THE HON'BLE THE ACTING CHIEFJUSTICE BILAL NAZKI
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 23228 OF 2007

ORDER: (The Hon'ble Sri Justice Ramesh Ranganathan)

Questioning the inaction of respondents 1 and 2 in not taking follow up action on the notice dated 20.09.2007, and the action of respondents 3 and 5 in not removing the tower, as illegal, the present writ petition is filed. The petitioner seeks a consequential direction to the 4th respondent to remove the illegally erected tower from the terrace of the fifth floor of their building.

The petitioner is one of the flat owners, among several others, in May Flower Park Apartments which she had purchased from the third respondent. On the fifth floor of the I-Block, the 4th respondent had erected a signal tower without consent of the flat owners. According to the petitioner, a wide crack and cut in their sub-block from the main I-Block was noticed right from the ground to the fifth floor completely from south to north, resulting in their sub-block bending towards the eastern side. It is stated that a play ground and a children's park is adjacent to their sub-block, that experts had opined that the wide crack was a great hazard and a danger to lives and safety of the flats residents, people in the vicinity and the general public, and that the high tower with

its connected heavy load of equipments, and machinery, on the terrace of 5th floor was mainly responsible for the damage. Petitioner would contend that no such cracks, cuts and bends were to be seen in any of the other eight blocks. She lodged a complaint with the second respondent on 17.08.2007, marking a copy thereof to the first respondent. According to the petitioner, the staff of the Greater Hyderabad Municipal Corporation (GHMC), from various sections, had inspected and examined the site and had submitted their reports to the Deputy Commissioner. It is stated that the Deputy Commissioner issued notice dated 20.09.2007 to the 3rd respondent to show cause as to how the telecommunication signal tower was erected without taking prior permission from the competent authorities and that a direction was issued to remove the illegally erected tower within ten days, failing which necessary action would be initiated as per the provisions of HMC Act, 1955. Copies thereof were also given to the 4th respondent. Petitioner would contend that neither the 3rd nor the 4th respondent had complied with the said notice dated 20.09.2007 and that, ultimately, the petitioner sent a reminder letter dated 04.10.2007 requesting respondents 1 and 2 to take urgent action to save public lives.

In the counter-affidavit filed, on behalf of the

respondents 1 and 2, by the second respondent, it is admitted that cracks had developed in the I-Block, that the 4th respondent had erected cellular equipment over the sub-block and that the petitioner had lodged a complaint on 17.08.2007. It is stated that the matter was referred to the Executive Engineer, vide letter dated 10.09.2007, requesting him to inspect the site and submit a report regarding the structural stability of the building. The fact that notice dated 20.09.2007 was issued to the 3rd and 4th respondent, under Section 459 of the HMC Act, asking them to remove the cellular tower erected over the sub-block is also admitted. It is stated that a copy of the notice was also sent to all the flat owners asking them to vacate the flats to enable necessary action to be taken. It is stated that the 3rd respondent, along with its reply, had submitted a structural stability report issued by Kulakarni Consultants, a Feasibility report issued by Torsteel Research Foundation of India & Civil AID Technoclinic (P) Limited, according to which the presence of the tower, and the shelter housing the communication systems, did not jeopardize the safety of the building in any way. It is stated that the third respondent had furnished a copy of the Government memo dated 27.02.2007 exempting the 4th respondent from all building regulations. It is stated that the Executive Engineer had referred the matter to the

Industrial Consultancy Services, (a Subsidiary to the J.N.T.U), for its opinion over the structural stability of the building and with regards its load bearing capacity and that the report was expected shortly. According to the second respondent the issue was not only with regards the cellular towers but also with regards structural stability of the entire structure and, as the third respondent had submitted an expert's opinion stating that the building was safe and could bear the weight of the tower and other equipment, the Corporation had called for the opinion of the Industrial Consultancy Services. The second respondent states that, if the opinion disclosed that the building was unsafe due to the erection of the Tower, the Corporation would take steps to remove the Tower. The second respondent states that the 4th respondent had erected the Tower in the year 2002.

In the Additional Counter-affidavit filed on behalf of the second respondent it is stated that, subsequent to the filing of the counter-affidavit the Industrial Consultancy Services (ICS), JNTU had submitted its report on 15.11.2007 opining that the cracks had occurred because of the location of the Expansion Joint because of thermal movements, that cracks were non-structural and in no way impaired the structural stability of the building and that, as per the opinion of the ICS, the building was safe for property and human beings.

On perusal of these counter-affidavits, and on examining the contents of the memo dated 27.02.2002, this Court, by its order dated 16.11.2007, observed that, *prima facie,* it appeared that the memo itself was illegal. In order to examine the question of legality of the memo and, as several other similar memos had been issued by the Government, ie., memos dated 16.04.1998, 10.05.2001 and 11.02.2002 whereby exemption was granted in favour of JT Mobile Limited, M/s. Tata Communications Limited, Tata Teleservices and Cellular Limited, M/s Bharati Mobile Limited and M/s. Barakamba Sales and Services Limited, this Court directed that these companies be made party-respondents to the writ petition and that notices be served upon them through Special Messenger. This Court also directed that the State, represented by its Principal Secretary to the Government, Department of Municipal Administration, be arrayed as a respondent. This Court examined the inspection report prepared by the Industrial Consultancy Services, JNTU College of Engineering, a copy of which was produced by the learned Standing Counsel, and observed that nothing could be made out from the inspection report as to whether the building was safe for human habitation or not and that the Commissioner, GHMC should file an affidavit taking a specific stand whether the building was safe for

property and human beings or not.

In his affidavit dated 26.11.2007, the first respondent-Commissioner GHMC stated that in order to ascertain whether the building was safe for inhabitants, because of the erection of the Tower by the 4th respondent, he had instructed the Engineer-in-Chief to submit his report on this aspect, that the Engineer-in-Chief, after verifying the furnished drawings and designs, had observed that the columns of the building was unsafe because of deficiency of steel, that the structure needed to be checked duly applying certain wind tests to verify the structural details and determine whether the building structure, as executed in the year 2002, was as per the submitted drawings or not. The first respondent stated that the Engineer-in-Chief had opined that the designs of the structure had been verified as per the relevant provisions after conducting suitable investigation/tests. According to the first respondent, the process had already been initiated and that three weeks time was required to conduct necessary verification and tests and, based on the verification and test results, the first respondent would be able to take a specific stand whether the building in question was safe to the inhabitants or not. It is further stated that the Corporation had addressed a letter to the Government on 20.11.2007 requesting it to revise the orders in memo dated 16.04.1998

purportedly issued under Section 679 of H.M.C. Act, duly insisting that the approval of the local body was required. It is also stated that the Corporation had constituted a committee comprising of the Additional Commissioner (P&P), GHMC as the Chairman and other members to study and frame norms and guidelines for grant of permission for erection of Cellular Towers, that he had directed the Zonal Commissioners and Deputy Commissioners on 20.11.2007 to get the towers inspected and to submit their report with regard to the structural safety of the towers and that he had also directed the Cellular mobile network companies, vide letter dated 23.11.2007, to furnish the list of buildings/locations on which the Cellular towers were erected along with the consent letters of the owners of the building.

In his counter-affidavit, the third respondent would state that May Flower Park Apartments is in two phases consisting of nine blocks with about 545 residential flats. They would claim that construction was made in accordance with the sanctioned plan and that all requisite safety precautions had been taken to maintain the standard of construction. While admitting that the 4th respondent was permitted to erect a signal tower for operation of mobile telephones, the 3rd respondent would state that the weight of the equipment installed was about 2 to 3 tons which was less

than 5% of the load bearing capacity of the structure. According to the third respondent, there was a water storage tank on the terrace of every block including I-Block with a capacity of 50 tons of water which meant that the weight which could be withstood on the terrace was much more than the storage capacity of the water. According to the third respondent installation of a signal tower by the 4th respondent did not in any manner affect the longevity of the construction nor did it result in its damage. According to the third respondent, the wide crack was "an expansion joint" which was an engineering requirement to enable expansion and contraction of the building due to climatic changes. The third respondent denies that the wide crack was a great hazard and danger to the lives of the residents. It is stated that the terrace rights were retained by them as per the sale deeds executed in favour of the owners of the flats and that neither the petitioner nor the other flats/apartment owners had any right over the terrace of the respective blocks. The third respondent would state that they had obtained an expert opinion about the condition regarding the I-Block and, as per the report dated 22.10.2007, the installation of the signal tower did not endanger the building. The third respondent would state that the complaint was frivolous and that the tower did not pose any threat to the structure since the

columns of the block had been designed to easily take the weight of structures like the water tank, lift room etc., which weighed more than 100 tons. According to the third respondent they had given their reply dated 22.09.2007 to the show cause notice dated 20.09.2007. While admitting that they were getting licence fee of Rs.8,000/- per month for the signal tower installation, the third respondent would state that it was not a money earning mechanism that had been resorted to by them and that the interest of the petitioner, or other apartment owners, was not at all effected by the installation of the signal tower on the terrace of the fifth floor. It is stated that the State Government had issued memo dated 27.02.2002 whereby the fourth respondent was exempted from obtaining building permit for installation of its signal towers as such an exemption had been given earlier to several other Cellular companies and, as per the exemption granted by the State Government, no building permission was necessary for installation of the Cellular Mobile network by the fourth respondent and that they had merely to comply with the conditions of obtaining approval from the Air Traffic Controller and to inform the local authorities and the development authorities of such erection along with the consent letters of the building owner. It is stated that the Government memo was traceable to Section 679 of the HMC

Act and that the complaint of the petitioner did not merit consideration by the Court.

The fourth respondent, in its counter-affidavit, states that as early as in the year 1998 the State Government had issued exemption in favour of Tata Communications and JTM, two commercial players in the market to raise installations on roof top, that the 4th respondent had made a representation on 08.02.2002 for grant of a similar permission, that a feasibility study was undertaken by the technical team of the 4th respondent which identified the building in Mayflower Park, Mallapur for the purpose of installation of the tower. It is stated that the fourth respondent obtained permission for making such installations vide memo dated 27.02.2002 and the said memo required the fourth respondent to inform the local authority concerned i.e., the Municipal Corporation and the Vice Chairman of the concerned Development Authority along with necessary drawings and the consent letter of the building owner before installation and, accordingly, they had informed about the construction of the tower in the said building vide their letter dated 27.11.2002. The fourth respondent submits that the feasibility study agency, in its report dated 24.09.2002, had stated that the identified columns of the building was structurally suitable for erection of the CDMA Tower & prefab

shelter on the roof and that subsequently an agreement of lease was registered on 10.03.2004 with a lease period of twenty years from 22.10.2002. It is stated that, subsequent to the complaint received from the petitioner and the notice issued by the second respondent, another feasibility study was carried out through M/s. Bright Infotec who, in their report, had concluded that the identified columns of the building were of structurally adequate strength and that the minor cracks were not because of the tower and that they could be filled by NITO BOND or any other approved bonding chemical. It is stated that the 4th respondent, vide letter dated 06.11.2007, had submitted a detailed reply to the notice dated 20.09.2007, that the entire weight of the tower is 3 tons which could easily be taken by the RCC structure and that the structure was not likely to cause any hazard/danger either to the building or surrounding inmates or public passing through the road/lane. The 4th respondent would deny having influenced any official. The 4th respondent would concede that this Court could scrutinize the existence of the structure in the context of public safety and the law relating to installation of such structures and that, in this context, the fourth respondent pleaded that the structure was raised and installed after a proper and detailed study and after taking appropriate permission from the Government of

Andhra Pradesh.

The 5th respondent-Joint Director, Municipal Administration, in his counter-affidavit, states that on the basis of the representation by Tata Communications and similar other Mobile and Telecommunication companies the Government had issued instructions duly exempting these companies from obtaining building permit from the concerned Municipality for erection of cellular mobile network equipment and roof top shelters and antennas for telecom operations as also for change of land use and this was considered by the Government in order to encourage the Telecom industry, that even while issuing the memo the Government had stipulated several conditions. It is stated that these directions were issued by the Government in terms of the provision contained in Section 679-E of the Hyderabad Municipal Corporation Act, 1955 and as per the Building Bye-laws, that the Government had examined the matter again in view of the recent complaint of the local residents and decided to issue a show cause notice to all service providers including M/s. Reliance Communications Limited to withdraw the exemption granted earlier by the government. Instructions were also being issued to all Municipal Commissioners to verify the structural safety of all the installations both on the roof top and on ground and take suitable necessary action.

It is necessary to refer to certain provisions of the Hyderabad Municipal Corporation Act, 1955 to examine the rival contentions. Clause (3) of Section 2 defines "building" to include a house, out-house, stable, latrine, godown, shed, hut, wall, fencing, platform and any other structure whether of masonry, bricks, wood, mud, metal or of any other material whatsoever. This definition is an inclusive definition and, thereunder, any metal structure or a structure made of any other material is also included. Section 428 requires a notice to be given to the Commissioner, by a person who intends to erect a building, in a form obtained for this purpose under Section 435, specifying the position of the building intended to be erected, the description of the building, the purpose for which it is intended, its dimensions and the name of the person whom he intends to employ to supervise its erection. Under Section 428(2), "to erect or re-erect a building" is defined to mean, under clause (vi) thereof, addition of any rooms, buildings, out-houses or other structures to any building. Thus, addition to a building, by a metal structure or a structure made with any other material, would fall within the expression to "erect a building" and would require notice, of the intention to so erect, to be given to the Commissioner prior to such erection. The Act contains several safeguards and under Section 429 the Commissioner may require plans

and other documents to be furnished. Under Section 430 he may require such plans to be prepared by a licensed surveyor. Under Section 431 he may call for additional information. Section 433 requires a notice to be given to the Commissioner of the intention to make additions to a building. Under Section 636 the Commissioner has been conferred the power to take action for unauthorised construction of a work including the power to remove or undo such work. Other safeguards are also provided under the Building Bye-laws and the Zoning regulations made under the A.P. Urban Areas Act. The A.P. Apartments (Promotion of Construction and Ownership) Act, 1987, and the rules made thereunder, place restrictions on the construction of a multi-storeyed building including the height of the building and its structural requirements.

Contrary to various statutory provisions, which prohibit illegal and unauthorized constructions, the Government issued memo dated 27.02.2002 on the subject of installation of temporary equipment over the terrace of buildings. The said memo dated 27.02.2002 reads thus:

GOVERNMENT OF ANDHRA PRADESH

MUNICIPAL ADMINISTRATION & URBAN DEVELOPMENT DEPARTMENT

Memo No. 2771/M1/2002-I,M.A. Dt. 27.02.2002.

Sub: Installation of temporary equipment over the

terrace of the buildings and installation of ground based towers by M/s. Reliance Communications Limited – Permission accorded – Reg.

Ref: 1). Govt. Memo No. 8436/M1/98-1,MA.,dt:16.4.1998.
2). Govt. Memo No. 5763/M1/2001,MA., dt:10.5.2001.
3). Govt. Memo No. 20754/M1/01-1, MA., dt:11.2.2002.
4). Representation from M/s. Reliance Communications Limited, dt:8.2.2002.

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In the reference 1st cited, Government have issued orders exempting the JT Mobile Limited and M/s. Tata Communication Limited from the requirements of building permit for installation of cellular mobile network equipment and exclusion of roof top shelter and antenna for telecom operations subject to certain conditions.

In the reference 2nd cited, orders have been issued permitting the Tata Tele Services and Cellular Limited to install land based installations i.e., towers, base tans receiving stations etc., in Residential, Commercial, Industrial, Institutional and Agricultural/Conservation Zones except in tank bed lands, parks, Layout open spaces, recreational uses, alignment of Master Plan roads.

In the reference 3rd cited, orders have been issued extending the orders issued in the reference 1st and 2nd cited to M/s. Bharati Mobile Limited and M/s. Barakamba Sales and Services Ltd., a dutchison Telecom Essar JV to install Cellular Mobile Network equipment for telecom operations.

In their representation 4th cited, M/s. Reliance Communications Limited have requested the Government to exempt the Cellular installations including land based towers from requirements of building permits and land use stipulations by extending the orders issued in the reference 1st and 2nd cited to them.

Government after careful examination of the matter considers the request of M/s. Reliance Communications Limited and decided to extend the orders issued in the reference 1st and 2nd cited to M/s. Reliance Communications Limited also subject to following conditions.

1. That they should obtain approval of Air Traffic Controller, Airport Authority of India for exemption of roof top antenna from height restriction, in case such exemption is required.
2. That they should inform the local authority i.e., Municipal Commissioner/Vice-Chairman of the concerned Development Authority etc., along with necessary drawings and consent letter of the building owner before installation.
3. That they are solely responsible for any damage to the building and for public safety.
4. That they should take special precautions for fire safety and lightening etc.

Further, the Government hereby exempts all telecom operators recognized by Government of Andhra Pradesh from obtaining building

permits for installation of land based communication towers in Residential, Commercial, Industrial Institutional and Agriculture/Conservation Zones except in Tank Bed lands, Parks, Layout open spaces, Recreational uses, alignment of Master Plan roads subject to following additional conditions.

1. They should intimate to the local authority concerned with proper drawings/documents before installation.
2. They should provide (i) sufficient circulating area/setback all around the land based tower for free movement of vehicles and equipment and (ii) a proper access.
3. They should take adequate precautionary measures to avoid any possible inconvenience to the neigbours.
4. They are solely responsible for any damage to the public safety.

A.K. GOYAL
PRINCIPAL SECRETARY TO GOVERNMENT

While it is vehemently contended by the learned Standing Counsel for GHMC that the memo dated 27.02.2002 has adequate safeguards, a perusal thereof would indicate to the contrary. All that the 4th respondent was required to do, under the memo, was to inform the local authorities i.e., the Municipal Corporation and Vice-Chairman of the Hyderabad Development Authority of erection of the tower and furnish to them the drawings and consent letters of the building owner before installation of the tower. Since the 4th respondent was exempted from the requirements of obtaining a building permit for installation of Cellular towers on building roof tops, the competent authorities under the Hyderabad Municipal Corporation Act were disabled from exercising their statutory powers to prevent such installation, even if they were satisfied, on a perusal of the drawings furnished to them, that

the installation was in violation of the applicable statutory provisions.

On being questioned, as to the power of the Government to issue such a memo, Counsel appearing on behalf of all the respondents, including the Government Pleader for Municipal Administration, would trace the power of the Government, to issue such a direction to Section 679-E of the Hyderabad Municipal Corporation Act. Under Section 679-E, the Government has been conferred the power to give directions, not inconsistent with the provisions of the Act or the Rules made thereunder, to the Corporations as it may consider necessary for carrying out the purposes of the Act. The power to give directions under Section 679-E is not unfettered but is circumscribed by the requirements that (a) the directions should not be inconsistent with the provisions of the HMC Act or the rules made thereunder and; (b) such directions are necessary for carrying out for the purposes of the Act.

In **Dr. C. Kulsum Reddy Vs. State of A.P.**[1], a Division bench of this Court, speaking through one of us, (Bilal Nazki J), observed:-

> ".....Section 679-E is a power on which much stress was laid by the learned Additional Advocate General. Under this section the Government may, from time to time, give such directions not inconsistent with the provisions of the Act. Section 679-E is reproduced.

[1] 2002(3) ALT 536

"**679-E. Power to give directions:** "the Government may from time to time give such directions, not inconsistent with the provisions of the Act or the rule made thereunder, to the corporations as it may consider necessary for carrying out the purposes of this Act."

This is exactly opposite to what is being argued by the respondents in this Writ petition that the Government can give instructions which are inconsistent with the act or the rules made thereunder. **The Act provides a definite mode for making constructions and if that mode is not followed there would be consequences. Every citizen needs a permission from the municipality to construct and if such construction is made without permission the only consequence is the demolition of such building in addition to prosecution in terms of various provisions of the Act. Therefore, Government can issue directions in furtherance of the objective that no construction is made in the city without permission of the Municipal authorities, but it cannot subvert the Act itself and then take refuge under Section 679-E by saying that the Government has the power to issue directions.**

The last argument which was made by the learned Additional Advocate General was that in terms of Article 154 of the constitution the Government has an executive power to issue such directions and the impugned G. O. is referable to article 154. **This is settled law that the executive power would not be available to the Government to defeat a statute. Ordinarily the executive power is the power which is exercised by the executive for the residual functions of the Government that remain with it after the legislative and judicial functions are taken away. If the state Government is empowered under a definite entry to legislate and there is no legislation it may exercise the power but once there is legislation the Government cannot use its executive power to defeat the legislation. The only way in such a situation is amendment in the legislation. This is settled law and the Courts have consistently taken this view that when a power is sought to be exercised in a particular way by the legislation the executive has to follow the methodology laid down by such legislation.** In this regard we may refer to a judgment of Supreme Court in **Ram Jawaya Vs. State of Punjab (AIR 1955 SC 549)**. It is a Constitutional Bench judgment which has not undergone any major changes to our knowledge from 1955. We would like to quote para 12 of the judgment. The Hon'ble Chief Justice B. K. Mukherjea, as His Lordship then was, speaking for the Court said;

".....It may not be possible to frame an exhaustive definition of what executive function means and implies. Ordinarily the executive power connotes the residue of Governmental functions that remain after legislative and judicial functions are taken away. The Indian Constitution has not indeed recognized the doctrine of separation of powers in its absolute rigidity but the functions of the different parts or branches of the government/have been sufficiently differentiated and consequently it can very well be said that our Constitution does not contemplate assumption, by one organ or part of the State, of functions that essentially belong to another. The executive indeed can exercise the powers of departmental or subordinate legislation when such powers are delegated to it by the legislature. It can also, when so empowered, exercise judicial functions in a limited way. The executive Government, however, can never go against the provisions of the Constitution or of

any law. This is clear from the provisions of Article 154 of the constitution but, as we have already stated, it does not follow from this that in order to enable the executive to function there must be a law already in existence and that the powers of the executive are limited merely to the carrying out of these laws....."

"The laws made by the legislature are bound to be followed by everybody including the government. Therefore, we are of the considered view that the impugned G. O. has been issued without any authority of law....." (emphasis supplied).

The Government memo dated 27.02.2002 is not referable to Section 679-E, since the said memo is contrary to the provisions of the HMC Act. It is also not known as to how issuance of such a memo, exempting the 4th respondent from obtaining a building permit, was considered necessary for carrying out the purposes of the HMC Act. The Government has absolved the 4th respondent, and other cellular operators, of the need to comply with the statutory requirements under the HMC Act and other enactments and rules. It has also resulted in authorities, under the HMC Act, being disabled from exercising their statutory duties of preventing unauthorized and illegal constructions.

The Commissioner, GHMC, in his affidavit filed before this Court, has stated that he had requested the Government, vide letter dated 20.11.2007, to revise the orders issued to various cellular companies from 16.04.1998 onwards exempting them from the requirements of obtaining a building permit. In his counter-affidavit, the Joint Director,

Municipal Administration would state that the Government had decided to issue show cause notices to all service providers as to why the memos issued earlier should not be withdrawn. The Government had no power in the first place to issue such a memo as such a power cannot be traced even to Section 679-E of the HMC Act. We consider it appropriate, in larger public interest, to quash these memos. As a result, Respondents 1 and 2 shall no longer be disentitled from discharging their statutory obligations, under the HMC Act and other enactments, to take action against those cellular operators who have erected towers and other equipment on roof tops of multi-storied apartments/buildings.

Sri Mohd. Zafarullah, learned Counsel for the petitioner, would contend that the A.P. Apartments (Promotion of Construction and Ownership) Act, 1987 required consent of flat owners also to be taken for erection of a tower on the roof top of the building which, according to him, was an addition to the existing building and was, in effect, a modification of the building permission granted earlier.

In **CSR Esates, Flat Owners Welfare Association Vs. H.U.D. Authority**[2], the Flat Owners Association had requested this Court to declare the modification and building permission granted by the Hyderabad Urban Development

[2] AIR 1999 AP 61

Authority in favour of the builder as contrary to the provisions of the A.P. Apartments (permission of construction and ownership) Act, 1987. This Court, on a detailed considerations of the provisions of the said Act, observed:-

".....Under Section 11 of the Act it is further provided that"no apartment owner shall add any material structure or excavate any additional basement or cellar or do any other work which would be prejudicial to the soundness or safety of the property or would reduce the value thereof or impair any easement of hereditament". From this it follows that even the owner of the apartment also cannot take up any work, which would be prejudicial to the soundness and safety of the building. In the instant case, respondent No. 3 now proposed to put up two additional flats over the top of the building and the same he cannot do. In all probability, the foundation that is provided as per the original plan takes only the building as per the plan. Whatever it may be, the impugned proceedings permitting the respondent No. 3 to construct certain constructions as per the modified plan is illegal.

However, the learned Counsel for the respondent No. 3 heavily relies on clause (4) included in all the sale deeds, which reads as under:"that it is specifically agreed that the Vendor shall have a right to construct further floors over and above the terrace of the building and the Purchaser/ Purchasers shall have no objection for the proposed additional construction. "this clause is prima facie ultra vires of Sections 4, 6 and 14 of the Act. As I have stated above, unless there is an amended declaration duly executed and registered by all the flat owners, there cannot be any modification to the existing plan and the building constructed according to it. It is a common principle of law that any contract prohibited by law would be a void contract. In fact Section 23 of the Indian Contract Act is to the same effect. Therefore, respondent No. 3 - builder cannot rely upon this clause for the purpose of seeking a modified plan to put up further constructions. As I have already stated above, if according to the plan already declared under Sections 4 and 14 of the Act, if some more construction is to be done, at the most he can complete that and he cannot put up any further construction....." (emphasis supplied).

We are in agreement with the conclusions of the learned Single Judge in the aforesaid judgment.

The first respondent, in his counter affidavit, has stated that in order to take a specific stand, whether or not the building in question was safe for the inhabitants to reside in,

he had called for a report from the Engineer-in-Chief. He has also stated that all cellular companies have been asked to furnish a list of buildings on which cellular towers were erected. With regards the building, which is the subject matter of the present writ petition, he stated that three weeks time was required to carryout necessary verification tests. The counter affidavit was filed on 26.11.2007 and the three weeks time, sought for by the Commissioner, GHMC, has already expired.

We are deeply pained to note the casual manner in which the authorities have dealt with even those matters which required their immediate action. They have turned a blind eye to the plight of gullible flat owners who have invested their hard earned money and their life savings in purchase of these flats. Any damage to the structure, as a result of erection of towers on the roof-top of the buildings, would not only deprive them of their property but could result in loss of their lives as well. We can neither permit such indifference to continue nor can we remain mute spectators to the damage caused to those whose agonized cry has fallen on the deaf ears of those who are meant to serve them. We direct the first respondent- Commissioner to ensure that the Chief Engineer's report is submitted within a week from today and, in case the report reveals even the slightest danger to

the building, on account of the cellular tower and other equipment installed on the roof top by the 4th respondent, to take action, in accordance with law, for removal of such structures within two weeks from the date of receipt of the report from the Chief Engineer. The first respondent shall also carry out a survey of all the buildings, within the territorial limits of the Greater Hyderabad Municipal Corporation, wherein such cellular towers are located on roof tops of multi-storeyed apartments/buildings. This exercise of verification shall be completed within two months from the date of receipt of a copy of this order and, in case any such structure is found to endanger the building or the lives of its residents, action shall be taken, in accordance with law, to have such structures removed within four weeks thereafter.

The writ petition is allowed with exemplary costs of Rs.10,000/- (Rupees ten thousand only) each payable by the 3rd and 4th respondents to the petitioner herein.

MEMORANDUM OF COSTS

1. Exemplary costs payable by the 3rd respondent to the petitioner ....Rs. 10,000/-
2. Exemplary costs payable by the 4th respondent to the petitioner ....Rs. 10,000/-

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Total costs payable to the petitioner ... Rs.20,000/-

(Note : The Court, by the order dated 31.12.2007 in Writ Petition No.23228 of 2007 allowed the Writ Petition with exemplary costs of Rs.10,000/- each payable by the 3rd and 4th respondents to the Petitioner)

SD/- S.V. RAMANA MURTHY
ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Special Officer & Commissioner, Greater Hyderabad Municipal Corporation, Tank Bund, Hyderabad.
2 The Deputy Commissioner, Greater Hyderabad Municipal Corporation, Kapra Municipality, Ranga Reddy District.
3 The Managing Partner, M/s. Modi Properties & Investments Pvt.Ltd.,5-4-187/3,4 III rd Floor, M.G. Road, Secunderabad.
4 The Manager, M/s. Reliance Communications Ltd., Lake Shore Towers, 6-3-1090/B/1, Raj Bhavan Road, Somajiguda, Hyderabad.
5 The Prl. Secretary to Government, Municipal Administration Department, Govt of A.P., Secretariat, Hyderabad.
6 Two CCs to the G.P. for Municipal Administration, High Court of A.P., Hyderabad (OUT)
7 Two C.D. copies.
8 One CC to Sri Mohammad Zafarullah,Advocate (OPUC)
9 One CC to Sri R. Ramachandra Reddy, Advocate (OPUC)
10 One CC to Sri V. Venkata Ramana, Advocate (OPUC)
11 One CC to Sri Milind G. Gokhale, Advocate (OPUC)
12 One CC to Sri L. Ravichander, Advocate (OPUC)
13 One CC to Sri Rama Rao Ganta, Advocate (OPUC)
14 One CC to Sri S. Niranjan Reddy, Advocate (OPUC)

RVR

HIGH COURT
DATED: 31/12/2007

ORDER
W.P.No.23228/2007

ALLOWING THE PETITION
NO COSTS.

16 Copies
GVR
22/1/08

HIGH COURT
DATED: 31/12/2007

ORDER
W.P.No.23228/2007

ALLOWING THE PETITION
NO COSTS.

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