HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
(Special Original Jurisdiction)

THURSDAY ,THE TWENTY NINTH DAY OF AUGUST
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE THE CHIEF JUSTICE ALOK ARADHE
AND
THE HONOURABLE SRI JUSTICE J SREENIVAS RAO

WRIT PETITION NO: 14677 OF 2009

Between:

Morning Walker Association, Rep. by its President, Syed Muneer Ahmed, S/o. Syed Quasim, Aged about 83 Years, Occ Retired Bank Employee, R/o.H.No. 3-6-158,

AND **...PETITIONER**

1. Government of Andhra Pradesh, Rep. by Principal Secretary, GAD Secretariat, Hyderabad.
2. Secretary Municipal Administration & Urban Development, Department, Government of Andhra Pradesh, Secretariat, Hyderabad.
3. Commissioner, Public Garden, Nampally, Hyderabad.
4. Public Garden Walkers Association, Rep. by its Chairman, Mr. Gulam Yazdani, Advocate, R/o. 5-9-919, Gunfoundry, Hyderabad.
5. State of Telangana Rep by its Principal Secretary, GAD Secretariat, Hyderabad

(Respondent No.5 is impleaded as per CO dated 23.08.2024 vide IA No.1 of 2015 (WPMP No. 12476 of 2015)) in WP.No. 14677 of 2009)

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue comprehensive writ, order, direction more particularly one in the nature of Writ of Mandamus, directing the Respondents to act according to law, prohibit the Respondents to use Public Park in Public Garden, Nampally, Hyderabad for any other purpose except aesthetic and recreational, decree the action of the Respondents is illegal, arbitrary, unreasonable and in violation of principles of natural justice and consequently direct the Respondents to restore park situated adjacent to Jubilee Hall, Public garden, Nampally, Hyderabad in the interest of justice a) The GOMS. No. 35 dated 02/03/2007 is illegal, arbitrary and unconstitutional and in violation of the law lay down by the Supreme Court

and in view of GOMS. No. 72 dated 20/02/2002 in addition to para 19 of the Affidavit the interest of justice and in the circumstances of the case. b) It is prayed that that this Hon'ble Court be pleased to declare GOMS. No 35 dated 02/03/2007 is illegal, arbitrary, unconstitutional and in violation of the law lay down by the Supreme Court and GOMS. No. 72 dated 20/02/2002 as prayer No 2 in addition to the existing prayer in the interest of justice and in the circumstances of the case.

Prayer is amended in Petition & affidavit para 19 (a&b), as per C.O dated 30.07.2024, Vide IA No.1 of 2024 in WPNo. 14677 of 2009

I.A. NO: 2 OF 2009(WPMP. NO: 19245 OF 2009)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased direct the Respondents stay all further construction activity in the lung space (Public park) adjacent to Jubilee Hall situated in Public Garden, Nampally, Hyderabad pending disposal of the Writ Petition

I.A. NO: 1 OF 2009(WVMP. NO: 3008 OF 2009)

Between:

1. Government of Andhra Pradesh, Rep. by Principal Secretary, GAD Secretariat, Hyderabad.
2. Secretary Municipal Administration & Urban Development, Department, Government of Andhra Pradesh, Secretariat, Hyderabad.
3. Commissioner, Public Garden, Nampally, Hyderabad.

....PETITIONERS(RESPONDNETS 1to3)

AND

1. Public Garden Walkers Association, Rep. by its Chairman, Mr. Gulam Yazdani, Advocate, R/o. 5-9-919, Gunfoundry, Hyderabad.

....RESPONDENT(WRIT PETITIONER)

2. Morning Walker Association, Rep. by its President, Syed Muneer Ahmed, S/o. Syed Quasim, Aged about 83 Years, Occ Retired Bank Employee, R/o.H.No. 3-6-158
(R2 is not necessary party in this petition)

...RESPONDENT
(4th RESPONDENT)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased

vacate the interim order dt. 24-7-2009 granted in WP No. 14677 of 2009

Counsel for the Petitioner: SRI. J. VENKAT NARSIMHA REDDY REP
SRI M. DAS MOHAPATRA

Counsel for the Respondent Nos.1to3: SRI MOHAMMED IMRAN KHAN,
ADDITIONAL ADVOCATE GENRAL
Counsel for the Respondent No.5: GP FOR GENERAL ADMINISTRATION
Counsel for the Respondent No.4:--

The Court made the following: ORDER

THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE

AND

THE HON'BLE SRI JUSTICE J. SREENIVAS RAO

WRIT PETITION No.14677 of 2009

ORDER: *(Per the Hon'ble Sri Justice J. Sreenivas Rao)*

Initially this writ petition is filed for the following relief:

> "... to issue comprehensive writ, order, direction more particularly one in the nature of writ of mandamus, directing the Respondents to act according to law, prohibit the Respondents to use Public park in Public garden, Nampally, Hyderabad, for any other purpose except aesthetic and recreational, declare the action of the Respondents is illegal, arbitrary, unreasonable and in violation of principle of natural justice and consequently direct the Respondents to restore park situated adjacent to Jubilee Hall, Public garden, Nampally, Hyderabad in the interest of Justice..."

1.1. During pendency of the writ petition, the petitioner Association filed I.A.No.1 of 2024 seeking amendment of prayer questioning the validity G.O.Ms.No.35, Agriculture and Co-Operation (Horticulture) Department, dated 02.03.2007, as it is in violation of the law laid down by the Supreme Court and G.O.Ms.No.72, Municipal Administration and Urban Development(G1) Department, dated 20.02.2002 and the said I.A. was ordered on 30.07.2024.

2. Heard Sri J.Venkat Narsimha Reddy, learned counsel representing Sri M.Das Mohapatra, learned counsel for the petitioner and Sri Mohammed Imran Khan, learned Additional Advocate General appearing for respondent Nos.1 to 3. No representation on behalf of respondent No.4.

Brief facts of the case:

3. The petitioner Association, namely Morning Walker's Association, Public Garden, Nampally, Hyderabad, has been established in the year 1990 with aims and objectives to protect the environment of public lung space for the welfare of the public, who visit Public Garden, and from further encroachment for some other purposes by the Government and its agencies.

3.1. It is further averred that the HEH Nizam, the ruler of the erstwhile Hyderabad State, artistically designed the Public Garden of 40 acres and the same was gradually shrunk into single digit by the construction of Lalitha Kala Thoranam and Telugu Open University and Public Park premises misused for non-recreational and commercial purpose and Public Garden is meant for public walkers and the respondents are using it

for other purposes and the same is illegal and the Government of Andhra Pradesh has further encroached the Park and lung space adjacent to Jubilee Hall and dug the pits to raise concrete structure contrary to G.O.Ms.No.72 Municipal Administration & Urban Development (J1) Department, dated 20.02.2002. In the said G.O., it is specifically stated that all Nagar/Panchayats/ Municipalities/Municipal Corporations in the State shall not propose to utilize the reserved open spaces of a layout for the purpose other than the intended original use such as a park, play ground, community structure, Urban forestry and similar eco-conservation programme. Contrary to the above said G.O., the Government has issued G.O.Ms.No.35, Agriculture and Co-operation (Horticulture) Department dated 02.03.2007, allocating 30,500 Sft. of land adjacent to Tennis Court in the Public Garden premises pertaining to Horticulture Department to General Administration (Protocol) Department for construction of Protocol Office building. The petitioner Association immediately submitted a representation on 10.07.2009 requesting the respondents not to convert the Public Park for

any other purpose. When the respondents are proceeding with the construction, the petitioner Association filed the present writ petition.

Submissions of learned counsel for the petitioner:

4. Learned counsel for the petitioner Association contended that the respondents are not entitled to allot the Public Parks for construction of buildings and allocation of 30,500 Sft. through G.O.Ms.No.35 dated 02.03.2007 for construction of Protocol Office building to General Administration (Protocol) Department is contrary to G.O.Ms.No.72 dated 20.02.2002.

4.1. In support of his contention, he relied upon the judgment of the Hon'ble Supreme Court in **Dr.G.N.Khajuria and others v. Delhi Development Authority and others**[1].

Submissions of learned Additional Advocate General:

5. Learned Additional Advocate General appearing for respondent Nos.1 to 3 submits that the respondents are maintaining the Public Garden with good greenery and much flora and fauna. The then Government of Andhra Pradesh has

[1] (1995) 5 SCC 762

taken a decision in the interest of general public to establish a Telugu Open University and Lalitha Kala Thoranam to promote and upkeep the importance of Telugu language and display of several folk arts of Telugu in Lalitha Kala Thoranam. Lalitha Kala Thoranam is an open air auditorium with less concrete structure, whereas the Telugu Open University is one of its kind in the State of Andhra Pradesh and Telangana (United Andhra Pradesh). He further submits that the respondent authorities are maintaining the Garden clean and green for the use of morning walkers to relax in the lawns and they have not violated the guidelines enumerated in G.O.Ms.No.72 dated 20.02.2002.

5.1. He further submits that though the Government has issued G.O.Ms.No.35 dated 02.03.2007 proposing to allocate 30,500 Sft. (3,389 sq. yards) to the General Administration (Protocol) Department, later on the Government had issued another G.O.Ms.No.266 Agriculture & Co-operation (Horticulture) Department dated 10.11.2009 modifying the earlier G.O.Ms.No.35 dated 02.03.2007 transferring only an extent of 859.50 sq. yards to the General Administration

(Protocol) Department, for construction of Protocol Office building.

5.2. He also submits that similar complaints, as alleged by the petitioner Association in the writ petition, were filed before the Lokayukta, *vide* Complaint Nos.2582 of 2013 and 3047 of 2013 and the same were closed on 26.09.2017. He further submits that the respondent authorities are protecting the Public Garden and only un-utilized small piece of open land to an extent of 859.50 sq. yards is taken for public purpose for construction of Protocol Office building, which is adjacent to the other buildings and there are no trees or garden and if any construction is made, no damage will be caused to the Park. He further submits that the land to an extent of 2,329.50 sq. yards is under the control of Horticulture Department and the said department is maintaining good greenery with flora and fauna and the respondent authorities are taking all precautions in protecting the Public Park.