

HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

FRIDAY, THE TWENTY FIRST DAY OF MARCH
TWO THOUSAND AND TWENTY FIVE

PRESENT

**THE HONOURABLE THE ACTING CHIEF JUSTICE SUJOY PAUL
AND
THE HONOURABLE SMT JUSTICE RENUKA YARA**

WRIT APPEAL NOs: 1639 and 1661 of 2017

WRIT APPEAL NO: 1639 OF 2017

Writ Appeal under clause 15 of the Letters Patent preferred against the order dated 07.03.2017 passed in WP No.13810 of 2008 on the file of the High Court.

Between:

1. The State Archaeological Museums Department, represented by its Director, Government of Telangana, (Previously shown as State of Andhra Pradesh), Gunfoundry, Hyderabad
2. The Commissioner, Survey and land Records Settlement, Government of Telangana (Previously shown as Government of A.P.), Hyderabad.

...APPELLANTS/RESPONDENTS

AND

1. V.Swaroopaa Rani, W/o Damodar Reddy, Occ House-wife, R/o 1-9-312/WA and B, Vidyanagar.
2. Smt. G. Ahalya Devi, W/o Sri G. Ramachandra Reddy, R/o. 32/2, RT, Malakpet, Hyderabad
3. V. Prabhakara Reddy, S/o late Narayana Reddy, (died) per LR Occ Agriculture, R/o Chowdoor Village, Devaruppula Mandal, Warangal District.
4. Smt. V. Sakuntala Devi, W/o Vasudeva Reddy, Occ Housewife, Chinna Maoor Village, Devaruppula Mandal, Warangal District.
5. Smt. K. Bharati Devi, W/o Rajeswara Rao, Occ Housewife, R/o B1-90, Chaval Road, Hyderabad.
6. Smt. V. Indra Devi, W/o late Prabhakara Reddy, R/o 16-10-228/3, Old Malakpet, Hyderabad.

(R6 herein is brought on record as LR of deceased R3 herein as per Court order dt. 08.09.2010 in WPMP.No.31470/2009)

...RESPONDENTS

I.A. NO: 1 OF 2017(WAMP. NO: 3122 OF 2017)

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 to suspend the operation of the order dt. 07.03.2017 in W.P.No.13810 of 2008.

IA NO: 1 OF 2018

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 to permit the petitioners herein to delete the words " was 3 hectares " from para -9 of the Affidavit filed in support of I.A.No. 1/ 2017(W.A.M.P.No. 3122/2017 in WANo. 1639 of 2017) and read the affidavit without taking into consideration of those words.

IA NO: 1 OF 2022

Between:

1. Smt. V. Sakuntala Devi, W/o Vasudeva Reddy, aged about major, Occ Housewife, Chinna Maoor Village, Devaruppula Mandal, Warangal District.
2. Smt. K. Bharati Devi, W/o Rajeswara Rao, aged about 89 years, Occ Housewife, R/o B1-90, Chaval Road, Hyderabad.
3. Smt. V. Indra Devi, W/o late Prabhakara Reddy, aged about major, R/o 16-10-228/3, Old Malakpet, Hyderabad.

...PETITIONERS/RESPONDENT Nos.4 to 6

AND

1. The State Archaeological Museums Department, represented by its Director, Government of Telangana, (Previously shown as State of Andhra Pradesh), Gunfoundry, Hyderabad
2. The Commissioner, Survey and land Records Settlement, Government of Telangana (Previously shown as Government of A.P.), Hyderabad.

...RESPONDENTS/APPELLANTS

3. V.Swaroopaa Rani, W/o Damodar Reddy, aged about major, Occ House-wife, R/o 1-9-312/WA and B, Vidyanagar.
4. Smt. G. Ahalya Devi, W/o Sri G. Ramachandra Reddy, aged about major, Occ House-wife, R/o. 32/2, RT, Malakpet, Hyderabad
5. V. Prabhakara Reddy, S/o late Narayana Reddy, aged about major, Occ Agriculture, R/o Chowdoor Village, Devaruppula Mandal, Warangal District.

...RESPONDENTS

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 to vacate the interim order Dated 07.03.2018 in W.A. No. 1639 of 2017 granted by this Hon'ble Court.

**Counsel for the Appellants: Ms. DIVYA ADEPU, SPL. GP, REP. FOR
THE ADVOCATE GENERAL**

**Counsel for the Respondent No.4 & 5: SRI VEDULA SRINIVAS, Sr. COUNSEL,
REP. FOR SRI K.PRADEEP REDDY**

WRIT APPEAL NO: 1661 OF 2017

Writ Appeal under clause 15 of the Letters Patent against the order passed dated 7-3-2017 in W.P. No. 16754 of 2008 on the file of the High Court.

Between:

1. The State Archeological Museums, rep. by its Director, Government of Telangana, (Previously shown as Government of Andhra Pradesh), Gunfoundry, Hyderabad.
2. The Commissioner, Survey and Land Records Settlement, Government of Telangana (Previously shown as Government of Andhra Pradesh), Hyderabad.

...APPELLANTS

AND

1. Vegasena Venkata Satyanarayana, S/o. Venkata Somaraju R/o. Mahadevapatnam, Bhimavaram Taluk, W.G. District.
2. Kalidindi Subba Raju, S/o. Surya Narayana Raju R/o. Myeepa Village, Bhimavaram Taluk, W.G. District.
3. Penumetcha Surya Narayana Raju, S/o. Lakshmiapati Raju R/o. Ilan Colony, Nagarjuna Sagar, Nalgonda District.
4. Penumathsa Venkata Sathyanarayana Raju, S/o. Penumathsa Surya Narayana Raju.
5. Fazal Ali, S/o. Ibrahim Esa R/o. Kingkoti, Hyderabad.

Rep. by their G.P.A. Holder Vegesana Murthy Raju, S/o. Subbaraju, age 31 Yrs, R/o. 40-4-6, J.V.R Street, Krishna Nagar, Venkateswarapuram, Vijayawada, Krishna District.

...RESPONDENTS

I.A. NO: 1 OF 2017(WAMP. NO: 3163 OF 2017)

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 to suspend the operation of the order dt. 07.03.2017 passed in W.P.No.16754 of 2008.

IA NO: 1 OF 2018

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 to permit the petitioners herein to delete the words "was 3 hectares" from para - 9 of the Affidavit filed in support of I.A. No. 1/ 2017 (WAMP No. 3163/ 2017 in WA. No. 1661 of 2017) and read the affidavit without taking into consideration of those words.

IA NO: 6 OF 2018

Between:

1. Vegasena Venkata Satyanarayana, S/o. Venkata Somaraju R/o. Mahadevapatnam, Bhimavaram Taluk, W.G. District.
2. Kalidindi Subba Raju, S/o. Surya Narayana Raju R/o. Myeepa Village, Bhimavaram Taluk, W.G. District.
3. Penumetcha Surya Narayana Raju, S/o. Lakshmiapati Raju R/o.Ilan Colony, Nagarjuna Sagar, Nalgonda District.
4. Penumathsa Venkata Sathyanarayana Raju, S/o. Penumathsa Surya Narayana Raju.
5. Fazal Ali, S/o. Ibrahim Esa R/o. Kingkoti, Hyderabad.

Rep. by their G.P.A. Holder Vegesana Murthy Raju, S/o.Subbaraju, age 31 Yrs, R/o. 40-4-6, J.V.R Street, Krishna Nagar, Venkateswarapuram, Vijayawada, Krishna District.

...APPELLANTS

AND

1. The State Archeological Museums, rep. by its Director, Government of Telangana, (Previously shown as Government of Andhra Pradesh), Gunfoundry, Hyderabad.
2. The Commissioner, Survey and Land Records Settlement, Government of Telangana (Previously shown as Government of Andhra Pradesh), Hyderabad.

...RESPONDENTS

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 to vacate the interim order dated 07.03.2018 passed in WA No. 1661 of 2017

**Counsel for the Appellants: Ms. DIVYA ADEPU, SPL. GP, REP. FOR
THE ADVOCATE GENERAL**

**Counsel for the Respondents: SRI VEDULA VENKATA RAMANA, Sr.COUNSEL,
REP. FOR M/s. BHARADWAJ ASSOCIATES**

The Court delivered the following: COMMON JUDGMENT

**THE HON'BLE THE ACTING CHIEF JUSTICE SUJOY PAUL
AND
THE HON'BLE SMT. JUSTICE RENUKA YARA**

WRIT APPEAL Nos.1639 and 1661 of 2017

COMMON JUDGMENT *(Per Hon'ble Smt. Justice Renuka Yara):*

Heard Ms. Divya Adepu, learned Special Government Pleader attached to the office of the learned Advocate General for the State of Telangana, appearing for the appellants, Sri Vedula Srinivas, learned Senior Counsel appearing for Mr. K. Pradeep Reddy, learned counsel for respondent Nos.4 and 5 in W.A.No.1639 of 2017, Sri Vedula Venkata Ramana, learned Senior Counsel appearing for M/s. Bharadwaj Associates for the respondents in W.A.No.1661 of 2017. Perused the record.

2. The appeals are preferred by the appellants/respondents aggrieved by the impugned common order dated 07.03.2017 passed by a learned Single Judge in W.P.Nos.13810 and 16754 of 2008. In the said order, the appellants were directed to pay costs of Rs.20,000/- to the respondents in each writ petition; declared the action of writ appellant No.1 in constructing the compound wall covering the land of the respondents in Sy.No.318/1, situated in Gaddiannaram Village, Asmangadh, Malakpet, Hyderabad, as illegal, violative of Article 300-A of the

Constitution of India, contrary to the orders passed by the P.A. to Collector, Hyderabad District in No.B2/392/78, dt.14.08.1980 as confirmed in Commissioner, Survey Settlement Land Records, Andhra Pradesh, Hyderabad, in Revision Petition Case No.R.O.R./1290/80 dt.14.09.1981 and the judgment of the VII Junior Civil Judge, City Civil Court, Hyderabad, dt.14.10.1998 in O.S.No.3903 of 1986 and confirmed in judgment dt.12.09.2000 in A.S.No.176 of 1999 on the file of the Chief Judge, City Civil Court, Hyderabad and consequently directed writ appellant No.1 to demolish the compound wall constructed by appellant No.1 over and above the land of Ac.3.00 gts. covered by the Monument Mons, Raymonds Obelisk (for short 'the subject land') and further directed the appellants not to encroach upon the land of the respondents in Sy.No.318/1, Gaddiannaram Village, Asmangadh, Malakpet, Hyderabad.

3. The respondents filed the writ petitions with the following prayers:

" to direct the Commissioner Survey and Land Records (2nd respondent) to survey the land of the State Archaeological Museums Department (1st respondent) and fix the boundaries as per the orders of the PA to the Collector, Hyderabad District in his order dt.14.08.1980 in B2/392/78 as confirmed by the

Commissioner, Survey Settlement Land Records in his order dt.14.09.1981 in Revision Petition No.ROR/1290/80 and further to direct the 1st respondent herein to demolish the compound wall constructed in deviation from the orders of the aforesaid authorities”.

Brief facts:

4. The respondents in both the writ petitions are claiming to be owners of land admeasuring Ac.3.00 gts. in Sy.No.318/1 Gaddi Annaram Village which was originally owned by H.E.H The Nizam the VII (for short 'the Nizam') and was purchased by Naseem Fatima and Saleema Fatima on 03.10.1964 and 02.09.1963 respectively. The respondents in W.A.No.1639 of 2017 purchased Ac.1.00 cts from Naseem Fatima on 20.08.1966, the said land was divided into six plots and five plots were sold. Similarly, the respondents in W.A.No.1661 of 2017 are claiming different extent of land through their vendor Saleema Fatima.

5. There is a history of proceedings before the revenue authorities for rectification of entries to reflect the name of the H.E.H. Nizam as the owner and possessor of land in Sy.No.318/1 by deleting the term 'Sarkari'. The said proceedings are orders of the PA to the Collector, Hyderabad District in his order dt.14.08.1980 in B2/392/78 as confirmed by the

Commissioner, Survey Settlement Land Records in his order dt.14.09.1981 in Revision Petition No.ROR/1290/80. The said proceedings before the revenue authorities ended in favour of the respondents in both the writ appeals. Consequently, the name of the H.E.H. Nizam is reflected as owner of the land in Sy.No.318/1.

6. Apart from the proceedings before the revenue authorities, the respondents in W.A.No.1639 of 2017 have filed O.S.No.3903 of 1986 seeking perpetual injunction against the writ appellant No.1 with respect to land to an extent of Ac.1.00 gts. consisting of six house plots in Sy.No.318/1 of Gaddiannaram Village and said suit was decreed by judgment and decree dated 14.10.1998. Further, the appeal filed by writ appellant No.1 challenging the judgment and decree passed by the Civil Court in A.S.No.176 of 1999 has been dismissed by the learned Chief Judge, City Civil Court, Hyderabad *vide* judgment dated 12.09.2000 and said judgment became final as the writ appellant No.1 did not challenge the same by filing Second Appeal.

7. Lastly, there was an attempt made to acquire the land in question by the A.P.Electricity Board and the same was

challenged before the High Court in W.P.Nos.4950 and 5322 of 1986 and the respondents were granted with stay from dispossession. In view of the culmination of all the proceedings before various forums in their favour, the respondents in both the writ appeals filed writ petitions seeking reliefs prayed for i.e. survey of subject land to declare the construction of compound wall around the subject land as illegal and to demolish the same.

Contentions of the Appellants:

8. The case of the writ appellants is that the land in question is an ancient monument existing in 3.73 hectares and 36 square meters of land as per extract of Town Survey Land Register and said monument is listed in Gazette Notification No.49/1/111/Archaeology/51, dated 12.01.1953 issued by the Education Department (Archaeology). In said notification, the monument is referred as 'Mons Raymonds Obelisk', 'Musa-Ram Bagh (H) Suburb)' 'resting place of Michel Joachim Marie Raymond, a French Officer who was originally in Tipu Sultan's service but subsequently joined the Nizam's service' and that 'monument is well protected and maintained'. On the basis of aforementioned documents, the writ appellants claim that the land in question belongs to an ancient monument which is

notified as early as 1953 and has been well protected and maintained ever since. According to the writ appellants, 3.73 hectares and 36 square meters approximately equals to Ac.7.28 gts. and the same is surrounded by compound wall protecting the resting place of Raymonds Obelisk', Ann Janet Elizabeth Jenkin, two dogs and a horse. Upon examining the case of the rival parties, the learned Single Judge on the basis of the findings given by the revenue authorities and the Civil Courts allowed the writ petitions leading to filing of the present appeals.

9. The learned counsel for the writ appellants argued that the prayer of the respondents is entirely civil in nature seeking localization/identification of the respondents' land and that sale deeds produced by the respondents do not show an archaeological monument as one of the boundary. Consequently, it is argued that the land of the respondents is not within confines of the ancient monument whose walls were in existence for more than 40 years and therefore, the respondents are not entitled to the relief sought.

10. Referring to the judgment of the learned Single Judge, reference is made to the observation that the boundary wall "appears" to have been constructed in violation of the Civil

Court's judgment of permanent injunction in favour of the respondents.

11. A reference is made to three sale deeds dated 27.06.1967 executed by respondent No.1 in favour of respondent Nos.2, 4 and 5 in W.A.No.1639 of 2017 coupled with rough sketch and Deed of Release dated 24.06.1967 executed in favour of respondent No.1 coupled with rough sketch. It is argued that the sale deeds of the respondents in both writ appeals do not disclose existence of any monument and therefore, there is no cause of action for filing a writ petition. A perusal of said documents, more particularly, Deed of Release, dated 24.06.1967 shows the northern boundary as 'Moosaram Plot form and Monument'. The sale deeds dated 27.06.1967 show the northern boundary as 'Tomb of Mosaremo' and 'Tomb area'.

12. The learned counsel for the writ appellants referred to the definition of an ancient monument as referred in Section 3 of the Telangana Ancient and Historical Monuments and Archaeological Sites and Remains Act, 1960, which reads as under:

"All ancient and historical monuments and all archaeological sites and remains which have been

declared by the 8 [Ancient Monuments Preservation Act, 1904 (Central Act 7 of 1904), or the Hyderabad Ancient Monuments Preservation Act (Hyderabad Act VIII of 1337 F.), to be protected monuments but which have not been declared by or under law made by Parliament to be of national importance, shall be deemed to be ancient and historical monuments or archaeological sites and remains declared to be protected monuments or areas for the purposes of this Act”.

13. The learned counsel for the appellants sought to negate the findings of the revenue authorities alleging that the said orders do not throw light on the boundaries of the land of the respondents and also do not disclose the location of land owned by them. Further, the judgment and decree of the civil Courts in O.S.No.3903 of 1986 and A.S.No.176 of 1999 are sought to be negated on the ground that said suit was filed seeking perpetual injunction with respect to 1 Acre of land only, that too by the respondents in W.A.No.1639 of 2017 only and that the writ appellants in W.A.No.1661 of 2017 are not parties to the proceedings before the civil Courts. Lastly, it is emphasized that the entries in Telangana Survey Land Records (TSLR) and Gazette notification of the year 1953 are completely ignored.

14. The learned counsel for the appellants referred to the judgments of the Hon'ble Supreme Court of India in **State of**

A.P. vs. Hyderabad Potteries Pvt. Ltd. and another¹, Palem Chandra Shekar and others vs. Palem Bikshpathy and others², E. Achuthan Nair vs. P. Narayanan Nair and another³, Mohan Pandey and another vs. Usha Rani Rajgaria (Smt) and others⁴ and Roshina T vs. Abdül Azeez K.T. and others⁵ referring to contentions of various parties without referring to findings of the Court. Therefore, said citations cannot be of assistance to the writ appellants.

15. The respondents while filing the writ petitions have sought re-survey of the land covered by the monuments which is within the confines of a compound wall for which the writ appellants have consented in their counter. However, the learned Single Judge without ascertaining the location of the land of the respondents has passed the order of demolition of the compound wall in order to deliver possession of the land to the respondents. In that context, the learned counsel for the appellants referred to the judgment of the Hon'ble Supreme Court of India in the case between **Union of India and others**

¹ AIR 2010 SC 2760

² 2019 SCC OnLine TS 3484

³ (1987) 4 SCC 71

⁴ (1992) 4 SCC 61

⁵ (2019) 2 SCC 329

vs. Dinesh Prasad⁶, wherein, it is held that no relief to a party can be granted on the grounds not taken in the writ petition and it is not possible to grant relief beyond pleadings. Further, learned counsel for the appellants referred to judgment of the Hon'ble Supreme Court of India in the matter of **Rajeev Mankotia vs. Secretary to the President of India and others**⁷, wherein, it is held that it is the duty of the Union of India and the State Governments to protect and preserve ancient monuments. Said matter related to the Viceregal Lodge as a protected monument included the land appurtenant to it. It is argued that contrary to the finding given by the Hon'ble Supreme Court of India in **Rajeev Mankotia (7 supra)**, the learned Single Judge directed to demolish the boundary wall without enquiry and without survey. Lastly, the learned counsel for the appellants relied upon the judgment of this Court in W.A.No.484 of 2017, in the matter between the **District Collector, Hyderabad and Syed Jahangir**, wherein, it is held as follows:

“48. The issues involved in this appeal are the material questions which require to be decided on examination of evidence and on material documents and the same cannot be

⁶ (2012) 12 SCC 63

⁷ 1997 (10) SCC 441

decided in the writ petition. These questions in our view were pure questions of facts and could be answered one way or the other by the competent civil court in properly constituted civil suit on the basis of the evidence adduced by the parties but not on the documents filed in the writ jurisdiction. Further, the veracity of the said documents has to be examined as per the provisions of the Evidence Act.

49. Further, the remedy under Article 226 of the Constitution of India shall not be available except where there is infringement of right of the persons by the action of the statutory authorities and this Court exercising power under the writ jurisdiction cannot decide the disputed questions as there is availability of remedy under the general law. In catena of judgments Supreme Court held that the power under Article 226 of the Constitution of India is not intended to replace the remedy available to the person aggrieved by filing a civil suit. (see **Mohan Pandey v. Usha Rani Rajgaria**⁸ and **Dwarka Prasad Agarwal v. B.D.Agarwal**⁹).

Contentions of Respondents in W.A.No.1661 of 2017:

16. Sri Vedula Venkata Ramana, learned Senior Counsel appearing for the respondents in W.A.No.1661 of 2017 referred to the Telangana Ancient and Historical Monuments and Archaeological Sites and Remains Act, 1960 to emphasize that the sections therein show that the State Government has power to protect the monuments, declare certain structures as ancient

⁸ (1992) 4 SCC 6

⁹ (2003) 6 SCC 230

monuments, to acquire the monuments and their maintenance, protection, etc., but does not give any scope for claiming ownership. Learned Senior Counsel referred to the judgment of the Hon'ble Supreme court of India in the matter of **Roma Sonkar vs. Mahdya Pradesh State Public Service Commission and another**¹⁰, wherein, it is held as follows:

“We have very serious reservations whether the Division Bench in an intra court appeal could have remitted a writ petition in the matter of moulding the relief. It is the exercise of jurisdiction of the High Court under Article 226 of the Constitution of India. The learned Single Judge as well as the Division Bench exercised the same jurisdiction. Only to avoid inconvenience to the litigants, another tier of screening by the Division Bench is provided in terms of the power of the High Court but that does not mean that the Single Judge is subordinate to the Division Bench. Being a writ proceeding, the Division Bench was called upon, in the intra court appeal, primarily and mostly to consider the correctness or otherwise of the view taken by the learned Single Judge. Hence, in our view, the Division Bench needs to consider the appeal(s) on merits by deciding on the correctness of the judgment of the learned Single Judge, instead of remitting the matter to the learned Single Judge”.

17. On the basis of above finding of the Hon'ble Supreme Court of India, the learned Senior Counsel appearing for the

¹⁰ (2018) 17 SCC 106

respondents in W.A.No.1661 of 2017 argued that this Court does not have jurisdiction to look into the merits of the order passed by the learned Single Judge.

Contentions of Respondents in W.A.No.1639 of 2017:

18. Sri Vedula Srinivas, learned Senior Counsel appearing for the respondents in W.A.No.1639 of 2017 argued that the documents relied upon by the writ appellants do not prove their title and are also not of assistance in proving the extent of land covered by the monument. It is argued that besides the Tombs of Raymonds Obelisk, Ann Janet Elizabeth Jenkin, two dogs and horse, there is an open land and said land belongs to the respondents.

19. Learned counsel for respondents in W.A.No.1639 of 2017 while relying upon the arguments forwarded by the learned senior counsel for the respondents in W.A.No.1661 of 2017 argued that the writ appellants have failed to prove their case before the revenue authorities as well as Civil Courts and therefore, cannot claim any relief in the present writ appeals. It is argued that the order of the learned Single Judge is based on findings of the revenue authorities as well as Civil Courts which have categorically given findings in favour of the respondents

declaring them as owners of the land in Sy.No.318/1 on the basis of entries in pahanies as well as registered sale deeds. About the genuineness of entries in TSLR, the learned Senior Counsel relied upon judgment of the High Court of Judicature, Andhra Pradesh at Hyderabad in the matter of **Hyderabad Potteries Pvt. Ltd. Vs. Collector, Hyderabad District and another**¹¹, wherein, it is held as follows:

“A bare reading of scheme of the A.P. Survey and Boundaries Act, 1923 would make it clear that the survey made under the said Act is mainly intended for the purposes of identification of the lands and fixation of boundaries. There is no provision under the Act intending to make any detail enquiries with regard to the right, title and interest of the persons in the lands. It is neither the object nor the scheme of the said Act. There is no presumption that every entry made in the TSLR shall be presumed to be true until contrary is proved as in the case of entries made in the record of rights under the provisions of A.P. Record of Rights in Land Act, 1971. It is not a record of right. There is no such provision in the Andhra Pradesh Survey and Boundaries Act, 1923”.

Findings of the Court:

20. Having perused the record, the oral arguments, written arguments and the citations relied by the respective counsel for

¹¹ 2001 (3) ALT 200

the writ appellants and the respondents in both the writ appeals, there are certain predominant points to be noted. The first and foremost is that the subject property consists of structures surrounded by a compound wall which is declared as ancient monument. The Gazette notification dated 12.01.1953 shows the subject property as an ancient monument at Serial No.23. When relief is sought by private parties for land housing an ancient monument and for demolition of walls surrounding the monument, the same requires certain amount of caution as contended by the learned counsel for the writ appellants on the basis of judgment in **Rajeev Mankotia (7 supra)**, wherein it is held that the State and Central Governments have a duty to protect ancient monument. Accordingly, the State and Central Governments are maintaining the same by constructing a compound wall around the monuments. The photographs filed by the writ appellants show that the ancient monument is indeed well maintained with compound wall and flooring. The photographs show the distinct structures being old as the architecture clearly does not belong to present day construction parlance.

21. The writ appellants resisted the attempts of the respondents in both the writ petitions before the civil courts and revenue authorities, but were unsuccessful in proving their case on the basis of record. The revenue authorities gave finding in favour of the HEH Nizam. The respondents in both the writ petitions are tracing their title through their vendors Naseem Fatima and Saleema Fatima. The sale deeds dated 27.06.1967 and Deed of Release dated 24.06.1967 clearly reflect that the northern boundary of the alleged plots is the platform of a Tomb or platform of ancient monument. The very description of northern boundary shows that the ancient monument is on a platform which is the northern boundary. The documents produced by the respondents themselves show that there is certain demarcation of the ancient monument in the form of a platform. When the respondents in W.A.No.1639 of 2017 approached civil Court *vide* O.S.No.3903 of 1986, the burden of proof is on them to prove that the writ appellants have encroached into their land by exceeding the northern boundary platform. There are no such pleadings or findings. Merely on the basis of ownership allegedly proven through the registered sale deeds emanating from the HEH Nizam and the subsequent vendors, the Civil Court granted perpetual injunction in favour

of respondents in W.A.No.1639 of 2017. The suit was filed way back in the year 1986 seeking perpetual injunction alleging that the writ appellant No.1 is attempting to dig trenches in the property of the respondents without title and they did not heed to the resistance of the respondents and since the same is not denied, perpetual injunction was granted.

22. According to the writ appellants, the compound wall had been in existence for more than 40 years. While so, according to the respondents in W.A.No.1639 of 2017, the writ appellant No.1 made attempts to dig trenches in the year 1986. When the respondents opposed digging of trenches in the year 1986 when there was no wall, a question arises as to why the respondents did not seek relief to prevent the construction of wall by the writ appellants after obtaining the decree of perpetual injunction. In this regard, i.e. construction of compound wall around the monument, the learned Single Judge in his order at paragraph No.38 has held as follows:

"38. The contention in the counter affidavit filed on 17.04.2012 in W.P.No.13810 of 2008 that compound wall was constructed 40 years back, is a false contention because, if so, it should have been constructed by 1972. However, in the written statement filed by the 1st respondent in O.S.No.3903 of 1986, no such pleading was

raised. It was only stated that it was looking after the suit area with the help of servants by erecting boundary stones and by putting sign boards. If the compound wall had been in existence since 1972, the 1st respondent as defendant in the suit O.S.No.3903 of 1986, would not have omitted to mention it in the written statement. In fact in the said suit, it was clearly held that the "Raymond's Obelisk" was not located in the land claimed by the petitioners/plaintiffs therein. Thus it is clear that after the decision of the Civil court, the 1st respondent built the compound wall in gross violation of the perpetual injunction granted by the Court and the land belonging to the petitioners was grabbed highhandedly by it. Such conduct of the 1st respondent, a Government Department, is to be strongly deprecated and cannot be countenanced".

23. The above finding shows that the learned Single Judge held that the contention of the writ appellants that the compound wall was constructed 40 years back is a false contention on the premise that the written statement filed by respondent No.1 in O.S.No.3903 of 1986 has no such pleadings. In this context, it is pertinent to note that existence or non-existence of a wall has to be proven by the respondents in W.A.No.1639 of 2017 who have approached the Civil Court vide O.S.No.3903 of 1986, but not writ appellants. There is an erroneous presumption that in case, the wall existed, the same would have been mentioned in the written statement. Further, it

is held that the monument "Raymond's Obelisk" was not located in the land claimed by the respondents. In case, the same was true, the respondents herein would have no ground to seek demolition of the compound wall.

24. There is a finding to the effect that the writ appellant No.1 has built the compound wall in gross violation of the perpetual injunction granted by the Court and the land belonging to the respondents was highhandedly grabbed by appellant No 1. The said finding does not stand to scrutiny for the simple reason that when the respondents in W.A.No.1639 of 2017 approached the civil Court for remedy in the year 1986 when trenches were dug, nothing prevented them from approaching a civil Court or the writ Court seeking appropriate relief, in case, the compound wall was highhandedly constructed at any point of time, in the interim between 1986 and 2008.

25. There is a finding given by the learned Single Judge with respect to extent of the land covered by the monument as follows at paragraph No.39 of the impugned order :

"39. Also in the suit, the 1st respondent had claimed that only Ac 3-00 cents had been given to the Archaeological Department for protection of the said monument. But now, it is contending in the counter affidavits that Ac 7-28

guntas is covered by compound wall. Neither for the Ac 3-00 guntas nor for Ac 7-28 guntas, is any scrap of paper filed by the 1st respondent to show that it was allotted to it by any authority. Thus it is not acting bonafide. It's action is highhanded and amounts to land grabbing without any right, title or interest therein".

26. The learned Single Judge erroneously held that the appellant No.1 claimed Ac.3-00 cents was given to it (Archaeological Department) for protection of the monument, but is claiming Ac.7-28 gts. as being covered by compound wall while filing counter in the writ petitions. The Town Survey Land Records (TSLR) shows that the land belonging to the monument is to an extent of 3.73 hectares and 36 square meters. Said extent when converted into acres would be Ac.7-28 gts. approximately. Therefore, we are of the considered opinion that the learned Single Judge erred in his assessment of extent of land within the confines of the compound wall surrounding the monument for the past 40 years due to error in reading the extent of monument as mentioned in TSLR.

27. Learned senior counsel for the respondents in W.A.No.1639 of 2017 has placed reliance on **Hyderabad Potteries Pvt. Ltd. (11 supra)** to contend that entries made in TSLR cannot be presumed to be true. Assuming for a moment

that the entries in TSLR are not true, the fact remains that Ac.7-28 gts. of land is covered by a compound wall.

28. The burden of proof is clearly on the party which approaches the Court seeking relief either before the Civil Court or the Writ Court. The respondents in the writ appeals ought to have filed a civil suit for identification of their property and demolition of the compound wall. Alternatively, when they approached the Writ Court seeking to demolish the compound wall of an ancient monument, the respondents ought to have filed conclusive documentary proof as to when the compound wall came into existence and that their land is encroached. Instead, the respondents have sought relief of Writ of Mandamus to direct the writ appellant No.2 to survey the land and fix boundaries as per orders of the P.A. to Collector, Hyderabad District in No.B2/392/78, dt.14.08.1980 as confirmed in Commissioner, Survey Settlement Land Records. Andhra Pradesh, Hyderabad, in Revision Petition Case No.R.O.R./1290/80 dt.14.09.1981. The prayer sought by the respondents squarely attracts the legal ratio laid down by this Court in W.A.No.484 of 2017 i.e. material questions which

require examination of evidence and documents cannot be decided in a writ petition.

29. The very fact that the respondents in the writ petition have sought survey of the land for the purpose of fixing boundaries shows that they do not have any poof as to location of their land on ground, more particularly, within confines of the compound wall of the ancient monument. In this context, it is also pertinent to note that the learned Single Judge exceeded the prayer of the respondents who have sought survey of land for the purpose of fixing boundaries and consequently sought demolition of compound wall. While so, the learned Single Judge without ordering survey has given a direction to demolish the compound wall. The learned Single Judge failed to consider the fact that the respondents in both the writ appeals did not produce any documentary proof as to the location of their plots within compound wall of the monument to seek demolition. In the absence of documentary evidence to show the exact location of the plots of the respondents, it is not possible to take up demolition of compound wall as there are no details as to the direction and location of the plots covered by the monument.

30. For the foregoing reasons, as per legal ratio laid down in **Roma Sonkar**, when the correctness or otherwise of the order passed by the learned Single Judge is examined, we are of the considered opinion that the order passed by the learned Single Judge is erroneous on three counts of non-existence of compound wall for 40 years, its construction in violation of the judgment passed by the Civil Court in O.S.No.3903 of 1986 and order to demolish the compound wall by exceeding the prayer of survey sought by the respondents in both the writ appeals.

31. Thus, both the Writ Appeals are allowed and the impugned common order of the learned Single Judge in W.P.Nos.13810 and 16754 of 2008, dated 07.03.2017 is set aside. However, this judgment will not come in the way of respondents to avail the remedy available under the civil law, if law so permits. There shall be no order as to costs.

As a sequel, Miscellaneous Petitions, pending if any, stand disposed of.

SD/-K. SRINIVASA RAO
JOINT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

- 1 The Director, State Archeological Museums, Government of Telangana, (Previously shown as Government of Andhra Pradesh), Gunfoundry, Hyderabad.
- 2 The Commissioner, Survey and Land Records Settlement, Government of Telangana (Previously shown as Government of Andhra Pradesh), Hyderabad.
- 3 The Section Officer, Posting Section, High Court for the State of Telangana at Hyderabad.
- 4 The Section Officer, Writ Non-Service Section, High Court for the State of Telangana at Hyderabad.
- 5 One CC to SRI K.PRADEEP REDDY, Advocate [OPUC]
- 6 One CC to M/s. BHARADWAJ ASSOCIATES, Advocate [OPUC]
- 7 Two CCs to ADVOCATE GENERAL, High Court for the State of Telangana at Hyderabad [OUT]
- 8 Two CD Copies

BSR
BS



HIGH COURT

DATED: 21/03/2025

COMMON JUDGMENT

WA.Nos.1639 and 1661 of 2017



**ALLOWING BOTH THE WRIT APPEALS,
WITHOUT COSTS**

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08/4/25
lew