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W.P.NO. 12/80 OF 1992
(Special Original Jurisdiction)

Between :

M/s.Allied Industries,r
represented by its Managing Partner,
G.L.Sanghi and others.

..... Petitioners

and

State of Andhra Pradesh, represented
by the Chief Secretary to the Government
Secretariat, Hyderabad.

..... Respondent

A F F I D A V I T

I, G.L.Sanghi, son of Sanghi, Hindu, aged 62 years, resident of Hyderabad, do hereby solemnly and sincerely affirm and state as follows :

1. I am the Managing Partner of the 1st petitioner Company and as such I am well acquainted with the facts of the case. I am also authorised to file this affidavit on behalf of the other petitioners.

2. The above Writ Petition is filed questioning the validity of the Azamabad Industrial Area (Termination and Regulation of Leases) Act, 92 (A.P.Act 15 of 1992).

3. Before setting out the grounds of challenge to the vires of the above Act, the chronology of facts in so far as they are relevant and material for the purposes of the above Writ Petition are set out as under :

4. In the year 1935-36, the then Nizam's Government through its Department of Commerce and Industry with the sole aim of the promoting industrial development in the Nizam State and with a view to promote employment.

too up the scheme of offering for sale the then marshy and uninhabited land on the outskirts of Hyderabad between Hyderabad and Secunderabad which is now known as Azamabad Industrial Area, Musheerabad, Hyderabad. An extent of Ac.130.00 divided into several plots of Ac.5.00 and Ac.1.20 were offered to the intending industrialists. The development of this area was being energetically pursued by Nizam's Government promising every infrstructural facilities for those interested in starting industries in the state. A copy of the circular letter offering the sale scheme no.C.G./105/21/36 issued on behalf of the Secretary to the Government, Department of Industries and Commerce, H.E.H.Nizam's Government, is appended in the material papers filed alongwith this Writ Petition.

5. In pursuance of the above offer for sale of the plots admeasuring Ac.1.20 to Ac.5.00 at varying prices between Rs.1,500/- to Rs.3,000/- per acre depending upon the location of the plots whether in the interior or abutting the main road as the case may be (disclosed on the reverse of the circular letter), certain industrialists came forward and took possession of the plots of the land, constructed factories, sheds and other buildings and installed plant and machinery, on the plots allotted to them as early as in 1939-40 i.e., more than fifty years ago. They also began running industries, investing capital amount and expending amounts towards the cost of manufacture of goods and employment of labour.

6. The then market value of the land in the vicinity of the said plots in Azamabad Industrial Area was not more than Rs.2,000/- per acre even for outright price. After the police action, the erstwhile Hyderabad State offered the said plots to the industrialists already in possession

since 1939-40, on a 99 year lease. A plain reading and a true and fair construction of the lease deeds makes it manifest that he leases so called wore actually sale deeds only subject to certain regulatory controls. All the industries were in bonafide buildings with 999 years of lease as good as the sale of the land, as it was never in contemplation that the plots of the land given in possession to industrialists for industrial development would at any time be expropriated by the Government at their pleasure. Having regard to the fact that the premium for the lease was fixed at Rs.2,000/- which was the market value of the land, a nominal quit rent of Rs.50/- per acre only was fixed. In the totality of circumstances stated above, it was not considered either rational or fair that the lease deeds contain a stipulation for increase of either the premium or the quit rent. A special trust fund known as the Industrial Trust Fund was also created by the erstwhile Hyderabad State for industrial development of the state. Most of the present industrialists of the said plots since 1940s and later had, struggled very hard in the formative stages and are pioneers in the industrial development of the state. During all these five decades, they struggled very hard and expended huge amounts of money on setting up of buildings, sheds and towards capital expenditure for purchase of plants and machinery, maintenance of the same and they also contributed enormously to the industrial development of the State and by way of payment of various taxes and production of goods. A large number of employees are also depending on these industries for their livelihood and decent existence.

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7. To demonstrate that even the price fixed for sale in respect of these plots was higher than the contemporaneous prices in the year 1941, it is submitted that about the same time in the centre of Himayatnagar on the main road in the area where Hotel Minerva, Gayatri Bhavan etc. are situated, an extent of Ac.1.00 was allotted to Dr.Jabbar a Radiologist. The price was fixed at Rs.0-4.0 per yard to be paid under the scheme 'payable at liberty'. This works out to about Rs.1240/- per acre. The said Dr.Jabbar during his lifetime in the year 1968 plotted out the land allotted to him and sold at the rate of Rs.30/- per sq.yd. It is submitted that the present market price of the same land is about Rs.3,000/- per sq.yd. The prices of urban land have thus gone up by more than 100 times during the past 16 years itself. In the Malakpet area adjacent to the Central Jail H.E.H. the Nizam sold a plot of land of about 30,000 sq.yd. for Rs.10,000/- to Dr.D.S.Reddi, a former Vice-Chancellor of Osmania University in the year 1960. Later Smt.Venkatalakshamma, W/o.Dr.Reddy 27,000 sq.yds. Out of the above extent of land for Rs.50,000/- in the year 1968. The some land was plotted out and sold in the year 1978 at the rate of Rs.16/- per sq.yd. The present market value even according to governmental valuation for the said area is more than Rs.1,000/- per sq.yd. compared to the Azamabad Area, the Himayatnagar and Malakpet Areas are more centrally situated and the transaction in the malakpet area is more than 20 years after the Azamabad Industrial Area plots were offered for sale. Another transaction recently undertaken very close to the Azamabad Industrial Estate and that too on the Musheerabad Main Road is that about 2000 sq.yd. of land was allotted to the former Chief Minister of Andhra Pradesh in the year 1981. Incidentally Sri.Rama Rao who was the holder of the relevant portfolio piloted

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the bill which became the impugned act. Originally, the land was offered at the rate of Rs.45/- per sq.yd. and the same was reduced in year 1983 to Rs.15/- per sq.yd. The present market rate as per the government valuation is over Rs.2000/- per sq.yd. At present, the area is converted into a commercial area and shops and Mulgis have come up in the said area opening into the main road.

8. Most of the plots were handed over by 1952 and a few of the plots were handed over from time to time upto 1952 to various entrepreneurs. Actual lease deeds were however executed from the year 1941 to 1965. Though in some cases, lease deeds were executed, nearly 25 years after delivery of possession of the documents mentioned, the date of delivery of possession and as the period commenced from the date of delivery of possession. The other terms and conditions were incorporated in the lease deed. One lease deed of the year 1965 is enclosed hereto as material paper.

9. As a matter of policy, the Central and various State Governments have taken various measures to promote industrial development in the country and have achieved that objective and various incentives have been provided from time to time. Incentives like Central Subsidy, State subsidy, tax holidays, energy at concessional rates etc. have been provided. The state has also created special regulations to speedily process licences and other formalities for promoting industrial development. One such corporation is the Industrial Infrastructure Corporation. A similar agency in the erstwhile Hyderabad was the Industrial Trust Fund. The state has also set up industrial estates in every district in the state. In some of those industrial estates plots have been sold and in some of them, they are leased out at low rents. In some industrial estates even sheds

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were built and then leased out. For example, in Sanathnagar Kukatpalli, Uppal and Kattedan Industrial Areas which are within the Hyderabad Urban Agglomeration, lands were acquired, developed into industrial estates and plots therein were sold at Rs.5.40 per sq. as late as in the year 1976. The present market value in the Kattedan Industrial Area Rs.500/- per sq.yd.

10. Coming to Azamabad Industrial Area, in some cases the State Government has permitted transfer of lease from one person to another and a view of the orders granting such permission for transfer are enclosed as material papers in this Writ Petition. After transfers were effected, fresh lease deeds were executed in some cases charging additional amounts from time to time from the lease period as reckoned from the original period.

11. The main condition in the lease deeds is that the land should not be for non-industrial purposes and leases cannot be transferred without the permission of the Government. While so, the Government itself permitted transfer in a number of cases and there was no complaint that any of the leasses used them for non-industrial purposes.

12. To the knowledge and belief of the petitioners, in two cases in the Azamabad Industrial Area when partners were taken by the original leasees, notices were issued and leases were terminated on the grounds that there was transfer of lease without permission. In both the cases, suits were filed in the City Civil Court, Hyderabad and in O.S.NO.205 of 1985 and the court decreed the suit enabling the lessees to continue without hindrance. The decree in the said case is filed as material papers to this Writ Petition.

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Apart from the above, there are a few cases where notices had been issued complaining of violation of some of the conditions and the aggrieved parties therein approached the courts and obtained say of the proceedings. Be that as it may in as many as about 28 out of the 33 leases, there was no complaint of any sort. Among the industries situated in the Azamabad Industrial Area include Oil Mills and Refineries, Casting Industries, Food Product Industries, Chemical Industries, Engineering Industries, Pharmaceuticals, Foundries, Stainless Steel and Metal Industries and Vazir Susltan Tobacco Industry etc.

13. Bill No : 23/89 was introduced in the A.P. Legislative Assembly on 11-9-89. The bill seeks to provide for termination and regulation of leases in respect of plots in Azamabad Industrial Area, Hyderabad and for connected and incidental matters. In the preamble to the bill, it is stated inter alia that it has come to the notice of the Government that certain lessees or occupants are putting the plots or portions of plots to unauthorised use and certain other lessees or occupants are misusing valuable industrial urban land for residential purposes and also for warehousing activity and that some are sub-leasing or transferring portions of plots by entering into disguised partnerships and transfer and that such erring lessees or occupants are collecting huge amounts through such unauthorised use of the plots or portions of plots. It is also averred that the Government is unable to assume possession of the plots or portions thereof held by persons or occupants even in cases of gross misuse and violation of the terms of the lease or other arrangement due to adoption of different formats of lease with varying terms and conditions, lacunae in the lease deeds executed or other arrangements made with such lessees or occupants regulating the relationship between the Government

and such persons and also due to long drawn civil litigation that is resulting in during the course of curbing such misuse and violation. The preamble to the bill also states that the plots were leased out to difference persons on long lease periods upto 99 years at incredible low rents and that the Government has been sustaining substantial recurring loss in the absence of necessary provisions in certain lease deeds for revision of rates of premium and quit rent that is reasonably due to the Government for the plots leased out and that therefore it is considered expedient in public interest to terminate by law existing leases or other arrangements made or entered into in respect of the demised plots or portion thereof with a view to curb misuse and unauthorised use of Government land, other irregularities, violations and to bring to non-industrial use including unauthorised constructions etc. and to regulate the leases afresh as may be decided by the Government with such uniform terms and conditions including reduced lease periods and revised rates of premium and quit rent and adoption of standard format and lease deed with a view to ensuring maximum use of the existing infrastructure facilities and proper management of valuable urban property of the government.

14. The bill which was introduced in the Assembly on 11-9-1989 was reserved by the Government of A.P. on 16-11-1989 for consideration and assent of the President of India. The President of India accorded assent on 27-5-1992 and it was published in the A.P.Gazette Part-IV B extraordinary on 3-6-1992. Act.15 of 1992 being the Azamabad Industrial Area (Termination of Regulation of Leases) Act, 1992 has thus come into force. The preamble of the said act is in pari-materia the preamble to the bill introduced on 11-9-1989.

15. It is submitted that the A.P.Act.15 of 1992 is void ab initio, unconstitutional beyond the legislative competence of the State and Stricken with the vice of being ultra vires Articles.14, 19, 21 and 300-A of the Constitution of India for the following amount other grounds and without prejudice to each of the several grounds set out hereunder :

A) Section.3 of the Act begins with a non-obstante provisions immunising reference to the Indian Contract Act 1872 and the Transfer of Property Act 1882 or any other law for the time being in force and the terms and conditions of any lease entered into or any other arrangement made with any person in respect of any demised plot either by erstwhile Nizam Government or the Government of Hyderabad or by the Government of A.P. prior to the appointed date, of leases or other arrangements made or entered into of a registered deed or otherwise in respect of the demised plots in the Azamabad Industrial Area. It is also provided that such leases or other arrangements shall stand terminated on the appointed date and there upon all the sub-leases or any other arrangements whatever made by the person in occupation to hold possession of the demised plots shall stand nulled and every such demised plot shall vest in the Government from encumbrances and shall be used subsequently for industrial purpose only. Section.3(2) of the Act provides that the rights and liabilities as between the parties to the lease or other arrangement shall cease and determine but any amounts due to the Government under the lease or to arrangements so terminated shall be recovered as arrear of land revenue. Therefore, by a legislative fiat, there is brought about the extinction of the contractual liability between the Government and the citizen. As can be seen from the preamble to the Act, the variety of the purposes are indeterminate vague and inchoate. The fact that some of the lessees

may have contravened would not provide a rational justification for termination of leases including those of persons who have not so violated. The determination of violation is made by the impugned legislation on non-stated standards and in any view of the matter without the intervention of an independent adjudicatory process for determination of the alleged violations of the lease. The leases are therefore deprived of the due process of law and a function of the basic structure of the constitution to have their right to property and the right to carry on the trade occupation, business or profession subject only to reasonable restrictions in the interests of general public. The deprivation of the right to judicial process for determination of the alleged violations even without the intervention of the minimum requirement of alternative and speedy special judicial processes violates Articles 14, 19 21 and 300-A of the Constitution of India. The impugned Act is therefore arbitrary and suffers the vice of capricious classification. It also suffers from the vice of procedural, structural and substantive irrationality.

B) The impugned legislation amounts to legislative determination of alleged violations of the terms of leases and therefore amounts to legislative usurpation of essentially judicial branch processes and therefore violates the Rule of Law and hence, articles.14 of the Constitution of India.

C) The impugned legislation suffers from the vice of irrational classification and hostile discrimination. Even as per the professed aims of the legislation as set out in the preamble, not all the lessees violated the terms of the lease. The impugned legislation in as much as it includes persons who have not violated the lease terms for imposition of the burdens of deprivation of their right to the lease, suffers from the vice of inclusion of dissimilar

persons in the same class as alleged violators. Such classification is irrational and violative of Article.14 of the Constitution. No legislation may impose burdence meant for violated such terms. Even person who have not violated the terms of lease are subjected by the impugned legislation to the burdens and onus of freshly to be negotiated terms.

D) The impugned legislation has the clean and direct effect of a legislative ^{modification} ~~notarion~~ of a subsisting contract.

E) Under the terms of the impugned legislation the state which is the successor to one of the articles to the contract aims to squelch on the contractual terms under the garb of a legislative on actment. The legislation is therefore arbitrary and violation of Article.14 of the Constitution.

F) The impugned legislation seeks to bring about deprivation of property without the procedural, structural and substantive safe guards warranted within the parameters of the objects of the law.

G) The lease-hold property is an integrated and integral component of the right of the petitioner available to them under Article.19(1) (g) read with Article.300-A. Deprivation of such property would have to answer the Constitutional obligations of Article.14. 19 and 300-A which the impugned legislation does not answer.

H) The direct and proximate effect of the legislation is expost facto provision of limitations of contractual freedom available under the lease by the device of prescription of artificial definition, vide explanation to section.4 of the Impugned Act.

I) Section.2(c) of the Impugned act defines the competent authority to be an authority, officer or person authorised by the Government, by notification, to perform the functions of the competent authority under the Act. Section.4 of the Act provides for an application being made by a "person in occupation" to the competent authority, for a fresh lease. Under Sec.4(2) the competent authority is empowered to determine the violation or otherwise of the conditions of lease for the purpose of consideration of grant of a fresh lease. Apart from the absence of any procedural safe guards in the area of violation adjudication, the impugned act deprives the 'persons in occupation' of a right to independent judicial determination of the contractual terms which was available prior to the impugned Act. Now, such a safe guard is substituted by a creature subordinate of one of the contracting parties acting as an arbiter. The shifting of the adjudicatory process from an independent judicial forum to an administrative agency subject to the chilling administrative control of the party to the dispute, is subversive of the Rule of Law and renders the object of the impugned legislation arbitrary and unconstitutional.

J) The preamble of the impugned act professes that the plots were leased out at incredibly low rents for long period upto 99 years and that certain lease deeds did not contain necessary provisions for revision of rates of premium and quit rent, resulting in substantial recurring loss to the Government. Now, his statement is demonstrably irrational and founded on an ex facie unsustainable basis. In a situation where the plots were advertised for out-right sale for prices ranging from Rs.1500/- to Rs.3000/- per acre, the Nizam's Government with a view to ensuring some regulatory control over the Industrial area and to ensure the development of the area for exclusive industrial purposes, gave out the plots on long 99 year leases at Rs.2000/- per acre

as premium. This premium for a plot in the outskirts of Hyderabad was beyond the market price and on a satisfaction that the full market price is realised by way of premium, the quit rent was nominally fixed at Rs.25/- to Rs.50/- per acre. This interaction of the facts forms the foundation for the rationality of a fixed premium and quit rent. This fact the impugned act glosses over. In the factual matrix of the Azamabad Industrial Area leases, the objects of the impugned act in so far as they relate to avoidance of fixed premia and quit rents are irrational, arbitrary and stricken with the vice of ignoring of the historical foundation of rationality of the terms of the cases.

k) The proviso to section.4 of the impugned act provides that a person in occupation, the lease of which stood terminated under the act, if he was using the demised plot actually for industrial purpose and was not otherwise guilty of violation of the conditions of the lease, would be entitled to have his application not rejected and be granted a fresh lease on terms and conditions to be prescribed. The explanation to section.4 provides that entering into a partnership or other cognate arrangement, for carrying on any activity whatsoever on the demised plot shall be deemed to be violation of the conditions of the lease, notwithstanding anything in the Indian Partnership Act, 1932.

As can be seen from the foregoing, by a retrospective deeming provision founded on an artificial definition supported by a non-obstante clause, the impugned act renders illegal retrospectively, activity that was legitimate and legal at the time of entering into the partnership or other cognate transactions. The result of such retrospective imposition of invalidity is the deprivation of the rights to property and of carrying on of trade, calling or business by

an arbitrary law. The impugned Act is unconstitutional both on account of its retrospective reach as well as on account of prescription of artificial definitions not within the contemplation of parties as per extant law.

L) Section.5 of the impugned Act obligates the person in occupation to vacate the demised premises and deliver possession thereof to the competent authority within the stipulated time and to demolish any structure existing on the demised plot and deliver vacant possession and failure to so demolish entailing vesting of the demised plot alongwith the structures in the Government free from any liability to pay compensation.

In the context of an automatic termination of the leases under sec.3 of the Act coupled with the retroactive artificial definition of violation and the whole process of adjudication of violations entrusted to a nominee of the state (which is a contracting party), section.5 is a classic piece of expropriatory legislation enacted for unconstitutional purposes.

M) Section.6 of the impugned act contains coercive procedures which taken in conjunction with the arbitrary contents of sec. 3 to 5 of the Act would also be IPso facto arbitrary and unconstitutional.

N) Section.7 of the impugned act provides that any person continuing in occupation beyond the period specified in the order of eviction issued under sub-section.1 of section.6 shall be punishable with imprisonment or with fine or with both as provided therein. Section.3 to 7 read together show that a determination of violations and the consequential coercive steps including the penal sanctions are to be orchestrated under the aegis of the competent authority who is a nominee of the State Government which is a party to the

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contract. The legislation is therefore wholly arbitrary and subverts the right to property, life and liberty without a procedure established under law and in circumstances where the law itself is substantively arbitrary and the classification of the law is discriminatory, illusory and irrational.

O) Section.8 of the impugned order further provides that persons failing to deliver possession of the demised plot within the time specified under section.6 shall be liable for payment of damages or meshe profits in addition to any penalty under this Act, for each day of such unauthorized occupation. All these penalties and prescription of damages under the act is founded on a party's unwillingness to abide by the terms of the contract duly and lawfully entered into and this irrational and illegal intent is legitimised by the device of a legislation which is a classic piece of class legislation. The impugned act is in the nature of a Bill of Attainder.

P) Section.9 provides for an appeal against any order of the competent authority to the State Government. Such an appeal from a Caesar to Caesar both of whom are administrative agencies, that too an appeal to the very party to the contract is ex-facie arbitrary and violates Article.14 of the Constitution of India. The entirety of the opportunity provided under sec.9 and the procedure therefore under section.10 is an illusory remedy and a mere public relations exercise devoid of substantive content of a fair procedure obligated under Act.14 and 21 of the Constitution of India.

Q) Section.II of the impugned Act provides that whereby operation of the provisions of section.3 a lease or other arrangement is terminated, the Government shall pay to the leasee an amount of solatium equivalent to 4 to 1 month's rent for the unexpired period of lease on a graded basis. The greater the unexpired portion of the lease the lesser is the solatium payable and the entire amount of solatium payable is limited to an amount of Rs. 3 lakhs. It is further provided in sub-section.2 of sec.II that the amount payable under sub-section-I shall be paid to the lessee in such manner and within such time as may be prescribed after deducting the amounts due to the Government, if any. The entirety of Sec.II violates Article 300-A read with articles.14 and 19 of the Constitution of India. In view of the repeal of Article.19 and 31, the Constitution recognises right to property in Article.300.A read with rights under articles.19(i)(g) and Article.14 postulate the payment of compensation for any deprivation of property. The petitioner's right to the lease entered into with the erstwhile Nizam's Government is governed by the terms of lease and is a right to pro party both within the meaning of Articles.19(1)(g) and Articles.300.A of the Constitution of India. In view of the 44th Amendment Act of the Constitution, not only is articles 31 deleted but all the constitutional limitations on the enjoyment of rights under Article.31 also stand delected. Therefore, the validity of the Legislative Act depriving a person of his property would have to answer the test not only of Act.19(1)(G) but also Article.14. In the circumstances, no property can be acquired with out payment of a just compensation. All of the leasehold properties which are the subject matter of the impugned legislation, bear existing industries together with all the necessary infrastructure such as the buildings, plant and machinery. The unilateral determination of the leases brought about by the impugned

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legislation would extinguish these integral components of the petitioners fundamental rights and under the terms of the impugned legislation, the entirety of the property would stand acquired by the State. The compensation payable for such acquisition will have to meet the requirement of rationality and just compensation rationally related to the deprivation brought about. This is the holistic result of the compulative application of Act.300-A read with Articles.14 and 19 of the Constitution of India.

R) The provisions of sec.14 of the impugned Act also impose unreasonable restrictions on the petitioner's right to the enjoyment of the plots demised under the lease and in so far as they are contrary with the terms of lease validly entered into are stricken with the vice of arbitrariness.

S) Section.16 of the impugned Act which debars a jurisdiction of any Civil Court in respect of any decision of order passed or proceedings taken by any officer or competent authority of the Government under this Act clearly discloses the intent of the legislation in excluding judicial review and substituting the pre existing right of the parties to independent adjudicatory processes by administrative by a party to the contract.

T) The provisions of sec.20 of the impugned Act in so far it confers immunity for any rules made under the Act from challenge qua other law for time being in force or any custom usage or agreement or decree or order of a court, Tribunal or other Authority, amounts to legislative usurpation of judicial power and is beyond legislative competence.

U) Section.3 of the impugned Act is beyond legislative competence as it seeks to extinguish the effect of lawfully obtained judgements and decrees which a legislature cannot do.

V) Some of the cases, entered into by the erstwhile Nizam State or the state of Hyderabad as the case may be in the Azamabad Industrial Estate, were in respect of and for the purpose of establishment of industries which have been reserved for central by the Union of India and declare as such by the Parliament for exclusive federal occupancy under list.1 of the 7th schedule. In as much as the impugned legislation seeks to terminate all the leases, the impugned legislation is beyond the legislative competence of the state legislature in view of Chapter.III of part-XII of the Constitution of India.

16). As can be seen from the narrative of facts in the earlier paragraphs of this affidavit, the impugned act contains drastic and draconian measures which are ex facie unreasonable and unconstitutional. The direct impact of the Act would be to bring about automatic termination of leases and immediately thereafter section.4 of the impugned Act come into operation resulting in dispossession of the lessees alongwith all the industry thereon and would cause in calculable hardship and injury. Overnight the industries would vanish without a substrata on which to function, number of employees would be rendered unemployed and irreversible consequences would follow leading to chaotic conditions.

17). I submit that I have no other alternative remedy except to approach this Hon'ble Court for relief.

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HYDERABAD DISTRICT

HIGH COURT OF ANDHRA PRADESH

HYDERABAD

W.P. NO. 12180 OF 1992

(SPL. ORIGINAL JURISDICTION)

MP : 15355/92

A F F I D A V I T

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L. NARASIMHA REDDY

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