

(2001) 09 AP CK 0114
In the Andhra Pradesh High Court
Case No : WA No. 1484 of 2001

Amrutha Estates

APPELLANT

Vs

Saphire Residential Welfare Association, Hyd. and Others

RESPONDENT

Date of Decision : 25-09-2001

Acts Referred:

Andhra Pradesh Apartments (Promotion of Construction and Ownership) Act, 1987 —
Section 28, 4(2), 6
Constitution of India, 1950 — Article 225, 226
Hyderabad Municipal Corporation Act, 1955 — Section 3

Citation : (2001) 6 ALD 340 : (2002) 2 ALT 774

Hon'ble Judges : Motilal B. Naik, J;G. Rohini, J

Bench : Division Bench

Advocate : K. Raghuveer Reddy, for the Appellant; G. Jyothi Kiran, SC for MCH, Government Pleader for Home, Government Pleader for Municipal Administration and M.V. Durga Prasad, for the Respondent

Final Decision : Allowed

Judgement

Motilal B. Naik, J.—In this writ appeal, the order passed by the learned single Judge of this Court in Writ Petition No. 14216 of 1999 on 31-8-2001 and the consequential order made on 12-9-2001 are assailed on various grounds.

2. Before we proceed to examine the main contentions raised by the learned senior Counsel for the appellant as well as the Counsel for the respondents 1 to 21 who are the principal contestants in this writ appeal, certain important factors which are relevant for the purpose of appreciating the genesis of the dispute between the appellant and the respondents 1 to 21 which led to filing of the Writ Petition No. 14216 of 1999 by the respondents 1 to 21 against the appellant are traced hereunder:

3. Writ Petition No. 14216 of 1999 was filed by respondents 1 to 21 herein initially against three respondents. However, by an order of the learned single Judge dated 24-8-2001, Government of Andhra Pradesh, represented by its

Principal Secretary, Municipal Administration and Urban Development, Secretariat, Hyderabad was impleaded as 4th respondent in the writ petition.

4. It is the case of the respondents 1 to 21 who are writ petitioners in WP No. 14216 of 1999 that the first petitioner association is a society of resident owners of Saphire Complex, Amrutha Hills, Panjagutta, Hyderabad registered under the A.P. (T.A.) Public Societies Registration Act, 1357 Fasli with Registration No. 3005 of 1990. According to the first petitioner in the writ petition, the Saphire Complex was constructed by the appellant-second respondent who is the promoter. The appellant-second respondent seems to have represented to all the writ petitioners that it had obtained necessary permission from all concerned to construct the building and offered to construct and sell apartments as per the specifications and plans and brochure issued by it. The Saphire Complex construction was undertaken from the year 1988 onwards and after collecting necessary payments from the individual purchasers, flats were also delivered to writ petitioners 1 to 21 during the year 1990 onwards and sale deeds were also executed thereafter.

5. It is the complaint of the respondents/writ petitioners 1 to 21 that the appellant failed to provide basic amenities as promised by it which includes provisions for water supply. According to them, the appellant constructed sub-cellar (stilt), cellar, ground floor plus three upper floors with 101 residential apartments. It is complained that the appellant-second respondent converted the entire sub-cellar (stilt) and cellar earmarked for parking into commercial purpose even after collecting amounts for covered parking (garage) from the flat owners and gave 2/3rd of the same to the brother of its Managing Partner namely Dr. Y. Chiranjeeva Reddy who has been running a hospital by name Amrutha Diabetic Clinic on profit sharing basis. The remaining part is either sold or let out and is being used for commercial establishments like shops and officers etc.

6. It is the case of the respondents/ Writ Petitioners 1 to 21 that the appellant/second respondent maintained the complex for some period in the year 1990 and started collecting huge amount from the residents and went on making illegal constructions even after delivery of flats to the members-owners. Thereafter, the appellant/second respondent raised pillars of the staircase for about 40 feet height above the third floor with four slabs on the top of which it constructed a water tank, without making any provision for supply of water. The flat owners resisted such a move of the appellant and formed the association in the year 1990 and took over the possession of all common areas and amenities including terrace. The writ petitioners also complained about the various irregularities committed by the appellant/second respondent and the manner in which it started creating problems to the flat owners despite collecting substantial sum of more than six lakhs from each of them towards the cost of each flat. They further complained that the appellant was drawing water for construction of the apartments from the bore-well and sunk a bore in the neighbouring complex of Topaz building. The entire parking area was wrongfully converted by the

appellant -second respondent for other purposes and therefore the writ petitioners have a lot of grievances against the appellant. The writ petitioners have also listed out various instances from para-11 onwards in the writ petition bringing to the notice of this Court about the manner in which the appellant has been creating lot of inconvenience to the flat owners, who have parted substantial monies and purchased flats from the appellant. They have also listed out the violations committed by the appellant and flouting the provisions of the A.P. Apartments Act and other relevant laws in raising four more floors on the existing three storeyed Sapphire Building Complex.

7. Under the above circumstances, the writ petitioners sought a writ, order or directions more particularly one in the nature of writ of mandamus declaring the action of the first respondent in allowing the second respondent to proceed with the illegal constructions above the third floor of the Sapphire Complex bearing No. 6-3-713, Block-A, Amrutha Hills, Panjagutta, Hyderabad as illegal and contrary to the provisions of the A.P. Apartments Act, 1987 including Sections 6 and 28 thereof and further sought a direction to the respondents to forthwith remove all the illegal constructions made above the third floor of the said building and pass such other order or orders as this Hon"ble Court may deem fit and proper in the circumstances of the case.

8. On behalf of the appellant-second respondent, a detailed counter has been filed in the writ petition admitting the fact of selling flats to the writ petitioners. However, it is indicated in the counter that all necessary permissions from the competent authorities for raising four more storeys have been obtained in terms of the agreement entered into with the writ petitioners. The appellant-second respondent denied that it had violated the provisions of the A.P. Apartments Act and other relevant laws.

9. A learned single Judge of this Court before whom the Writ Petition No. 14216 of 1999 came up for consideration, during the course of its hearing, passed an order on 31-8-2001 constituting a three-man committee of Structural Engineers to submit a report as to what extent the appellant herein complied with the provisions of various Acts and rules made thereunder in reconstructing the Sapphire Complex and if any deviations of violation of rules are noticed, whether they are minor or major, more so on the 17 aspects referred to in the said order. Again, a consequential order of 12-9-2001 was also passed by the learned single Judge directing the Municipal Corporation of Hyderabad to furnish information whether this is the first case for the appellant in violating the relevant rules or is it in the habit of constructing buildings and approaching the authorities later for relaxation. The learned single Judge also directed various authorities which include the Director of Fire Services, Director of National Airport Authority and the Director General of Anti-Corruption Bureau to appear before the Court along with relevant files for complying with the directions issued by the Court in the said order. These two orders passed by the learned single Judge are assailed in this writ appeal on various grounds.

10. On behalf of the appellant who is the builder and second respondent in the writ petition, Sri E. Manohar, learned senior Counsel along with Sri K. Raghu Veer Reddy, Counsel raised two important contentions before this Court. The first and foremost submission made on behalf of the appellant is that the learned single Judge who is hearing the Writ Petition No. 14216 of 1999 had no jurisdiction to hear the writ petitions and since he had no jurisdiction, any order passed therein is without jurisdiction. According to the senior Counsel, as per the arrangement made by the Hon"ble Chief Justice of this Court, the learned single Judge is not assigned with hearing of the writ petitions. As per the notification issued by the Registrar (Judicial) of this Court on 10-1-2001, the matters which were coming before the Hon"ble Judges under the caption "for dismissal", and "for orders" shall get released and stand transferred to the concenied Benches as per the determination/ provision whenever there is a change of sitting of the Hon"ble Judges. Drawing our attention to the said notification, learned senior Counsel submitted that as per the arrangement of the sitting of the Hon"ble Judges from 4-6-2001 to till this date, the learned single Judge who is hearing the instant writ petition was entrusted with the work of hearing first appeals and CMPs, CRPs (Rent Control, Land Ceiling and Tenancy Laws) Final Hearing. Learned Counsel submitted that by virtue of this sitting arrangement of the Hon"ble Judges and the notification issued by the Registrar (Judicial) dated 10-1-2001, the Registry ought not to have posted the Writ Petition No. 14216 of 1999 before the learned single Judge. In other words, learned senior Counsel stated that since the said WP No. 14216 of 1999 was not a part-heard matter and no arguments were advanced thereon, before the learned single Judge, by virtue of the sitting arrangements from 4-6-2001 onwards, the learned single Judge has no jurisdiction to hear the said writ petition and ought not to have passed any order thereof. Elaborating his submissions, Counsel stated that from 4-6-2001, the learned single Judge was entrusted with the work of hearing First Appeals and CMPs, CRPs (Rent Control, Land Ceiling and Tenancy Laws) Final hearing and this arrangement is being continued till this day. By virtue of the same, the Writ Petition No. 14216 of 1999 which was not part-heard before the learned single Judge, should automatically get released and stood posted before the other Bench which is entrusted with the work of hearing the writ petitions and as such the learned single Judge has no jurisdiction to proceed with the hearing of the same. Laying emphasis on this submission, learned senior Counsel took us to a decision of the Supreme Court in State of Rajasthan Vs. Prakash Chand and Others, . While drawing our attention to several paragraphs from the said decision, learned senior Counsel stated that Chief Justice enjoys a special status not only under the Constitution but also under the Rules of the Court made in exercise of the powers conferred under Article 225 of the Constitution and that the Chief Justice alone can determine the jurisdiction of various Judges of the Court to hear a particular category of cases. Learned senior Counsel submitted that when such is the position, the learned single Judge who was assigned the work of hearing the first appeals and CMPs, CRPs etc., from 4-6-2001 ought not to have heard the Writ Petition No. 14216 of 1999 as he was not entrusted with

the provision of hearing the writ petitions. Counsel also submitted any order passed in the Writ Petition No. 14216 of 1999 by the learned single Judge who ceased to have jurisdiction to hear the writ petitions is without jurisdiction and liable to be set aside. Learned senior Counsel, therefore, seeks to set aside the order dated 31-8-2001 passed in the said writ petition and the consequential order passed therein on 12-9-2001 on the ground of lack of jurisdiction.

11. Alternatively, learned senior Counsel argued that even assuming without conceding that the learned single Judge had jurisdiction to entertain the Writ Petition No. 14216 of 1999, the two orders passed therein on 31-8-2001 and 12-9-2001 are clearly beyond the scope of the relief sought in the writ petition and as such, they are liable to be set aside on this ground also. Learned senior Counsel has drawn our attention to the nature of the relief sought in the writ petition and submitted that when the complaint of the writ petitioners is that the appellant herein is raising four more floors on the existing three storeyed complex by flouting and violating the provisions of the A.P. Apartments Act, the writ petitioners sought a direction to the Municipal Corporation and other concerned Government officials to remove the illegal constructions made above the third floor of the Sapphire Complex. However, according to the learned senior Counsel, the order passed by the learned single Judge dated 31-8-2001 and 12-9-2001 giving series of directions to various authorities have no nexus with the relief claimed in the said writ petition. Learned senior Counsel, therefore, submitted that as the orders passed on 31-8-2001 and the consequential orders dated 12-9-2001 passed by the learned single Judge in Writ Petition 14216 of 1999 are beyond the scope of the relief claimed in the said writ petition, they are liable to be set aside on this grounds also. Learned senior Counsel also pleaded when the learned single Judge is not assigned with the hearing of the said writ petition, he could not have heard the same.

12. On behalf of respondents 1 to 21/ writ petitioners, Sri M.V. Durga Prasad, learned Counsel took a preliminary objection as to the maintainability of this writ appeal. According to the Counsel, by order dated 31-8-2001, the learned single Judge has constituted a three-man expert committee to enquire into the allegations levelled by the writ petitioners against the appellant and submit a report for passing appropriate orders in the writ petition. Insofar as the order dated 12-9-2001 is concerned, it is intended for ascertaining the fact whether the appellant herein has complied with all the relevant rules and the provisions of the A.P. Apartments Act, 1987 and has permitted all the flat owners of the adjoining buildings to participate in the writ proceedings by bringing to the notice of the Court about various illegalities committed by the builder. Counsel submitted that these orders made by the learned single Judge during the course of hearing the writ petition are in the interest of justice and in order to understand the implication arising out of the allegations made by the writ petitioners, and as such they are not judgments within the meaning of clause 15 of the Letters Patent and therefore, the present writ appeal which is filed under clause 15 of the Letter Patent is not maintainable.

13. Learned Counsel further submitted that the learned single Judge was not only hearing the instant Writ Petition No. 14216 of 1999 but also is hearing other connected three more writ petitions and therefore, it became necessary for the learned single Judge to collect more information about the allegations made in those writ petitions also. Learned Counsel also contended that the instant writ petition is being heard intermittently by the learned single Judge since a year and therefore, it cannot be said that the matter is not "part-heard". Though it is not listed in the cause list that the matter is "part-heard", yet the docket proceedings recorded by the learned single judge would reflect that the matters were being heard by him intermittently since a year and the appellant has also participated in the said proceedings, and therefore, at this point of time, it is not open for the appellant to contend that the learned single Judge lacked jurisdiction. He submitted that the record by the Court is sacrosanct and it cannot be called in question in any proceedings and its correctness therefore cannot be doubted merely for the asking. In support of this submission, Counsel placed reliance on a decision of the Supreme Court in *D.P. Chadha v. Triyugi Narain Mishra and Ors.* (2001) 2 SCC 221. He also submitted that by notification issued on 10-1-2001, only the matters which as under the caption "for dismissal" and "for orders listed before the Hon"ble Judges were withdrawn and transferred to the concerned Benches as per the provision whenever there is change of sittings of the Hon"ble Judges and the matters listed under the caption "part-heard" were ordered to be retained by the Hon"ble Judges who had heard such matters in-part. Counsel submitted that the instant writ petition is connected with WP No. 14807 of 1990, 15374 of 1997, and 11648 of 1999 which are on the file of the learned single Judge and therefore, it cannot be said that the learned single Judge lacked jurisdiction to hear the same. It is nextly submitted by the Counsel that the appellant having participated in the proceedings before the learned single Judge all through, cannot now make a grievance in this writ appeal that the learned single Judge has no jurisdiction to hear the writ petition. Counsel submitted that the learned single Judge by the impugned orders dated 31-8-2001 and 12-9-2001 sought certain information which is relevant for the purpose of disposal of the said writ petition which has hurt the ego of the appellant as such, he filed the writ appeal on flimsy grounds as if the learned single Judge lacked jurisdiction. He submitted that the appellant has not even filed any affidavit swearing to the facts of the day-to-day posting of the writ petition and only vague and ill-founded allegations are made and therefore, the writ appeal cannot be entertained. In support of his varied contentions, learned Counsel also placed reliance on few decisions reported in *Naresh Shridhar Mirajkar v. His Lordship the Hon"ble Justice Tarkunde*, 1964 B L R 214, *M. Gopaiah Vs. Sri Malleswara Swami Labour Contract Co-operative Society Ltd. and Others*, , and in *Bandhua Mukti Morcha Vs. Union of India (UOI) and Others*, . Counsel, therefore, pleaded for dismissal of the writ appeal.

14. We have also heard the learned Standing Counsel appearing on behalf of the 22nd respondent - Municipal Corporation of Hyderabad, represented by its

Commissioner, in the writ appeal.

15. Insofar as the Administrative Powers of the Chief Justice including constitutions of Benches, providing rosters, transfer of cases including part-heard cases from one Bench of single Judge to a Division Bench for disposal, the Supreme Court in *State of Rajasthan's case* (supra) while referring to various decisions on the subject, has categorically held that such powers are within the prerogative of the Chief Justice. The Supreme Court further held that a single Judge or a Division Bench cannot give any direction to the Registry to post a particular case before it. Puisne Judges can only do that work which is allotted to them by the Chief Justice or under his direction. If any single Judge or Division Bench requires any case to be listed before it, it may seek an appropriate order from the Chief Justice for that. Therefore, the issue relating to the administrative powers of the Chief Justice to transfer and withdraw cases from one Bench to another and allotment of judicial work to Judges is no longer *res Integra* in the light of the decision of the Supreme Court in *State of Rajasthan's case* (supra).

16. However, in the instant case we are not dealing with the administrative powers of the Chief Justice in allotment of cases to Hon'ble Judges and constitution of Benches, etc. The principal question raised in this writ appeal is whether the learned single Judge has the necessary jurisdiction to hear the Writ Petition No. 14216 of 1999 though there is a change of sitting of the Hon'ble Judges by virtue of the Notification dated 10-1-2001 issued by the Registrar (Judicial) of this Court whereby the learned single Judge has not been assigned with the provision of hearing the writ petitions?

17. In order to satisfy ourselves about the allegation that the Writ Petition No. 14216 of 1999 is not made part-heard before the learned single Judge, we have perused the back files and records relating to the Writ Petition No. 14216 of 1999 which are placed before us. We have also perused the proceedings recorded by the learned single Judge on the proceedings-sheet/docket-sheet of the said writ petition. A perusal of the proceedings-sheet in WP No. 14216 of 1999, it is evident that the said writ petition is admitted on 12-7-1999 by another learned single Judge of this Court and interim direction was also issued in WPMP No. 17434 of 1999 on the same day. When WPMP No.1923 of 1999 was filed and the matter came up for consideration on 3-8-1999, it was adjourned to 10-8-1999. On 10-8-1999, the matter was adjourned to 16-8-1999. The matter again came up on 26-8-1999 and adjourned to 28-8-1999 and from that day to 30-8-1999. On 1-9-1999, an order was passed by the present learned single Judge on the basis of a representation made on behalf of Mr. Anantha Babu, learned senior Counsel, posting the case for orders on 8-9-1999. On 9-9-1999, the matter was directed to be listed on 14-9-1999. Thereafter, the matter has been coming up before the very same learned single Judge from time to time i.e., on 20-9-1999, 28-9-1999, 28-10-1999, 29-10-1999, 20-1-2000, 31-1-2000, 15-2-2000, 1-3-2000, and on 23-8-2001.

18. On 24-8-2001, the learned single Judge passed an order in the writ petition

that though the petitioner-association did not choose to make the Government as a party-respondent, since the Government is already made as a party-respondent in WP No. 14807 of 1999 relating to the same building complex, the petitioner-association was permitted to implead the Government as party-respondent and directed the matter to be posted on 28-8-2001.

19. On 28-8-2001, the learned single Judge made the following order:

A representation was made on behalf of the Sri Anantha Babu appearing for the 2nd respondent that since the Court impleaded the Government as a party-respondent, he being the Advocate General cannot appear in this case and instructed the clients to engage another Counsel and on that ground adjournment is sought. I cannot accede to the said request for the following reasons:

1. Though the Government as such is not made as a party in these proceedings, the Government was made as a party in WP No. 14807 of 1990 concerning the same complex.

2. In this writ petition when the 2nd respondent started making constructions, the plot owners", association along with the residents filed this writ petition and the specific stand of the respondent is that the Government agreed to regularise the unauthorised constructions in principle on payment of penal charges.

3. I heard the arguments in this case intermittently for over an year and I was adjourning the matter to suit the convenience of Mr. Anantha Babu, he being the Advocate-General. Now as Sri Anantha Babu is not in picture as he has given up the vakalath on 24-8-2001 and this fact was informed to the party on Saturday morning, there is sufficient time for the party to engage senior Counsel who can get ready in this matter by today.

4. This matter is clubbed with several other matters and this being one of the back cases, and if I adjourn the matter, it will disturb the Court work.

Be that as it may, I am prepared to accommodate the 2nd respondent to the extent that I will hear his Counsel after completion of the arguments of all the Counsel appearing in the batch cases."

20. The proceedings recorded by the learned single Judge in the Writ Petition No. 14216 of 1999 on 28-8-2001 would clearly go to show that the learned single Judge has been hearing the matter for over a year along with other cases. It is also evident that this writ petition is being heard by the learned single Judge from time to time even after the change in the allotment of work made by the Hon"ble Chief Justice on 4-6-2001 immediately after summer vacation. Thus it is clear from the above record of proceedings that the said writ petition is on the file of the learned single Judge for over a year and he has been hearing the matter intermittently.

21. Though there is a change in the allotment of work and sittings of the Hon"ble

Judges with effect from 4-6-2001 by virtue of which the learned single Judge has been allotted the work of final hearing of first appeals and CMPs, CRPs (Rent Control, Land Ceilings and Tenancy Laws), but the proceedings recorded by the learned single Judge in the docket-sheet would go to show that the instant writ petition has been heard by him intermittently by him for over a year. The Registrar (Judicial) issued a notification on 10-1-2001 notifying that all matters which are under the captions "for orders" and "for dismissal" not being part-heard, shall get released and stand transferred to the concerned Benches as per the determination/provision whenever there is change of sittings of the Hon"ble Judges. By virtue of the said notification, the matters which are under the caption "part-heard" before a particular Judge/Bench shall continue to remain as such despite the change of sittings of the Hon"ble Judges. However, having regard to the proceedings recorded by the learned single Judge on the docket-sheet of Writ Petition No. 14216 of 1999 on 28-8-2001 categorically indicating that he has been intermittently hearing the arguments in the said writ petition for over an year, there is no reason for us to ignore this fact recorded by the learned single Judge about the matter being heard by him from time to time.

22. The Supreme Court in D.P. Chadha's case (supra) has categorically held that the record of proceedings made by the Court is sacrosanct and the correctness thereof cannot be doubted merely for the asking, In the said decision, the Supreme Court has also referred to an observation made by the Supreme Court in State of Maharashtra Vs. Ramdas Shrinivas Nayak and Another, , wherein it was held thus:

"The Judges "record was conclusive. Neither lawyer nor litigant may claim to contradict it, except before the Judge himself, but nowhere else. The Court could not launch into inquiry as to what transpired in the High Court."

23. Having regard to the view taken by the Supreme Court in the above decision (supra) and in the light of the proceedings recorded by the learned single Judge on 28-8-2001 in the Writ Petition No. 14216 of 1999 that he has been hearing the arguments in the said writ petition intermittently for over an year, we are of the view that no further enquiry is required to be made by us to ascertain whether the said writ petition is treated as part-heard or not. We, therefore, hold that the learned single Judge has got jurisdiction to hear the Writ Petition No. 14216 of 1999 despite there is a change in the allotment of work and sitting of the Hon"ble Judges. We, therefore, reject the contention of the learned senior Counsel appearing on behalf of the appellant that the learned single Judge has no jurisdiction to hear the Writ Petition No.14216 of 1999.

24. Learned senior Counsel for the appellant alternatively submitted, even if it is held that the learned single Judge has got jurisdiction to hear the Writ Petition No. 14216 of 1999, the impugned orders dated 31-8-2001 and 12-9-2001 passed therein cannot be sustained as they are beyond the scope of the relief claimed in this writ petition.

25. To appreciate this contention, we shall now proceed to examine the scope of the Writ Petition No. 14216 of 1999. While narrating the facts in the initial paragraphs of this judgment, we have listed out the gist of the contentions raised in the said writ petition by the respondents 1 to 21/writ petitioners. The relief sought for by respondents 1 to 21 in the writ petition is to issue a writ, order or direction more particularly one in the nature of writ of mandamus declaring the action of the first respondent in allowing the second respondent to proceed with the illegal constructions above the third floor of the Sapphire Complex bearing No. 6-3-713, Block A, Amrutha Hills, Panjagutta, Hyderabad as illegal and contrary to the provisions of the A.P. Apartments Act, 1987 including Sections 6 and 28 thereof and further direction to the respondents to forthwith remove all the illegal constructions made above the third floor of the said building and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

26. It would appear from relief sought in the Writ Petition No. 14216 of 1999, the writ petitioners have grievances against the first respondent therein i.e., Municipal Corporation of Hyderabad, represented by its Commissioner for permitting the appellant-2nd respondent who has raised four more floors over the existing three storied Sapphire Complex, in violation of all the existing laws and provisions of the A.P. Apartments Act, 1987 and have sought consequential direction to all the respondents to remove the illegal structures made above the third floor of the said complex. The learned single Judge during the course of hearing the Writ Petition No. 14216 of 1999 has passed an order on 31-8-2001 constituting a three-man committee of Structural Engineers to submit a report as to what extent the appellant herein complied with the provisions of various Acts and rules made thereunder in reconstructing the Sapphire Complex and if any deviations or violation of rules are noticed, whether they are minor or major, more so on the 17 aspects referred to in the said order. Again, a consequential order on 12-9-2001 was also passed by the learned single Judge directing the Municipal Corporation of Hyderabad to furnish information as to whether this is the first case where the appellant has violated the relevant rules or is in the habit of constructing buildings and approaching the authorities later for relaxation. The learned single Judge also directed the Director of Fire Services, Director of National Airport Authority and the Director-General of Anti-Corruption Bureau to appear before the Court along with relevant files for complying with the directions issued by the Court in the said order.

27. In order to appreciate the contention advanced on behalf of the appellant that the said two orders dated 31-8-2001 and 12-9-2001 passed in WP No. 14216 of 1999 by the learned single Judge are beyond the scope of the relief claimed in the said writ petition, those two orders are extracted as under:

Order made on 31-8-2001 in Writ Petition No. 14216 of 1999 :

It is not in dispute that even before the Corporation issued permit for constructing three more floors on the existing structures, (a) Sapphire (b)

Emerald; and (3) Topaz, the second respondent-firm raised the structures and approached the Government for relaxation of almost all the rules that are applicable to multi-storied buildings. Now, the second respondent-firm wants to raise two more structures "D" and "E" to provide parking place and also to raise additional apartments. In the letter bearing No. 158/TP5/MCH/87/ 64 dated 14-9-1995, various violations committed by the second respondent-firm in raising the structures were pointed out. At the same time, this letter is silent on so many aspects. At a time when the second respondent-firm was making preparations for raising the structures on Sapphire, the Sapphire Residents Welfare Association as well as some of the residents filed this writ petition seeking a direction not to allow the second respondent-firm to proceed with the construction. If ultimately this Court comes to the conclusion that the Government is having power to regularize the illegal constructions, to what extent this power can be exercised keeping not only the laws governing the construction of multi-storied buildings but also the safety of the inmates will be the mute question. Hence, I am inclined to constitute a three man committee of structural engineers, one nominated by the Court, one nominated on behalf of the petitioners, and the other nominated on behalf of the second respondent-firm from out of the list of experts furnished by them to submit a report to what extent the second respondent-firm complied with the provisions of various Acts and rules made thereunder in reconstructing these buildings and if any deviations of violation of rules are noticed whether they are minor or major more so on the aspects referred hereunder in particular".

(1) What is the extent of the land held by the second respondent-firm and whether any of the land claimed by the second respondent-firm is occupied by encroachments:

(2) What is the extent of the land that was sold to the apartment owners after raising structures as per the approved plan and whether any extent of land is available to be conveyed to the people to whom they want to sell the apartments now constructed after leaving the open land required under the laws covering the construction of buildings;

(3) The number of exits that were provided to each of the buildings and whether the action of the second respondent-firm in connecting these three buildings at each of the floor land is permissible in law.

(4) The external stairs provided to buildings in case of fire or any other calamity are in compliance with the safety norms.

(5) Whether the structural designs of these structures are in conformity with the rules and also with respect to safe bearing capacity of the soil on all the sides taking into account the seismic factors of the area;

(6) Whether the second respondent-firm filed any applications seeking modification or alternation of the zoning regulations;

- (7) Whether the floor area ratio and open air space are satisfied;
- (8) Whether any lay-out is required for construction of more than one building in one and the same place and if so, whether any layout is obtained before taking up the construction;
- (9) Whether the external access provided is in conformity with the zonal regulations.
- (10) Whether the access provided to these buildings is in conformity with Regulation 8;
- (11) Whether the area covered by the buildings exceeds 50 per cent of the land;
- (12) Whether the structures are in conformity with the Multi-storeyed Building Rules 1981;
- (13) Whether required parking place was provided in each of the buildings for the use of residents as well as their visitors;
- (14) Whether the action of the second respondent-firm in letting out the premises for commercial activity in residential buildings can be permitted and whether it will interfere with the privacy of the inmates;
- (15) Whether the action of the second respondent-firm in raising two more buildings "D" and "E" to provide parking place and some more apartments is in conformity with the provisions of various Acts and rules and regulations made thereunder;
- (16) Any other useful information with regard to the buildings to this Court and;
- (17) The parties are given liberty to file work memos specifying the aspects on which the report of the committee is required and the committee shall consider those aspects also while submitting the report.

Prof. Sri D.S. Prakash Rao is nominated by this Court as Chairman and he will head this committee.

The other members are:

- (1) Prof. Dr. M. Venkataratnam nominated by the petitioner-association and;
- (2) Sri S. Satyanarayana, nominee of the second respondent-firm.

The staff involved in approving the multi-storied building plans in the MCH including the Chief Engineer and Chief City Planner and the staff deployed by the second respondent-firm in undertaking this work shall be present at the time of inspection of - the complex by the committee to furnish any information required by the committee. The Chairman of the Committee shall serve notice on all the parties fixing time and day for inspection of the premises on the Counsel representing both the parties. The parties are given liberty to fix the remuneration payable to the Engineers nominated from their respective side. As

far as the Chairman is concerned, I am fixing his fee at Rs.25,000/- tentatively and after execution of the warrant if he is claiming any additional amount for the work done by him it is open to him to do so by filing a petition before this Court. This amount will be paid by the second respondent-firm subject to the final orders to be passed at the time of disposal of the writ petition who have to bear the expenditure in getting the warrant executed.

As the arguments are going on this matter, I will be happy if the committee submits its report as expeditiously as possible at any rate not later than 10-9-2001.

Post on 10-9-2001."

Order made on 12-9-2001 in Writ Petition No. 14216 of 1999 :

By order dated 31-8-2001, I appointed three man committee of the structural engineers to submit a report to this Court to what extent the second respondent complied with the provisions of various Acts and rules made thereunder in reconstructing three buildings, (A) Sapphire, (B) Emerald and (C) Topaz, and the proposed buildings (D) and (E) for providing parking place and also for raising additional apartments and whether any deviations or violation of rules are noticed and if so whether they are minor or major and in particular the aspects referred to in the order.

The Committee submitted its report yesterday i.e. 11-9-2001. From the report it is seen that the Committee submitted the report with regard to the buildings i.e., (A) Sapphire and only in the form of answers to the aspects raised in the warrant of commission. It is also brought to my notice that that Sapphire-Residents-Welfare Association filed a representation before the committee at the time of inspection of the building. But the committee seemed to have not referred to the issues raised in that representation. One of the members of the committee, Prof. Venkataratnam, submitted a separate note while agreeing with the findings of other members of the committee. From the report it is also seen that the Municipal Corporation did not show either the approved plan or the permit under which the builder was permitted to take up construction. The Counsel states that the original file is with the ACB. The officials of the Municipal Corporation of Hyderabad are directed to approach the ACB and collect the original plans if necessary by substituting therewith the certified copies from ACB and place the original approved plan before the committee. On such approach, the ACB shall forthwith furnish the original plans that are available with them to the Municipal Corporation of Hyderabad.

From the report it is also seen that the Deputy Director of Survey and Land Records, Hyderabad did not respond to the notice issued by the Chairman of the committee to produce the plan of the site for S.Nos. 177, 174 and 175 of Khairatabad village. The action on the part of the Deputy Director of Survey and Land Records is nothing but contempt of this Court. Now, he is given one more opportunity to mend himself by not only to producing the maps before the

committee but also by assisting the committee in all respects with the expertise and the knowledge he possesses on the subject.

As the report of the committee is incomplete more so with reference to the two buildings i.e., (B) Emerald and; (C) Topaz, which are existing structures and the other two buildings i.e., (D) and (E) which are proposed to be constructed for providing parking and in trying to construct additional apartments and whether any deviations were made by the second respondent while constructing the apartments as per the approved plan. I direct the committee to go into all the aspects that are relevant and that endanger the habitation of the human beings in these apartments. If the learned Counsel for the petitioner requires any further information, he may file a work memo before the committee and the committee shall also submit its report on the issues raised by the petitioners. The committee shall also include in its report whether the open spaces earmarked were conveyed under the registered gift deed to the Government as required u/s 4(2)(c) of the A.P. Apartments Act, 1987.

The other two members of the committee shall give their reactions to the note submitted by Prof. Venkataratnam.

While submitting the report, the committee is requested to go into the revised plans that were submitted by the second respondent to the Municipal Corporation of Hyderabad and whether the constructions made are in accordance with the revised plans or whether any deviations are made.

The Municipal Corporation of Hyderabad shall file additional counter-affidavit as to for how many flats they are collecting house tax in the entire complex.

The Municipal Corporation of Hyderabad shall also provide information whether this is the first case for the builder or the builder is in the habit of constructing buildings and approaching the authorities later for relaxation.

As this being a multi-storyed building complex, whether any permission for layout was obtained as required u/s 3 of the Hyderabad Municipal Corporation Act and the zoning regulation No. 7 From the report of the expert committee it is also seen that the height of the building is 35 metres. But at the same time the National Airport Authority gave no-objection certificate for a building of 28 meters in height and the Director of Fire Services gave no-objection certificate for a building of 24-88 metres in height. Both the officers shall appear on 18-9-2001 along with the files to show how they issued no-objection certificate for a building which is not in conformity with the multi-storeyed building regulations and which is not in conformity with the height shown by the second respondent in his application.

During the course of hearing, it came to light that the ACB seized the original records from the Municipal Corporation of Hyderabad way back in the year 1997. They shall file counter affidavit with regard to the progress they made in the investigation. The Director-General, ACB shall appear before this Court on

14-9-2001 to explain how many more years he requires to complete the investigation in the matter.

The Counsel for the petitioner is directed to give paper notification in the daily newspapers "The Hindu" and "Eenadu" bringing to the notice of the residents in these three buildings about the hearing of the case to participate in the proceedings, if they wish to show-cause as to why this Court should not give a direction to pull down the structures if all laws governing the multi-storeyed buildings are found to have been violated. The Counsel for the petitioner shall also serve notice on the residents welfare associations, if they exist.

Post on 18-9-2001.

28. It is well settled, under Article 226 of the Constitution of India, the High Courts though have the power of judicial review, but such judicial review has to be exercised within certain parameters and cannot be stretched too far. In order to decide an issue which requires some expertise opinion in a particular field, Courts are no doubt entitled to seek assistance from the experts in such field. However, in the guise of deciding an issue, High Courts in exercise of the powers under Article 226 of the Constitution of India, cannot make a roving enquiry and rope in all sorts of unconnected issues and take on to decide as if they! are the main issues.

29. A plain reading of the order dated 31-8-2001 made by the learned single Judge in WP No. 14216 of 1999 makes it clear that a three-man Committee of Structural Engineers which has been appointed by the learned single Judge, has been assigned the task of submitting a report after examining as to what extent the second respondent complied with the provisions of various Acts and rules made thereunder in reconstructing three buildings (A) Saphire, (B) Emerald; and (C) Topaz, and the proposed buildings (D) and (E) for providing parking place and also for raising additional apartments any deviations or violation of rules are noticed and if so, whether they are minor or major, particularly with reference to the 17 aspects pointed out in the said order. It is an admitted fact that the instant Writ Petition No. 14216 of 1999 is filed only in respect of Saphire Complex complaining to this Court about the illegal constructions of four more storeys by the appellant over and above the three existing floors. The other two buildings, viz., Emerald and Topaz and the proposed buildings (D) and (E) are not the subject-matter of the said writ petition.

30. Insofar as the consequential order dated 12-9-2001 made in Writ Petition No.14216 of 1999 is concerned, the learned single Judge directed the three-man Structural Engineers Committee to examine whether in the existing structures viz., Emerald and Topaz and also the other two buildings which are proposed to be constructed, any parking space is provided and whether any deviations are made by the appellant while constructing the apartments as per the approved plan. The committee was also directed to include in its report whether the open spaces earmarked were conveyed under the registered gift deed to the

Government as required u/s 4(2)(c) of the A.P. Apartments Act, 1987. Further, the committee was also permitted to go into the revised plans that were submitted by the appellant to the Municipal Corporation to find out whether the constructions are made in accordance with the revised plans or any deviations are made. That apart the learned single Judge has required the Municipal Corporation of Hyderabad to provide information whether this is the first case for the builder or he is in the habit of constructing buildings and approaching the authorities later for relaxation. The Director-General of Anti-Corruption Bureau was also directed to appear before the Court to explain how many more years he requires to complete the investigation in the matter where original records from the Municipal Corporation of Hyderabad were seized in the year 1997 pertaining to the appellant. Lastly, the learned single Judge directed the Counsel for the petitioner to give paper notification in daily newspapers bringing to the notice of the residents of these three buildings about the hearing of the case to participate in the proceedings asking them to show-cause as to why this Court should not give a direction to pull down the structures if all laws governing the multi-storeyed buildings are found to have been violated.

31. Having regard to these directions issued by the learned single Judge as noticed above, it would undoubtedly appear that the learned single Judge has contemplated to hold a roving enquiry into the alleged irregularities committed by the appellant herein. Having regard to the averments made in the Writ Petition No. 14216 of 1999 and in the light of the relief claimed therein, we have no doubt in our mind to hold that the orders dated 31-8-2001 and 12-9-2001 passed by the learned single Judge in the said writ petition are clearly beyond the scope of the relief sought for in the writ petition and as such they are liable to be set aside. We accordingly set aside the impugned orders dated 31-8-2001 and 12-9-2001 made by the learned single Judge in WP No. 14216 of 1999.

32. We shall now deal with the preliminary objection raised by Sri M.V. Durga Prasad, Counsel appearing on behalf of the respondents 1 to 21 about the maintainability of this writ appeal. It is contended by him that the order dated 31-8-2001 and the consequential order dated 12-9-2001 made by the learned single Judge in WP No. 14216 of 1999 are not judgments within the meaning of clause 15 of the Letters Patent and as such, the writ appeal filed assailing the said orders is not maintainable. We are not inclined to countenance this submission. The general principle which is well accepted that if any orders passed either in an interlocutory application or in the writ petition itself or a final order passed therein affects the merits of the controversy between the parties in the proceedings, then such an order is appealable. In the instant case, the two orders passed by the learned single Judge in the writ petition on 31-8-2001 and 12-9-2001 are interlocutory in nature and as such they are appealable, as held by the Supreme Court in *M.S.R. Prasad Vs. Bommiseti Subba Rao and Others*, . In finding out whether the order is a judgment within the meaning of clause 15 of the Letters Patent it has to be found out that the order affects the merits of the action between the parties. A reading of the orders made by the learned

single Judge on 31-8-2001 and 12-9-2001 leaves no doubt in our mind that several unrelated information is called for from various authorities which have no nexus to the relief sought in the writ petition on a such calling of unconnected information would undoubtedly affect the merits of the action between the parties and therefore, we hold that the objection raised as to the maintainability of the writ appeal is unsustainable.

33. Learned senior Counsel appearing on behalf of the appellant submitted that though three more writ petitions are taken up along with the present writ petition, for consideration by the learned single Judge, but there is o nexus between them as the issues involved in them are different than the issues involved in the instant writ petition, we do not propose to go into that area of controversy as in our view whether the relief sought in those writ petitions has any bearing or not on the present writ petition need not be examined by us as the scope of this writ appeal is limited only to the extent whether the impugned orders passed by the learned single Judge are beyond the scope of the relief claimed in the writ petition.

34. For the above reasons, this writ appeal is allowed in the above terms. No costs.