromise of disputed claims. The petitioners are not entitled to continue the present proceedings to make claim for compensation for any land

area. Their remedy is to enforce the agreement/memorandum of understanding against respondents No.1 and 2 only for the balance amount payable under the said agreement by proving necessary ingredients. Respondents 4 to 7 are therefore neither necessary nor proper parties to the present proceedings. The land acquiring authorities calculated the land value at Rs.15,000/- per square yard and had taken into consideration 242 square yards and paid compensation there for. For the balance area no compensation was paid by the authorities. Compensation for the structures constructed by this respondent was transferred to the respondents 1 and 2 and thereafter respondents 1 and 2 had transferred the rights to respondent No.4 and the compensation was paid by valuing the construction separately. Therefore, in the event of the petitioners proving their ownership, possession and title, their claim against the respondents No.1 and 2 cannot exceed the rate of Rs.15,000/- per square yard and that too for an area of 242 square yards and in view of the Memorandum of understanding dated 01-07-2001 between them and the petitioners will be forced to restrict their claim as mentioned in the memorandum of understanding. This respondent and the successors were in illegal possession is a totally baseless allegation. In the former suit though the title of Vyas was declared in respect of 605 square yards in survey number 40, it is nowhere proved that this respondent had encroached into the said land or that the constructions made were in fact made in the said land. The additional plea of adverse possession by the respondents cannot be found fault with as both parties are claiming under rival titles. The claim petition is a totally new and fresh case and the petitioners are not proceeding on the basis of transfer of the case from the Supreme Court to this Court. Since this is a fresh proceeding, there has to be a trial and the matter has to be dealt with by ignoring the entire record of LGC No.144 of 1995. Hence, the petition may be dismissed."



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6. The averments in the counter of the 7th Respondent, in brief, are as follows:

"This respondent is a subsequent purchaser of a portion of property bearing premises No.1-10-72/2/3 and 1-10-72/2/3A admeasuring 2700 square feet on second floor of 'Modi House' along with undivided share of land 126.96 square yards from the respondents No.1 and 2 herein in terms of four registered sale deeds bearing documents Nos.1064 of 1995, 1190 of 1995, 1190 of 1995 and 1101 of 1995 dated 8th and 9th December, 1994. This respondent is a legal and rightful owner of the said portion of 'Modi House' and is duly entitled to receive compensation awarded by the eighth respondent in the award proceedings. This respondent is not a party to the former suit and LG case, writ petitions, special leave petition and also the memorandum of understanding executed between the petitioners and the respondents 1 and 2. It is true that this respondent had also filed claim petition before the 8th respondent and the eighth respondent had allowed the claim petition of this respondent also. As per clause 6 of the memorandum of understanding dated 18-07-2001, the parties to the said understanding had agreed that the petitioners are free to pursue their rightful claim for such other part of land out of the total area of 605 square yards after leaving all such areas of land over which Modi House is constructed with the respective departments of Government of Andhra Pradesh to claim such compensation of area acquired for road widening. In terms of the said memorandum of understanding, the petitioners have agreed that they are in no way concerned with the compensation payable for the land on which the 'Modi House' is constructed. Hence, the owners of various portions of Modi House who are rightly entitled for the compensation were awarded compensation along with this respondent. Much prior to the passing of the award, the memorandum of understanding was executed in the year 2001 and the same was brought to the notice of the 8th respondent and was referred to in his award. The petitioners having

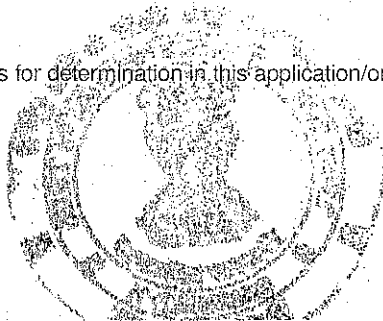
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executed a memorandum of understanding are bound by the award passed by the 8th respondent. This respondent being the purchaser of a portion of the property of Modi House cannot be made liable for any disputes or liabilities inter-se between the petitioners on one hand and the respondents No.1 and 2 on the other. This respondent before purchasing the property made enquiries and ascertained that the respondents No.1 and 2 are the rightful owners and possessors and had legal competence to sell the property in favour of this respondent. Hence, this respondent is a bonafide purchaser for value after due enquiries made by this respondent. As this respondent is a bonafide subsequent purchaser of a portion of the schedule property for value and had paid money in good faith, this respondent's rights are to be protected under law. It is a settled law that bonafide purchaser for value gets a good title as long as he did not have notice of the defective title of the seller. The petitioners are in no way concerned with the compensation amount received by this respondent and as awarded by the 8th respondent. The petition is untenable and deserves to be dismissed."

7. At the time of enquiry before this Court PW1 was examined and exhibits A1 to A41 were marked on the side of the petitioners and RWs1 and 2 were examined and exhibits B1 to B46 were marked on the side of the contesting respondents.

8. I have heard the submissions of the learned counsel for both the sides. I have carefully perused the pleadings and the oral and documentary evidence.

9. Now the points for determination in this application/original petition are -



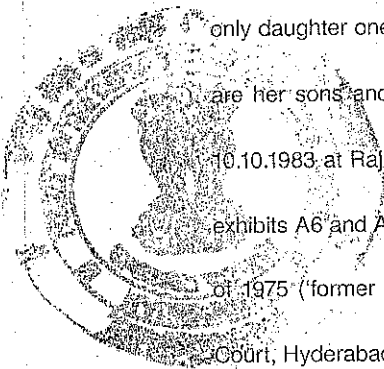
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- (i) Whether the claim petitioners are entitled to a declaration that the claim petitioners are entitled to receive the compensation of Rs.92,82,777/- (Rupees ninety two lakhs eight two thousand seven hundred and seventy seven only) as awarded by the eight respondent / Special Deputy Collector, Land Acquisition, Greater Hyderabad Municipal Corporation or any part thereof. And, if so what amount? What is the liability of the respondents?
- (ii) Whether the petitioners are entitled to claim any interest? And, if so, at what rate and from which date?
- (iii) To what relief?

10. POINT NO. 1:

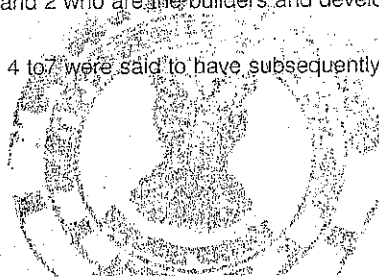
- (a) The pleadings of both the sides are already stated supra, in detail.

The relevant facts of the case, some of the relevant contentions and rival contentions and the important chronology of events, which are necessary for determination of the instant point, in brief, are as follows: "To begin with, it is to be noted that the first petitioner is the only daughter one late Chotalal Shivaram Vyas ('Vyas' for short) and the petitioners 2 to 4 are her sons and are the maternal grandsons of the said Vyas. The said Vyas died on 10.10.1983 at Rajkot, Gujarat. The copy of his death certificate and its translated copy are exhibits A6 and A7. Firstly, the said Vyas during his lifetime, had instituted a suit in O.S. 36 of 1975 ('former suit' for short), in the Court of the learned I Additional Judge, City Civil Court, Hyderabad, against the third respondent herein and others for declaration that he is the exclusive owner and possessor of the dry urban land of 605 square yards or Ac.0-5



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Guntas in survey no. 40 situated at Begumpet. The said suit was decreed on 29.03.1980 declaring Vyas as the owner and possessor of the above said property. However, while granting the said declaratory relief in favour of Vyas the Court had not granted the relief of injunction sought for against the defendants therein in view of the finding that all the defendants had no right, title or interest in the said property and as they had also pleaded that they were not in possession of the said property. The copies of the judgment and decree in the said suit are exhibits A9 and A10. Having been aggrieved of the dismissal part of the decree and judgment of the trial court, the said Vyas had preferred an appeal vide CCCA No.61 of 1981 before the Hon'ble High Court, but the said appeal was dismissed on 11.04.1988 confirming the decree the decree of the trial Court. The copy of the Judgment of the Hon'ble High Court in the said appeal is exhibit A 14. In fact the third respondent herein had taken a specific stand in the former suit that he is in no way concerned with the land in survey no.40 and that he is the owner of only a portion of land in survey no. 41 and the 3rd respondent had further claimed before this Court that he had purchased the said property on 09.07.1993 from defendants 1 to 3 in the former suit and that the property in possession of the 3rd respondent is totally different from the one being claimed by the petitioners as the legal heirs of Vyas. Thus the petitioners who are the legal heirs of Vyas are claiming right, title and interest in the property in survey number 40 of Begumpet where as the 3rd respondent had claimed right, title and interest in the property in survey number 41. While so, the 3rd respondent had obtained sanction for construction of commercial complex from Municipal Corporation of Hyderabad, Secunderabad Division and got the property developed and got made construction of a commercial complex through the respondents 1 and 2 who are the builders and developers. The respondents 1 and 2 and the respondents 4 to 7 were said to have subsequently acquired rights, title and



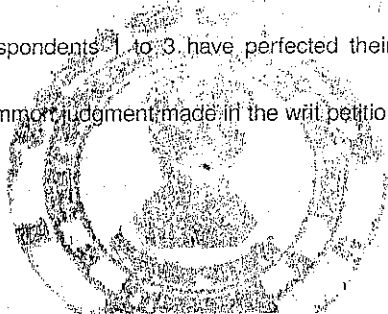
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interest in the portions of the developed property through the other respondents. According to the petitioners their investigation and enquiries disclosed that the 3rd respondent had misrepresented to the Municipal Corporation of Hyderabad, Secunderabad Division that the property to be developed is in survey number 41 and had obtained sanction for construction of the building from the Corporation on the strength of such misrepresentation and thus got made the construction of the building/complex through the respondents 1 and 2 on the land comprised in survey number 40 belonging to the petitioners. Hence the petitioners had claimed that their land has been grabbed by respondents 1 to 3 and that the respondents No.1 to 3 have no lawful entitlement over the said land and that the structures which had been recently raised behind the back of the petitioners are illegally raised without any authority and by making misrepresentation to departments concerned. For this reason, the petitioners had got issued a lawyer's dated 24.01.1995 to respondents 1 to 4. The office copy of the said notice is exhibit A21. A reply dated 02.03.1995 under exhibit A22 was given on behalf of respondents 1 to 2 wherein they had admitted their vendor was the third respondent but had denied the title and claims of the petitioners and had also set up title in themselves and had inter alia claimed adverse possession. According to the petitioners the decree in the former suit clearly establishes the ownership and possession of the petition Schedule property with Vyas through whom the present petitioners are claiming ownership and possession. In the circumstances, the petitioners filed a land grabbing case in LGC No.144/1995 on the file of the special court against respondents 1 to 4 seeking a declaration that they are land grabbers in respect of the schedule property and also seeking their eviction and restoration of possession to the petitioners besides a direction to the respondents 1 to 4 to demolish and remove the unauthorized and illegal structure. Reliefs for payment of



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compensation of Rs.50,000/- per month for illegal occupation and for construction of illegal construction thereon and also for launch of criminal proceedings and for punishing them or the act of land grabbing were also sought. While raising their defence the respondents had pleaded that the third respondent purchased the property to an extent of 411 square meters equivalent to 491 square yards in survey no. 41 of Begumpet village under a registered sale deed dated 09.07.1973 from Sivagori Maisaiah and others who are the original owners. The copy of the said sale deed is exhibit B4. The copy of the plan attached to the said sale deed is exhibit B5. The respondents had inter alia raised contentions that assuming that the land in the possession of the 3rd respondent is covered by a portion of survey no. 40 claimed by the petitioners, still they had perfected title in respect of the schedule property by way of adverse possession. After full trial and on merits the Special Court vide judgment dated 19.12.1997 allowed the said LGC No.144 of 1995 declaring the respondents therein i.e., respondents 1 to 4 herein as land grabbers in respect of the schedule of property and directed them to deliver the vacant possession of the property to the petitioners. The claim of mesne profits was directed to be adjudicated on a separate application under Order XX Rule 12 of the Code of Civil Procedure. The Special Court came to a conclusion that the schedule property is situated in survey no.40 of Begumpet village. The copies of the application and counters in the said LGC are exhibits A23, 24, 25 and 26. The third respondent on one hand and respondents no.1 and 2 on the other filed two petitions in W.P. Nos.137 and 8053 of 1998 challenging the said judgment of the special court and the Hon'ble High Court vide its common judgment dated 03.02.2000 allowed the writ petitions and thereby set aside the judgment of the Special court on the ground that the respondents 1 to 3 have perfected their title by adverse possession. Aggrieved by this common judgment made in the writ petitions, the petitioners

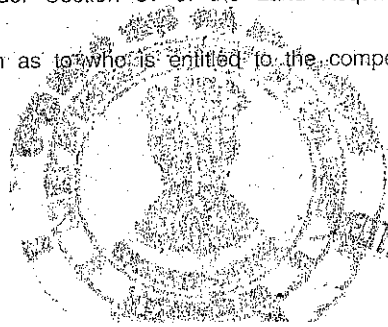


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herein preferred SLPs vide SLP Nos.10815 and 10816 of 2000. The Hon'ble Supreme Court by an order dated 24.07.2000 ordered status quo and later leave was granted on 20.07.2001 and consequently the cases were numbered as Civil Appeal Nos.4482 and 4483 of 2001. While the matters were pending before the Hon'ble Supreme Court, an attempt was made by the respondents 1 to 2 and the petitioners for settlement of the dispute and after some deliberations an understanding was reached, and accordingly a memorandum of understanding dated 18.07.2001 (MOU) was executed by and between the petitioners on one part and respondents 1 and 2 on the other. The said MOU is exhibit A29. In terms of the said document respondents 1 and 2 have paid a sum of Rs.10,00,000/- (Rupees Ten Lakhs Only) to the petitioners herein which amount is non-refundable under any circumstances as per the memorandum of understanding. It was also agreed under the MOU that in the event of said SLPs being decided in favour of the petitioners, the respondents 1 and 2 would pay a further amount of Rs.35,00,000/- (Rupees Thirty Five Lakhs Only) within a period of 2 ½ months i.e., 75 days from the date of orders made in SLPS, for relinquishing all the rights in the said property by the petitioners. It was further agreed that in the event the orders are passed in favour of respondents 1 and 2, the petitioners shall not pursue their rights, claims, etcetera in respect of the said land and such rights shall stand extinguished in consideration of the amount of Rs.10,00,000/- (Rupees Ten Lakhs Only) so received by the petitioners. While matter stood thus, the property to the extent of 242 square yards on which a building called Modi House was built was acquired by GHMC and the respondents 1 and 2 and the other respondents claiming under them filed their respective claim petitions before the 8th respondent. The petitioners had also filed their claim petition seeking compensation. During the course of hearing the above said memorandum of understanding dated

18.07.2001 was produced before the 8th respondent. The 8th respondent passed an award dated 05.08.2008 in favour of respondents 1 to 7 adjudicating that they together are entitled for a sum of Rs.92,82,777/- (Rupees ninety two lakhs eight two thousand seven hundred and seventy seven only) in respect of the said extent of land of 242 square yards and the structures. The copy of the award is exhibit A 30. In the said award the schedule of property is described as under: "Premises number 1-10-72/3. Survey number 40/2, extent notified 0.02 Gts. i.e., 242.00 square yards. The Modi House, a commercial complex situated on the main road leading from SP Road to Begum pet consisting of ground floor and two upper floors. The compensation was determined by the 8th respondent separately for land and structures. And, in fact the compensation was apportioned among the respondents 1, 2, 3 to 6 and 7 and was paid to the said respondents. Meanwhile the Civil Appeal Nos.4482 4483 of 2001 were disposed off on 10.11.2009 by the Hon'ble Supreme Court of India, on the strength of the representation dated 29.10.2009 made by the counsel for respondent 3 herein that the land in question was acquired by the GHMC and the matter can be remanded to the District Judge, Hyderabad under Section 31 of the Land Acquisition Act for determination of the question as to who is entitled to the compensation. Consequently the matter was remanded to this Court by order dated 10.11.2009 passed by the Hon'ble Supreme Court of India in Civil Appeals No.4482-4483 of 2001 and the relevant portion of the order is as follows:

"Sri Nageshwar Rao, learned Senior Counsel, appearing for the respondents very fairly stated that the matter can be remanded to the District Judge, Hyderabad under Section 31 of the Land Acquisition Act, who will determine the question as to who is entitled to the compensation. We direct accordingly,



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"The District Judge, Hyderabad shall decide the question of title on its own merits in accordance with law, expeditiously preferably within four months from the date of receipt / production of a copy of this order and uninfluenced by this order, impugned judgment of the High Court and judgment of the Special Court.

Both the parties can place all material before the District Judge, Hyderabad and all questions are left open to the parties to be advanced before him".

The copy of the order of the Hon'ble Supreme Court is exhibit A2. Accordingly the instant application is now coming for adjudication."

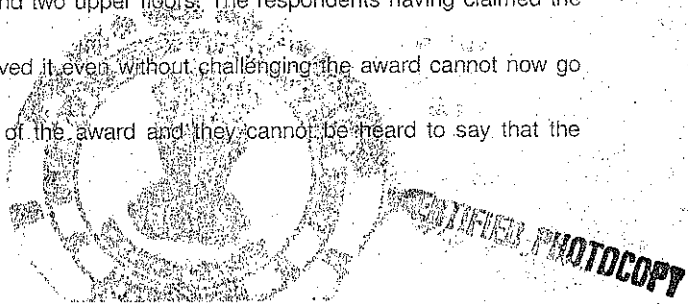
(b) Now that the introductory aspect of the matter has been stated supra, it is necessary to now advert to the crux of the matter.

(c) **Firstly:** The petitioners being the daughter and maternal grand sons, are the legal heirs of Vyas. The said Vyas had filed a suit O.S. 36 of 1975 i.e., the former suit in the Court of the learned I Additional Judge, City Civil Court, Hyderabad, against the third respondent herein and others for declaration that he is the exclusive owner and possessor of the dry urban land of 605 square yards or Ac.0-5 Guntas in survey no. 40 situated at Begumpet. The said suit was decreed on 29.03.1980 declaring Vyas as the owner and possessor of the above said property in Survey No.40. The said decree in so far as the relief of declaration in favour of the said Vyas has become final and is binding on the 3rd respondent as well as the other respondents herein as they are

claiming right title and interest in the acquired property through the 3rd respondent. Added to this, the 3rd respondent, not only in the former suit, but also in the present proceeding before this Court, had claimed that he is in no way concerned with the property in survey no.40 and that his property is in survey no.41. Hence, based on pleadings and the evidence adduced in line with the pleadings it can safely be concluded that the petitioners are concerned with their property in survey no.40 and the respondents 1 to 7 have nothing to do with the petitioners' property in survey no.40.

(d) **Secondly:** This Court is obliged to decide the present issue i.e., the question of title on its own merits in accordance with law uninfluenced by the order of the Hon'ble Supreme Court and also the judgment of the Hon'ble High Court in the Writ Petitions and the judgment of the Special Court in the LGC. As already noted the title of Vyas to the property in survey no.40 was declared by a Competent Court by a decree and judgment in O.S.No.36 of 1975 and the copies of the said decree and judgment are exhibits A9 and A10. Now the respondents are precluded and estopped by record from contending that the said Vyas is not the owner of the property covered by the decree and judgment in the said suit.

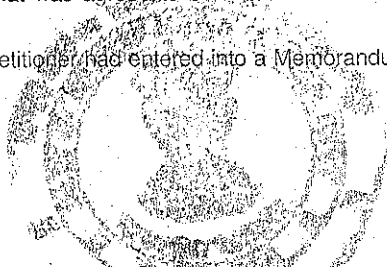
(e) **Thirdly:** The land/the property that was acquired, as is evident from the copy of the award under exhibit A 30, is the Premises number 1-10-72/3. Survey number 40/2, extent notified 0.02 Gts. i.e., 242.00 square yards i.e., the Modi House, a commercial complex situated on the main road leading from SP Road to Begum pet consisting of ground floor and two upper floors. The respondents having claimed the compensation and having received it even without challenging the award cannot now go back and dispute the contents of the award and they cannot be heard to say that the



property acquired was not a part of the land in survey number 40. Thus, the property acquired was undisputedly and admittedly a property in survey no. 40/2 over which the 3rd respondent or the other respondents claiming through him have no manner of right whatsoever even according to their own showing. The petitioners' predecessor in interest i.e., Vyas had a declaratory decree in his favour in respect of the property in survey number 40. The compensation was determined in respect of the above said property in survey no.40/2 and the total compensation so determined by the 8th respondent was Rs.92,82,777/- (Rupees ninety two lakhs eight two thousand seven hundred and seventy seven only) in respect of the said extent of land of 242 square yards and the structures. The respondents are fully aware that they have nothing to do with the property in survey number 40 or any part thereof. But they had claimed the compensation in respect of the said property acquired. In fact, an award was passed and the compensation was disbursed to the respondents 1, 2, 3 to 6 and 7 and they had received the said compensation in proportion to their respective portions of the property acquired by them through the 3rd respondent, is not in dispute. There is no other rival claimant except the petitioners. In the MOU, which is an admitted document the relationship of the petitioners is admitted and not disputed. The liability to pay the agreed sum to the petitioners is also admitted in the MOU. Since the petitioners are claiming through Vyas, whose title is declared in respect the property, the compensation lawfully due ought to have been paid to the petitioners and not to the respondents. Be that as it may.

(f) **Fourthly:** The compensation was determined taking into consideration not only the extent of the land acquired but also the structures. Admittedly, the petitioners did not make any constructions and the constructions were made by the respondents 1 and 2, the builders and the developers at the instance of the 3rd respondent.

The land value as per the award works out to Rs.36,30,000/- (Rupees Thirty Six Lakhs Thirty Thousands only). Under the award solatium at 30% on land value as admissible under Section 23 (2) of the Act and 12% additional market value on land value from the date of notification i.e., 19.05.2007 to the date of the award i.e., 05.08.2008 i.e., for 445 days as admissible under Section 23 (1-A) of the Act was also awarded. The said solatia and additional market values on land value as determined in the award work out to Rs.16,20,074/- (Rupees Sixteen Lakhs Twenty Thousand And Seventy Four only). The total of the above two amounts works out to Rs.52,50,074/- (Rupees Fifty Two Lakhs Fifty Thousands And Seventy Four only). The above amount is the compensation determined in respect of land excluding the value of the structure. However, it is very pertinent and appropriate to note that during the pendency of the matter before the Hon'ble Supreme Court, the petitioners and the respondents 1 and 2 had entered into an MOU under exhibit A29, where under the petitioners in case of their ultimate success had restricted their total entitlement to a sum of Rs.45,00,000/- (Rupees Forty Five Lakhs only). In fact, the said Memorandum was acted upon and the petitioners had received Rs.10,00,000/- (Rupees Ten Lakhs only) and the said sum is not refundable even in case the petitioners turned out to be unsuccessful in the litigation. Under the memorandum the petitioners are only entitled to the further amount of Rs.35,00,000/- (Rupees Thirty Five Lakhs only) even in case of their ultimate success in the matter. In this regard, as could be seen from the pleadings and evidence on the side of the respondents, the respondents inter alia are submitting before this Court that in any view of the matter the rights of the parties are governed by the terms and conditions of the MOU and the petitioners are not entitled to any amount than that was agreed to be received under the MOU. PW1 admitted in his evidence that the petitioner had entered into a Memorandum of Understanding settling the



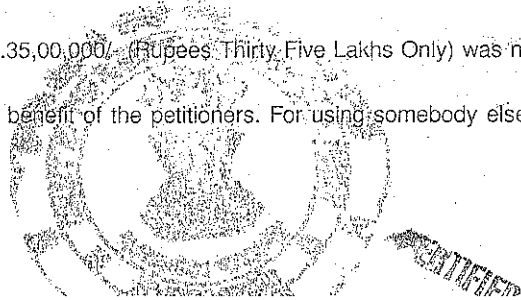
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dispute over the schedule property and as per the MOU the total consideration is Rs.45,00,000/- (Rupees Forty Five Lakhs only) and that the petitioners had not challenged the award. In the evidence of RW1 in the chief examination itself he had stated as follows: "Thus, there is a valid and binding contract between the parties for limiting the claim to a further sum of Rs.35,00,000/- (Rupees Thirty Five Lakhs only) and in a total sum of Rs.45,00,000/- (Rupees Forty Five Lakhs only) including Rs.10,00,000/- (Rupees Ten Lakhs only) already paid in the event of the petitioners succeeding in the litigation over the title to the property." Thus, both parties are bound by the terms and conditions of exhibit A29, MOU, which was acted upon and, therefore, in the well considered view of this Court, the petitioners are entitled to a total sum of Rs.45,00,000/- (Rupees Forty Five Lakhs only) from out of the compensation amount awarded. The petitioners had admittedly received a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) and, therefore, they are only entitled to receive Rs.35,00,000/- (Rupees Thirty Five Lakhs only) from the respondents jointly and severally.

(g) **Lastly:** In the light of the detailed discussion coupled with the reasons, the point is answered holding that the claim petitioners are entitled to a declaration that they are entitled to receive a compensation of Rs.45,00,000/- (Rupees Forty Five Lakhs only) from out of the compensation amount awarded. The petitioners had admittedly received a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) and, therefore, it follows that they are only entitled to receive Rs.35,00,000/- (Rupees Thirty Five Lakhs only) from the respondents jointly and severally. Rest of the claim is disallowed. Point number 1 is accordingly answered partly in favour of the petitioner.

11. POINT NO.2:

Now the short questions to be determined are – (i) 'whether the petitioners are entitled to claim any interest? At what rate? And, from what date?' The learned counsel for the petitioners contended that in case of success of the petitioners the petitioners are entitled to recover the amount with interest. On the other hand the learned counsel for the petitioners contended that a reasonable amount was fixed under the MOU taking into consideration all the aspects including interest and that no interest is awardable in the peculiar facts of the case. The petitioners are claiming interest as of right and also under principle of equity. The respondents 1 and 2 made construction of the complex at the instance of the 3rd respondent and a part of the construction is covered by the land in survey number 40 as is evident from the award passed by the 8th respondent and therefore they had enjoyed the property and received benefits out of such enjoyment. The respondents 1 and 2 acquired right and interest in the property through the 3rd respondent. The other respondents had also subsequently and during the pendency of litigation had acquired interest in the property through the respondents 1 to 3, the predecessors in interest. The respondents had enjoyed the property [i.e., their respective portions and also undivided interest in the land as per shares] till acquisition. They are enjoying the money paid as compensation in proportion to their shares in the property till date. Even though the respondents had no claim what so ever in respect of the property in survey number 40, they had received the compensation in respect of the property in the said survey number. Further, though there was an understanding under the MOU in respect of the further sum, the said further sum of Rs.35,00,000/- (Rupees Thirty Five Lakhs Only) was not even left unclaimed for the ultimate benefit of the petitioners. For using somebody else's property



and also for realizing the benefits out of such enjoyment of the property, the respondents are bound to account for both under common law and equity and are hence liable to pay interest. Interest is a premium one pays for using somebody else's money. Vyas and the petitioners were driven to series of litigations and all the said facts are sufficient in themselves to grant the request of the petitioners to award interest. In a case of this nature interest must follow the event. In money claims normally interest follows the event. Therefore, the respondents are liable to refund the now determined compensation amount to the petitioners with interest. The property which was acquired was capable of being put to commercial use is born out by record and the property was situated in a prime locality of the City. Hence the pendente-lite interest rate can be determined at 12%. Coming to the date from which the interest is to be awarded there is no evidence/material as to the date on which the compensation was actually paid to the respondents. The date of the award (exhibit A30) was 05.08.2008. It is obvious that the compensation might have been paid after some time thereafter. Hence interest is awarded to the petitioners @12% per annum simple on the amount of Rs.35,00,000/- (Rupees Thirty Five Lakhs Only) from 01.11.2008 till to-day [the date of the instant decree]. Subsequent/future interest, in the facts and circumstances of the case, is awarded @ 6% per annum simple from to-day, [the date of the present decree] till the date of payment or realisation. The point is accordingly answered in favour of the petitioners.

12.

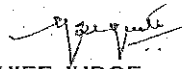
POINT NO. 3:

In the result, the petition is allowed in part and without costs declaring that the petitioners are entitled to receive a compensation of Rs.45,00,000/- (Rupees Forty Five Lakhs only) from out of the compensation amount awarded under the award passed

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by the 8th respondent. However, since the petitioners had already and admittedly received a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) from out of the above determined amount, the petitioners are now held entitled to receive only Rs.35,00,000/- (Rupees Thirty Five Lakhs only) from the respondents 1 to 7 jointly and severally with interest @12% per annum simple on the said amount of Rs.35,00,000/- (Rupees Thirty Five Lakhs Only) from 01.11.2008 till the date of the decree and future interest @ 6% per annum simple on the said sum from the date of the decree till the date of payment or realisation.

Typed, by the Personal Assistant, to my dictation, corrected and pronounced by me in the open Court, on this the 3rd day of June, 2013.



CHIEF JUDGE

City Civil Courts: Hyderabad.

APPENDIX OF EVIDENCE

Witnesses Examined

For the Petitioners:

PW1: Subash K. Mehta.

For the Respondents:

RW1: Soham Modi.

RW2: M.B.S. Purushottam.

Documents Marked

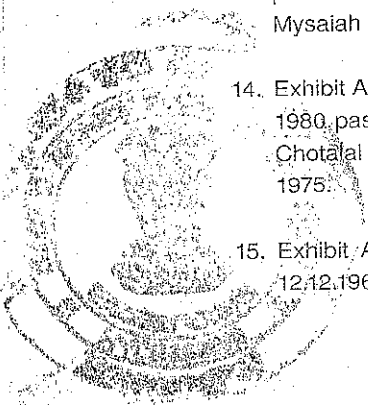
For the Petitioners:

1. Exhibit A1: Original Notarised GPA dated 17.06.1995 executed by the petitioners 1, 2 and 4 in favour of the Petitioner No.3.



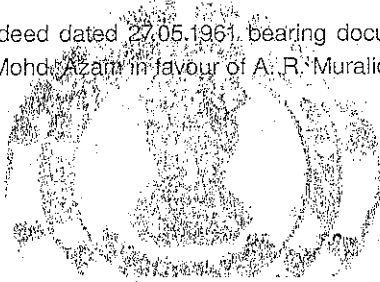
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2. Exhibit A2: Certified copy of the order dated 10.11.2009 passed by the Hon'ble Supreme Court of India, in Civil Appeal No.4482-4483 of 2001 filed by the petitioners against the respondents 1 to 4.
3. Exhibit A3: Certified copy of the sale deed dated 12.12.1964 executed by A. R. Muralidhar in favour of Chottalal Shivram Vyas bearing document No.2011 of 1964 obtained from the Court of the I Additional Judge, City Civil Court, Hyderabad in O.S.No.51 of 1968.
4. Exhibit A4: Certified copy of sale deed dated 27.05.1961 executed by Syed Azam in favour of A.R. Muralidhar bearing document No.1674 of 1961 obtained from the Court of the I Additional Judge, City Civil Court, Hyderabad in O.S.No.51 of 1968.
5. Exhibit A5: Plan dated 30.04.1962.
6. Exhibit A6: Death Certificate dated 18.11.1983 of Chotalal Shivram Vyas in Gujarati Language.
7. Exhibit A7: English Translation of Death Certificate.
8. Exhibit A8: Original Special Notice of Property Tax dated 15.05.1972 in respect of the property in Survey No.40.
9. Exhibit A9: Certified copy of Judgment dated 29.03.1980 in O.S.No.36 of 1975 on the file of the IV Additional Judge, Hyderabad.
10. Exhibit A10: Certified copy of decree dated 29.03.1980 in O.S.No.36 of 1975 on the file of the IV Additional Judge, Hyderabad.
11. Exhibit A11: Extract of G.O.Ms.No.212 dated 11.02.1981 issued by the Government of A.P. Revenue (UC.II) Department granting exemption under Section 20 (1) (a) and 20 (1) (b) of ULC Act.
12. Exhibit A12: Pahani for the year 1993-94 in respect of Sy.No.40.
13. Exhibit A13: Certified copy of order dated 11.04.1988 in CCC.A.No.61 of 1981 passed by the Hon'ble High Court filed by Chotalal Shivram Vyas against Mysaiah and others against the judgment and decree in O.S.No.36 of 1975.
14. Exhibit A14: Certified copy of judgment dated 24.02.1994 in C.C.C.A.No.169 of 1980, passed by the Hon'ble High Court filed by M.B.S. Purushottam against Chotalal Shivram Vyas against the judgment and decree in O.S.No.36 of 1975.
15. Exhibit A15: Encumbrance certificate dated 26.08.1995 for the period from 12.12.1964 to 27.06.1980.



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16. Exhibit A16: Encumbrance certificate dated 26.08.1995 for the period from 28.06.1980 to 31.03.1982.
17. Exhibit A17: Encumbrance certificate dated 26.08.1995 for the period from 01.04.1982 to 25.08.1985.
18. Exhibit A18: Paper Publication dated 11.01.1995 in Deccan Chronicle.
19. Exhibit A19: Paper Publication dated 20.01.1995 in Deccan Chronicle.
20. Exhibit A20: Paper Publication dated 20.06.1995 in Deccan Chronicle.
21. Exhibit A21: Office copy of the legal notice dated 24.01.1995.
22. Exhibit A22: Reply notice dated 02.03.1995.
23. Exhibit A23: Certified copy of LGC Application No.144 of 1995 filed by the petitioners.
24. Exhibit A24: Certified copy of counter in LGC Application No.144 of 1995 filed by the Respondent No.1.
25. Exhibit A25: Certified copy of counter in LGC Application No.144 of 1995 filed by the Respondents Nos.2 and 3.
26. Exhibit A26: Certified copy of counter in LGC Application No.144 of 1995 filed by the Respondent No.4.
27. Exhibit A27: Certified copy of Gazette Notification dated 31.12.1976.
28. Exhibit A28: Certificate copy of Gazette Notification dated 31.12.1976 (Page No.7).
29. Exhibit A29: Memorandum of Understanding dated 18.07.2001 executed by and between the petitioners and respondents nos.1 and 2.
30. Exhibit A30: Certified copy of Award dated 05.08.2008 in Award No.A/867/2005 passed by the Respondent No.8.
31. Exhibit A31: Sale deed dated 16.12.1964 bearing document number 2011 of 1964 executed by A. R. Muralidhar in favour of Chottalal Sivaram Vyas.
32. Exhibit A31A: Plan bearing Survey No.40 situated at Begumpet Village, Hyderabad.
33. Exhibit A32: Sale deed dated 27.05.1961 bearing document number 1674 of 1961 executed by Mohd. Azam in favour of A. R. Muralidhar.



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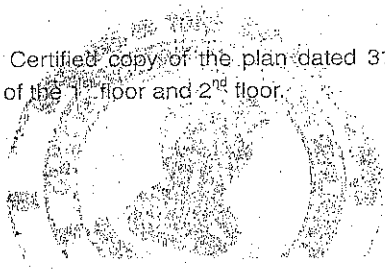
34. Exhibit A33: Sanctioned plan dated 18.07.1962 for construction of compound wall.
35. Exhibit A34: Will dated 06.02.1988.
36. Exhibit A35: Letter of Administration dated 26.06.1989.
37. Exhibit A36: Form – 7 dated 17.05.2007 bearing No.A/867/2005, from the Office of the Special Deputy Collector, LA, GHMC, Hyderabad.
38. Exhibit A37: Deposition of B. Srinivas, Inspector of Survey, Assistant Director, Survey & Land Records in L.G.C.No.144 of 1995, dated 28.11.1997.
39. Exhibit A38: Deposition of B. Srinivas, Inspector of Survey, Assistant Director, Survey & Land Records in L.G.C.No.144 of 1995, dated 28.06.1996.
40. Exhibit A39: Deposition of Sourabh Modi (Respondent No.2 herein) in L.G.C.No.144 of 1995, dated 25.04.1997.
41. Exhibit A40: Record of Proceedings dated 24.07.2000 before the Hon'ble Supreme Court of India in SLP (Civil) No.10815-10816 of 2000.
42. Exhibit A41: Deposition of M. V. S. Purushottam, (Respondent No.3) in L.G.C.No.144 of 1995, dated 23.07.1996.

For the Respondents:

1. Exhibit B1: Spot Inspection Report dated 31.10.1998 of the Assistant Director Survey & Land Records, Ranga Reddy District (Commissioner) in LGC No.144 of 1995.
2. Exhibit B2: Sketch dated 31.10.1998 showing the suit schedule property in LGC No.144 of 1995.
3. Exhibit B3: Deposition of Petitioner No.3 i.e., Subhash K. Mehta in LGC.No.144 of 1995 (PW1) dated 14.12.1995.
4. Exhibit B4: Certified copy of sale deed dated 09.07.1973 bearing document No.1477 of 1973 executed by Sivagari Maisaiah and two others in favour of M. B. S. Purshottam (3rd respondent).
5. Exhibit B5: Certified copy of the plaint dated 09.07.1973 pertaining to sale deed No.1477 of 1973.
6. Exhibit B6: Certified copy of plan dated 24.03.1981 applied to MCH for construction of compound wall.

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7. Exhibit B7: Certified copy of agreement between the 3rd respondent and MCH, Secunderabad.
8. Exhibit B8: Certified copy of property tax demand notice dated 20.05.1982 for the period from 01.10.1982 to 31.03.1982 and payment receipt.
9. Exhibit B9: Certified copy of letter dated 16.09.1982 bearing No.TP/SD/81, from MCH, Hyderabad to the Respondent.No.3.
10. Exhibit B10: Certified copy of the plan dated 24.12.1981 issued by the Assistant Town Planner.
11. Exhibit B11: Certified copy of G.O.Ms.No.372 MA dated 19.04.1982 issued by the Government of Andhra Pradesh.
12. Exhibit B12: Certified copy of sanctioned plan dated 29.05.1982 issued by the Special Officer, MCH, for construction of shops.
13. Exhibit B13: Certified copy of notice dated 06.10.1982 issued in favour of the 3rd respondent by the MCH under Section 452 of the HMC Act.
14. Exhibit B14: Letter dated 26.02.1983 bearing No.24/open/1/B4/80 from MCH refusing the permission for revised proposal.
15. Exhibit B15: Certified copy of the agreement dated 01.04.1985 between the 3rd respondent and Satish Modi (father of the 1st respondent).
16. Exhibit B16: Certified copy of Memorandum No.3774/M1/85-2, M.A., dated 21.05.1986 issued by the Government of Andhra Pradesh Housing, Municipal Administration and Urban Development to the 3rd respondent.
17. Exhibit B17: Certified copy of letter No.404/SEE/WC/86-87 dated 22.05.1986 by MCH, Secunderabad to the 3rd respondent.
18. Exhibit B18: Certified copy of the receipt dated 22.05.1986 issued by MCH.
19. Exhibit B19: Certified copy of the Gruha Pravesam Card dated 10.04.1986 showing the respondents 1 and 2 performing the Puja.
20. Exhibit B20: Certified copy of the order dated 03.05.1990 in W.P.No.16663 of 1986.
21. Exhibit B21: Certified copy of the Abstract of G.O.Ms.No.905 M.A., dated 16.07.1991 with regard to proposed construction of show rooms in 1st and 2nd floor.
22. Exhibit B22: Certified copy of the plan dated 31.01.1992 issued by MCH for construction of the 1st floor and 2nd floor.



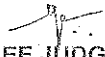
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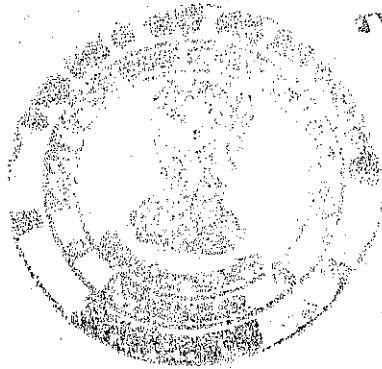
23. Exhibit B23: Certified copy of the property tax demand notice dated 21.03.1991 issued by the MCH, Hyderabad for the year 1990-1991 for the premises No.1-10-72/2/3.
24. Exhibit B24: Certified copy of the property tax demand notice dated 21.03.1991 issued by the MCH, Hyderabad for the year 1990-1991 for the premises No.1-10-72/3/A.
25. Exhibit B25: Certified copy of the sale deed dated 24.07.1993 bearing document No.3529 of 1993 in favour of the 1st respondent.
26. Exhibit B26: Certified copy of the sale deed dated 24.07.1993 bearing document no.3530 of 1993 in favour of the 2nd respondent.
27. Exhibit B27: Certified cop of the report dated 29.09.1995 filed by the Mandal Revenue Officer, Balanagar Mandal.
28. Exhibit B28: Certified copy of Town Survey Record.
29. Exhibit B29: Certified copy of Town Survey Register.
30. Exhibit B30: Certified copy of the Pahani for the period 1963-1964 showing the survey numbers.
31. Exhibit B31: Certified copy of the Pahani for the period 1965-1966 showing the survey numbers.
32. Exhibit B32: Letter dated 02.07.2011 from the Government of Andhra Pradesh, Revenue Department vide No.B1/207/2011.
33. Exhibit B33: Letter dated 29.06.2011 from the Assistant Director, S & LRS, R.R.District bearing No.K3/2163/2011 under RTI Act.
34. Exhibit B34: Letter dated 04.05.2011 from the Assistant Director, S & LRS, R.R.District bearing No.A3/1262/2011 under RTI Act.
35. Exhibit B35: Letter dated 16.07.2011 from the GHMC, Town Planning Section-Circle-18, Secunderabad vide No.2160/TPS/C-18/GHMC/2011.
36. Exhibit B36: Certified copy of partition deed dated 07.09.1954 bearing document no.768 of 1954.
37. Exhibit B37: Certified copy of partition deed bearing document no.967 of 1958.
38. Exhibit B38: Certified copy of sale deed dated 26.10.1960 bearing document No.1520 of 1960.




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39. Exhibit B39: Certified copy of sale deed dated 01.04.1961 bearing document number 659 of 1961.
40. Exhibit B40: Certified copy of sale deed dated 25.09.1961 bearing document no.1668 of 1961.
41. Exhibit B41: Certified copy of sale deed bearing document no.166 of 1344 Fasli by Uppu Siviah in favour of Syed Azam along with translation.
42. Exhibit B42: Certified copy of sale deed bearing document no.618 of 1354 Fasli by Syed Azam in favour of Cheekoti Family.
43. Exhibit B43: Original letter dated 28.12.2011 by the Office of Deputy Collector and Tahsildar, Balanagar Mandal.
44. Exhibit B44: Tonch Plan dated 26.05.2011 of Survey Nos.37, 40 and 41.
45. Exhibit B45: Objection dated 14.11.1996 filed by the respondents 1 and 2 (respondents 2 and 3 in LGC No.144 of 1995) to the Inspection Report filed by the Assistant Director/Commissioner.
46. Exhibit B46: Deposition of A. Ranga Reddy, Assistant Director, Survey & Land Records, R. R. District in LGC No.144 of 1996 dated 26.03.1996.


CHIEF JUDGE
City Civil Courts: Hyderabad.



Copying Superintendent
Central Copying Hall
City Civil Courts Hyderabad-47

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COURT OF THE CHIEF JUDGE
CITY CIVIL COURT HYDERABAD
CENTRAL COPYIST ESTABLISHMENT

C.A. No. 11457/2013
Application made on 5-6-08
Called on 25-2-08
Charges Deposited on 26-7-00
Charges 360.00
Deposited U/A 203 (A) (1) U/r No. 11176
Addl. Stamps Called on 2
Addl. Stamps Deposited on 2
Copy made ready on 13-2-08
Copy Delivered on 13-2-08

[Signature]
SUPERINTENDENT
Central Copyist Establishment
City Civil Court, Hyderabad

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IN THE COURT OF THE CHIEF JUDGE: CITY CIVIL COURT:
AT HYDERABAD

E.P.No. 26 OF 2014

IN

L.A.O.P.No.2440 OF 2009

BETWEEN:

Dinmani K. Mehta

... Decree holders/Petitioners

AND

Soham Modi and another

... Judgment Debtors/Respondents 1 and 2

COUNTER FILED ON BEHALF OF RESPONDENTS 1 AND 2

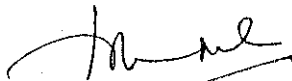
These respondents submit as follows.

1. At the outset, it is submitted that the execution petition is not maintainable in view of the fact that there is no executable decree which is passed by the Hon'ble Court. It is submitted that this Hon'ble Court has only declared the entitlement of the petitioners to receive amounts stated in the Order, but it has not given any direction to the respondents to pay the said amounts. It is submitted that the remedy of the petitioners lies elsewhere to seek payment of the said amount and not in an execution petition.

Without prejudice to the above, these respondents submit as follows.

2. In reply to paragraphs 1 and 2, no specific reply is required from these respondents except to the extent of stating that this Hon'ble Court has only declared the entitlement of the petitioners to receive the said amounts, but there is no direction to pay the said amounts.

3. In reply to paragraph 3, it is denied that there is any categorical direction from this Hon'ble Court to pay the said amount of Rs.35 lakhs with interest. At any rate, these respondents have filed an appeal before the Hon'ble High Court in C.C.C.A.No.133 of 2013, which is pending adjudication. It is submitted that no stay of the execution petition is obtained in view of the fact that there is no direction from this Hon'ble Court to pay and as such, in view of the in-executability of the decree, there is no requirement of obtaining stay order from the Hon'ble High Court. It is submitted that the matter has been adjudicated by the Court of the Chief Judge, City Civil Court, Hyderabad, as per the orders passed in SLP No.4482-4483 of 2001 dated 10.11.2009 which clearly states that the matter is remanded to the District Judge, Hyderabad, under section 31 of the Land Acquisition Act, who will determine the question as to who is entitled for the



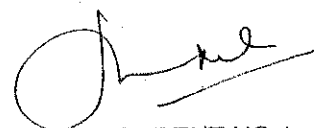
compensation. It is respectfully submitted that the Supreme Court has also directed only determination of entitlement of compensation and the application made by the petitioners herein pursuant to the said judgement in L.A.OP.No.2440 of 2009 also is very clear and it only prays for a declaration of the petitioners entitlement to receive compensation. It is a settled practice and position of law that whenever an entitlement to receive compensation is decided under sec. 31 of Land Acquisition Act, the same has to be paid by the Land Acquisition Officer and not the third parties. In view of this position of law and in view of the fact that the Hon'ble Court has only decided only the entitlement of the petitioners in L.A.OP.No.2440 of 2009 and in the absence of any direction to the respondents to pay the said amounts the decree is in executable against these respondents, as such the petitioners cannot claim against these respondents.

4. In reply to paragraph 4, it is denied that the decree holders are entitled to recover the decretal amounts along with interest in the present E.P., and as the present E.P., is not maintainable, and there is no decretal amount as there is only declaration of entitlement of amount and not decree to pay the amount and no specific direction or decree against these respondents.

5. In reply to paragraph 5, it is submitted that as the decree itself is in-executable the question of attaching the properties of the respondents in the present execution petition does not arise and as such E.P. is not maintainable and is liable to be dismissed.

It is, therefore, prayed that this Hon'ble Court may be pleased to dismiss the execution petition with costs.


Date: 22.6.2014
Hyderabad

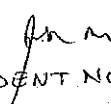

RESPONDENT NO.1


RESPONDENT NO.2

VERIFICATION

We, the respondents No.1 & 2, do hereby truly and sincerely declare that whatever has been stated in the above paras are true and correct to the best of my knowledge and belief and believe the same to be true and correct and hence verified on this the 22nd day of June, 2014, at Hyderabad.


RESPONDENT NO.1


RESPONDENT No. 2

RESPONDENT NO.2

IN THE COURT OF THE CHIEF JUDGE,
CITY CIVIL COURTS: AT HYDERABAD

E.P.No. 26 OF 2014

IN

L.A.O.P.No.2440 OF 2009

BETWEEN:

Dinmani K. Mehta

... Decree holders/Petitioners

AND

Soham Modi and another

... Judgment Debtors/Respondents 1
and 2

COUNTER FILED ON BEHALF OF
RESPONDENTS 1 AND 2

FILED ON: 2 -06-2014

FILED BY:

PERI PRABHAKAR
PERI VENKATA RAMANA
RASHEEDA THABASSUM
ADVOCATES

COUNSEL FOR RESPONDENT No.1 & 2

IN THE COURT OF THE CHIEF JUDGE: CITY CIVIL COURT:
AT HYDERABAD

E.P.No. 26 OF 2014

IN

L.A.O.P.No.2440 OF 2009

BETWEEN:

Dinmani K. Mehta

... Decree holders/Petitioners

AND

Soham Modi and another

... Judgment Debtors/Respondents 1 and 2

COUNTER FILED ON BEHALF OF RESPONDENTS 1 AND 2


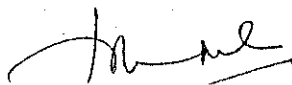
These respondents submit as follows.

1. At the outset, it is submitted that the execution petition is not maintainable in view of the fact that there is no executable decree which is passed by the Hon'ble Court. It is submitted that this Hon'ble Court has only declared the entitlement of the petitioners to receive amounts stated in the Order, but it has not given any direction to the respondents to pay the said amounts. It is submitted that the remedy of the petitioners lies elsewhere to seek payment of the said amount and not in an execution petition.

Without prejudice to the above, these respondents submit as follows.

2. In reply to paragraphs 1 and 2, no specific reply is required from these respondents except to the extent of stating that this Hon'ble Court has only declared the entitlement of the petitioners to receive the said amounts, but there is no direction to pay the said amounts.

3. In reply to paragraph 3, it is denied that there is any categorical direction from this Hon'ble Court to pay the said amount of Rs.35 lakhs with interest. At any rate, these respondents have filed an appeal before the Hon'ble High Court in C.C.C.A.No.133 of 2013, which is pending adjudication. It is submitted that no stay of the execution petition is obtained in view of the fact that there is no direction from this Hon'ble Court to pay and as such, in view of the in-executability of the decree, there is no requirement of obtaining stay order from the Hon'ble High Court. It is submitted that the matter has been adjudicated by the Court of the Chief Judge, City Civil Court, Hyderabad, as per the orders passed in SLP No.4482-4483 of 2001 dated 10.11.2009 which clearly states that the matter is remanded to the District Judge, Hyderabad, under section 31 of the Land Acquisition Act, who will determine the question as to who is entitled for the



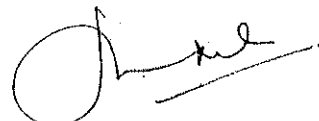
compensation. It is respectfully submitted that the Supreme Court has also directed only determination of entitlement of compensation and the application made by the petitioners herein pursuant to the said judgement in L.A.OP.No.2440 of 2009 also is very clear and it only prays for a declaration of the petitioners entitlement to receive compensation. It is a settled practice and position of law that whenever an entitlement to receive compensation is decided under sec. 31 of Land Acquisition Act, the same has to be paid by the Land Acquisition Officer and not the third parties. In view of this position of law and in view of the fact that the Hon'ble Court has only decided only the entitlement of the petitioners in L.A.OP.No.2440 of 2009 and in the absence of any direction to the respondents to pay the said amounts the decree is in executable against these respondents, as such the petitioners cannot claim against these respondents.

4. In reply to paragraph 4, it is denied that the decree holders are entitled to recover the decretal amounts along with interest in the present E.P., and as the present E.P., is not maintainable, and there is no decretal amount as there is only declaration of entitlement of amount and not decree to pay the amount and no specific direction or decree against these respondents.

5. In reply to paragraph 5, it is submitted that as the decree itself is in-executable the question of attaching the properties of the respondents in the present execution petition does not arise and as such E.P. is not maintainable and is liable to be dismissed.

It is, therefore, prayed that this Hon'ble Court may be pleased to dismiss the execution petition with costs.

Date: 22.6.2014
Hyderabad

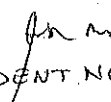

RESPONDENT NO.1


RESPONDENT NO.2

VERIFICATION

We, the respondents No.1 & 2, do hereby truly and sincerely declare that whatever has been stated in the above paras are true and correct to the best of my knowledge and belief and believe the same to be true and correct and hence verified on this the 22nd day of June, 2014, at Hyderabad.


RESPONDENT NO.1


RESPONDENT NO.2

~~RESPONDENT NO. 2~~

IN THE COURT OF THE CHIEF JUDGE,
CITY CIVIL COURTS: AT HYDERABAD

E.P.No. 26 OF 2014

IN

L.A.O.P.No.2440 OF 2009

BETWEEN:

Dinmani K. Mehta

... Decree holders/Petitioners

AND

Soham Modi and another

... Judgment Debtors/Respondents 1
and 2

COUNTER FILED ON BEHALF OF
RESPONDENTS 1 AND 2

FILED ON: 2 -06-2014

FILED BY:

PERI PRABHAKAR
PERI VENKATA RAMANA
RASHEEDA THABASSUM
ADVOCATES

COUNSEL FOR RESPONDENT No.1 & 2

NOTICE TO SHOW CAUSE WHY EXECUTION SHOULD NOT ISSUE
(Order 21, Rule 22 & 16 of the Code of Civil Procedure)

IN THE COURT OF THE Chief Judge C.C.C

At Hyd bad 218

Execution Petition No. 26 of 2014

SAL No 2440 of 2009

Between :

Sanjiv Dinnani Decree Holder
AND

Bham Modi Judgement debtor

To Sourabh Modi & Satish Modi
H.No. 5-4-187/38A M.G. Road
Sel bad

WHEREAS Sanjiv Dinnani has made
Application in this Court for Execution of Decree in SAL No. 2440/2009
the allegation that the said Decree has been transferred to him by assignment or
with out assignement this is to give Notice that you are to appear before this court on
the day 18 of April 2014 to Show Case why Execution
should not be granted.

GIVEN under my hand and the Seal of the Court this day 13 of 2014



SUPERINTENDENT
Central Nazarat Section
City Civil Court, Hyderabad



EXECUTION PETITION
(As per Rule 141 (2) C.R.P. Order 21 Rule 11 C.P.C.)
IN THE COURT OF THE HON'BLE CHIEF JUDGE,
CITY CIVIL COURT :: HYDERABAD

E.P.NO. 26 OF 2014

LA OP NO. 2440 OF 2009

BETWEEN:

Smt.Dinmani K. Mehta,
and 3 others.

... Decree Holders/Petrs.

A n d

Sri Soham Modi,
and another.

... Judgment Debtors/Respts.1&2

-
1. No. of Suit : LAOP No.2440/2009
2. Name of Decree-Holders:
1. Smt.Dinmani K. Mehta, W/o.late KB Mehta, Aged 82 years, Occ; Household,
 2. Girish K.Mehta, S/o.late K.B.Mehta, Aged 63 years, Occ; Business,
 3. Subash K.Mehta, S/o.late KB Mehta, Aged 54 yrs, Occ; Business,
 4. Balakrishna K.Mehta, S/o.late KB Mehta, Aged 42 yrs, Occ; Business,
DHrs.1, 2 & 4 are rep.by their GPA Holder, Mr.Subash K.Mehta, i.e., DHr.No.3, and all are R/o.3-6-456, Himayathnagar, Hyderabad.
3. Name of Judgement-Debtors:
1. Sri Soham Modi, S/o.Satish Modi, Aged about 47 years, R/o.H.No.5-4-187/3 & 4, 3rd Floor, Mahatma Gandhi Road, Sec'bad.
 2. Sri Sourabh Modi, S/o.Satish Modi, Aged 45 years, R/o.H.No.5-4-187/3 & 4, III Floor, Mahatma Gandhi Road, Sec'bad.
 3. M.B.S.Purushotham, S/o.MV Subbarayudu, Aged 80 years, R/o.C-11, Vikrampur Colony, Sec'bad-500 003.
 4. Sri Anil Rupani, S/o.Jai Rupani, Aged about 60 years, carrying business 1-8-142/143, Prendarghast Road, Sec'bad.
 5. Ms.Yasmeen Asad, W/o.Ajmal Asad, Major, R/o.Uma Nagar, Begumpet, Hyderabad.
 6. Brig.SS Adikari, S/o.not known, Major, R/o.ZIVA No.1135, Road No.58, Jubilee Hills, Hyderabad.
 7. M/s.Garden Silk Mills Ltd., Having its office at 95/A, B.S.Siddam Shetty Complex, Park Lane, Secunderabad, rep.by its Managing Director.
 8. The Special Deputy Collector, Land Acquisition, GHMC, Tank Bund, Hyderabad.
(JDrs.Nos.3 to 8 are not necessary parties To this E.P.)

1) Smt. Mehta

2) Smt. Mehta

3) Smt. Mehta

4) Smt. Mehta

:: 2 ::

4. Date of Decree : 03.06.2013
- a) Where any appeal prepared from decree and with date i) CCCA No.133/2013 on the file of Hon'ble High Court of AP, preferred by JDrs.1&2 & others (However, no stay has been granted)
- b) Payment of adjustment made if any subsequent to decree No
- c) Previous application date & result : No
- d) Amount of Decree : Rs.35,00,000-00
- e) Interest @12% p.a. from 1.11.2008 till 2,6.2013 i.e., the date of decree Rs.19,25,000-00
- Interest @6% p.a. from the date of decree/3.6.2013 to 18.2.2014, i.e., till the date of filing of present E.P. Rs: 1,48,750-00
- e) Amount of cost : NIL
- f) Advocate Fee : Rs. 12,500
- TOTAL : Rs. 55,86,250/-
- g) Against whom to be executed: Judgment Debtors 1 & 2

BRIEF FACTS:

1. The petitioners filed LAOP No.2440/2009 as per the directions of the Hon'ble Supreme Court of India in the Order dt.10.11.2009 passed in Civil Appeals No.4482 and 4483 of 2001, seeking to recover the compensation amount of Rs.92,82,777/- as awarded by the Judgment debtor No.8 from the Judgment Debtors 1 to 7.

2. On contest the LAOP No.2440/2009 was partly allowed by an Order dt.03.06.2013, thereby holding that the Decree Holders are entitled to receive Rs.35,00,000/- from Judgment Debtors 1 to 7 jointly and severally with interest @12% per annum on the said amount of Rs.35.00 lakhs from 01.11.2008 till the date of decree and future interest @6% per annum from the date of decree till the realization. However, no costs were awarded.

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3. Notwithstanding such categorical directions to pay the said amount of Rs.35.00 lakhs with interest as awarded, the Judgment Debtors 1 to 7 failed to pay the said amount and on the contrary the Judgment Debtors 1 to 3, 5 and 6 filed CCA No.133/2013 before the Hon'ble High Court of A.P. However, till the date of filing of the present E.P. no stay has been granted by the Hon'ble High Court of A.P. A separate affidavit to that effect is being filed.

4. In view of the facts and circumstances, the Decree Holders are entitled to recover the decretal amount along with upto date interest and accordingly the present E.P. is being filed to recover the amount covered by the decree, by attachment and sale of the immovable properties of Judgment Debtors 1 and 2 (as described in Schedule A and B hereunder) under Order-21, Rule-30 of CPC, in interest of Justice.

It is therefore prayed that this Hon'ble Court may be pleased to attach the immovable properties of Judgment Debtors 1 and 2 (as described in Schedule A and B hereunder) and sell the same for realization of the decretal amount along with upto date interest under Order-21, Rule-30 of CPC, in interest of Justice.

SCHEDULE-A PROPERTY

All that the house bearing No.2-293/82/A/280, admeasuring 573 sq.yards, covered by Sy.Nos.403/1, 120, 102/1, Plot No.280/P, situated at Road No.25, Jubilee Hills, Hyderabad, and bounded by:

North : Road
South : Part of Plot No.280
East : Plot No.280 B
West : Part of Plot No.280

SCHEDULE-B PROPERTY

All that the house bearing No.2-293/82/A/280/1, admeasuring 573 sq.yards, covered by Sy.Nos.403/1, 120, 102/1, Plot No.280/P, situated at Road No.25, Jubilee Hills, Hyderabad, and bounded by:

North : Part of Plot No.280 & Passage
South : Plot No.279/A
East : Plot No.280/B
West : Plot No.279

1/ *[Signature]*
2/ *[Signature]*
3/ *[Signature]*
4/ *[Signature]*

Decree Holders

[Signature]

Advocate for the Decree-Holders

VERIFICATION

We, the decree holders above named declare the what is stated in columns No.1 to 4 true to our knowledge and what is stated in para (5) is stated on information and belief and we believe the same true and correct.

1) *[Signature]*

3) *[Signature]*

2) *[Signature]*

4) *[Signature]*

Decree Holders

IN THE COURT OF THE HON'BLE
CHIEF JUDGE,
CITY CIVIL COURT :: HYDERABAD

E.P.NO. 26 OF 2014
IN
LA OP NO. 2440 OF 2009

BETWEEN:

Smt.Dinmani K. Mehta,
and 3 others.

... Decree Holders/Petrs.

A n d

Sri Soham Modi,
and another.

... Judgment Debtors/
Respts.1&2

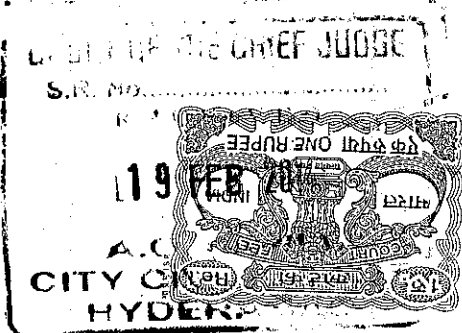
EXECUTION PETITION

Filed on : .02.2014

Filed by :

M/s.P. SHIV KUMAR,
(AP/538/84)
M.SAMBASIVA RAO
C.KUMAR &
T. SRIDHAR REDDY
ADVOCATES

3-4-526/21, 1st floor,
Barkatpura, Hyderabad



**HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**



CCCA :71 of 2014

Between:

SMT.DINMANI K.MEHTA & 3 OTHERS

..... APPELLANT(S)

AND

SRI SOHAM MODI & 7 OTHERS

.....RESPONDENT(S)

Appeal from the decree and Judgement dated 03-06-2013 , OP 2440 of 2009 of the Court of CHIEF JUDGE,CCC,HYDERABAD

Take notice that appeal petition from the above decree/order has been presented by the above named appellant and registered in this Court, and that if you intend to defend the same you must enter an appearance in this court and give notice to the appellant or his pleader within 30 days after service of this notice on you.

If no appearance is entered on your behalf by yourself, your pleader or someone by law authorised to act for you in this appeal it will be heard and decided in your absence.

The address for service of the appellant is that of his Advocate PSHIV KUMAR

A copy of the Memorandum of which is annexed here to - A

by order of the Court

Date: 18/07/2014;
Hyderabad

Co. 18/07/14
BS
ASSISTANT REGISTRAR •

①

MEMORANDUM OF LAND ACQUISITION APPEAL SUIT
(Under Section ~~54~~ of Land Acquisition Act) 96 of C.P.C
IN THE COURT OF SPECIAL TRIBUNAL UNDER A.P. LAND GRABBING
ACT-CUM-CHIEF JUDGE, CITY CIVIL COURT,
AT HYDERABAD

LAOP NO. 2440 OF 2009

IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH
AT HYDERABAD

CCCA
~~LAAS~~ NO. 71 OF 2014

Between:

1. Smt.Dinmani K. Mehta, W/o.late K.B.Mehta,
Aged 77 years, Occ; Household,
2. Girish K.Mehta, S/o.late K.B.Mehta,
Aged 59 years, Occ; Business,
3. Subash K.Mehta, S/o.late KB Mehta,
Aged 50 years, Occ; Business,
4. Balakrishna K.Mehta, S/o.late KB Mehta,
Aged 39 years, Occ; Business,

Appls.1, 2 & 4 are represented by their GPA Holder,
Mr.Subash K.Mehta, the Applt.No.3 herein,
and all are R/o.3-6-456, Himayathnagar,
Hyderabad.

... Appellants/Petitioners

A n d

1. Sri Soham Modi, S/o.Satish Modi,
Aged about 47 years, R/o.H.No.5-4-187/3 & 4,
III Floor, Mahatma Gandhi Road, Secunderabad.
2. Sri Sourabh Modi, S/o.Satish Modi,
Aged about 45 years, R/o.H.No.5-4-187/3 & 4,
III Floor, Mahatma Gandhi Road, Secunderabad.
3. M.B.S.Purushotham, S/o.MV Subbarayudu,
Aged 80 years, R/o.C-11, Vikrampuri Colony, Sec'bad.
4. Sri Anil Rupani, S/o.Jai Rupani,
Aged about 60 years, carrying business
at 1-8-142/143, Prendarghast Road, Sec'bad.
5. Ms.Yasmeen Asad, W/o.Ajmal Asad, Major,
R/o.Uma Nagar, Begumpet, Hyderabad.
6. Brig.SS Adikari, S/o.not known, Major,
R/o.ZIVA No.1135, Road No.58, Jubilee Hills, Hyderabad.
7. M/s.Garden Silk Mills Ltd.,
Having its office at 95/A, B.S.Siddam Shetty Complex,
Park Lane, Secunderabad-500 003,
rep.by its Managing Director.
8. The Special Deputy Collector, Land Acquisition,
GHMC, Tank Bund, Hyderabad.

(RR.8 is not necessary party to the appeal)

...Respondents/Respts.

The name, description and address of the appellant for the purpose of service of summons, notices and process is that of their Counsel **M/S.P.SHIV KUMAR, C.KUMAR & T.SRIDHAR REDDY**, Advocates, 3-4-526/21, 1st Floor, Barkatpura, Hyderabad.

The name, description and address of the Respondents for the purpose of service of summons, notices and process is the same as mentioned in the above cause title.

The above named Appellant begs to submit this Memorandum of Appeal being partly aggrieved by the Order and Decree dt.03.06.2013 in LAOP No.2440/2009 passed by the Special Tribunal under A.P. Land Grabbing Act-cum-Chief Judge, City Civil Court, Hyderabad, on the following among other:

GROUND S

- i) The Order under appeal is contrary to law, facts pleadings and evidence on record, in so far as the Trial Court allowing the petition in LAOP No.2440/09 only to the extent of Rs.45,00,000/-.
- ii) The Trial Court ought not have taken into consideration, the Memorandum of Understanding dt.18.07.2001, marked as Ex.A29, inasmuch as the same lost its significance, in view of the fact that the Hon'ble Supreme Court has not decided the Civil Appeals on merits.
- iii) In the facts and circumstances of the case, the Trial Court ought to have held that the Memorandum of Understanding i.e., Ex.A29 became redundant and unenforceable.
- iv) The Trial Court while categorically holding that the schedule land belongs to the appellants and as such they are entitled for the compensation awarded by the GHMC, ought not have restricted the amount to Rs.45.00 lakhs and awarded the entire compensation of Rs.92,82,777/- received by the respondents 1, 2, 4 to 7.
- v) The Trial Court having categorically held that the land value as per Award works out to Rs.36,30,000/- and the solatium at 30% on the land value as admissible under Section 23 (2) of the Land Acquisition Act and 12% additional market value on land value from

date of notification to the date of Award works out to be Rs.16,20,074/- and thus the total value of the land works out to be Rs.52,50,074/-, ought not have restricted the amount to Rs.45.00 lakhs, on the basis of Ex.A29 MOU, which became unenforceable and redundant, in view of the intervening events and the Trial Court ought to have awarded the entire compensation amount of Rs.92,82,777/-, since admittedly the respondents 1 and 2 made structures on the schedule of property, knowing fully well that the same does not belong to respondent No.3.

- vi) The Trial Court having said that the structures on the schedule of property were built by respondents 1 and 2 at the instance of respondent No.3, ought to have held that they had no right, title, interest, whatsoever to make any structures on schedule of property and as such the Trial Court ought to have awarded the entire amount of Rs.92,82,777/-, which was determined in the Award.
- vii) The Trial Court failed to interpret the terms of MOU marked as Ex.A29 in their right perspective and accordingly held erroneously that the MOU shall bind the appellants.
- viii) The Trial Court ought not have held that the respondents 1, 2, 4 to 7 are entitled for the compensation paid for the structures, since admittedly such structures were made on the schedule of property, after grabbing the same in illegal manner.
- ix) The other and further grounds shall be urged at the time of argument of the appeal.

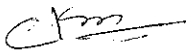
VALUATION & COURT FEE:

The O.P.is valued at	Rs.92,82,777.00
LESS:	
Amount awarded in OP	Rs.45,00,000-00

TOTAL:	Rs.47,82,777-00

Therefore, the present appeal is valued at Rs.47,82,777/- and a court fee of Rs. /- is paid as per the Supreme Court orders in CA No.4482-4483/2001, which is proper and sufficient.

Place: Hyderabad,
Date : 14.3.2014


Counsel for the appellants