
(2010) 09 AP CK 0035
In the Andhra Pradesh High Court
Case No : Writ Petition No. 17 of 2010

K. Vivek Reddy

APPELLANT

Vs

The State of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 30-09-2010

Acts Referred:

Andhra Pradesh Urban Areas (Development) Act, 1975 — Section 12, 12(1), 12(2), 3, 6
Constitution of India, 1950 — Article 21, 226
Hyderabad Municipal Corporation Act, 1955 — Section 14(1), 14(2), 32, 388, 389
Hyderabad Revised Building Rules, 2006 — Rule 10, 10.7, 6, 7.1, 7.2

Citation : (2010) 16 ALT 360

Hon'ble Judges : Nisar Ahmad Kakru, C.J.; Sanjay Kumar, J

Bench : Division Bench

Advocate : Vedula Venkata Ramana for B. Mahender Reddy, in W.P. No. 17 of 2010, K. Rama Krishna Reddy for Sanga Reddy, in W.P. No. 1259 of 2010, Party in Person in W.P. No. 1677 of 2010 and K. Ramakrishna Reddy for B. Venkat Rama Rao, in W.P. No. 6123 of 2010, for the Appellant; A.G. for Respondent No. 1, R. Ramachandra Reddy, for Respondent Nos. 2 and 3, E. Manohar for P. Kamalakar and B. Adinarayana Rao, for the Respondent

Final Decision : Allowed

Judgement

Nisar Ahmad Kakru, C.J.—The judgment handed down by my learned Brother, Shri Justice Sanjay Kumar, originates from a painstaking exercise. He has highlighted detailed facts arising out of the pleadings, as also the impact of the relevant statutes/rules/regulations. Undoubtedly a highly appreciable endeavour and I am in total agreement with the judgment in so far as it upholds the validity of Rule 7.1(xiv) of the Hyderabad Revised Building Rules, 2006, relating to the reduction of requirements and standards of the setback and change of use of the land but I could not persuade myself to fall in line with some of the conclusions, not because of tall thinking to present an innovative or a novel idea but to ensure real and substantial justice between the parties.

2. Another conclusion, I am in agreement with my learned Brother, is referable to the challenge thrown by medium of W.P. Nos. 1259 of 2010 and 1677 of 2010, to G.O.Ms. No. 539 Municipal Administration and Urban Development (II) Department dated 27.7.2007, permitting the change of use of land to the extent of 500 square meters in the premises bearing number D. No. 2-2-20/K/9 in Durga Bai Deshmukh Colony for residential purposes. The challenge has been turned down by my learned Brother and concurring therewith, I am tempted to make a little addition to the reasoning, in view of the importance of the issue. Before proceeding in that direction, reference to the stand of the Respondents depicting that in and around the colony several educational institutions having already come up, there remains no justification for construction of new schools in the colony which is well visualized by the residents of the colony, assumes relevance. The factual narration need not detain me because relevant issue is, whether power to change the land use is available and with whom. In this behalf reference to Sub-section (2) of Section 12 of the A.P. Urban Areas Development Act becomes imperative which reads:

12 Modifications to plan:

(1) The Authority may make such modifications to the plan as it thinks fit, being modifications which, in its opinion, do not effect important alterations in the character of the plan and which do not relate to the extent of land uses or the standards of population density.

(2) The Government may suo motu or on a reference from the Authority make any modifications to the plan, whether such modifications are of the nature specified in Sub-section (1) or otherwise.

(3) Before making any modifications to the plan, the Authority or, as the case may be, the Government shall publish a notice in such form and manner as may be prescribed inviting objections and suggestions from any person with respect to the proposed modifications before such date as may be specified in the notice and shall consider all objections and suggestions that may be received by the Authority or the Government.

(4) Every modification made under the provisions of this section shall be published in such manner as the Authority or the Government, as the case may be, may specify and the modifications shall come into operation either on the date of the publication or on such other date as the Authority or the Government may fix.

(5) When the Authority makes any modifications to the plan under Sub-section (1), it shall report to the Government the full particulars of such modifications within thirty days of the date on which such modifications come into operation.

(6) If any question arises whether the modifications proposed to be made by the Authority are modifications which effect important alterations in the character of the plan or whether they relate to the extent of land-uses or the standards of

population density, it shall be referred to the Government whose decision thereon shall be final.

(7) Any reference in any other Chapter, except this Chapter, to the Master Plan or the Zonal Development Plan shall be construed as a reference to the Master Plan or the Zonal Development Plan as modified under the provisions of this section.

3. The argument of the learned Counsel for the Petitioners, that the land use prescribed in the plan cannot be changed, has to be answered in the negative, for, the provision extracted. above, unambiguously confers power on the Government, to make modifications to the plan. Indisputably, it is the power of the Government to earmark the land in the plan for any particular purpose and it has equally the power to alter the purpose of the utilization of the land to yield to the legally valid demands of the people and time but power has to be exercised as per the procedure contained therein, envisaging publication of a notice inviting objections with respect to the proposed modifications which obligation stands duly discharged by the Respondents. There is no denying by the Petitioners that before permitting the change of land use, objections and suggestions from general public were invited vide Gazette Notification published in A.P. Gazette No. 226, Part-I Extraordinary, dt. 19.4.2007, to which Petitioners chose not to respond, consequently change of the land use was confirmed vide G.O.Ms. No. 539, dt. 27.7.2007. Significantly, adherence to the procedure established by law is not in dispute.

4. Now the areas of disagreement and I start with the main edifice of the argument of the learned Counsel for the Petitioner that the relaxation accorded vide Memo No. 14283/F2/2009-2 dated 5-10-2009 issued by the Government and authenticated by Ex. Officio Principal Secretary to the Government in Municipal Administration and Urban Development (F2) Department, is illegal. To appreciate the challenge in its right perspective, the Memo may be noticed;

GOVERNMENT OF ANDHRA PRADESH MUNICIPAL ADMINISTRATION AND URBAN DEVELOPMENT (F2) DEPARTMENT

Memo NO. 14283/F2/2009-2 Dated:05-10-2009

Sub: MA & UD Dept - GHMC - Proposal for construction of Residential Flats in H. No. 2-2-20/K/9, situated at Bagh Amberpet, Hyderabad -Instructions - Issued.

Ref: 1. From Sri Danam Nagender, M(MH&FW, ABWP and Hospital Services) D.O.Lr. No. 362/M (H & FW) 2009, dated 18.8.2009.

2. Letter of Sri M. Anjan Kumar Yadav, MP (Lok Sabha) dated 17.8.2009.

3. Representation of Managing Partner, Raja Rajeswari Builders dated 17.8.2009.

4. Govt. Memo NO. 14283/F2/2009-1, dated 25.8.2009.

5. From Commissioner & Special Officer, GHMC, Hyderabad Lr. No. 0492/CSC/TP-9/CZ/09 dated 2.9.2009.

The attention of the Commissioner and Special Officer, Greater Hyderabad Municipal Corporation, Hyderabad is invited to the references cited. He is requested to comply with the provisions of 7.1(xiv) of Revision Common Building Rules issued in G.O.Ms. No. 86 M.A. & UD(M1)Department dated 3.3.2006 for narrow plots in which the setbacks on sides may be compensated in front and rear setbacks so as to ensure that the overall aggregate setbacks are maintained in the site, subject to maintaining a minimum of 1 m. on each side, for according permission in this case.

5. Memo reproduced above is questioned on the ground that it has originated from the recommendation of a Member of the Parliament and the Minister who had indisputably recommended the disposal of the representation but such recommendation will not ipso facto debase the presumption of correctness of the Government memo, for, it has been issued in regular course of official business and presumption of correctness has to remain intact unless it is shown to be actuated by favoritism, oblique motive, or to have emanated from improper or irrelevant considerations and opinion to that effect cannot be formed on mere assertions but on adequate material which is wanting, therefore, such challenge to the memo is not sustainable.

6. Challenge is also thrown to the Government memo on the ground that the Commissioner and Special Officer, Greater Hyderabad Municipal Corporation Hyderabad (Commissioner GHMC Hyderabad for short), has passed the impugned order on asking of the Government which seems to have impressed my learned Brother, but we have to appreciate that there is a difference between exercise of revisional powers over orders passed by lower authority and exercise of revisional powers in the basic proceeding itself. In this behalf it is pertinent to narrate the background of the Government memo starting with the decision of the Building Committee, communicated to the Respondent 4 vide its communication dated 3.8.2009, providing for 2.5 meters set back on the sides to be compensated by additional requirement of 1 meter each in front and rear. Being dissatisfied, Respondent 4 represented to the Minister, which evoked his response vide memo dated 25.8.2009, addressed to the Commissioner GHMC Hyderabad, requiring the latter to examine the representation, which representation was examined and rejected. Consequent thereto, the Government came to be seized of the controversy, which was clinched by Memo No. 14283/F2/2009-2 dated 5-10-2009, requiring the Commissioner GHMC Hyderabad to comply with the provisions of 7.1 (xiv). The factual matrix makes it clear that it is a case where order is issued by the Government in exercise of revisional jurisdiction. We are, therefore, required to examine whether Government could exercise such power hence, there is a need to have a look at the amplitude of revisional powers of the Government, traceable to Section 679 of the Greater Hyderabad Municipal Corporation Act, 1955 (GHMC Act), which is reproduced hereunder:

Section 679: Powers of revision.

(1) The Government may at any time for the purposes of satisfying itself as to the correctness, legality, property or regularity of any proceeding or order passed by the Commissioner or any officer subordinate to him call for and examine the record and pass such orders with reference thereto as it thinks fit.

(2) (a) where the Government is of opinion that the execution of any resolution or order passed by the Corporation or the doing of any act which is about to be done or is being done by or on behalf of the Corporation is in contravention of or in excess of powers conferred by this Act or of any law for the time being in force or is likely to lead to a breach of peace it may by order in writing suspend the execution of such resolution or order or prohibit the doing of any such act:

Provided that before suspending such resolution under this Clause the Government shall communicate to the Corporation the grounds on which it proposes so to do, fix a reasonable period for corporation to show cause against the proposal and consider its explanation and objection, if any;

(b) A copy of such order shall forthwith be sent to the Corporation by the Government;

(c) The Government may at any time on representation by Corporation or otherwise revise, modify or revoke any order passed under Clause (a).

7. A glance at Section 679 would show that the Government is invested with the power to call for and examine the record, relating to any proceeding or order passed by the Commissioner GHMC Hyderabad, for the purposes of satisfying itself as to the legality, propriety, or regularity thereof and to pass such orders with reference thereto, as it thinks fit. Expression "as it thinks fit" speaks of wider and extensive scope of correctional jurisdiction of the Government, apparently among other things, enabling it to do justice. It is in exercise of the said power that Memo No. 14283/F2/2009-2 dated 5-10-2009 was issued, directing the Commissioner to comply with Clause (xiv) of Rule 7.1. Not only that, the memo further directs the Commissioner GHMC Hyderabad to compensate setbacks on the sides in the front and the rear and to maintain the overall aggregate setbacks. The direction to comply with Clause (xiv) read with the conditions therein, leaves no room for doubt that the order of the Commissioner GHMC Hyderabad, denying the benefit of Clause (xiv) of Rule 7.1 to the Respondent 4 is set at naught and the benefit of the clause is extended to him by the Government. To describe it aptly, order of the Commissioner has been substituted by the Government, exercising its revisional jurisdiction, which stands translated into action by the Commissioner. The Government memo also needs to be appreciated in the light of the fact that no particular words are prescribed by the statute/rules in which an order disposing of a revision petition by the Government is to be couched. Thus permission is not passed on the dictation of the Minister but in pursuance of the order passed by a superior authority, that is, the Government and in exercise of its revisional jurisdiction

and there is nothing wrong in such exercise of power.

8. The challenge also needs to be appreciated on the touchstone of Clauses (iii), (xii) and (xiii) of Rule 7.1 of the Hyderabad Revised Building Rules which are extracted hereunder:

(iii) The setbacks are to be left after leaving the affected area of the plot/site, if any, for road widening. In respect of owners who surrender land affected in road widening free of cost under G.O.Ms. No. 483, MA, dt. 24.8.1998 would be eligible for concessions in setbacks other than the front setback.

(xii) In case of plots 300 sq m and upto 750 sq m, it is permitted to transfer up to one metre of setback from one side to the other side, and in case of plots above 750 sq m, it is permitted to transfer up to 2 m of setback, which needs to be uniform at any given point, subject to maintaining of minimum building line in the front.

(xiii) In case of corner plots, the front setback shall be as per the building line for the respective abutting road width.

Perusal of clauses aforementioned unveils that setbacks excepting frontal ones can be given a go-bye to achieve the objective spelt out in the rules. Here comes the relevance of Clause (xiv) of Rule 7.1, which is extracted hereunder:

For narrow plots where the length is at least 4 times the width of the plot, the setbacks on sides may be compensated in front and rear setbacks so as to ensure that the overall aggregate setbacks are maintained in the site, subject to maintaining a minimum of 1 metre on each side.

A plain reading of (xiv) of Rule 7.1 Hyderabad Revised Building Rules makes it clear that the relaxation in set backs on sides is permissible in respect of a narrow plot subject to certain conditions which may be analyzed:

- (a) Length is at least 4 times the width of the plot.
- (b) Relaxation accorded in set backs on sides is compensated in front and rear.
- (c) A minimum set back of 1 meter on each side is maintained.
- (d) Overall aggregate setbacks are maintained in the site.

9. Although conditions summarized above are not even alleged to have been observed in breach, yet GHMC in its wisdom did not deem it proper to reduce the side setbacks to 1 meter by compensating the same on front and rear, giving cause to the aggrieved Respondent to approach the Government and the latter in exercise of its revisional jurisdiction directed GHMC to comply with 7.1 (xiv) by due observance to the conditions prescribed therein. It is true that Petitioners have averred that memo is illegal but without any supporting material. Thus, in absence of material it is just not possible to infer non compliance with the conditions stipulated by the rule. In the given facts and the rule position, I find no infirmity with the impugned Memo No. 14283/F2/2009-2 dated 5-10-2009,

issued by the Government, directing the Commissioner GHMC Hyderabad, to comply with the provisions of Rule 7.1(xiv).

10. Adverting to the view taken by my learned Brother that sub-division of the plot is not legal, reference to the provisions dealing with the sub-division, contained in Sections 388 to 391 of the Greater Hyderabad Municipal Corporation Act, 1955, becomes imperative and the provisions are reproduced hereunder:

388. Notice to be given to Commissioner of intention to lay out lands for building and for private streets:

Every person who intends

(a) to sell or let on lease any land subject to a covenant or agreement on the part of a purchaser or lessee to erect buildings thereon,

(b) to divide land (whether unbuilt or partly built) into building plots,

(c) to use any land or a portion thereof or permit the same to be used for building purposes, or

(d) to make or lay out a private street whether it is intended to allow the public a right of passage or access over such street or not, shall give written notice of his intention to the Commissioner and shall along with such notice, furnish a copy of the title deed of the land duly attested by a Gazetted Officer of the Government together with an urban land ceiling clearance certificate, in case the extent of land exceeds the ceiling limit and if it does not exceed the ceiling limit, an affidavit declaring that the total extent of land held by such holder, his or her spouse and unmarried minor children does not exceed the ceiling limit, pay the drainage betterment charges as fixed by the Commissioner from time to time submit plans and Sections, showing the situation and boundaries of such building, land and the site of the private street, if any, and also the situation and boundaries of all other lands of such person of which such building, land or site forms a part and the intended development, laying out and plotting of such building, land including the dimensions and area of each building plot and also intended level, direction, width, means of drainage, paving, metalling and lighting of such private street, the provisions of planting and rearing of trees, beside such private street and the height and means of drainage and ventilation of the building or buildings proposed to be erected on the land, and if any building when erected will not abut on a street then already existing or then intended to be made as aforesaid the means of access from and to such building and the manner of the paving, metalling, draining and lighting of such means of access

389. Commissioner may call for further particulars:

If any notice u/s 388 does not supply all the information which the Commissioner deems necessary to enable him to deal satisfactorily with the case or if any such notice given for any or all of the purposes mentioned in Clause (a), (b) or (c) of

the said section does not contain any proposal or intention to make or lay out a private street, he may, at any time within thirty days after receipt of the said notice, by written notice require the person who gave such notice

(a) to furnish the required information together with all or any of the prescribed documents, or

(b) to revise any or all of the schemes submitted under the said Clause (a), (b) or (c) so as to provide for the making or laying out of a private street or private streets of such width or widths as he may specify in addition to or in substitution for any means of access proposed to be provided in such scheme or schemes and to furnish such further information's and documents relating to the revised scheme or schemes as he may specify.

390. Commissioner may require plans to be prepared by licensed Surveyors:

The Commissioner may decline to accept any plan, section or description as sufficient for the purposes of Section 388 or 389 which does not bear the signature of a licensed Surveyor in token of its having been prepared by such Surveyor or under his supervision.

391. Laying out of land, dimensions and area of each plot, laying out of private streets and heights of buildings to be determined by Commissioner:

(1) The laying out of land for building the dimensions and area of each building plot, the level, direction, width and means of drainage of every private street, the kind and number of trees to be planted and reared beside such streets and the height and means of drainage and ventilation of, and access to all buildings to be erected on such land or on either side of such street shall be fixed and determined by the Commissioner subject to such general directions as the Standing Committee may give in this behalf from time to time with the general object of securing sanitary conditions, amenity and convenience in connection with laying out and use of the land of any neighboring lands and also with the object that the proposed private street may not conflict with any arrangements which have been made or which are, in the opinion of the Commissioner, likely to be made for carrying out any general scheme of new streets or of improvements of existing streets in the locality:

Provided that if, within sixty days after the receipt by the Commissioner of any notice u/s 388 or of the plans, sections, descriptions, scheme or further information, if any, called for u/s 389 the disapproval by the Commissioner with regard to any of the matters aforesaid specified such notice has not been communicated to the person who gave the same proposals of the said person shall be deemed to have been approved by the Commissioner.

(2) When the Commissioner signifies in writing to the said person his approval of the said work under certain conditions or without any conditions, or when the said person may at any time within one year from the date of the delivery of the notice u/s 388 to the Commissioner, proceed with the said work in accordance

with the intention as described in the notice or in any of the documents aforesaid and in accordance with the conditions, if any, imposed by the Commissioner but not so as to contravene any of the provisions of this Act or of any bye-law made thereunder.

11. Section 388 consists of several parts, dealing with different situations. Part (a) makes it obligatory upon a person to give notice of his intention to sell the land and part (b) requires a person inclined to sub-divide his plot to give notice to the Commissioner of his intention to sub-divide the plot. The person in the given facts of the case to which section refers is the original owner, namely Dr. Sayeed who sold the land to the Respondents 4 and 5 by virtue of two separate sale deeds which got verified by the Corporation and only then received the applicable sub-division charges. Thus undisputed factual position is that the Respondents 4 & 5 have purchased plots, one each, individually by virtue of separate sale deeds from the original owner and the said sale deeds are neither challenged nor declared invalid by the civil court and there is no dispute inter se the said Respondents over the identification, measurement and sub-division of their individual plots and it is for the original owner, who is not impleaded by the Petitioners as a party, to explain whether he had given notice of his intention to the Commissioner and it is not for the purchasers (Respondents 4 and 5) who have come in possession of narrow plots by dint of the sale deeds. More so, it is not in dispute that in view of the individual dimensions both the plots separately fall within the ambit of narrow plots in terms of the impugned rule, thus a million dollar question that has arisen, is whether requirement of sub-division can be foisted on the Respondents 4 & 5 but amazingly there is no endeavour whatsoever on the part of the Petitioners to assist the court to answer this question against the subdivision and what appears to have influenced my learned Brother to refuse to accept the sub division, is the legal proposition that the Commissioner GHMC Hyderabad, being himself a delegated could not have sub-delegated the power of sub-division of plots to the zonal offices. If that be so, it has to be followed; being a sound proposition of law but it is other way round as is evident from the fact that no power to sub-divide the plot was ever delegated by the Commissioner to the Zonal offices. It is true that GHMC has stated that power to collect sub-division charges was delegated. Apparently it has employed an incorrect expression, yet it makes no difference because Clause (a) Section 388 which envisages division of land (whether un-built or partly built) into building plots does not require the Commissioner GHMC to collect the charges muchless himself. A plain reading of Sections 388 to 391 of Greater Hyderabad Municipal Corporation Act, 1955 reveals that collection of subdivision charges is unknown to them, suggesting that direction to receive the sub-division charges is nothing but a part of departmental procedure and at best assignment of collection of charges can be defined as an authorization to collect the charges. Suffice it to say that such authorization cannot by any stretch of imagination amount to sub-delegation of power of sub-division.

12. What has further prevailed upon my learned Brother is the absence of grant

of permission for the sub-division by the Commissioner. What is the impact of absence of permission, admitted facts having direct bearing thereupon may be noticed. Respondent 4 filed application on 6.6.2009 (date reflected by GHMC on first page of file) for grant of permission. In response thereto, he was informed by GHMC vide its communication dated 3.8.2009 to maintain 2.5 meters setback on the sides as against the required 3.5 meters and without communicating anything against sub-division, building permit was issued by GHMC in his favour vide No. 6/72 dated 3.12.2009, permitting him to undertake construction of residential building with stilt for parking plus five upper floors of 14.95 meters height (excluding the stilt floor and the structures on the terrace) limiting side setback to 1 meter on each side. Respondent 5 applied for building permit on 10-7-2009, sub-division charges were paid by him on 4-8-2009 and permission was granted in his favour on 10-8-2009 vide permit No. 4/72 for construction of 4 floors and stilt. These facts I have narrated to show that instead of rejecting the requests of the Respondents 4 and 5 for sub-division, they were asked to deposit the sub-division charges. On top of it, the sub-division affected is admitted by GHMC. In the given facts, proviso to Section 391 reproduced above assumes significance which provides that when one seeks sub-division through a notice and it is disapproved, such decision has to be communicated to such person. It casts an obligation on the Commissioner to pass the order one way or the other and if order rejects the request of sub-division, it has to be communicated within sixty days to the person seeking sub-division and in case disapproval of the request is not communicated within the stipulated period of sixty days, the request shall be deemed to have been granted, on the expiration of the period of sixty days. Admittedly disapproval was not communicated to the Respondents because their request was not rejected. Assuming for the sake of argument that the request was rejected but was not conveyed, in that eventuality permission is deemed to have been granted by the Commissioner in terms of proviso to Sub-section (1) Section 391. Hence absence of a written permission cannot render the sub-division invalid.

13. For what is stated above, I hold that;

- (a) Rule 7.1(xiv) of the Hyderabad Revised Building Rules, 2006 does not suffer from any illegality.
- (b) G.O.Ms. No. 539, dt. 27.7.2007 confirming change of the land use is legally valid.
- (c) Relaxation accorded vide Memo No. 14283/F2/2009-2 dated 5-10-2009 issued by the Government in terms of Rule 7.1(xiv) of the Hyderabad Revised Building Rules, 2006 is legally valid and
- (d) Sub-division of plot on the strength of deemed proviso to Sub-section (1) Section 391 is also legally valid.

14. Something more that has weighed with my learned Brother to declare the impugned Building Permits illegal is the non availability of joint open space for

maneuverability of fire vehicles in terms of condition No. 33 of Building Permit favouring Respondents 4 & 5 which reads;

33. Structural Safety and Fire Safety Requirements shall be the responsibility of the Owner, Builder/Developer, Architect and St. Engineer to provide all necessary Fire Fighting installations as stipulated in National Building Code of India, 2005 like;

i) To provide one entry and one exit to the premises with a minimum width of 4.5. meters and height clearance of 5 meters.

ii) Provide fire resistant swing door for the collapsible lifts in all floors.

iii) Provide Generator, as alternate source of electric supply.

iv) Emergency lighting in the corridor/common passages and stair case.

v) Two numbers water type fire extinguishers for every 600 sq. mts of floor area with minimum of four numbers fire extinguishers per floor and 5k DCP extinguishers minimum 2 Nos. each at Generator and Transformer area shall be provided as per I.S.I, specification No. 2190-1992.

vi) Manually operated and alarm system in the entire buildings;

vii) Separate Underground static water storage tank capacity of 25,000 lits. Capacity.

viii) Separate Terrace Tank of 25,000 lits. Capacity for Residential buildings.

ix) Hose Reel, Down Corner.

x) Automatic Sprinkler system is to be provided if the basement area exceed 200 sq. mts.

xi) Electrical Wiring and installation shall be certified by the electrical engineers to ensure electrical fire safety.

xii) Transformers shall be protected with 4 hours rating fire resist constructions.

xiii) To create a joint open spaces with the neighbours building/premises for maneuverability of fire vehicles. No parking or any constructions shall be made in setbacks area.

For purposes of maneuverability of fire vehicles, Clause (xiii) of condition 33 calls for reference which requires an owner to create joint space with neighbours building/premises. Neighbours may or may not agree, therefore, it is for the enforcing agency to insist upon the requirement which power flows to it from Rule 7.2(vii) of Hyderabad Revised Building Rules, 2006, reproduced hereunder;

Provision of Joint Open Space in certain cases:

With a view to facilitating fire and emergency operations in a building site and adjoining sites, the Fire Service Department, in addition to the minimum

setbacks to be left, may insist on the owner for providing joint open space between the proposed site and adjoining sites for mutual use during fire and emergencies. The joint open space shall be reckoned from building edge to building edge (inclusive of any type of projections). Such joint open space shall not be less than 6 m. in respect of non-high rise buildings and not less than 9 m. in respect of high-rise buildings.

Such joint open space shall be kept unobstructed and open to sky and no permanent compound wall of masonry or civil construction would be allowed. The compound wall, if any, shall be of fencing type or collapsible type. The greenery and landscaping shall be of soft type with lawns, grass, creepers and climbers and shrubs variety of plants and mountable in cases of emergencies. The joint open spaces shall be maintained to the satisfaction of the Fire Service Department

A plain reading of the rule evinces that joint spaces are to be maintained to facilitate fire and emergency operations in a building site and adjoining sites. These open spaces have to be provided to the satisfaction of the Fire Service Department. How much space is required and whether space on one side of the building can suffice movement of fire engines during emergencies is an area entirely to be embarked upon by the experts. That is what rule mandates as is discernible from the expression "may insist on the owner" used in the rule. Thus it emerges that joint space is to be provided if the Fire Service Department insists for it and it would insist for space if there is a need and necessity. There may or may not be a need for joint space and it may be a requirement in some cases but not in all as is apparent from the very head note of the provision and I quote "Provision of Joint Open Space in certain cases". That apart, the counter filed by the GHMC reveals that the Building permits were sanctioned after due application of mind and by adherence to the rules and regulations, hinting at a conclusion by the GHMC that the construction in question will not prevent the access to the fire engine. Then there is nothing before us to show that the Fire Service Department has insisted on a particular space from a particular side of the proposed construction to be maintained as joint open space, obviously in absence of insistence by the said Department, it is not possible to say that movement of fire vehicles is not possible. In the aforementioned backdrop, I regret, for having failed to persuade myself to agree with the interpretation placed by my learned Brother, on the scope and implications of Rule 7.2(vii).

15. This brings me to the finding returned by my learned Brother that in view of minimum distances stipulated in Table V made applicable to non high rise buildings covered by Rule 7.1 by virtue of Rule 7.1(xv), it was not permissible for GHMC to consider the application of Respondent 4 in violation thereof. The provisions referred may be noticed;

7.1 Minimum setbacks & Height Stipulations for all types of non-high rise buildings

(Buildings below 18 m height inclusive of stilt/parking floor)

(xv) The space between 2 blocks shall be as given Table V.

10.7 GROUP DEVELOPMENT SCHEMES & GROUP HOUSING SCHEMES:

Group Housing Schemes are reckoned as Apartment blocks in two or more blocks. These could be high-rise or simple walk-up units. Group Development Schemes are reckoned as Building in two or more blocks in a campus or site, and could be normal height buildings or high-rise blocks or combination of both.

(a) The open spaces/setbacks for such type of development shall be as follows:

TABLE V Distance to be Distance Height of building maintained from between two block periphery to blocks building block Up to 10 m* 3M 2m Above 10 m & up to 15 4m 3m m* 15m & upto 18 m** 5m 4m Above 18m As per alround setbacks required under High-rise buildings given in Table IV

Going by the language of Clause (xv) Rule 7.1, there can be no two opinions that space is to be maintained between 2 blocks as per Table V, but Table V can be applied if a plot falls within the ambit of Clause (xv) and to appreciate its application or otherwise, it needs to be noticed that Table V finds place under the caption of Rule 10.7 which relates to Group Development Schemes and Group Housing Schemes. As is clear from the rule itself, both the schemes refer to blocks two or more in number and the rule makes the definition of block determinable by reference to apartment blocks but neither "block" nor "group" is defined in the rules. Therefore, I find no option but to take a look at the dictionary meaning extracted hereunder:

Block 2. a large single building sub- Oxford Dictionary divided into separate flats or Thesaurus and offices. Wordpower Guide 3. a group of buildings bounded First Indian Edition at by four streets. page 122. A group of buildings bounded by The Chambers intersecting streets; a large Dictionary 10th Edition building containing individual units at page 160 of accommodation etc., a building lot; an extensive area of land for settlement Group 1. A number of people or things Oxford Dictionary located, gathered, or classed Thesaurus and together. Wordpower Guide First Indian Edition at page 565. A number of people or things The Chambers together, a number of individual Dictionary 10th Edition things or people related kn some at page 660 definite way differentiating them from others

The natural meaning as given in the dictionary, to the words "Block" and "Group" used in the rule, speak of plurality of buildings and plurality of people, suggesting exclusion of individual narrow plots from their ambit but the dictionary meaning may not help to arrive at a definite conclusion, therefore, there is a necessity for a glance at other provisions to understand what these words actually convey. In this behalf, Rule 7.1 Table III Clause (xiv) of the Hyderabad Revised Building Rules, 2006, assumes significance and is extracted hereunder;

Table III

Permissible Height and setbacks for Non-High rise Buildings.

xx xxx xx (xiv) For narrow plots where the length is at least 4 times the width of the plot, the setbacks on sides may be compensated in front and rear setbacks so as to ensure that the overall aggregate setbacks are maintained in the site, subject to maintaining a minimum of 1 metre on each side.

16. The rules deal with different plots of different sizes, high-rise, non high rise, blocks, narrow plots etc. and there is no uniform application to all the cases, which cannot be said to be impermissible because State is empowered to regulate the constructional activities being the best judge to understand and appreciate correctly the need of its own people and by dint of Rule 7.1 Clause (xiv) narrow plot owners are treated differently on some reasonable basis and constitute a separate Class.

17. Rule 7.1 Clause (xiv) having been held intra vires the Constitution, therefore permission has to sustain. Nevertheless violation if any is actionable. Reverting to the factual matrix, it is averred that relaxation in setback will deprive the Petitioners of light and air. The contention is rebutted by the Respondents giving rise to several questions of fact one being;

(i) Whether construction in question will deprive the Petitioners of their right to light and air.

18. The nature of the rights claimed by the Petitioners is easementary and civil, giving rise to serious disputes, a finding whereof depends on elaborate oral evidence which is not possible in exercise of writ jurisdiction because these writ petitions are sought to be decided by the Petitioners on the basis of pleadings only by support of affidavits which are controverted by the Respondents and writ court not being a fact finding court, I am therefore loath to return findings of fact and leave the same open to be adjudicated upon, provided Petitioners choose to approach the appropriate forum.

19. Now a word about the violations allegedly committed by the writ Petitioner in W.P. 1677 of 2010 in the set backs on the Sourthern, Eastern and Western sides. Having noticed the breach of obligations on the part of the above said writ Petitioner, my learned Brother has granted liberty to GHMC to take necessary action against the illegal construction if any made by the Petitioner and while observing so he has declared the Petitioner disentitled to claim immunity on account of absence of objections and delay. In the light of attending facts and circumstances of the case, I record my concurrence with the view taken. At the same time I would like to observe that the deemed sub division would not entitle the Respondents to use the land without observing the norms/standards which would include providing passage for movement of a fire engine and any violation, the State/GHMC shall be free to deal with non compliance of the conditionalities, as also provisions of the rules.

20. Regarding attempt of the Petitioners to bring the cause urged in these petitions within the scope of public interest by styling the petitions as public interest litigation, I am to say, that attempt has aborted on the face of the pleadings because material forming part of the pleadings evinces that the writ Petitioners aim at enforcement of their personal rights under the guise of public interest litigation. Nonetheless the Government is required to deal with the violations, be it on the part of the Petitioners or the Respondents 4 and 5. Accordingly the official Respondents - the State and the Commissioner and Special Officer, Greater Hyderabad Municipal Corporation Hyderabad are directed to address the violations to undo the wrong, if any, of course in accordance with law and, this direction, I believe, will take care of the grievances of both the parties. However, I need not remind the Government and the GHMC that the power vested in them is expected to cater to the needs of the residents in an orderly manner and it goes without saying that they are not powerless to take necessary steps to mitigate the genuine sufferings of the aggrieved by due adherence to law and the principles of uniformity of administration, fairly and reasonably.

21. Situated thus interference with the impugned building permits is declined and writ petitions as also miscellaneous petitions are disposed of in the light of the observations aforementioned. Interim directions are vacated.

Sanjay Kumar, J.

22. Rule 7.1(xiv) of the Hyderabad Revised Building Rules, 2006 provides for relaxation of the prescribed setbacks on the sides of "narrow plots" subject to a minimum of one meter. This Rule is under challenge in these writ petitions.

23. The Petitioners also assail the building permits granted to Raja Rajeshwari Builders (Respondent 4 in the writ petitions) and Lina Bollapragada (Respondent 5 in the writ petitions) under the aegis of this Rule.

24. W.P. Nos. 1259 of 2010 and 1677 of 2010 further call in question G.O.Ms. No. 539, Municipal Administration and Urban Development (II) Department, dated 27.07.2007, whereby the Government of Andhra Pradesh permitted change of land use from special reservation (High School) to residential in respect of 500 square meters in the premises bearing Door No. 2-2-20/K/9, Durga Bai Deshmukh Colony, Bagh Amberpet, Hyderabad. W.P. No. 6123 of 2010 poses an additional attack on the sub-division of the premises bearing Door No. 2-2-20/K/9 into two plots thereby enabling grant of separate permits to Respondents 4 and 5 for constructing two independent apartment buildings.

25. Durga Bai Deshmukh Residential Colony in Bagh Amberpet area of Hyderabad City was developed under Lay Out Plan No. 42/63. Plot No. 7 in Block-K of this layout forms the subject matter of the present litigation. This plot bears Door No. 2-2-20/K/9, admeasures 1197 square yards equivalent to 1000 square meters and abuts a 48 feet (14.63 meters) road.

26. Under registered sale deed bearing Document No. 2444/2005 dated 01.08.2005, Dr. Syed Omer, the ostensible previous owner of this plot sold a part thereof, being an extent of 598.5 square yards equivalent to 500 square meters to Lina Bollapragada, Respondent 5. Under registered sale deed bearing Document No. 2445/2005 dated 01.08.2005, Dr. Syed Omer transferred the remaining 598.5 square yards equivalent to 500 square meters of the Subject premises to Raja Rajeshwari Builders, Respondent 4. Respondent 5 entered into a development agreement with Respondent 4 under registered document bearing No. 2465/2005 dated 03.08.2005. It is stated that the said agreement was cancelled under registered document bearing No. 965/2009 dated 22.04.2009. Simultaneously, Respondent 5 sold an extent of 6.41 square yards equivalent to 5.36 square meters, out of the extent purchased by her, to Respondent 4 under registered sale deed bearing document No. 966/2009 dated 22.04.2009. Thus, Respondent 4 became the owner of 505.36 square meters and Respondent 5, the owner of 494.64 square meters, of the subject premises. Respondents 4 and 5 applied for and obtained separate building permits in respect of the aforesaid extents purchased by them.

27. Respondent 4 submitted building application dated 09.06.2009 in the office of the Commissioner, Greater Hyderabad Municipal Corporation (GHMC) for constructing a residential apartment building (stilt floor for parking plus five upper floors) in the extent of 505.36 square meters being a plot with a width of 35 feet 5 inches (10.78 meters) and a length of 154 feet (46.94 meters).

28. The application of Respondent 4 was placed before the Building Committee comprising the Commissioner and Special Officer, GHMC-cum-Ex-Officio Principal Secretary to Government, Municipal Administration Department; the Additional Commissioner (Planning), GHMC; the CPO, Hyderabad Metropolitan Development Authority and the Chief City Planner (CCP), GHMC. In the meeting held on 10.07.2009, the Building Committee examined the application and sought resubmission of the same subject to certain conditions. With regard to provision of setbacks, the Building Committee exercised discretion under the impugned Rule and directed maintenance of 2.5 meters setback on the sides as against the required 3.5 meters by transferring the additional Requirement of one meter on each side to the front and the back of the plot. The same was communicated to Respondent 4 by the GHMC under its letter dated 03.08.2009. Respondent 4 submitted application dated 17.08.2009 to the Minister for Municipal Administration, Government of Andhra Pradesh, aggrieved by the direction of the GHMC to maintain a setback of 2.5 meters on the sides instead of the minimum one meter permissible under the impugned Rule. The application of Respondent 4 was supported by the recommendatory letters of a Member of Parliament and a Minister. Taking into consideration the aforesaid correspondence, the Municipal Administration and Urban Development Department vide its memo dated 25.08.2009 requested the Commissioner and Special Officer, GHMC, to examine the representation of Respondent 4 under Rule 7.1(xiv) and submit a report. Responding thereto, the GHMC addressed letter dated 02.09.2009 to the

Government pointing out that the Building Committee had already examined the proposal submitted by Respondent 4 and after exercising discretion under Rule 7.1(xiv), it had fixed the side setbacks at 2.5 meters by compensating the required additional one meter on each side in the front and the rear setbacks. It was therefore pointed out that the plea of Respondent 4 had been considered under the relevant rule. In response, the Municipal Administration and Urban Development Department of the Government issued memo dated 05.10.2009 "calling" upon the Commissioner and Special Officer, GHMC, to comply with the provisions of Rule 7.1(xiv) of the Revised Building Rules for according permission in the case. Thereupon, Building Permit No. 6/72 dated 03.12.2009 was sanctioned by the GHMC permitting Respondent 4 to undertake construction of a residential apartment building with stilt for parking plus five upper floors of a height of 14.95 meters (excluding the stilt floor and the structures on the terrace), providing relaxation of setbacks on the sides by limiting it to the minimum one meter on each side under the impugned Rule.

29. Respondent 5 submitted building application dated 06.07.2009 through her registered GPA, MSVS Durga Prasad, for permission to construct a residential apartment building (stilt floor for parking plus four upper floors) in the extent of 494.64 square meters in her plot with the same door number. The dimensions of the plot are 34.5 feet (10.55 meters) in width and 154 feet (46.94 meters) in length. This application was submitted to the Assistant City Planner, Circle-9, GHMC. Respondent 5 was granted permission under building permit No. 4/2 dated 10.08.2009 by the Assistant City Planner, Circle-9, GHMC permitting construction of a residential apartment building (stilt floor for parking plus four upper floors) of a height of 11.80 meters (exclusive of the stilt floor and the structures on the terrace). This building was also granted maximum relaxation in so far as setbacks on the sides are concerned, giving benefit under the impugned Rule.

30. It appears that the subject plot No. 7, Block-K in the layout was ear-marked for a special reservation use (High School) in the notified Zonal Development Plan of the Municipal Corporation of Hyderabad area. Under G.O.Ms. No. 539, Municipal Administration & Urban Development (II) Department, dated 27.07.2007, the Government of Andhra Pradesh acting upon the application of Respondent 4 permitted the change of use of an extent of 500 square meters in the premises bearing D. No. 2-2-20/K/9 in Durga Bai Deshmukh Colony for residential purpose subject to the conditions enumerated therein. This G.O. is under challenge in W.P. Nos. 1259 of 2010 and 1677 of 2010.

31. The sub-division of the premises bearing D. No. 2-2-20/K/9 of Durga Bai Deshmukh Colony into two, thereby enabling the sanction of two multi-storied apartment buildings under the impugned permits is challenged in W.P. No. 6123 of 2010.

32. Heard Sri K. Ramakrishna Reddy, learned Senior Counsel appearing for the Petitioner in W.P. No. 17 of 2010 and as a party-in-person in W.P. No. 1677 of

2010, Sri Vedula Venkata Ramana, learned Senior Counsel for the Petitioner in W.P. No. 1259 of 2010, Sri B. Venkat Rama Rao, learned Counsel for the Petitioner in W.P. No. 6123 of 2010, the learned Advocate General for the State, Sri R. Ramachandra Reddy, learned Standing Counsel for the GHMC, Sri E. Manohar, learned Senior Counsel representing Respondent 4 and Sri B. Adinarayana Rao, learned Counsel for Respondent 5.

33. At the outset it may be noticed that the Petitioners in W.P. Nos. 17, 1677 and 6123 of 2010 claim to be personally affected by the proposed construction under the impugned building permits as they occupy plots neighbouring the subject premises. W.P. No. 1259 of 2010 is filed by the founder member and Secretary of the Durga Bai Deshmukh Colony Welfare Association and he claims to be litigating in public interest. Though W.P. No. 17 of 2010 was filed originally espousing a private cause, a miscellaneous application in WPMP No. 1731 of 2010 was filed seeking to introduce a better affidavit, wherein the Petitioner, being the son of the Petitioner in W.P. No. 1677 of 2010, sought to project that the lis was filed in public interest. However, no orders were passed upon this WPMP. W.P. No. 1677 of 2010 filed by the Senior Counsel, Sri K. Ramakrishna Reddy as a party-in-person, also professes to be in public interest wherein he states that he is not claiming any personal interest in the subject matter of the plot and is acting in public interest to safeguard the orderly development of the locality. The Petitioner in W.P. No. 6123 of 2010, a neighbour, does not profess to be litigating in public interest. The bona fides of the Petitioners are under attack by Respondents 4 and 5 on various grounds.

34. Technicalities apart, the matter requires consideration keeping in mind the larger issue involved i.e. the validity and implementation of the impugned Rule which has a wide and far reaching impact in terms of construction activity in the State of Andhra Pradesh. It may be noticed that the impugned Rule has general application, owing to the extension of these rules to various other cities and towns in the State. During the hearing, the Petitioner in W.P. No. 1259 of 2010 chose to abandon his challenge in so far as the validity of the rule is concerned and limited his attack to the building permits granted in favour of Respondents 4 and 5.

35. On a conspectus of the pleadings, material, records of the GHMC and the arguments of the learned Counsel, the following questions arise for consideration:

- (1) Whether Rule 7.1(xiv) of the Hyderabad Revised Building Rules, 2006 is legal and valid?
- (2) Whether the sub-division of the premises bearing Door No. 2-2-20/K/9, Durga Bai Deshmukh Colony, Bagh Amberpet, Hyderabad, is legal and valid?
- (3) Whether Building Permit No. 6/72 dated 03.12.2009 granted to Respondent 4 is legal and valid?
- (4) Whether Building Permit No. 4/2 dated 10.08.2009 granted to Respondent 5

is legal and valid?

(5) Whether G.O.Ms. No. 539, Municipal Administration and Urban Development (II) Department, dated 27. 07.2007 is liable to be set aside?

(6) What is the effect of the Petitioners' lack of bona fides, if any?

1) Whether Rule 7.1(xiv) of the Hyderabad Revised Building Rules, 2006 is legal and valid?

36. The Hyderabad Revised Building Rules, 2006 were framed by the Government of Andhra Pradesh vide G.O.Ms. No. 86, Municipal Administration and Urban Development (M) Department, dated 03.03.2006 in exercise of the powers conferred by Section 585 read with Section 592 of the Hyderabad Municipal Corporation Act, 1955 (presently, the Greater Hyderabad Municipal Corporation Act, 1955) and the proviso under Sub-section (1) read with Sub-section (2) of Sections 14, 32, 46 and 58 of the Andhra Pradesh Urban Areas (Development) Act, 1975. Being a part of this subordinate/delegated legislation, the impugned Rule 7.1(xiv) partakes a statutory flavour. Rule 7.1(xiv) reads as under:

7.1. Minimum Setbacks & Height Stipulations for all types of non-high rise buildings (Building below 18 m height inclusive of stilt/parking floor):

...

(xiv) For narrow plots where the length is at least 4 times the width of the plot the setbacks on sides may be compensated in front and rear setbacks so as to ensure that the overall aggregate setbacks are maintained in the site, subject to maintaining a minimum of 1m on each side.

37. A plain reading of the impugned Rule demonstrates that a discretion has been given to the sanctioning authority to relax the required setbacks on the sides of narrow plots by compensating the same in the front and rear setbacks so as to ensure that the overall aggregate setbacks are maintained, subject to a minimum of 1 meter setback being maintained on each side. By way of an amendment under G.O.Ms. No. 623, MA & UD (M1) Department, dated 01.12.2006, a "narrow plot" for the purpose of this Rule was defined to be one "where the length is at least 4 times the width of the plot".

38. Under Table-III in Rule 7.1 the permissible height and minimum setbacks to be maintained for plots of different sizes have been specified with reference to the abutting road. The prescriptions in respect of plots ranging between 400 and 500 square meters and 500 upto 750 square meters are as follows:

Sl. No.	Plot Size (sq.m.)	Parking	Height (m.)	Building line or minimum front setback (m.)
1	Upto 400	7	3	4
2	400 & upto 500	3	4	5
3	500 & upto 750	4	5	6
4	Above 750	5	6	7.5
5	Above 750	6	7.5	2.0
6	Above 750	7	2.0	400
7	Above 750	8	400	& parking upto floor 500 allowed
8	Above 750	9	500	upto 3
9	Above 750	10	500	4
10	Above 750	11	500	5
11	Above 750	12	500	6

7.5 2.5 12 6. Above Stilt Upto 7 3 4 5 6 7.5 2.5 500 parking & upto 750 floor allowed Upto 3 4 5 6 7.5 3.0 12 Below 3 4 5 6 7.5 3.5 15

39. The plot of Respondent 4 being above 500 square meters and permitted construction of a building of the height of 14.95 meters, exclusive of the stilt floor parking and terrace structures, would therefore normally have to provide a minimum setback of 3.5 meters on the sides. Respondent 5's plot being less than 500 square meters and having been given permission for construction of a building of 11.80 meters height, exclusive of the stilt floor parking and terrace structures, would normally have to provide 2.5 meters setbacks on the sides. It is not in dispute that the dimensions of the individual plots purchased by Respondents 4 and 5 under the two separate sale deeds, whereby the extent in Door No. 2-2-20/K/9, Durga Bai Deshmukh Colony, Bagh Amberpet, Hyderabad, has been vertically split into two, would satisfy the requirements of a narrow plot as defined in Rule 7.1(xiv). Thereby, Respondent 4 who has to leave a setback of 3.5 meters on the sides and Respondent 5 who has to provide 2.5 meters, could avail the benefit of maximum relaxation of the required side setbacks under the impugned Rule.

40. The State in its counter justified the impugned Rule stating that the same was formulated keeping in view the hardship faced by owners of narrow plots and stated that the said rule would only be applicable in the case of narrow plots and not for regular sized plots.

41. The attack against the rule is that it causes considerable prejudice to the safety, security, light and fresh air requirements of the residents of the colony, particularly the neighbours, as mandatory setbacks are given a go-by. The Petitioners allege that the rule enables relaxation of setbacks to the extent that fire safety of the constructions would be compromised in addition to creating an unhealthy and unhygienic atmosphere owing to the lack of space and distance between the constructions. This, according to the Petitioners, would adversely affect the light and air circulation in addition to posing a threat to safety and security. It is pointed out that such mushrooming of excessive constructions owing to relaxation of setbacks would place a strain upon civic amenities such as water, electricity and drainage, thereby adversely affecting the residents of the entire colony. It is stated that the scheme of Municipal and Urban Development Laws is to promote public interest and public good by balancing the needs and interests of the society at large with the individual interest of a land owner in making construction upon the land. The Petitioners allege that this balance is vitally distorted by the impugned Rule which permits constructions to be made without maintaining the required minimum setbacks. It is further alleged that no guidelines are prescribed for exercise of the power under the impugned Rule and the same is therefore arbitrary and illegal. Sri K. Ramakrishna Reddy, learned Senior Counsel, pointed out that the definition of a "narrow plot" as being one with a length of at least four times the width would lead to absurdity as a plot of 10 meters width and 40 meters length would be placed on par with one of 100

meters width and 400 meters length and both would be equally entitled to relaxation of side setbacks under the impugned Rule.

42. Rebutting these allegations, the learned Advocate General submitted that the impugned Rule must be read and understood as an exception to the general rules. He pointed out that this rule was introduced to ameliorate the plight of owners of narrow plots of land wherein construction as per the prescribed setbacks and norms would be unviable owing to the size and structure of the land. He pointed out that the rule was clarified further by the amendment, whereby a narrow plot was defined to mean one where the length was at least four times the width of the plot. He further stated that discretion has been vested in the sanctioning authority to consider such individual cases of narrow plots and relax the prescribed setbacks on the sides subject to maintaining one meter minimum setback on each side. Reacting to the hypothetical example cited by the Petitioners, the learned Advocate General stated that such exaggerations could not be the basis of an attack, as the rule would apply only to the case of "narrow plots" where construction as per regular norms would be unviable and not to every plot where the length is four times the width. He pointed out that in a plot of 100 meter width, there would be no difficulty whatsoever in making construction as per the required norms and setbacks.

43. The word "narrow" is defined by the Concise Oxford Dictionary of Current English (9th Edition) to mean:

1. of small width in proportion to length;
2. confined or confining; constricted (within narrow bounds)
3. of limited scope; restricted (in the narrowest sense);

It is no doubt true that the rule does not specify the benchmark minimum width of a "narrow plot" and leaves the definition loosely worded by providing a ratio between the width and the length. It is however to be noticed that the Municipal Corporation Building Bye-laws, 1981 and Clause 12 of Part 3 - "Development Control Rules and General Building Requirements" of the National Building Code of India, 2005 provide for the minimum requirements in respect of size and area of various rooms in a residence such as a habitable room, a kitchen, bathrooms etc. It is to be noticed that though the Hyderabad Revised Building Rules, 2006 supercede the Municipal Corporation of Hyderabad Building Bye-laws, 1981, such supercession is only to the extent covered by the 2006 Rules.

44. The 2006 Rules define a high-rise building to mean a building of 18 meters or more in height and exclude buildings less than 18 meters, including stilt floor/parking floor, from the definition. However, the argument of the Respondents that all such buildings being non high-rise buildings do not need to conform to the requirements and standards of the National Building Code is untenable. Rule 7.2 of the 2006 Rules specifically provides that buildings above 10 meters height would have to comply with the requirements and standards other than heights

and setbacks as specified in the National Building Code of India, 2005. There is a specific reference in Rule 7.2(vii) of the 2006 Rules that irrespective of the height, the requirements of the building like size and area requirements of habitable rooms, kitchen, bathrooms etc. shall conform to the National Building Code of India, 2005. Therefore, the requirements under the said Code including specifications of room sizes would necessarily have to be adhered to. The viability of making constructions as per the prescribed norms would thus have to be evaluated in the light of these requirements. It is only when such viability is affected by the narrowness of the plot that the impugned Rule may come into play, subject to its applicability. It is also to be noticed that the Municipal Corporation Building Bye-laws, 1981 and the National Building Code of India, 2005 (Part 8 - Section 1) provide for various other parameters to be maintained with regard to lighting and ventilation. No doubt, buildings above 10 meters height, not being high-rise buildings, are exempted from the standards pertaining to height and setbacks prescribed under the National Building Code of India, 2005 under Rule 7.2(i) of the 2006 Rules, but the said rule makes it clear that all other building requirements specified in the Code shall be complied with. Ergo, mere relaxation of the side setbacks would not mean that a builder can give a go-by to the detailed instructions provided in Part 4 (Fire and Life Safety) of the National Building Code of India, 2005 with regard to the safeguards to be provided in this regard. Perhaps that is the reason why Rule 7.2(vii) speaks of provision of Joint Open Spaces beside buildings of over 10 meters height for facilitating fire and emergency operations. Pertinent to note, this has been stipulated in the rule, notwithstanding the exemption of such buildings from complying with the setback requirements prescribed in the National Building Code of India, 2005.

45. It is also relevant to note Rule 7.1(xv) of the 2006 Rules.

46. Rule 7.1(xv):

The space between 2 blocks shall be as given in Table V.

Table V finds place under Rule 10 of the 2006 Rules which deals with "Requirements of Group Development, Group Housing/Cluster Housing/ Residential Enclaves and Row Housing Schemes". Rule 10.7 pertains to Group Development and Group Housing Schemes and states that Group Housing Schemes are reckoned as apartment blocks in two or more blocks, which could be high-rise or simple walk-up units. Group Development Schemes are reckoned as buildings in a campus or site. Rule 10.7(a) states that the open spaces/ setbacks for such type of development shall be as given in Table V, which reads as follows:

TABLE V Height of building block Distance to be maintained from two blocks periphery to building block

Height of building block	Distance to be maintained from two blocks periphery to building block
Up to 10 m	3 m
Above 10 m & up to 12 m	4 m
Above 12 m & below 18 m	6 m
Above 18 m	As per

around setbacks required under High-rise buildings given in Table IV

It is the case of the Respondents that Table V has no application to the case on hand as it deals with Group Development and Housing Schemes. However, Sri Vedula Venkata Ramana, learned Senior Counsel, pointed out that Table V finds specific mention under Rule 7.1 at Clause (xv) which clearly indicates that the requirements of Table V are imported into the norms applicable to non high-rise buildings covered by Rule 7.1. "Blocks" have not been defined in the 2006 Rules, but an indication is given in Rule 10.7 which defines Group Housing Schemes to mean "apartment blocks" in two or more blocks. Rule 10 deals with such development within a single site whereas the placing of the table under Rule 7.1 posits that the distances specified in Table V would require to be maintained wherever two apartment blocks are constructed, being non high-rise buildings. It would be meaningless to contend that the distances in Table V should be maintained between two apartment buildings within the same site but the same need not be maintained between two apartment buildings in adjacent sites. The argument of Sri E.Manohar, learned Senior Counsel for Respondent 4, that such requirement cannot be imposed upon constructions undertaken in narrow plots in the light of Rule 7.1(xiv) cannot be countenanced. Once Rule 7.1(xiv) is juxtaposed with Rule 7.1(xv), both requirements would have to run concurrently and one cannot supercede or stifle the other. The exercise of discretion under Rule 7.1(xiv) would necessarily have to be in tune with the requirement of the spaces to be maintained between two apartment blocks prescribed under Rule 7.1(xv).

47. It is therefore in the context of these other rules in the 2006 Rules and the other applicable rules and laws, including the National Building Code of India, 2005, that the impugned Rule would have to be construed and implemented. As pointed out by the learned Advocate General, the impugned Rule is only by way of an exception and does not authorize the relaxation of setbacks on the mere whims and fancies of the sanctioning authority. Further, such relaxation is discretionary and it is not as a matter of right that every "narrow plot" owner can insist upon reduction of side setbacks to the minimum one meter. It is for the sanctioning authority to examine the facts and circumstances of each given case and decide as to what extent such relaxation should be permitted.

48. Though the validity of the building permits of Respondents 4 and 5 forms the subject matter of consideration under separate issues hereinafter, the above discussion indicates that the exercise of discretion by the GHMC in the present case under Rule 7.1(xiv) in isolation is unsustainable, being opposed to the scheme of the Rules in their totality. However, the argument of the learned Counsel for the Petitioners that this erroneous exercise of discretion by the Municipal Authorities in sanctioning two apartment blocks abutting each other in violation of Rule 7.1(xv) and the other applicable norms would by itself be indicative or conclusive of the validity and constitutionality of the impugned Rule cannot be accepted. The mere erroneous and unsustainable exercise of power would not invalidate the power itself. Rule 7.1(xiv) therefore has to be read in concomitance with the relevant rules including Rule 7.1(xv), Rule 7.2(vii) and the

other applicable laws and it would not be permissible for the Municipal Authorities to exercise such discretion ignoring the requirements of the other rules and laws.

49. As pointed out by the Supreme Court, there is a presumption in favour of the constitutionality of delegated legislation and it is only when there is a clear transgression of constitutional principles or the parent statute that delegated legislation would be struck down by the Court. Needless to state, the Court must exercise judicial restraint while judging the validity of such legislation [*Hinsa Virodhak Sangh Vs. Mirzapur Moti Kuresh Jamat and Others*, , *Government of Andhra Pradesh and Others Vs. Smt. P. Laxmi Devi*, , *J.K. Industries Limited v. Union of India* (2007) 13 SCC 673 , *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*,].

50. Reference may also be made to *State of Tamil Nadu and Another Vs. P. Krishnamurthy and Others*, wherein the Supreme Court observed:

15. There is a presumption in favour of constitutionality or validity of a subordinate legislation and the burden is upon him who attacks it to show that it is invalid. It is also well recognised that a subordinate legislation can be challenged under any of the following grounds:

- (a) Lack of legislative competence to make the subordinate legislation.
- (b) Violation of fundamental rights guaranteed under the Constitution of India.
- (c) Violation of any provision of the: Constitution of India.
- (d) Failure to conform to the statute under which it is made or exceeding the limits of authority conferred by the enabling Act.
- (e) Repugnancy to the laws of the land, that is, any enactment.

[f] Manifest arbitrariness/unreasonableness (to an extent where the court might well say that the legislature never intended to give authority to make such rules).

16. The court considering the validity of a subordinate legislation, will have to consider the nature, object and scheme of the enabling Act, and also the area over which power has been delegated under the Act and then decide whether the subordinate legislation conforms to the parent statute. Where a rule is directly inconsistent with a mandatory provision of the statute, then, of course, the task of the court is simple and easy. But where the contention is that the inconsistency or nonconformity of the rule is not with reference to any specific provision of the enabling Act, but with the object and scheme of the parent Act, the court should proceed with caution before declaring invalidity.

51. Another ground of attack against the impugned Rule is that it confers unfettered and unguided discretion upon the sanctioning authority to relax the prescribed setbacks on the sides of narrow plots. Uncanalised and uncontrolled power delegated to the executive authorities has been held to be ultra vires by

the Supreme Court. Absence of arbitrary power is held to be the first essential of the rule of law. Discretion, when conferred upon executive authorities, must be contained within clearly defined limits. Clarity and precision are essential in the guidelines so as to avoid the danger and misinterpretation of the situation. An enactment would be void for vagueness if its prohibitions are not clearly defined. Vague laws offend several important values and provide for resolution on an ad hoc and subjective basis with the attendant dangers of arbitrary and discriminatory application [Hamdard Dawakhana and Another, Kalipada Deb and Another, Lakshman Shripati Itpure @ Lakshman Shripati Impore and A.B. Choudhri and Another Vs. The Union of India (UOI) and Others, , S.G. Jaisinghani Vs. Union of India (UOI) and Others, , Harakchand Ratanchand Banthia and Others Vs. Union of India (UOI) and Others, , A.N. Parasuraman v. State of Tamil Nadu (1989) 4 SCC 683 , Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, , Kartar Singh v. State of Punjab (1994) 3 SCC 569).

52. However, the observations of the Supreme Court in The Consumer Action Group and Another Vs. State of Tamil Nadu and Others, are equally important:

18. The catena of decisions referred to above concludes unwaveringly in spite of a very wide power being conferred on the delegatee that such a section would still not be ultra vires, if guidelines could be gathered from the Preamble, Objects and Reasons and other provisions of the Acts and Rules. In testing the validity of such provision, the courts have to discover, whether there is any legislative policy, purpose of the statute or indication of any clear will through its various provisions. If there be any, then this by itself would be a guiding factor to be exercised by the delegatee. In other words, then it cannot be held that such a power is unbridled or uncanalised. The exercise of power of such delegatee is controlled through such policy. The fast-changing scenario of economic, social order with scientific development spawns innumerable situations which the legislature possibly could not foresee, so the delegatee is entrusted with power to meet such exigencies within the inbuilt check or guidance and in the present case to be within the declared policy. So the delegatee has to exercise its powers within this controlled path to subserve the policy and to achieve the objectives of the Act. A situation may arise, in some cases where strict adherence to any provision of the statute or rules may result in great hardship, in a given situation, where exercise of such power of exemption is to remove this hardship without materially affecting the policy of the Act, viz., development in the present case then such exercise of power would be covered under it. All situations cannot be culled out, which have to be judiciously judged and exercised, to meet any such great hardship of any individual or institution or conversely in the interest of the society at large. Such power is meant rarely to be used....

...

30. When such a wide power is vested in the Government it has to be exercised with greater circumspection. Greater is the power, greater should be the caution. No power is absolute, it is hedged by the checks in the statute itself. Existence of

power does not mean to give one on his mere asking. The entrustment of such power is neither to act in benevolence nor in the extra-statutory field. Entrustment of such a power is only for the public good and for the public cause. While exercising such a power the authority has to keep in mind the purpose and the policy of the Act and while granting relief has to equate the resultant effect of such a grant on both, viz. the public and the individual. So long as it does not materially affect the public cause, the grant would be to eliminate individual hardship which would be within the permissible limit of the exercise of power. But where it erodes the public safety, public convenience, public health etc. the exercise of power could not be for the furtherance of the purpose of the Act. Minor abrasion here and there to eliminate greater hardship, may in a given case, be justified but in no case affecting the public at large. So every time the Government exercises its power it has to examine and balance this before exercising such a power. Even otherwise, every individual right including fundamental right is within, reasonable limit but if it makes inroads into public rights leading to public inconveniences it has to be curtailed to that extent. So no exemption should be granted affecting the public at large. Various development rules and restrictions under it are made to ward off possible public inconvenience and safety. Thus, whenever any power is to be exercised, the Government must keep in mind, whether such a grant would recoil on the public or not and to what extent. If it does then exemption is to be refused. If the effect is marginal compared to the hardship of an individual that may be considered for granting....

53. As discussed supra, the impugned Rule, is not to be construed or implemented in isolation but has necessarily to be read in tune and consonance with the other rules in the 2006 Rules and the other applicable norms and laws. Such construction inevitably restricts the scope and ambit of the impugned Rule and provides guidance to the sanctioning authority in the exercise of the discretion vested in it by the impugned Rule.

54. In such circumstances, this Court finds it difficult to accept the submissions of the learned Counsel for the Petitioners that the impugned Rule is liable to be struck down on the ground of vagueness or arbitrariness. Sufficient safeguards have been provided to guide and mould the exercise of discretion by the sanctioning authority under the impugned Rule and every individual exercise of such power would necessarily have to meet the standards so as to justify the exception to the required norm of maintaining the prescribed setbacks. Such exercise also has to be in keeping with the other requirements and guidelines prescribed in the 2006 Rules and other relevant laws.

55. In the present case there is no challenge to the competence of the Government to frame the 2006 Rules. It is the Petitioners' case that Rule 7.1(xiv) being part of this delegated legislation violates the Scheme and the mandate of the parent statute. Chapter XII (Sections 428 to 463) of the GHMC Act, 1955 deals with "Building Regulations". Section 429 authorizes the Commissioner, GHMC to seek furnishing of the plan of the building intended to be

erected showing the position, form, dimensions and means of ventilation and of access to the several parts of such building. Sections 444 to 450 under the caption "Provisions as to structure, material etc." deal with the various parameters to which newly erected buildings must adhere, including ventilation.

56. Once the impugned Rule is construed and implemented in the context of the surrounding rules and the other applicable laws, there is no possibility of the discretion vested by the impugned Rule being exercised in violation of the statutory provisions of the Act. Such exercise of discretion shall necessarily be shaped and structured by the mandate of the parent statute. Ample safeguards have been provided to guide and mould the exercise of discretionary power under the impugned Rule. In the ambience of its context vis-a-vis the other rules and applicable laws, the impugned Rule does not violate any provisions of the parent statute or its underlying scheme. Restricted so, the exercise of discretion under the impugned Rule would not be violative of the constitutional rights of the neighbours under Article 21 as their interests would form part of the consideration in such exercise.

57. The impugned Rule therefore does not suffer from illegality, vagueness or arbitrariness warranting its invalidation by this Court. The Rule is accordingly upheld. However, in the scheme of the 2006 Rules, the discretionary power under Rule 7.1(xiv) is by way of an exception and the same is not intended to enable commercial exploitation of "narrow plots" by giving a go-by to the normal setbacks. Waiver of requirements of side setbacks would deprive adjacent buildings and their occupants of light and air and also make it impossible for a fire engine to be used to fight a fire [The Consumer Action Group and Another Vs. State of Tamil Nadu and Others,]. These aspects would have to be weighed, evaluated and balanced in each individual exercise of relaxation under the Rule.

2) Whether the sub-division of the premises bearing Door No. 2-2-20/K/9, Durga Bai Deshmukh Colony, Bagh Amberpet, Hyderabad, is legal and valid?

58. It is the case of the Petitioners in all these writ petitions that the subject premises wherein Respondents 4 and 5 obtained two separate permits for constructing two independent apartment buildings forms one single plot with one municipal number. The Petitioners allege that no sub-division of the plot was made under the relevant law or the rules made thereunder. It is stated that no procedure was followed and no orders were passed except for collection of sub-division charges at the time of granting of permission. It is pointed out that both the building permits reflect the same municipal number i.e. 2-2-20/K/9, clearly indicating that there was no sub-division of the plot by appropriate proceedings. It is further alleged that Respondent 4 adopted this ruse of creating two separate plots so as to avail the benefit of the impugned Rule whereby the setbacks could be relaxed enabling Respondents 4 and 5 to make additional construction to the tune of 8000 square feet. It is also stated that by adopting this ruse the two building permits were obtained from separate offices i.e. the Office of the Commissioner, GHMC (permit of Respondent 4) and the Office of Circle-9, GHMC,

Hyderabad (permit of Respondent 5). The Petitioner in W.P. No. 6123 of 2010 specifically averred that without the sub-division of the plot, no building permission could have been granted treating the same as two separate plots solely on the basis of the sale deeds.

59. Sri Vedula Venkata Ramana, learned Senior Counsel, stated that the rule had no application to the subject premises as the sub-division of the plot must be borne out by proceedings in accordance with law before the premises could be split up into two "narrow plots". It is pointed out by the learned Senior Counsel that the dimensions of the original plot are not in conformity with those of a "narrow plot" and that it is only by way of the vertical division of the plot that it was split up into two "narrow plots". The learned Counsel would assert that there was no sub-division of the plot as per law and that the invocation of the impugned Rule is itself unsustainable on facts.

60. Countering this attack, the Respondents rely upon Section 388 of the Greater Hyderabad Municipal Corporation Act, 1955 and state that sub-division charges were paid at the time of grant of the building permission. The GHMC, in its counter, stated that as the plot had not been sub-divided in terms of the above statutory provision, payment of sub-division charges was insisted upon and the same were paid by the applicants. Reference is made to the proceedings of the GHMC bearing No. 360/CSE/TPL/2009/1232 dated 09.06.2009 whereby Zonal Offices were delegated the power of collecting sub-division charges for division of plots in accordance with the approved schedule of rates. The GHMC further stated that in the instant case, no such sub-division had been obtained and when building permission was applied for, it had insisted upon payment of the sub-division charges from Respondents 4 and 5 and upon such payment being made, the plot was sub-divided into H. Nos. 2-2-20/K/9 (Part).

61. Respondents 4 and 5 pointed out that the plot occupied by the Petitioners in W.P. Nos. 17 and 1677 of 2010 was itself a subdivided one and therefore, the Petitioners in those cases could not contend that the sub-division of the subject premises was not valid.

62. No material has been placed on record as to the procedure followed for sub-division of the plot pertaining to the Petitioners in W.P. Nos. 17 and 1677 of 2010. This Court therefore deems it inappropriate to comment on the same. Sub-division of an approved plot in a layout is permitted under law. The contention of the Petitioners that only approved plots in a layout should be given the benefit of the impugned Rule and that sub-divided plots do not come under the definition of "narrow plots" is liable to be rejected. Once law permits the division of the plot, be it for whatever reason, the bona fide owner of such plot cannot be denied the benefit of the impugned Rule only on the ground that the dimensions of the original undivided approved plot did not attract the impugned Rule.

63. Relevant to note, Rule 6 of the 2006 Rules, pertaining to "Requirements of Approach Road for Building Sites/Plots", states that in the case of single plot sub-

division approved by the sanctioning authority, a means of access of minimum 3.6 meters pathway may be considered for individual residential buildings and 6 meters for Apartment Complexes/Commercial Complexes and other non-high rise buildings.

64. Thus, sub-divided plots are also the subject matter of the 2006 Rules and the mere sub-division of an approved plot would not disentitle the owners of such plots from availing the benefit under the impugned Rule.

65. However, sub-division of an approved plot necessarily has to be in accordance with the procedure prescribed. In this regard, reference has been made to Section 388 of the Greater Hyderabad Municipal Corporation Act, 1955. Section 388 speaks of notice being given to the Commissioner of an intention to layout lands for building and for private streets. The relevant portion of the Section reads as under:

Every person who intends -

(a)

(b) To divide land (whether unbuilt or partly built) into building plots;

(c) To use any land or a portion thereof or permit the same be used for building purposes;

(d)

shall give written notice of his intention to the Commissioner and shall along with such notice...

66. Such person is required by the provision to furnish plans showing the laying out and plotting of such building, land including the dimensions and area of each building plot. The Commissioner is required to pass orders thereupon u/s 391 of the Act.

67. The Urban Development Authority constituted u/s 3 of the Andhra Pradesh Urban Areas (Development) Act, 1975, is empowered u/s 6 to prepare a Master Plan defining the various Zones into which the development area may be divided. u/s 7, the authority is required to prepare Zonal Development Plans into which the development area has been divided. This Zonal Development Plan, among other things, also provides for division of any site into plots for the erection of buildings. The Plan also stipulates allotment or reservation of lands for roads, open spaces, gardens, recreation, grounds, schools, markets and other public purposes. Under G.O.Ms. No. 633, Municipal Administration and Urban Development (MI) Department, dated 23.08.2007, the powers conferred under the A.P. Urban Areas (Development) Act, 1975 upon the Urban Development Authority relating to layout approvals and building permissions stand delegated to the Commissioner and Special Officer, GHMC, in so far as areas falling within the GHMC jurisdiction are concerned. The Municipal Corporation Building Bye-laws, 1981 under Bye-law 17.12 stipulates that in the case of plots proposed to

be subdivided the sanction of the authority for such sub-division shall be obtained. This Bye-law continues to be operative as the 2006 Rules do not touch upon this aspect. Pertinent to note, the Bye-law posits the sanction being obtained before actual sub-division of the plot. Similarly, as per the Layout and Land Sub-division Regulations, 2008, no plot sub-division shall be allowed unless it is permitted by the Competent Authority and no building permission shall be entertained unless such subdivision permission is obtained from the Hyderabad Urban Development Authority. The power of the Urban Development Authority having been delegated to the Commissioner and Special Officer, GHMC such permission had to be obtained from him with regard to the proposed sub-division of the premises bearing Door No. 2-2-20/K/9, Durga Bai Deshmukh Colony, Bagh Amberpet, Hyderabad. This, apparently, was not done. It is relevant to note that the application of Respondent 5 was dealt with by Circle No. 9 of the GHMC and unless specific permission was obtained from the Commissioner and Special Officer, GHMC, with regard to the sub-division of this plot, the said application could not have been entertained as per the Regulations. The so-called sub-division of the plot claimed by the Respondent authorities basing on the mere collection of sub-division charges falls short of the legal requirement notwithstanding the delegation to the Zonal Offices to collect the charges, referred to in the counter-affidavit of the GHMC. In any event, the delegation is only with regard to the collection of the charges. The Commissioner, GHMC, being himself a delegatee could not have sub-delegated the essential power of sub-division of plots to the Zonal Offices. Further, mere collection of the sub-division charges would not amount to adherence with the procedure laid down by law. It is relevant to note that the Urban Development Authority is placed under a responsibility by the provisions of the A.P. Urban Areas (Development) Act, 1975 to undertake a planned and proper development of the area and the details specified in Section 7 which are to be incorporated in the Zonal Development Plans spell out the extent to which such planned and proper development is to be made. This responsibility stood transferred to the Commissioner, GHMC in so far as the area falling under its jurisdiction is concerned. Such a responsibility cannot be lightly discharged by mere collection of fees without proper proceedings passed after due application of mind.

68. Once law mandates a particular procedure to be adopted for discharging a function, the same has to be scrupulously adhered to [*Naraindas Indurkhyia Vs. The State of Madhya Pradesh and Others*,]. This salutary principle of administrative law, as oft pointed out by the Supreme Court, is that if an action is to be taken in a particular manner as provided by a statute, it must be taken, done or performed in the manner prescribed and in no other manner [*Meera Sahni Vs. Lt. Governor of Delhi and Others*, , *Babu Verghese and Others Vs. Bar Council of Kerala and Others*, *Rao Shiv Bahadur Singh and Another Vs. The State of Vindhya Pradesh*, *Deep Chand v. State of Rajasthan* AIR 1951 SC 1527 , *Charan Lal Sahu Vs. Neelam Sanjeeva Reddy*,].

69. The so-called sub-division of the subject premises is therefore a fiction based

on the mere collection of sub-division charges and is not borne out by any proceedings relatable to law. Having purchased the subject premises under two sale deeds, at best Respondents 4 and 5 can claim to be joint owners and without proper sub-division of the premises into two plots in accordance with law, they cannot claim the benefit of the impugned Rule in respect of their individual extents. Bye-law 4.2(ii)(e) of the Municipal Corporation Building Bye-laws, 1981 postulates that the "Site Plan" submitted along with the application shall indicate the boundaries of the site and in the case of a site that is partitioned, the boundaries of the portion owned by the applicant and also, of the portion owned by others. The records of the GHMC demonstrate that the plans submitted by Respondents 4 and 5 were not in conformity with this legal requirement. It is relevant to note that though the GHMC stated in its counter that after collection of the sub-division charges, the subject premises was sub-divided by allotting H. No. 2-2-20/K/9 (Part), the same is not borne out by the record placed before the Court. The building permits and the plans sanctioned by the GHMC refer to the premises by the number 2-2-20/K/9 only and there is no indication of sub-division by use of the word "Part" as stated. It appears that the Head Office and the Zonal Office (Circle-9) of the GHMC operated independently and in ignorance of the other while sanctioning the building permissions to Respondents 4 and 5 in respect of the same premises i.e. Door No. 2-2-20/K/9, Durga Bai Deshmukh Colony, Bagh Amberpet, Hyderabad. The sub-division, being merely illusory in law, cannot enure to the benefit of Respondents 4 and 5. Their applications, treating their individual extents as separate and independent "narrow" plots could not therefore be acted upon. There was thus no sub-division of the subject premises in accordance with law.

3. Whether Building Permit No. 6/72 dated 03.12.2009 granted to Respondent 4 is legal and valid?

70. In the light of the finding recorded on the above issue it follows that the application of Respondent 4 could not have been considered under the impugned Rule by treating the plot as a "narrow" plot. However, as varied and contentious arguments were advanced on the validity of the building permit, the issue is taken up for consideration on the other aspects as well.

71. Respondents 4 and 5 submitted their building applications in the Offices of the Commissioner, GHMC and the Assistant City Planner, Circle 9, GHMC respectively. It is stated that vide Proceedings No. 8/GHMC/TPS/HO/2007/2856 dated 18.12.2007 the Commissioner, GHMC authorized the Zonal Offices to process and release building permissions upto stilt plus four floors (upto 12 meters in height, excluding the stilt floor) retaining the power of sanctioning permission for buildings over and above the aforesaid parameters. Thus, the submission of applications by Respondents 4 and 5 as stated supra cannot be found fault with.

72. The admitted factual position as regards Respondent 4's application is that the Building Committee of the GHMC, in the first instance, recommended

reduction of setbacks on the sides by one meter adjusting the same in the front and rear setbacks. This recommendation was also intimated to Respondent 4, which then brought political pressure to bear upon the authorities. The impugned Rule, as stated hereinbefore, vests the sanctioning authority with a discretion to adjust/relax the setbacks on the sides of narrow plots subject to a minimum of one meter being maintained on each side. Within this discretion, it is for the sanctioning authority to analyze each individual case and decide as to what extent the setback should be relaxed and adjusted. As the Building Committee had already exercised such discretion, the same was brought to the notice of the Government vide the GHMC's letter dated 02.09.2009. Responding thereto, the Government of Andhra Pradesh under its memo dated 05.10.2009 requested the Commissioner and Special Officer, GHMC, to "comply" with the provisions of the rule for according permission in the case. This was practically a veiled direction to the GHMC to exercise its discretion in the manner sought by Respondent 4. The rule explicitly demonstrates that no owner of a "narrow plot" has a right to insist upon maximum relaxation of the setback, whereby the setback would be restricted to only one meter on each side. Once the sanctioning authority exercised its discretion, the power of the Government to interfere in the matter is open to question.

73. It is the case of the Respondents that the Government had such power u/s 679 of the GHMC Act, 1955. Section 679 deals with the powers of revision and states that the Government may at any time for the purposes of satisfying itself as to the correctness, legality, propriety or regularity of any proceeding of or order passed by the Commissioner or any officer subordinate to him call for and examine the record and pass such orders with reference thereto as it thinks fit.

74. It is no doubt true that this revisional power of the Government is clothed with the widest amplitude and that the Government would in fact have power in a given case to substitute, for sufficient reasons, the discretionary order passed by the GHMC under the impugned Rule. However, that is not what has happened in the present case. The Government did not pass any independent order in exercise of its revisional jurisdiction. By way of the memo dated 05.10.2009, it practically directed the Commissioner and Special Officer, GHMC, to exercise discretion in a particular manner. Such a direction is not within the scope of Section 679. In this regard, the observations of the Supreme Court in *State of Uttar Pradesh and Others Vs. Maharaja Dharmander Prasad Singh and Others*, are apposite:

55. It is true that in exercise of powers of revoking or cancelling the permission is akin to and partakes of a quasi-judicial complexion and that in exercising of the former power the authority must bring to bear an unbiased mind, consider impartially the objections raised by the aggrieved party and decide the matter consistent with the principles of natural justice. The authority cannot permit its decision to be influenced by the dictation of others as this would amount to abdication and surrender of its discretion. It would then not be the authority's

discretion that is exercised, but someone else's. If an authority "hands over its discretion to another body it acts ultra vires". Such an interference by a person or body extraneous to the power would plainly be contrary to the nature of the power conferred upon the authority. De Smith sums up the position thus:

The relevant principles formulated by the courts may be broadly summarised as follows. The authority in which a discretion is vested can be compelled to exercise that discretion, but not to exercise it in any particular manner. In general, a discretion must be exercised only by the authority to which it is committed. That authority must genuinely address itself to the matter before it : it must not act under the dictation of another body or disable itself from exercising a discretion in each individual case. In the purported exercise of its discretion it must not do what it has been forbidden to do, nor must it do what it has not been authorised to do. It must act in good faith, must have regard to all relevant considerations and must not be swayed by irrelevant considerations, must not seek to promote purposes alien to the letter or to the spirit of the legislation that gives it power to act, and must not act arbitrarily or capriciously. Nor where a judgment must be made that certain facts exist can a discretion be validly exercised on the basis of an erroneous assumption about those facts. These several principles can conveniently be grouped in two main categories : failure to exercise a discretion, and excess or abuse of discretionary power. The two classes are not, however, mutually exclusive.

(Emphasis is ours)

The records of the GHMC clearly demonstrate that having exercised discretion under the impugned Rule in the first instance, the GHMC bowed to the imperatives of the Government and moulded its discretion thereafter to suit the purposes of Respondent 4. The exercise of such discretion by the GHMC upon the dictates of the Government is therefore unsustainable in law.

75. It is also relevant to note that by the time the application of Respondent 4 was considered, the GHMC had already granted permission to Respondent 5 under Building Permit No. 4/2 dated 10.08.2009 for construction of a residential apartment building of stilt plus four upper floors with a minimum setback of one meter on the side abutting the plot of Respondent 4. In view of the minimum distances stipulated in Table V made applicable to non high-rise buildings covered by 7.1, by virtue of Rule 7.1(xv), it was not permissible for the GHMC to consider the application of Respondent 4 in violation thereof.

76. It is also relevant to note that the other requirements made applicable to buildings above 10 meters height under Rule 7.2(vii) speak of provision of joint open space in certain cases. It reads as under:

Provision of Joint Open Space in certain cases

With a view to facilitating fire and emergency operations in a building site and adjoining sites, the Fire Service Department, in addition to the minimum

setbacks to be left, may insist on the owner for providing Joint Open space between the proposed site and adjoining sites for mutual use during fire and emergencies. The Joint open space shall be reckoned from building edge to building edge (inclusive of any type of projections). Such Joint open space shall not be less than 6 m. in respect of non-high rise buildings and not less than 9 m. in respect of high-rise buildings.

The Building Permit No. 6/72 dated 03.12.2009 granted to Respondent 4 enumerates the conditions subject to which it is sanctioned and under Clause 33 (xiii), Respondent 4 is required to create joint open spaces" with the neighbours" building for maneuverability of fire vehicles. The imposition of this condition makes it clear that the sanctioning authority was ignorant of the fact that the neighbouring plot occupied by Respondent 5 had already been granted building permission with a setback of one meter making it impossible to comply with the requirement of leaving "joint open spaces" for maneuverability of fire vehicles.

77. Further, Section 447 of the GHMC Act, 1955 stipulates the maximum height of a building with reference to the width of street which it abuts. Section 447(3) states to the effect that if the width of a street exceeds 40 feet, the building abutting such street shall not be raised to a height greater than the width of such street. The width of the street in the present case being 48 feet (14.63 meters) the building of Respondent 4 could not have exceeded the same. However, the impugned building permit allows construction of an apartment building of 14.95 meters (excluding stilt floor parking and terrace structures). This, obviously, is in violation of the statutory requirement u/s 447(3). This aspect appears to have been completely lost sight of by the GHMC while sanctioning the building permit.

78. Thus, for reasons more than one, Building Permit 6/72 suffers from incurable illegality and cannot be sustained.

4. Whether Building Permit No. 4/2 dated 10.08.2009 granted to Respondent 5 is legal and valid?

79. Respondent 5 submitted application dated 06.07.2009 through her registered GPA, MSVS Durga Prasad, in the Office of the Assistant City Planner, Circle-9, GHMC. This application pertained to the premises admeasuring 494.64 square meters in the property bearing Door No. 2-2-30/K/9. Though allegations are made about complicity between Respondents 4 and 5, whereby a single plot was deliberately shown to be owned by different individuals so as to avail the benefit of the impugned Rule, this Court is not inclined to delve into that aspect. The motive behind the splitting of the plot ceases to be of relevance once the rule is of general applicability to "narrow plots", be they originally approved plots or subsequently sub-divided plots. Further, as pointed out by Sri B. Adinarayana Rao, learned Counsel, the sale transactions of Respondents 4 and 5 are of August, 2005 while the "width-length" parameter of a narrow plot in the Rule was introduced only in December, 2006 by way of an amendment. Thus, the motive imputed to Respondents 4 and 5 that the sales were designed to avail the

benefit of the Rule is not borne out by facts.

80. Be that as it may, the illegality that taints the permission accorded to Respondent 4 is equally applicable to Respondent 5 i.e. with regard to the lack of sub-division of the premises in accordance with law. Further, it is to be noticed that the premises bearing Door No. 2-2-20/K/9 of Durga Bai Deshmukh Colony were ear-marked for a special reservation use (High School). The record reflects that Respondent 4 alone applied for change of land use in respect of the 500 square meters owned by it, forming half the subject premises. Acting thereupon, the Government of Andhra Pradesh issued G.O.Ms. No. 539, Municipal Administration and Urban Development Department, dated 27.07.2007 permitting change of land use from special reservation use (High School) to residential use only in respect of Respondent 4's extent of 500 square meters. No such proceeding has been issued in respect of the remaining extent of 500 square meters covered by the sale deed obtained by Respondent 5. The letter No. 9591/P5 HUDA/2005 dated 12.08.2005 said to have been issued by the HUDA certifying that the land in premises No. 2-2-20/K/9, Durga Bai Deshmukh Colony, Bagh Amberpet is earmarked for residential use is clearly incorrect as demonstrated by the subsequent exercise of change of land use undertaken by the Government under G.O.Ms. No. 539 dated 27.07.2007 in respect of part of the very same premises. Without change of land use in accordance with law, it was not permissible for the GHMC to entertain the building application of Respondent 5 for construction of a residential apartment building. This aspect appears to have been completely overlooked by the authorities as is evident from their counter, wherein reference is made to G.O.Ms. No. 539 dated 27.07.2007 as if it covers the entire extent of 1000 square meters in Door No. 2-2-20/K/9 of Durga Bai Deshmukh Colony. Further, as the building proposed to be constructed by Respondent 5 also exceeded ten meters in height (excluding the stilt floor for car parking and terrace structures), the requirements under Rule 7.2, including the provision of "Joint Open Spaces" would be applicable. There is no evidence of the Fire Service Department having been consulted in this regard as is clearly mandated by the provision. The proposed buildings of Respondents 4 and 5 do not fall within the category of high-rise buildings, but they would necessarily have to conform to the standards required for "buildings above ten meters height", both in respect of the National Building Code of India, 2005 and also fire safety. The building Permit of Respondent 5 is therefore equally illegal and cannot be sustained.

5. Whether G.O.Ms. No. 539, Municipal Administration and Urban Development (II) Department, dated 27.07.2007 is liable to be set aside?

81. Under G.O.Ms. No. 539 dated 27.07.2007, the Government permitted change of land use from special reservation use (High School) to residential use in so far as the premises admeasuring 500 square meters owned by Respondent 4 is concerned. The G.O. reflects that the draft variation of the notified zonal development plan was published in the Andhra Pradesh Gazette dated

19.04.2007 and as no objections or suggestions had been received within the stipulated period, the Government having been informed that the required development charges were paid by the applicant, confirmed the variation in the use of the subject extent. This procedure was strictly in accordance with the provisions of Section 12 of A.P. Urban Areas (Development) Act, 1975. It is not the case of the Petitioners that they responded to the notice issued u/s 12 or raised any objection prior to the change of land use. It is only in the year 2010 that the Petitioners in W.P. Nos. 1259 and 1677 of 2010 chose to challenge the proceeding of the year 2007. As the authorities scrupulously followed the procedure laid down by law and as the Petitioners in W.P. Nos. 1259 and 1677 of 2010 did not choose to interfere in the proposed change of land use at the appropriate time, their attack at this late stage is belated and cannot be countenanced. The Petitioners placed reliance on Virender Gaur and Others Vs. State of Haryana and Others, wherein the Supreme Court observed that the right to have a living atmosphere congenial to human existence is part of the right to life. The State, it was pointed out, has a duty in that behalf to forge its policy to maintain ecological balance and hygienic environment. The Supreme Court further stated that where in the zonal plan certain land is marked out and reserved for park or recreational purpose, it cannot be allotted for building purpose though housing is a public purpose.

82. It is however to be noticed that the subject premises was not earmarked for a park or recreational purpose (lung space) but for a special reservation use (High School). No material is brought on record to demonstrate any paucity of educational institutions and more particularly, High Schools, in the locality of the subject premises. Further, the Petitioners did not allege any mala fides against the Government in the exercise of change of land use. That being so, once the power of the State is admitted u/s 12 to change/modify the Zonal Development Plan and the State has acted in strict accordance with the procedure prescribed therefor, the same cannot be assailed lightly. Thus, no grounds are made out even on merits warranting interference with the exercise of the Government in this regard. G.O.Ms. No. 539 dated 27.07.2007 is accordingly upheld.

6. What is the effect of the Petitioners' lack of bona fides, if any?

83. Respondents 4 and 5 challenged the bona fides of the Petitioners and more particularly, the Petitioners in W.P. Nos. 17, 1259 and 1677 of 2010. It is argued that the Petitioners are furthering their own interests and are not acting pro bono publico. It is further stated that the Petitioner in W.P. No. 1259 of 2010 has been set up by the Petitioner in W.P. No. 1677 of 2010 and that the duplication of their pleadings is the proof thereof.

84. Ashok Lanka and Another Vs. Rishi Dixit and Others, the Supreme Court observed that even in a case where the Petitioner might have moved the court in his private interest and for redressal of personal grievances, the court in furtherance of the public interest may treat it necessary to enquire into the state of affairs of the subject of litigation in the interest of justice. When a public

interest litigation is entertained the individual conduct of the writ Petitioners would take a back seat.

85. In the light of the aforesaid observations of the Supreme Court the individual conduct of the Petitioners would take a backseat once the issue is taken up for consideration in public interest. This Court is therefore not inclined to go into the question as to whether the Petitioners in these cases are working in tandem to further their own interests and defeat the interests of Respondents 4 and 5.

86. Sri E. Manohar, learned Senior Counsel, submitted that the Petitioners were at best asserting violation of their easementary rights and therefore a writ petition under Article 226 of the Constitution was not the proper remedy. He placed reliance on *I. Venkat Rao Vs. Municipal Corporation of Warangal and another*, wherein a learned single Judge of this Court held that a neighbour who is aggrieved by illegal construction made in contravention of the building plan has no locus to question the same in a public law remedy and that his only remedy is by way of a civil suit for declaration of easementary rights and consequential injunction. It is however to be noticed that in *Shri K. Ramadas Shenoy Vs. The Chief Officers, Town Municipal Council, Udipi and Others*, the Supreme Court observed that it would enforce the performance of statutory duty by public bodies as obligation to rate payers who have a legal right to demand compliance by a local authority with its duty to observe statutory rights alone. The scheme is for the benefit of the public and there is a special interest in the performance of the duty. All the residents in the area have their personal interest in the performance of the duty. The special and substantial interest of the residents in the area is injured by the illegal construction.

87. Again, in *Bangalore Medical Trust Vs. B.S. Muddappa and others*, the Supreme Court held that the residents of the locality are the persons intimately, vitally and adversely affected by any action of the Bangalore Development Authority and the Government, which is destructive of the environment and which deprives them of facilities reserved for the enjoyment and protection of the health of the public at large. The residents of the locality were held to be naturally aggrieved by the impugned orders and they had, therefore, the necessary locus standi. The same was followed in *Virender Gaur and Others Vs. State of Haryana and Others*,

88. In *V.M. Kurian Vs. State of Kerala and Others*, the Supreme Court stated that observance and compliance with the Rules is for public safety and convenience. There cannot be relaxation of the Rules which are mandatory in nature and they cannot be dispensed with especially in the case of a high-rise building. The position may be different in the case of a one or two-storeyed building where there are minor deviations from the Rules, which do not affect the public safety and convenience. The Supreme Court held that the State Government's order exempting a proposed building from the rules was contrary to the mandatory provisions of the rules and was accordingly unsustainable.

89. Therefore, the dictum of the learned single Judge in *I. Venkat Rao Vs. Municipal Corporation of Warangal and another*, runs counter to the observations made by the Supreme Court in the aforesaid decisions with regard to the locus of not only the neighbours, but also the residents of the locality in insisting upon adherence with statutory duties by the local authorities in the matter of constructions being made in the locality. *I. Venkat Rao Vs. Municipal Corporation of Warangal and another*, therefore does not lay down the correct law in so far as the locus standi of a neighbour in a public law remedy is concerned.

90. It is further argued by the Respondents that the house occupied/constructed by the Petitioners in W.P. Nos. 17 and 1677 of 2010 is itself in violation of the sanctioned building permit, and therefore they have no right to assail the building permission granted to Respondents 4 and 5. The GHMC filed an additional-counter in W.P. No. 1677 of 2010 specifying the alleged violations committed by the Petitioner in W.P. No. 1677 of 2010 in the construction of his building. The affidavit reflects that violations are said to have been committed in the setbacks on the southern, eastern and western side of the plot occupied by the Petitioner in W.P. No. 1677 of 2010. These alleged violations are not the subject matter of this lis. The GHMC is always at liberty to take necessary action against illegal constructions in accordance with law. However, the illegal construction, if any, made by the Petitioner in W.P. No. 1677 of 2010 would not disentitle him from assailing the illegalities sought to be perpetrated in the neighbouring plot in the light of the law laid down by the Supreme Court in *Ashok Lanka and Another Vs. Rishi Dixit and Others*. At the same time, the Petitioner in W.P. No. 1677 of 2010 cannot claim immunity from law merely because of passage of time or absence of objections earlier. The GHMC is therefore at liberty to proceed against the Petitioner in W.P. No. 1677 of 2010 in accordance with law in respect of any illegal construction/violations of the sanctioned permit in so far as his building is concerned.

91. Before concluding, this Court deems it appropriate to observe that planned and structured growth of urban areas is not merely desirable but is the burning necessity of the day. As pointed out by the Supreme Court in *The Consumer Action Group and Another Vs. State of Tamil Nadu and Others*, violation and relaxation of building norms would result in undue strain on the civic amenities such as water, electricity, drainage, etc. Waiver of setbacks inevitably hampers fire fighting measures endangering the lives of the occupants of such buildings. The authorities therefore have to strike a balance so as to permit exercise of the individual right of an owner to make constructions on his land without compromising on the community good. The exceptional discretionary power vested in the sanctioning authority under Rule 7.1(xiv) must therefore be exercised in genuine cases so as to alleviate the plight of "narrow plot" owners. It is not for coming to the aid of commercial builders who cite global recession and downward trends in the realty sector as reasons for invoking the said Rule. This Court need say no more.

92. In the result, Rule 7.1(xiv) of the Hyderabad Revised Building Rules, 2006 is held to be lawful and valid. The so-called subdivision of the premises bearing No. 2-2-20/K/9, Durga Bai Deshmukh Colony is of no legal consequence being in violation of the prescribed procedure. The building permits granted in favour of Respondents 4 and 5 being Permit No. 6/72 dated 03.12.2009 and Permit No. 4/2 dated 10.08.2009 are held to be illegal and unsustainable being in violation of the applicable rules. G.O.Ms. No. 539 dated 27.07.2007 is held to be lawful and valid.

93. The writ petitions are accordingly disposed of. There shall be no order as to costs.