**THE HON'BLE THE CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN**

**AND**

**THE HON'BLE DR. JUSTICE SHAMEEM AKTHER**

**WRIT PETITION (PIL) Nos. 79 OF 2019 AND 86 OF 2019**

**COMMON ORDER:** (Per the Hon'ble the Chief Justice Raghvendra Singh Chauhan)

The looming threat of demolition of a 150 years old palace, Irrum Manzil, due to the decision of the Council of Ministers on 18.06.2019, to construct a new legislative complex at the site of the palace, has agitated the people of Hyderabad. For, the proposed construction of the legislative complex would be possible only with the demolition of the palace. Proud as people are of their heritage and culture of the beautiful city of Hyderabad, eight Public Interest Litigation ('PIL') writ petitions have been filed, challenging the said decision, before this Court.

2. Writ Petition (PIL) No. 86 of 2019, and Writ Petition (PIL) No. 79 of 2019, which have challenged the proposed demolition of the Irrum Munzil, shall be dealt with herein under. For, the most meaningful arguments have been raised by both the parties in these two writ petitions. The other writ petitions, namely W. P. (PIL) Nos. 64, 65, 73, 75, and 80 of 2019 shall be decided separately, but in light of the decision of these two writ petitions. The W.P. (PIL) No. 81 of 2019 shall also be decided separately altogether, as

the petitioner therein has not only challenged the proposed demolition of the Irrum Manzil, but has also questioned the constitutional validity of the Telangana Heritage (Protection, Preservation, Conservation and Maintenance) Act, 2017 ("the Act, 2017", for short).

***Brief glimpse of the past and the present:***

3. Trained as an architect, in 1870, Nawab Safdar Jung Musheer-ud-Daula Fakhrul-Mulk designed and constructed a 150 room palace for his family. The palace is sprawled over 36 acres, 36 guntas on top a hillock known as "Erragadda" or "red hill" in Telugu language. The word "Errum" means the colour 'red' in Telugu; the word "Iram" means 'paradise' in Persian. In order to emphasize the phonetic similarity between the two words, and in order to highlight the commonality of the Hindu and Islamic cultures, Nawab Safdar Jung Musheer-ud-Daula Fakhrul-Mulk named the palace as "Iram Manzil". Originally, the palace was even painted red in order to underline the Telugu word, "Erram". Presently, the building is called "the Irrum Manzil".

4. The Irrum Manzil is a unique combination of the Deccani, the Rajasthani, and the European Baroque architecture. The palace is famous for its stucco ornamentations. It is claimed that the palace was originally

furnished with Louis XVI furniture. The palace not only had a nine-hole golf course, but also had a polo ground, stable for horses, and even a dairy farm. Initially the palace used to overlook the Hussain Sagar Lake. But presently, due to urban construction, the view is blocked.

5. At its height, the palace had seen the strengthening of relationship between the Nizam of Hyderabad and the British. The palace had hosted dinners and lavish events for the British nobility, in general, and for the British Resident at Hyderabad, in particular. Thus, the building is not only a part of the history of the Nizams of Hyderabad, but is equally a part of the colonial past of our country.

6. Furthermore, it is not only the palace which reflected the pluralistic ideology and lifestyle of the Nawab, but the family itself was known for celebrating Hindu and Muslim festivals alike. Thus the Irrum Manzil is an important milestone in the history of Nizam Kingdom. It symbolises the very spirit and ethos for which Hyderabad is well-known, namely as a city of confluence of various traditions, cultures, civilizations, which peacefully co-exist and generously acknowledge the contributions made by each other. Thus, the palace reflects the plurality, the

multi-dimensionality of our people, and the concept of unity amongst diversity.

7. But with the afflux of time, the palace deteriorated in its condition, and declined in its importance. Abandoned and forlorn, it stands as a mute testimony of a glorious era of history of Hyderabad. Eventually, on 25.06.1951 the palace was taken over by the State Government. Although the petitioners claim that presently, Irrum Manzil houses the offices of Public Works Department, Roads & Buildings Department, Irrigation and Command Area Development (ICAD), the respondents have denied the said fact. According to the respondents, due to its dilapidated condition, the palace can no longer be used by the government departments.

***Fast-forward to the present:***

8. With the bifurcation of Andhra Pradesh, on 02.06.2014, the State of Telangana came into existence. But despite the bifurcation, both the States treated Hyderabad as a common Capital. Therefore, initially the present Legislative Assembly building, situated at the Public Gardens, Nampally, was jointly used by both the States. However, subsequently in March, 2017 the State of Andhra Pradesh vacated its possession of the legislative complex at Nampally. Ever since then, the legislative

complex, sprawled over Ac.11.00 gts. of land, is being used by the State of Telangana.

9. However, on 18.06.2019, the Council of Ministers held a meeting; the Council of Ministers decided to construct a new legislative complex at the Irrum Manzil. The integrated legislative complex will have "designated residential accommodation for the Chairman/Speaker, Deputy Chairman/Deputy Speaker and Legislative Secretary". On 19.06.2019, the said decision of the Cabinet was highlighted by the media, both electronic and print. Since the legislative complex could not be constructed without the demolition of the Irrum Manzil, a section of the people of Hyderabad were agitated over its possible demolition. Hence, eight Writ Petitions (PIL) were filed, over the course of two weeks, for challenging the decision of the Cabinet dated 18.06.2019

10. In order to fully understand the complexity of the issues raised before this Court, it is essential to first understand the numerous laws, which deal with the protection of "historical monuments, historical sites, archaeological sites, heritage buildings and heritage sites", on the one hand, and to deal with different laws, which concern "the urban development and urban planning", on the other hand.

11. Undoubtedly, Indian civilization is a continuum of 5,000 years. During these five millennia, different people, different civilizations have come, conquered, and settled in this land. They have left their footprints in the sand of time as testimonies of their culture, and of their achievements. Realising the need to preserve the historical monuments and archaeological sites, even the English had enacted the Ancient Monuments Preservation Act, 1904.

12. Keenly aware of the rich history of our country, our Founding Fathers had placed specific Entries in the different Lists of the Seventh Schedule of the Constitution of India, for conservation and preservation of historical monuments and archaeological sites: Entry 67, List I; Entry 12, List II; Entry 40, List III of the Seventh Schedule of the Constitution of India. Consequently, the Parliament has enacted the Ancient Monuments and Archaeological Sites and Remains Act, 1958 ('the Act, 1958', for short). This Act deals with ancient monuments and archaeological sites of "national importance".

13. Similarly, in order to protect and conserve the numerous historical monuments dotting the landscape of the State, the former State of Andhra Pradesh enacted the Andhra Pradesh Ancient and Historical Monuments and

Archaeological Sites and Remains Act, 1960 ('the Act, 1960', for short).

14. In fact, after the State of Telangana came into existence, the State has enacted the Act, 2017. The said Act not only deals with historical monuments and museums, but also deals with "heritage buildings", "heritage sites", and natural heritage sites, such as boulders and rocks. Thus, it is a comprehensive law dealing with protection, conservation, and restoration of historical monuments and heritage buildings.

15. On the other hand, in order to regulate, supervise, and control the development of urban areas, in 1975, the former State of Andhra Pradesh enacted the Andhra Pradesh Urban Areas (Development) Act, 1975 ('the Urban Areas Act', for short).

16. Well aware of the existence of historical monuments and sites, which fall within numerous cities, wanting to conserve and preserve these monuments and sites, Section 39 of the Urban Areas Act clearly stipulated that "*the Government shall constitute an Urban Art Commission*". One of the functions of the Urban Art Commission was "*to preserve and conserve historical monuments and historical sites, which fall within the limits of urban areas*". In order to give teeth to the Urban Art

Commission, the Government had even promulgated the Urban Art Commission Rules, 1978, by G.O. Ms. No. 312, Housing MA & UD Department (MA), dated 06.05.1987.

17. Moreover, Section 59 of the Urban Areas Act empowers the Urban Development Authority to promulgate regulations consistent with the Act and the Rules made there under.

18. Hyderabad, the capital of the State, had to be planned for the future needs of the city and of the State. Therefore, invoking its power under Section 59 of the Urban Areas Act, on 11.08.1981, the Hyderabad Urban Area Development Authority ("HUDA", for short) promulgated the Bhagyanagar (Hyderabad) Urban Development Authority Zoning Regulations, 1981 ("the Zoning Regulations, 1981", for short). However, the Zoning Regulations, 1981 did not contain any provision for protecting, preserving and conserving the historical monuments sprinkled across Hyderabad. Therefore, while invoking its power under Section 59 of the Urban Areas Act, on 14.12.1995, HUDA framed and incorporated Regulation 13 within the Zoning Regulations, 1981. The said Regulation 13 was approved by the Government by G. O. Ms No. 542 dated 14.12.1995.

19. The Regulation 13 of the Zoning Regulations, 1981 was "*brought into force for the purpose of conserving the buildings, artefacts, structures and/or precincts of historical and/or aesthetical and/ or architectural and/or cultural value, which were referred to as "Heritage Buildings and Heritage Precincts*". Regulation 13 (2) of the Zoning Regulations, 1981 prescribes that the government should constitute a Heritage Conservation Committee ('the Committee', for short). Regulation 13 (3) imposes a duty upon the Committee to identify the "*heritage buildings*" which need to be protected by the Government. Relying on the recommendation of the Committee, by G. O. Ms. No. 102, dated 23.03.1998, the Government had notified and declared 137 buildings within Hyderabad as "*heritage buildings*". One of the buildings, so notified and protected as "heritage buildings", is the Irrum Manzil. It is mentioned at serial No.47 of the list attached to the notification. Subsequently, by G. O. Ms. No.185, dated 22.04.2006, fourteen more buildings were added to the list. Thus, in total, 151 buildings were declared as "*protected heritage buildings*" within the city of Hyderabad.

20. Moreover, Regulation 13 (2) of the Zoning Regulations, 1981 prohibits the demolition of a heritage building without the prior written permission of the Vice-

Chairman, HUDA (presently, the Commissioner, Hyderabad Metropolitan Development Authority, 'the HMDA', for short). According to the said Regulation, the vice-chairman, HUDA has to act on the advice of the Committee. Therefore, Regulation 13(2) of the Zoning Regulations, 1981 prescribes the procedure, established by law, for demolition of a heritage building.

21. Subsequently, considering the fact that the city of Hyderabad had grown into a Metropolitan City, the Hyderabad Metropolitan Development Authority Act, 2008 ('the HMDA Act', for short) was brought into force. The HMDA Act constituted HMDA. With the coming of HMDA into existence, HUDA was abolished. But the provisions of the Urban Areas Act and HMDA Act are similar to each other. Section 34 of the Urban Areas Act empowers the government to control the functioning of HUDA; Section 49 of the HMDA Act, likewise empowers the government to control and issue directions to HMDA for the implementation of the Act. Moreover, under Section 59 of the Urban Act, HUDA was empowered to formulate the Regulations; under Section 57 of the HMDA Act, the HMDA is similarly empowered to frame the regulations. Hence, after 2008, the HMDA is empowered to frame the Master plans, Zonal plans, and the Zoning Regulations.

22. Consequently, in 2010, HMDA formulated the Metropolitan Development Plan along with the Land Use Zoning Regulations with regard to the core area of HMDA—that is the area within the Ring Road of the city. (Henceforth, while the Metropolitan Development Plan shall be referred to as "Plan, 2010", the regulations shall be referred to as "the Zoning Regulations, 2010", for short). On 21.8.2010, the government sanctioned the Zoning Regulations, 2010.

23. Regulation 2 of the Zoning Regulations, 2010 demarcated different zones of the Hyderabad city, e.g. the residential, the commercial, the industrial zones etc. Interestingly, keeping in mind the existence of "heritage buildings" which were already declared to be protected by the government, Regulation 2 of the Zoning Regulations, 2010 created a particular zone, namely "*the Special Reservation Use Zone*".

24. More pertinently, Regulation 9 (A)(ii) Zoning Regulations, 2010 provided that Regulation 13 of the Zoning Regulations, 1981 and other relevant orders or amendments issued by the government from time to time shall be applicable. Most importantly, the site of Irrum Manzil was earmarked in the map of Plan, 2010 as falling within the Special Reservation Zone.

25. Considering the fact that Hyderabad had to be developed further, beyond the Ring Road, on 24.1.2013 the government sanctioned the Metropolitan Development Plan 2031, along with the Zoning and Development Promotion Regulations, 2013 (henceforth, referred to as the "Zoning Regulations, 2013"). Regulation 1.1.10 of the Zoning Regulations, 2013 delineates Special Reservation Zone which includes the "heritage buildings and heritage precincts". Most importantly, Regulation 1.11.1 of the Zoning Regulations, 2013 provides that the Heritage Regulations issued vide G. O. Ms. No. 542 (Regulation 13 of Regulations, 1981) and other relevant orders and amendments issued by the government from time to time shall be applicable.

26. Therefore, presently, both the Plan, 2010 and Plan, 2013 co-exist. While the former deals with the Hyderabad city within the Ring Road, the latter deals with the Hyderabad metropolitan region beyond the Ring Road. It is pertinent to note that Regulation 13 of the Zoning Regulations, 1981 is mentioned both in Regulation 9(A)(ii) of the Zoning Regulations, 2010, and in Regulation 1.11.1 Zoning Regulations, 2013.

27. Although numerous arguments were raised with regard to Regulation 1.11.1 of Zonal Regulations, 2013, but

they need not concern us. For, Zonal Regulations, 2013 is concerned with development area of Hyderabad beyond the ring road, whereas Irrum Manzil falls within the ring road. Thus, the area of Irrum Manzil is covered by Regulation 9(A) of Zonal Regulations, 2010. Hence, while referring to different arguments *qua* Regulation 13 of the Zonal Regulations, 1981, this court will refer to only Regulation 9(A) of Zonal Regulations, 2010.

28. For the purpose of this judgment, it is essential to note that while Regulation 13 of the Zoning Regulations, 1981 was framed under Section 59 of the Urban Areas Act, it is mentioned in the Zoning Regulations, 2010. Hence, while discussing different aspects of Regulation 13 of the Zonal Regulations, 1981, the Court would be referring to the Urban Areas Act, to the HMDA Act, and to the Zoning Regulations, 2010.

29. However, being of the opinion that Regulation 13 of the Zoning Regulations, 1981 is inconsistent with and *ultra vires* the Urban Areas Act, 1975, on 7.12.2015, by G.O.Ms. No.183, the State deleted Regulation 13 of the Zoning Regulations, 1981 "*from its very inception*".

30. Further, being of the view that with the repeal of Regulation 13 of the Zoning Regulations, 1981 in 2015, the Irrum Manzil has lost its status as "a protected heritage

building", and wanting to construct a new legislative complex for the new State of Telangana, on 18.06.2019, the Council of Ministers decided to construct a new legislative complex at the Irrum Manzil. Hence, different writ petitions have been filed for challenging the decision of the Cabinet dated 18.06.2019, before this Court, as mentioned hereinabove.

**Writ Petition (PIL) No.86 of 2019**

31. Mr. D. Prakash Reddy, the learned Senior Counsel for the petitioner, while narrating the factual matrix mentioned hereinabove, has raised the following contentions before this Court:-

Firstly, Section 59 of the Urban Areas Act empowers the Urban Development Authority to frame regulations. The regulations need to be approved by the government. However, the power to promulgate the regulation is vested only with the Urban Development Authority, and not with the government.

Secondly, Regulation 13 of the Zoning Regulations, 1981 was framed by HUDA by invoking its power under Section 59 of the Urban Areas Act. Subsequently, it was approved by the government. Therefore, Regulation 13 of the Zoning Regulations, 1981 is a statutory regulation having the force of law.

Thirdly, Regulation 2 of Zoning Regulations, 2010 clearly divides Hyderabad city into different zones. The said regulation clearly mentions that "the protected heritage buildings" would fall within the Special Reservation Zone. Further, Regulation 9(A)(ii) of the Zoning Regulations, 2010 clearly mentions Regulation 13 of the Zoning Regulations, 1981. Therefore, Regulation 13 of the Zoning Regulations, 1981 is "legislation by way of incorporation" in the Zonal Regulations, 2010.

Fourthly, Regulation 9(A) (ii) of Zoning Regulations, 2010 can easily be bifurcated into two parts: the first part mentions Regulation 13 of the Zoning Regulations, 1981; the second part speaks of "*the orders/amendments issued by the government from time to time*". Since the government does not have the power to amend the regulations issued under Section 59 of the Urban Areas Act, obviously, the words "*orders/amendments issued by the government from time to time*" do not refer to the repeal of Regulation 13 of the Zoning Regulations, 1981. Instead, the words refer to the amendment, which may be brought by the government in the list of protected heritage buildings or sites, issued by the government. Therefore, the subsequent repeal of Regulation 13 of the Zoning Regulations, 1981 would not delete the incorporation of Regulation 13 of the Zoning

Regulations, 1981 in Regulation 9(A)(ii) of the Zoning Regulations, 2010. For, it is settled principle of law that when a provision is incorporated from one enactment to another, it becomes an integral part of the latter enactment as if it was written afresh in the latter enactment. Therefore, the provision so incorporated has to be adjudged with reference to the scheme and purpose of the latter enactment. The provision so incorporated gets completely de-linked from the former enactment. Thus, any change in the former enactment does not adversely affect the provision so incorporated in the latter enactment. In order to buttress this plea, the learned Senior Counsel has relied on the case of **Gauri Shankar Gaur v. State of U.P.**[1].

Fifthly, since Regulation 13 of the Zoning Regulations, 1981 is squarely covered under Regulation 9(A)(ii) of the Zoning Regulations, 2010, the former is also a part of a statutory regulation. Hence, it has the force of law. Therefore, the procedure established by Regulation 13 of the Zoning Regulations, 1981 would necessarily have to be followed if any heritage building were to be demolished. According to Regulation 13 of the Zoning Regulations, 1981, before a heritage building can be demolished, a written permission from the HUDA/HMDA has to be taken.

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[1] **(1994) 1 SCC 92**

In turn, HUDA/HMDA is required to seek the advice of the Committee. The advice of the Committee is binding on the HUDA/HMDA. It is only after seeking the advice of the Committee that the HUDA/HMDA is permitted to grant its permission, but that too in writing.

Sixthly, since the heritage building falls under the Special Reservation Zone, any modification of the land use of a Special Reservation Zone necessarily has to follow the requirement of the Zoning Regulations, and the requirement of the HMDA Act. Section 15 of the HMDA Act, while bestowing the power upon the government to modify the Metropolitan Development Plan, prescribes a procedure for modification of the Development Plan. However, in the present case, the government has neither taken any written permission from HMDA, nor followed the procedure prescribed under Section 15 of the HMDA Act. Instead, it has taken a unilateral decision of demolishing Irrum Manzil and in constructing the legislative complex. Therefore, the impugned Cabinet decision is in contravention of Regulation 13 of the Zoning Regulations, 1981. Furthermore, since the land use is being changed, the impugned decision is in violation of Regulation 9(A)(ii) of Zoning Regulations, 2010, read with Section 15 of the HMDA Act. Therefore, the decision of the Cabinet is in

violation of various provisions of law: it is an arbitrary decision. It is, thus, legally unsustainable.

Seventhly, it is, indeed, a settled position of law that what cannot be done directly, cannot be permitted to be done indirectly. However, the government is trying to modify the Plan, 2010 by surreptitious means of taking a Cabinet decision for construction of a legislative complex.

Lastly, when Regulation 13 of the Zoning Regulations, 1981 was repealed by the government in 2015, a Public Interest Litigation writ petition was filed before the former High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh, namely W.P. (PIL) No. 360 of 2015 challenging the said repeal. In the said writ petition, on 21.12.2015, the learned Advocate General had given an undertaking that "*no protected heritage building would be demolished till the next date of hearing*". The said order was extended on 25.01.2016, 22.01.2016, and finally to 28.03.2016. On 28.03.2016, the said undertaking was extended till further orders. Moreover, on 18.04.2016, the Hon'ble High Court had clearly ordered that "*no structure declared as heritage building under Regulation 13 of the Zoning Regulations, 1981 shall be altered or demolished without the permission of the Court*". The said writ petition is still pending before

this Court. Therefore, the order dated 18.04.2016 is still operational. But despite the fact that the said order requires the government to seek the permission of the Court, no such permission has been sought by the government prior to taking the decision on 18.06.2019 by the Cabinet. Therefore, the impugned decision of the Cabinet violates the order dated 18.04.2016 passed by the learned Division Bench in W.P. (PIL) No.360 of 2015.

32. On the other hand, Mr. J. Ramchandra Rao, the learned Additional Advocate General ('the AAG', for short), has raised the following counter-contentions before this Court:-

Firstly, the Urban Areas Act naturally dealt with urban planning and development. While it may have contained a provision, such as Section 39, for protecting archaeological and heritage sites, it did not contain any provision for protection, preservation and conservation of "*heritage buildings*" and "*heritage sites*".

Secondly, the Urban Areas Act flows from, and is covered by Entry 5, List-II of the Seventh Schedule of Constitution of India, dealing with "Local Government, Municipal Corporations, Improvement Trusts etc". However, Regulation 13 of the Zoning Regulations, 1981 emanates from Entry 12, List-II of the Seventh Schedule of

Constitution of India, namely dealing with "ancient and historical monuments". Therefore, the Urban Areas Act, and the Regulation 13 of the Zoning Regulations, 1981 originate from two different entries of List-II of the Seventh Schedule of the Constitution of India. According to the learned counsel, a law can emanate only from a single Entry, and not from multiple Entries of List II of the Seventh Schedule to the Constitution of India. Therefore, as Regulation 13 of the Zoning Regulations, 1981 emanates from a different Entry, it could not form part and parcel of the Urban Areas Act. Thus, there is a constitutional mismatch. Hence, the government was well justified in concluding that Regulation 13 of the Zoning Regulations, 1981 is inconsistent with, and *ultra vires* the Urban Areas Act. Therefore, it was justified in repealing Regulation 13 of the Zoning Regulations, 1981 "from its very inception".

Thirdly, by letter dated 16.04.2015, the HMDA had clearly requested the government to repeal Regulation 13 of the Zoning Regulations, 1981. Therefore, the government had repealed the said regulation only at the instance of the HMDA.

Fourthly, Section 34 of the Urban Areas Act bestows a power on the government to issue directions to the authority for the efficient administration of the Act. In

fact, according to Section 34(1) of the Urban Areas Act, the authority is legally bound to carry out such directions issued by the government. Thus, even under Section 59 of the Urban Areas Act, the government does have both the power to frame, and the power to repeal the regulations. Hence, the repeal of Regulation 13 of the Zoning Regulations, 1981 is legally valid.

Fifthly, the learned counsel has vehemently opposed the argument that the reference to Regulation 13 of the Zoning Regulations, 1981 made in Regulation 9 (A) (ii) of Zoning Regulations, 2010 is by way of "incorporation". According to the learned counsel, the legislation is by "reference", and not by "incorporation". Moreover, one of the major differences between a "legislation by reference" and "legislation by incorporation" is that in the former, the repeal of the provision from the original Act in which the provision is contained, would also automatically delete the provision in the second Act, where the provision has been referred. But such is not the position, when it is "legislation by incorporation". Since the Regulation 13 of the Zoning Regulations, 1981 is "legislation by reference", its repeal from the Zoning Regulations, 1981 would automatically delete its "reference" in Regulation 9 (A) (ii) of Zoning Regulations, 2010. Therefore, the protection

granted to Irrum Manzil under Regulation 13 of the Zoning Regulations, 1981 no longer exists.

Sixthly, the present legislative complex situated at Public Gardens, Nampally is insufficient for the needs of the government and the legislature. For, it neither has a hall for holding a joint session of the Legislative Assembly, and of the Legislative Council, nor has the requisite number of the offices. Moreover, there is no residential accommodation for the Speaker of the Legislative Assembly, or for the Chairman of the Legislative Council, or for the Deputy Speaker, or the Deputy Chairman. Because of the inadequacy of the present legislative complex, a dire need exists for the construction of a new legislative complex at the Irrum Manzil.

Lastly, the scope of judicial review of policy decision is extremely limited. While the Court can examine the decision making process, the Court cannot substitute the decision of the government by its decision. For, the Court does not sit as an appellate authority over the decision of the government. In order to buttress this plea, the learned AAG has relied upon the cases of **Janhit Manch through its President Bhagvanji Raiyani v. State of Maharastra**[2],

[2] **(2019) 2 SCC 505**

**Jal Mahal Resorts Private Limited v. K.P. Sharma**[3], and **Union of India v. Kannadapara Sanghatanegala Okkuta & Kannadigara**[4]. Since the Cabinet has taken a decision in accordance with law, and while keeping the present and the future requirements of a legislative complex, the Cabinet decision dated 18.06.2019 is legally valid. Therefore, the PIL writ petitions, filed by different petitioners, deserve to be dismissed by this Court.

33. In rejoinder, Mr. D. Prakash Reddy, the learned Senior Counsel, has submitted the following arguments:-

Firstly, although the petitioner is not challenging the repeal of Regulation 13 of the Zoning Regulations, 1981 *per se*, but as the repeal has been justified by the respondents, the petitioner is entitled to question the said justification. Therefore, the learned Senior Counsel has raised certain arguments against the repeal of Regulation 13 of the Zoning Regulations, 1981 which are as under:-

(a) As mentioned hereinabove, Section 59 of the Urban Areas Act bestowed the power to formulate the regulations only on the Urban Development Authority, and not on the government. Even Section 34 of the Urban Areas Act does not support the case of the respondents. For, Section 34 of the Urban Areas Act permits the

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[3] (2014) 8 SCC 804
[4] (2002) 10 SCC 226

government "*to issue directions to the Urban Development Authority for efficient administration of this Act*". But, these words do not bestow the power upon the government to repeal a regulation, which was promulgated by the Urban Development Authority. Therefore, once the power to promulgate a regulation is given to the Urban Development Authority, the government cannot usurp the power in the garb of Section 34 of the Urban Areas Act. Moreover, admittedly, Regulation 13 of the Zoning Regulations, 1981 has been repealed by the government, and not by the Urban Development Authority. Therefore, the repeal is contrary to the Section 59 of the Urban Areas Act.

(b) Relying on the cases of **Manohar Lal v. Ugrasen**[5], **Chandrika Jha v. State of Bihar**[6], **Bangalore Medical Trust v. B.S. Muddappa**[7], and **State of Punjab v. Hari Kishan**[8], the learned Senior Counsel has pleaded that once a statute confers a power on a particular authority to do something, only the said authority can exercise the power. No other authority, even a superior or a higher authority, can exercise that power. Therefore, once Section 59 of the Urban Areas Act bestows the power to frame the regulations, or to repeal the regulations only upon the

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[5] **(2010) 11 SCC 557**
[6] **(1984) 2 SCC 41**
[7] **(1991) 4 SCC 54**
[8] **(1966) 2 SCR 982**

Urban Development Authority, the government, although a superior authority, could not repeal Regulation 13 of the Zoning Regulations, 1981. Hence, the repeal of Regulation 13 of the Zoning Regulations, 1981 by G.O.Ms. No. 183, dated 07.12.2015 is contrary to Section 59 of the Urban Areas Act. Thus, it is illegal.

(c) The reasons given by the learned AAG for repealing Regulation 13 of the Zoning Regulations, 1981 are highly misplaced. The learned AAG is unjustified in claiming that Regulation 13 of the Zoning Regulations, 1981 is inconsistent with and contrary to the Urban Areas Act. In fact, the former is in consonance with the latter. For, both the Urban Areas Act and the Zoning Regulations deal with the concept of planning and development of Hyderabad city. Both are well aware of the fact that Hyderabad does have historical monuments, which form part of the heritage of the city. Both are well aware of the fact that such heritage needs to be protected, restored and conserved. Keeping in mind the need to protect, conserve and restore these monuments, Section 39 of the Urban Areas Act required the constitution of an Urban Art Commission. Section 39(2)(iii) of the Urban Areas Act clearly imposes a duty on the Commission to make recommendations to the government for conservation and

restoration of archaeological and historical sites. According to the learned Senior Counsel, it is a misnomer to try to distinguish between a "historical monument", and a "heritage building". For, according to the learned Senior Counsel, while "historical monuments" form a genus, "heritage buildings" form a species of the said genus. Therefore, such distinction made by the learned Additional Advocate General that there is no provision dealing with "heritage building" in section 39 of the Urban Areas Act is a misinterpretation of law. In order to buttress this plea, the learned counsel has drawn the attention of this Court to the definition of "heritage building" given in the Act, 2017. According to the said definition, it includes "*any building which requires conservation and/or preservation for historical or cultural value*". Therefore, in order to be a "heritage building", the building is required to be a "historical". Hence, the purpose of Section 39 of the Urban Areas Act and Regulation 13 of the Zoning Regulations, 1981 is similar in nature, namely to protect historical monuments, which would *per se* include "heritage buildings", which are located within the Hyderabad Metropolitan area. Therefore, Regulation 13 of the Zoning Regulations, 1981 is clearly *intra vires* the Urban Areas Act.

Hence, the basis for repealing Regulation 13 of the Zoning Regulations, 1981 is invalid.

(d) Even the reliance on different Entries of List-II is highly misplaced. For, the argument presumes that the law necessarily has to be confined to a single Entry of List-II. And a law cannot be permitted to cover more than one Entry of List-II. But such a presumption on part of the State is belied by the decisions of the Hon'ble Supreme Court in **Hari Kishan Bhargav v. Union of India**[9], **The Madurai District Central Co-operative Bank Ltd. v. The Third Income Tax Officer**[10], and **M/s Ujagar Prints v. Union of India**[11]. Therefore, the Urban Areas Act while originating from Entry 5 of List-II of the Seventh Schedule of the Constitution of India could legally deal with subject falling under Entry 12, List-II of the Seventh Schedule of the Constitution of India. Hence, the learned AAG is not justified in claiming that there is constitutional mismatch between the Urban Areas Act, and Regulation 13 of the Zoning Regulations, 1981.

(e) Moreover, the learned AAG has invented a constitutional basis for claiming that Regulation 13 of the Zoning Regulations, 1981 is inconsistent with and *ultra vires* the Urban Areas Act. For, such an explanation or

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[9] **AIR 1966 SC 619**
[10] **(1975) 2 SCC 454**
[11] **(1989) 3 SCC 488**

reason has not been stated in G.O.Ms. No. 183, dated 07.12.2015, by which, Regulation 13 of the Zoning Regulations, 1981 was repealed by the government.

(f) Furthermore, the contents of letter dated 16.04.2015 belie the arguments of the learned AAG. According to the learned Senior Counsel, in the said letter, although the HMDA had prayed for repealing of Zonal Regulations, 1981, but simultaneously, it had carved out an exception with regard to Regulation 13 of the Zoning Regulations, 1981. In fact, it had pleaded for establishing a Committee which would identify historical monuments and heritage building. According to the learned Senior Counsel, this was done as in W.P. No. 6820 of 2008, in order dated 21.04.2014, a learned Single Judge had noticed the fact that the Heritage Conservation Committee had ceased to function from 16.03.2013. Moreover, the learned Single Judge, and in W.P. (PIL) No. 360 of 2015 a learned Division Bench of the former High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh had directed the government to reconstitute the Committee and continue to implement Regulation 13 of the Zoning Regulations, 1981. Hence, the plea to constitute the Committee, made in the letter dated 16.04.2015 is based on the directions issued by the former

High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh. Therefore, the HMDA was pleading for the continuation of Regulation 13 of the Zoning Regulations, 1981, and not for its abrogation by the government.

Most importantly, even if there was a request by the HMDA to the government for repealing Regulation 13 of the Zoning Regulations, 1981 in the letter dated 16.04.2015, the said letter is not mentioned in G. O. Ms. No. 183, dated 07.12.2015. Hence, the reliance on the letter dated 16.04.2015 is merely an after-thought. Such a defence only has to be uttered to be rejected.

(g) Further, according to the learned Senior Counsel, although not conceding the point, but for the sake of argument, accepting that the government does have the power to repeal the Regulation 13 of the Zoning Regulations, 1981, the regulation cannot be repealed retrospectively, "from its very inception". For, the settled principle of law is that the provision granting the power to repeal must also grant the power to repeal retrospectively. However, Section 59 of the Urban Areas Act does not empower the government to repeal the regulation retrospectively. Therefore, the government could not have repealed Regulation 13 of the Zoning Regulations, 1981

"*from its very inception*". At best, it could have repealed the said regulation from the date of the government order.

(h) Even if it were conceded for the sake of argument that the government could repeal the Regulation 13 of the Zoning Regulations, 1981, under Section 8 of the Andhra Pradesh General Clauses Act, 1891, which is *mutatis mutandis* of Section 6 of the General Clauses Act, 1897, any right bestowed under the original law would continue to exist notwithstanding the repeal of the law. Therefore, once a protection was bestowed upon Irrum Manzil, the protection would continue to exist notwithstanding the repeal of Regulation 13 of the Zoning Regulations, 1981.

(i) The learned Senior Counsel has not argued extensively on "legislation by reference", or "the legislation by incorporation". For, the said contention has been argued in depth by Mr. Nalin Kumar, the learned counsel in Writ Petition (PIL) No. 79 of 2019. The learned Senior Counsel has merely adopted those arguments. Therefore, these arguments are not being recorded at this juncture.

(j) Lastly, the learned Senior Counsel has pleaded that once a procedure is established by law for changing the land usage specific to a zone under the Zoning Regulations, the Cabinet is not justified in taking a decision in violation of the procedure established by law. Therefore,

the decision making process stands vitiated. Furthermore, since the impugned decision is against the order passed by a learned Division Bench of the former High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh, dated 18.04.2016 in W.P.(PIL) No. 360 of 2015, the decision making process is illegal. Therefore, the impugned decision of the Cabinet deserves to be set aside by this Court.

**Writ Petition (PIL) No.79 of 2019**

34. Mr. Nalin Kumar, the learned counsel for the petitioner, in the petition mentioned hereinabove, and Mr. D. Prakash Reddy, the learned Senior Counsel, at times, have echoed the arguments of each other. Therefore, only those arguments of Mr. Nalin Kumar are being recorded, which supplement the arguments of Mr. D. Prakash Reddy, the learned Senior Counsel.

35. Mr. Nalin Kumar, the learned Counsel for the petitioner in W.P. (PIL) No. 79 of 2019, has raised the following contentions:-

Firstly, undoubtedly Regulation 13 of the Zoning Regulations, 1981 was promulgated by the HUDA under Section 59 of the Urban Areas Act. Subsequently, 151 heritage buildings, including the Irrum Manzil, were identified and were bestowed with the status of being

"*protected heritage buildings*". Although the respondents have pleaded that Regulation 13 of the Zoning Regulations, 1981 was repealed "*from its very inception*", the right bestowed upon the protected heritage buildings would continue to exist under Section 8 of the Andhra Pradesh General Clauses Act, 1891, which is *mutatis mutandis* with Section 6 of the General Clauses Act, 1897. Under this provision, any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed, would continue notwithstanding the said repeal. Since a right of protection had been bestowed upon the heritage buildings by the inclusion in the list promulgated under the Regulation 13 of the Zoning Regulation, 1981, the right of protection would continue even if the said Regulation were repealed.

Secondly, initially, the Urban Areas Act existed. Under the said Act, HUDA looked after the planning and development of Hyderabad. However, with the enactment of the HMDA Act in 2008, the HMDA replaced HUDA. Thus, it is imperative to first consider the functions and powers of HMDA under the HMDA Act.

Section 3 of the HMDA Act empowers the government to exclude, or include areas from the development area. Moreover, Section 3(3) of the HMDA Act incorporates the

provisions of sub-sections (3) to (8) of Section 13 of the Urban Areas Act. According to Section 13 of the Urban Areas Act, it is the duty of the HMDA to carry out the developmental plan falling under the development area. Moreover, according to Section 13(4) of the Urban Areas Act, "*no development of land within the development area shall be undertaken or carried out by any person or body including any department of the government, unless permission for such development has been obtained in writing from the Authority in accordance with the provisions of this Act*". Therefore, Section 13 of the Urban Areas Act, as incorporated in Section 3(3) of the HMDA Act, prescribes the procedure for carrying out a development within the development area.

Furthermore, Section 6 of the HMDA Act prescribes the powers and functions of the HMDA. Section 6(1) of the HMDA Act imposes a duty upon the HMDA to prepare the Metropolitan Development and Investment Plan. Moreover, Section 11 of the HMDA Act deals with preparation of "Metropolitan Development Plan and Investment Plan". Section 11 (1) (iii) (b) casts a duty upon the HMDA to formulate "*policies for preservation, conservation and development of areas of natural beauty and scenic spots and areas of historic and archaeological interest and tourism*

*areas*". Therefore, one of the cardinal functions of the HMDA is to preserve and conserve the areas of historical value. According to the learned counsel, the function being bestowed upon the HMDA is similar to the function bestowed upon HUDA under Regulation 13 of the Zoning Regulations, 1981.

Further, Section 19 clearly stipulates that "*no development or institution of use or change of use of any land, shall be undertaken or carried out in the metropolitan region without obtaining a development permission order from the Metropolitan Authority*". Thus, the said section places a prohibition upon change of use of any land, without the permission of the Development Authority.

Section 29 enables the Development Authority to prepare development scheme and to make provisions for all or any of the matters, namely "*preservation and protection of heritage sites and buildings, objects of historical importance or outstanding natural beauty, etc.*"

Further, Section 57 of the HMDA Act bestows the power to formulate the regulations only on the HMDA, the Development Authority.

Consequently, while invoking its power under Section 6(1) and Section 11 of the HMDA Act, in 2010, the HMDA had published the master plan for the metropolitan area of

Hyderabad and had formulated the Zoning Regulations in 2010. Regulation 9 (A) (ii) of Zoning Regulations, 2010 specifically mentions that while dealing with the heritage buildings, which fall within the Special Reservation Use Zone, "*it is necessary to obtain a specific clearance from HMDA, after consultations of Heritage Conservation Committee before undertaking certain kinds of development and re-development as specified by the government or issued as specific guidelines*". It further states that "*the heritage regulations issued vide G.O.Ms. No. 542, dated 14.12.1995 (i.e. the Regulation 13 of the Zoning Regulations 1981) and other relevant orders/amendments issued by the government, from time to time, shall be applicable*".

Thirdly, the mentioning of Regulation 13 of the Zoning Regulations, 1981, in Regulation 9 (A) (ii) of the Zoning Regulations, 2010, is "legislation by incorporation", and not "by reference". While expanding on this argument, the learned counsel has submitted the following sub-arguments:-

(a) HMDA Act and the Zoning Regulations made thereunder form a complete Code in themselves. For, both the Act and the Zoning Regulations focus on the planning and the development of the metropolitan area. Therefore, essential factors, which need to be taken into account for

planning the development of the city, necessarily have to be considered by the HMDA. Since Hyderabad has large number of heritage buildings and historical monuments, since the planning and development of the city would necessarily involve such historical monuments and heritage buildings, Section 11 of the HMDA Act clearly stipulated that "*the HMDA would have to draft policies for the preservation, and conservation of these historical monuments and heritage buildings*". Similarly, Section 29 of the HMDA Act casts a duty on the HMDA to prepare the development scheme. While doing so, under Section 29 (1) (g) of the HMDA Act, the development authority is required to make provision for the "*preservation and protection of heritage sites and buildings*". Therefore, a legal duty is cast upon the HMDA to protect and preserve the heritage buildings while preparing the Master Plan, or the Zonal Plan.

(b) While relying on the case **Bharat Cooperative Bank (Mumbai) v. Cooperative Bank Employees Union**[12], the learned counsel has pleaded that in order to examine whether it is case of legislation by "reference" or by "incorporation", one of the tests to be applied is to consider the aim and object of the legal provisions. While applying

[12] **(2007) 4 SCC 685**

this test, it is obvious that the aim of Regulation 13 of the Zoning Regulations, 1981, and the aim of the HMDA Act, as reflected in Section 11 read with Section 29 of the Act, mentioned hereinabove, is to preserve and protect heritage sites and buildings. Keeping in mind the purpose, scope and ambit of Section 11 and Section 29 of the HMDA Act, Regulation 9(A)(ii) of the Zoning Regulations, 2010 mentions Regulation 13 of the Zoning Regulations, 1981. Therefore, the reference to Regulation 13 of Zoning Regulations, 1981 in Regulation 9(A)(ii) of Zoning Regulations, 2010 is by "incorporation".

(c) Ordinarily, if an Act is referred to by its title, it is intended to refer to that Act with all the amendments made in it up to the date of reference. In order to support this plea, the learned counsel has relied on the case of **State of Maharashtra v. Madhavrao Damodar Patil**[13]. In the present case, Regulation 9(A)(ii) of the Zoning Regulations, 2010 refers to the G.O.Ms.No.542, MA, dated 14.12.1995, that is by the title of Regulation 13. Thus, the mention of Regulation 13 of Zoning Regulation, 1981 is "legislation by incorporation". Hence, any amendment made only up to the date of incorporation, i.e., only till 2010 in case of Zoning Regulations, 2010 are deemed to have been

[13] AIR 1968 SC 1395

incorporated. Therefore, any amendment made *qua* Regulation 13 of the Zoning Regulations, 1981, in post-2010 period would not adversely affect the scope, operation and ambit of Regulation 13 of the Zoning Regulations, 1981 as incorporated in Zoning Regulations, 2010. Hence, the repeal of Regulation 13 in 2015 would leave the mentioning of Regulation 13 in Zoning Regulations, 2010 untouched and intact. In order to buttress the plea, the learned counsel has relied on the case of **Mahindra & Mahindra Limited v. Union of India**[14], and on the case of **State of Uttar Pradesh v. Mohan Singh**[15].

(d) Regulation 13 of the Zoning Regulations, 1981 was framed under Section 59 of the Urban Areas Act. However, the Zoning Regulations, 2010 was framed under HMDA Act. Therefore, even if for the sake of argument it were accepted that the Regulation 13 of the Zoning Regulations, 1981, were to be repealed from its very inception, the repeal would be *qua* the Urban Area Act, and not *qua* the HMDA Act. Therefore, the repeal of Regulation 13 of the Zoning Regulations, 1981 even if held to be valid, would not adversely affect the operation of the scope and ambit of HMDA Act.

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[14] **(1979) 2 SCC 529**
[15] **(2012) 13 SCC 281**

(e) Another indication that the mentioning of Regulation 13 of the Zoning Regulations, 1981, is by way of "incorporation" is that part of Regulation 13 of Zoning Regulations, 1981 has been modified by Regulation 9(A)(ii) of the Zoning Regulations, 2010. Sub-regulation (2) of Regulation 13 of the Zoning Regulations, 1981 clearly stipulated that the demolition of the whole or any part of the heritage building shall be allowed only with the prior written permission of the Vice-Chairman of the HUDA (now the Commissioner, HMDA). The Vice-Chairman, HUDA, was required to seek the advice of or in consultation of the Heritage Conservation Committee. In exceptional cases, the Vice-Chairman could overrule the recommendation of the heritage conservation committee. However, on the other hand, Regulation 9(A)(i) of the Zoning Regulations, 2010, clearly stipulates that before undertaking any kind of development or re-development "*as specified by the government or issued as specific guidelines*", a specific clearance from HMDA, after consultation by the Heritage Conservation Committee, is required. The words "*as specified by the government or issued as specific guidelines*" are conspicuously missing from Regulation 13 (2) of the Zoning Regulations, 1981.

Moreover, Regulation 9(A)(i) of the Zoning Regulations, 2010 further stipulates that "*a special exemption from land use controls is allowed subject to approval from the government in the interest of conservation of heritage buildings with the concurrence from the heritage committee subject to mandated public safety requirements*". This entire sentence does not exist in Regulation 13 of the Zoning Regulations, 1981. This clearly proves that Regulation 9(A) of the Zoning Regulations, 2010 not only incorporates Regulation 13 of the Zoning Regulations, 1981, but even modifies it to a limited extent. Therefore, the mentioning of Regulation 13 of the Zoning Regulations, 1981 in the Zoning Regulations, 2010 is by way of "incorporation"; it is certainly not by way of "reference".

(f) Considering the fact that Regulation 9(A)(i) of the Zoning Regulations, 2010, permits the government to allow special exemption from land use controls in the interest of conservation of heritage building, this further proves that conservation of "heritage building" is of great significance and importance. Thus, the goal of Regulation 9(A) Zoning Regulations, 2010 is to protect and conserve the "heritage buildings".

(g) Relying on the case of **Nagpur Improvement Trust v. Vasant Rao**[16], the learned counsel has emphasised that when an earlier Act or certain of its provisions of the Act are incorporated by reference into a later Act, the provisions so incorporated become part and parcel of the later Act as if they had been bodily transported into it. Moreover, in case of legislation by "incorporation", the repeal of the first statute by a third statute does not affect the second statute where the "incorporation" exists. The later Act along with the incorporated provisions of the earlier Act constitutes an independent legislation which is not modified or repealed by a modification or repeal of the earlier Act.

(h) Relying on the case of **Girnar Traders v. State of Maharashtra**[17], the learned counsel has further contended that while applying any of the doctrines, the Court will have to take care that there is "no distortion or destruction of the provisions of the principal statute". For examining this aspect, it really would not matter whether we apply the doctrine of "incorporation" or "reference" to the present case. What this Court would have to consider is the placement of Regulation 9(A)(ii) of the Zoning Regulations, 2010 and its correlation to the HMDA Act. Any

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[16] **(2002) 7 SCC 657**
[17] **(2011) 3 SCC 1**

interpretation which would make Regulation 9(A)(ii) of the Zoning Regulations, 2010 redundant or otiose, or would denude the Development Authority of its power to plan and develop, and/or to consent to a modification to a development plan, necessarily has to be avoided by this Court.

(i) If, however, the mentioning of Regulation 13 of the Zoning Regulations, 1981 in the Zoning Regulations, 2010 were taken to be legislation by "reference", any subsequent amendment in Regulation 13 Zoning Regulations, 1981 would necessarily have to be read in Regulation 9(A)(ii) of the Zoning Regulations, 2010. This would, therefore, imply that the repeal of Regulation 13 of the Zoning Regulations, 1981 "from its very inception" would automatically delete Regulation 13 of the Zoning Regulations, 1981 from the Zoning Regulations, 2010. However, such an interpretation would have catastrophic effect on Regulation 9(A)(i) of the Zoning Regulations, 2010, and on the HMDA Act itself. For, the Master Plan 2010 has demarcated certain zones as Special Reservation Zones which deal with heritage buildings and heritage sites. Under Section 15 of the HDMA Act, the Development Authority may modify the development plan as it thinks fit, and which in its opinion are necessary. Moreover, Section 19 of the HMDA Act

prohibits that no development shall be undertaken without obtaining the permission from the Development Authority. However, if Regulation 13 of the Zoning Regulations, 1981 is said to be deleted from Regulation 9(A)(ii) of the Zoning Regulations, 2010, firstly the Development Authority cannot modify the Metropolitan Development Plan *qua* the Special Reservation Zone under Section 15 of the HMDA Act. Secondly, no permission needs be sought from the Development Authority before any change of use of the land is made in the Special Reservation Zone as contemplated under Section 19 of the HMDA Act. Such an interpretation, obviously, would deplete and dilute the powers of the Development Authority. Hence, such an interpretation should be avoided like the plague. Therefore, the only conclusion that can be drawn is that the mentioning of Regulation 13 of the Zoning Regulations, 1981 in Regulation 9(A)(ii) of the Zoning Regulations, 2010 is, indeed, by way of "incorporation", and not by way of "reference".

(j) Since the mentioning of Regulation 13 of the Zoning Regulations, 1981 in Regulation 9(A)(ii) of the Zoning Regulations, 2010 is by way of "incorporation", therefore, the repeal of Regulation 13 of the Zoning Regulations, 1981 by G. O. Dated 07.12.2015 would not

delete the said Regulation from the Zoning Regulations, 2010.Hence, the protection provided to Irrum Manzil under Regulation 13 of the Zoning Regulations, 1981, would continue to subsist under the Zoning Regulations 2010. Therefore, the decision of the Cabinet dated 18.06.2019, to demolish the Irrum Manzil is in violation of Regulation 9(A)(ii) of the Zoning Regulations, 2010. Moreover, the said decision is also in violation of Sections 15 and 19 of the HMDA Act. Hence, the decision is arbitrary. Therefore, it deserves to be interfered with by this Court.

36. On the other hand, Mr. J. Ramchandra Rao, the learned AAG, has raised the following counter-arguments:-

(i) The argument of the learned counsel for the petitioner based on Section 8 of the Andhra Pradesh General Clauses Act, 1891 is highly misplaced. For, before the protection under the said provision can be granted, it is imperative that the fresh Act brought into force must repeal the previous Act/provision. However, the Act, 2017 does not repeal Regulation 13 of the Zoning Regulations, 1981 for the very simple reason that Regulation 13 of the Zoning Regulations, 1981 ceased to exist in 2015 itself. Therefore, the protection given under Regulation 13 of the Zoning Regulations, 1981 cannot be continued under Section 8 of the Andhra Pradesh General Clauses Act, 1891.

(ii) It is not a case of simple repeal of a regulation, but the repeal has been followed by a fresh law dealing with protection of ancient and historical monuments, namely by Act, 2017. Therefore, the provisions of the new Act have to be considered while deciding whether the protection under Section 8 of the Andhra Pradesh General Clauses Act would apply or not?

(iii) Relying on the case of **State of Punjab v. Mohar Singh Pratap Singh**[18], the learned counsel has pleaded that although the consequences of Section 8 of the Andhra Pradesh General Clauses Act would follow if an enactment is repealed, but not if a different intention appears while repealing the Act. If a repeal is followed by a fresh legislation on the same subject, this Court will have to examine the provisions of the new Act for the purpose of determining whether they indicate a different intention or not. The line of enquiry would not be whether the Act expressly keeps the old rights and liabilities alive, but whether the new Act "manifests an intention to destroy" them. If there is an incompatibility between the new enactment, and the old enactment, which was repealed, the intention to destroy the old rights and liabilities would be writ large. Since there is incompatibility between

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[18] **AIR 1955 SC 84**

Regulation 13 of the Zoning Regulations, 1981 and Act, 2017, the intention to destroy the old rights bestowed under the former is rather apparent. Therefore, the benefit of Section 8 of the Andhra Pradesh General Clauses Act cannot be given to the Irrum Manzil.

(iv) Relying on the case of **Kolhapur Canesugar Works Ltd. v. Union of India**[19], the learned AAG has pleaded that the normal effect of repealing a statute or deleting a provision is to obliterate it from the statute-book as completely as if it had never been passed, and the statute must be considered as a law that never existed. The intention that the rights conferred by the earlier statute no longer existed, and indeed have been extinguished would be manifest from the fact that the subsequent statute does not contain any saving clause. According to the learned counsel, the Act, 2017 does not contain any saving clause thereby saving Regulation 13 of the Zoning Regulations, 1981. Thus, "the intention is manifestly clear" that any right bestowed upon a "heritage building" under Regulation 13 of the Zoning Regulations, 1981 stands extinguished and destroyed. Hence, the petitioner is unjustified in claiming that the benefit of Section 8 of the Andhra Pradesh General Clauses Act

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[19] (2000) 2 SCC 536

should not only be extended, but the protection given under Regulation 13 of the Zoning Regulations, 1981 should also be continued *qua* the Irrum Manzil.

(v) Relying on the case reported in **Bansidhar v. State of Rajasthan**[20], the learned AAG has pleaded that while considering the question of protection being provided under Section 8 of the Andhra Pradesh General Clauses Act, the Court is required to examine the issue whether the rights under the repeal Act have been saved or not? The saving may be expressed or implied. However, where the provisions of the old Act are incompatible with the rights under the new Act, the former Act is said to be extinguished. Therefore, any right or privilege, which emanates from the former Act, ceases to exist.

(vi) Relying on the case of **Lalji Raja v. Hansraj Nathuram**[21] and on the case of **Bansidhar** (supra), the learned AAG has pleaded that Section 8 of the Andhra Pradesh General Clauses Act saves "accrued rights", and not "abstract rights". Since no right has "accrued" upon the protected heritage building, the protection does not continue beyond the date of the repeal of Regulation 13 of the Zoning Regulations, 1981, namely beyond 2015.

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[20] **(1989) 2 SCC 557**
[21] **(1971) 1 SCC 721**

(vii) Both the Urban Areas Act, and the HMDA Act are parental Acts, which contain provisions empowering the Development Authority to prepare the Metropolitan Development Plan, and to seek the sanction of the government before a Master Plan can be implemented. Both these Acts also empower the Development Authority to formulate regulations. However, both the Master Plan and the Zoning Regulations are subordinate pieces of legislation. Therefore, the Master Plan cannot be exalted to a position of a statutory legislation. Moreover, a Zoning Regulation being a subordinate legislation does not have the force of law. Therefore, the reliance placed by the learned counsel for the petitioners upon Regulation 9(A)(ii) of the Zoning Regulations, 2010 in order to plead that Irrum Manzil is a protected heritage building, is highly misplaced.

(viii) Entry 12, List-II of the Seventh Schedule of the Constitution of India deals with "ancient and historical monuments", which are not declared to be of national importance. Taking its cue from the said Entry, the erstwhile State of Andhra Pradesh had enacted the Act, 1960. However, the said Act dealt only with "ancient and historical monuments", and not with "heritage buildings or heritage sites".

(ix) Entry 5, List-II of the Seventh Schedule of the Constitution of India deals with local government i.e. to say, "with the constitution and powers of the municipal corporations etc." It is under this Entry that the Urban Areas Act was enacted. Even if Section 39 of the Urban Areas Act bestowed a duty upon the Urban Art Commission to make recommendations with regard to restoration and conservation of archaeological and historical sites, even then, the Act did not deal with "*heritage buildings or heritage sites*". Since HUDA itself was created under a law emanating from Entry 5, List-II of the Seventh Schedule of the Constitution of India, it could not have promulgated any regulation, which would have encroached upon Entry 12, List-II of the Seventh Schedule of the Constitution of India. Hence, the formulation of Regulation 13 of the Zoning Regulations, 1981 was *ultra vires* the power of HUDA. Therefore, the State was justified in concluding that Regulation 13 of the Zoning Regulations, 1981 is contrary to the parental Act, namely Urban Areas Act.

(x) Part IX-A of the Constitution of India deals with the constitution of the municipalities, composition of the municipalities, and the powers, authorities and responsibilities of the municipalities. Article 243-W of the Constitution of India empowers the legislature of the State

to endow, by law, powers upon the municipalities to perform functions and implement schemes in relation to those matters listed in Twelfth Schedule of the Constitution of India. However, the Twelfth Schedule of the Constitution of India does not impose a duty upon the municipalities to preserve "historical sites and historical monuments or even heritage buildings or heritage sites". Therefore, both HUDA/HMDA should confine their jurisdictions to those items which have been mentioned in the Twelfth Schedule of the Constitution of India. Hence, the Regulation 13 of the Zoning Regulations, 1981 dealing with the preservation of heritage buildings/heritage sites is *ultra vires* the functions bestowed by Article 243-W of the Constitution of India. Therefore, while realising that Regulation 13 of the Zoning Regulations, 1981 was contrary to the constitutional provisions, and to the Entries mentioned in List-II of the Seventh Schedule of the Constitution of India, the government was certainly justified in repealing Regulation 13 of the Zoning Regulations, 1981 "from its very inception".

(xi) Relying on the case of **Bharathidasan University v. All India Council for Technical Education**[22], the learned AAG submits that if the regulations are made

[22] **(2001) 8 SCC 676**

beyond the provisions of the parental Act, the Court can ignore such regulations. Since Regulation 13 of the Zoning Regulations, 1981 is inconsistent with the provisions of Urban Areas Act, the Regulation 13 of the Zoning Regulations, 1981 can be ignored easily by this Court.

(xii) After the bifurcation of the erstwhile State of Andhra Pradesh into the State of Andhra Pradesh and the State of Telangana, it was realised that there is no law prevalent in the State of Telangana to protect the historical monuments and archaeological sites. Therefore, the State enacted the Act, 2017. Since the Act, 2017 does not save the Regulation 13 of the Zoning Regulations, 1981, the protection given under Regulation 13 of the Zoning Regulations, 1981 stands automatically repealed with the enactment of Act, 2017.

(xiii) The Act, 2017 has saved merely those monuments, which were protected under the Act, 1960. Therefore, the protection would continue to only these monuments which are covered under the new enactment of Act, 2017. Hence, the protection bestowed upon Irrum Manzil under Regulation 13 of the Zoning Regulations, 1981 is impliedly repealed.

(xiv) Since Act, 2017 covers the entire State of Telangana, including the metropolitan area of Hyderabad,

Act, 2017 and Regulation 13 of the Zoning Regulations, 1981 cannot co-exist simultaneously. Therefore, with the coming into force of Act, 2017, Regulation 13 of the Zoning Regulations, 1981 is impliedly repealed.

(xv) Even the reasons and the statement of objects of Act, 2017 clearly reveal that the State was keenly aware of the fact that there was no law which protected historical monuments and heritage buildings/heritage sites in the State. For, Regulation 13 of the Zoning Regulations, 1981 was repealed in 2015. Therefore, it was imperative to enact a new law. Hence, even the statement of reasons and objects point to the fact that with the new law coming into force, Regulation 13 of the Zoning Regulations, 1981 would cease to have any relevance.

(xvi) The mentioning of Regulation 13 of the Zoning Regulations, 1981 in Regulation 9(A)(ii) of the Zoning Regulations, 2010 is merely "by reference" and not "by incorporation".

(xvii) Relying on the case of **Girnar Traders** (supra), the learned AAG has pleaded that when there is a general reference in the Act in question to some earlier Act, but there is no specific mention of the provisions of the former Act, then it is "legislation by reference", and not "by incorporation". There is merely a general reference to

Regulation 13 of the Zoning Regulations, 1981 in Regulation 9(A)(ii) of the Zoning Regulations, 2010. There is no indication that any of the specific provisions of Regulation 13 of the Zoning Regulations, 1981 are being incorporated in the Zoning Regulations, 2010. Hence, the mentioning of Regulation 13 of the Zoning Regulations, 1981 in Zoning Regulations, 2010 is "legislation by reference".

(xviii) Once it is "legislation by reference", then any subsequent amendment made after the date of "legislation by reference", would affect the existence of the provision, which has been brought into the later Act "by reference". Hence, when Regulation 13 of the Zoning Regulations, 1981 was repealed in 2015, that too "from its very inception", any mentioning of Regulation 13 of the Zoning Regulations, 1981 in the Zoning Regulations, 2010 would stand automatically deleted. Therefore, the protection given to the Irrum Manzil under Regulation 13 of the Zoning Regulations, 1981 no longer survives. Since Irrum Manzil is no longer a protected heritage building, the government is well within its power to demolish the same for the purpose of construction of a new legislative complex at the site of the palace. Thus, the decision taken by the Cabinet on 18.06.2019 is legally valid.

37. In rejoinder, Mr. Nalin Kumar, the learned counsel for the petitioner, has also relied on the case of **Mohar Singh Pratap Singh** (supra) and pleaded that in the said case, the Apex Court had already opined that "*the Court cannot subscribe to the broad proposition that Section 6 of the General Clauses Act is ruled out when there is repeal of an enactment followed by a fresh legislation*". Thus, even if Regulation 13 of the Zoning Regulations, 1981 were followed by a fresh legislation, namely the Act, 2017, the new enactment, even without a saving clause, would not deprive the protection extended under Section 6 of the General Clauses Act, and in our case, Section 8 of the Andhra Pradesh General Clauses Act. The protection under Section 8 of the A. P. General Clauses Act can be deprived only if the new legislation "manifests an intention" incompatible with, or contrary to the protection of Section 8 of the A. P. General Clauses Act. However, the Act, 2017 does not indicate any such intention to deprive the protection provided by Section 8 of the A. P. General Clauses Act.

Secondly, there is no incompatibility between Regulation 13 of the Zoning Regulations, 1981, and the Act, 2017. For, both the Act and the Regulation are meant to protect to serve and preserve the "historical monuments"

and “heritage buildings”. In fact, Act, 2017 itself deals with the protection of “heritage buildings”. Thus, both the Act, 2017 and the Regulation 13 of the Zoning Regulations are, in fact, in consonance with each other.

Thirdly, relying on the case of **Justiniano Augusto De Piedade Barreto v. Antonio Vicente Da Fonseca**[23], the learned counsel has pleaded that there is a distinction between a “general law”, a “special law” and a “local law”. A “special law” is one which is on a particular subject-matter, and is applicable to a larger territory than a “local law”. A “local law” is one which is applicable to a limited territory. Therefore, both the laws can co-exist, especially when there is no incongruity between the two laws. Moreover, Regulation 13 of the Zoning Regulations, 1981 is applicable to the limited area of Hyderabad Metropolitan Area. Hence, it is a “local law”. However, the Act, 2017 is a “special law” as it deals with a particular subject-matter, and is applicable to the entire State. Hence, the Regulation 13 of the Zoning Regulations, 1981 and its incorporation in Regulation 9(A)(ii) of the Zoning Regulations, 2010 deal with a “local law”, as the law is confined to a particular geographical area. Therefore, in fact, both the Act, 2017 and the Regulation 13 of the Zoning Regulations, 1981 can

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[23] **(1979) 3 SCC 47**

peacefully co-exist as they are compatible to and cover the same field. Thus, the learned AAG is unjustified in claiming that the Act, 2017 and the Regulation 13 of the Zoning Regulations, 1981 cannot co-exist.

Fourthly, even if for the sake of argument it were accepted that there is an incompatibility between Act, 2017 and the Regulation 13 of the Zonal Regulations, 1981, even then the "local law" would override the "special law". Thus, even then, the Regulations 13 of the Zonal Regulations, 1981, as incorporated in Regulation 9 (A) (ii) of the Zonal Regulations, 2010 would continue to cover the field in Hyderabad.

Fifthly, even in the Statement of Objects and Reasons for bringing the Act, 2017 into the statute-book, the legislature had clearly stated that "*there is no law, but in the HMDA area*". Thus, the legislature was well aware of the existence of Regulation 13 of the Zoning Regulations, 1981.

Sixthly, the identity of an individual is formed by the awareness of one's heritage, culture and history. Sense of dignity of the individual also emanates from the awareness of heritage, culture and history. Therefore, preservation of heritage, culture and history has been incorporated to be part of Article 21 of the Constitution of India. In order to

buttress this plea, the learned counsel has replied on **Ramsharan Autyanuprasi v. Union of India**[24].

Seventhly, the learned counsel has emphasised that under Article 51-A of the Constitution of India, one of the fundamental duties of a citizen is the preservation of one's culture, history and heritage. Relying on the case of **AIIMS Students' Union v. State of West Bengal**[25] the learned counsel has argued that the duty of the individual is also the collective duty of the State. Thus, the State has a constitutional duty to preserve the heritage, culture and history of the State. Therefore, the decision taken by the Cabinet on 18.06.2019 is contrary to the constitutional philosophy, and constitutional mandate.

38. Heard the learned counsel for the parties, perused the record produced by the State, and considered the case law cited at the Bar.

39. These writ petitions have raised a plethora of legal issues:

1) Whether Section 59 of the Urban Areas Act empowers only the Development Authority to formulate a regulation or not? Or whether such power is bestowed upon the government or not? Whether the government has

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[24] **AIR 1989 SC 549**
[25] **(2002) 1 SCC 428**

the power to repeal a regulation under Section 59 of the Urban Areas Act, or not?

2) Whether the Master Plan, the Zonal Plan and the Zoning Regulation formulated by the Urban Development Authority have the force of law or not?

(3) Whether the reasons given for repealing Regulation 13 of the Zoning Regulations, 1981 are legally valid or not?

(4) Whether the repeal of Regulation 13 of the Zoning Regulations, 1981 by G.O. Ms. No. 183, dated 07.12.2015 is legally sustainable or not?

(5) Whether the mentioning of Regulation 13 of the Zoning Regulations, 1981 in Regulation 9(A)(ii) of the Zoning Regulations, 2010 is "legislation by incorporation" or "legislation by reference"?

(6) What are the legal consequences if the mentioning of Regulation 13 of the Zonal Regulations, 1981 in the Zonal Regulations, 2010 is by way of "incorporation"?

(7) If the mentioning of Regulation 13 of the Zonal Regulations, 1981 is by way of "incorporation", then what is the interpretation of the words, "*order/amendments made by the Government from time to time*" used in Regulation 9 (A) (ii) of the Zonal Regulations, 2010?

(8) Whether Irrum Manzil, which was protected under the Regulation 13 of the Zoning Regulations, 1981 would

continue to have the protection under Regulation 9(A)(ii) of Zoning Regulations, 2010 or not?

(9) Whether the total repeal of Regulation 13 of the Zoning Regulations, 1981 expresses "a manifest intention" to deny the protection and the benefit of Section 8 of the Andhra Pradesh General Clauses Act or not?

(10) Whether the benefit of Section 8 of the Andhra Pradesh General Clauses Act can be given to Irrum Manzil or not? And if the protection were given, whether the palace has an "accrued right" or an "abstract right" of protection?

(11) Whether there is an inconsistency between the Regulation 13 of the Zoning Regulations, 1981 and the Act, 2017 or not?

(12) Whether both Regulation 13 of the Zoning Regulations, 1981 and Act, 2017 can peacefully co-exist or not?

(13) Whether under Section 19 of HMDA Act, the government is required to take a prior approval of the HMDA for modifying the Zonal plan or not? And whether the government can claim the benefit of Section 34 of the Urban Areas Act, or not?

(14) Whether the decision taken by the Cabinet on 18.06.2019 is in violation of Sections 15 and 19 of HMDA

Act, and in violation of Regulation 9(A)(ii) of the Zoning Regulations, 2010 or not?

(15) Whether the impugned decision is in violation of the order dated 18.04.2016 passed by the learned Division Bench in W.P. (PIL) No.360 of 2015 or not?

(16) What is the scope of judicial review of a government policy decision? And

(17) Whether the impugned decision dated 18.06.2019 of the Cabinet is legally sustainable or not?

40. Before these issues can be adjudicated, this Court must firstly scan the Constitution of India, the grundnorm, of all the laws. Since urban Planning is essential for human life, it is embedded in constitutional provisions as well. Art. 47 of the Constitution imposes a duty upon the State to raise the standard of living of its people, and to improve public health. This is described as "among its primary duties" of the State. Moreover, under Part IX-A of the Constitution of India, dealing with Municipalities, the municipalities are required to deal with areas specified in the Twelfth Schedule of the Constitution of India. One of the areas, so enumerated in the Twelfth Schedule of the Constitution of India, is "urban planning, including town planning". Further, Article 243-ZE of the Constitution of India prescribes that "in every metropolitan

area, a Metropolitan Planning Committee should be constituted which would prepare a draft development plan for the metropolitan area". Although the Metropolitan Planning Committee is to work under the municipality, but nonetheless, the Committee is similar to a Development Urban Authority in a metropolitan city. Thus, urban planning is part of the constitutional scheme.

41. Besides the particular provisions mentioned hereinabove, Article 21 of the Constitution of India guarantees the fundamental "right to life". The word "right to life", in the expansive interpretation of Article 21, includes the right to shelter, to education, to roads, to hygienic environment of a city. Article 19 of the Constitution of India also guarantees the right to freedom of speech and expression, to move freely throughout the territory of India, to reside and settle in any part of the territory of India, to practice any profession, or to carry on any occupation, trade or business. Article 25 of the Constitution of India guarantees the fundamental right to freedom of conscience and free profession, practice and propagation of religion. All these provisions are intrinsically intertwined with urban planning. For, without urban planning many of these fundamental rights would be illusionary in their scope and ambit. A well drafted Master

Plan ensures that the fundamental rights are protected and promoted in the cities for the benefit of the inhabitants of the city. A Master Plan also proves that the State is, indeed, performing its duty by its people as required under Article 47 of the Constitution of India. Therefore, urban planning is an estuary, which flows from the Constitution.

42. Keeping in mind the necessity of urban planning, Section 59 of the Urban Areas Act empowered HUDA to frame regulations. The relevant provision of Section 59 of the Urban Areas Act is as under:

> ***59. Powers to make regulations:-***
>
> *(1) The Authority may, with the previous approval of the Government, make regulations consistent with this Act and the rules made thereunder, to carry out the purposes of this Act and without prejudice to the generality of this power, such regulations may provide for—*
>
> *(a) xxx*
> *(b) xxx*
> *(c) xxx*
> *(d) xxx*
> *(e) the procedure for the carrying out of the functions of the Authority under Chapter III;*

43. A bare perusal of the provision clearly reveals that the power to make the regulation is bestowed only on the Development Authority, and not on the government. Secondly, the regulations must be "*consistent with the Act and the rules made thereunder*". Thirdly, the regulations may deal with "*the procedure for the carrying out the functions of the Authority under Chapter III*", the chapter

dealing with drawing up of Master Plan and Zonal Plan by the Development Authority. Fourthly, since the power to frame the regulations has been bestowed only upon the Development Authority, ergo the power to repeal is also only with the Development Authority. Hence, under Section 59 of the Urban Areas Act, the government does not have the power to repeal the regulations.

44. Moreover, while Regulation 13 of the Zoning Regulations, 1981 was formulated under Section 59 of the Urban Areas Act, the Zonal Plan 2010 was drafted under the HMDA Act. Presently, the controversy is covered under the provisions of the HMDA Act. Therefore, for our purpose the provisions of HMDA Act are more germane. For, the HMDA has not only been constituted, but has also been bestowed with numerous powers and functions under the HMDA Act. Therefore, it would be beneficial to have an overview of the important provisions of the HMDA Act, which are as under:-

45. Section 3 of the HMDA Act empowers the government to declare the Hyderabad metropolitan region consisting of such urban or rural areas as a development area for the purposes of the Act. Section 4 of the HMDA Act constitutes the HMDA.

46. Section 6 of the HMDA Act enumerates the various powers and functions of HMDA. Section 6(1) of the HMDA Act imposes a duty upon HMDA to "*undertake preparation of Metropolitan Development and Investment Plan, revision of the said Plan and prioritize the implementation of the said Plan*".

47. Section 11 of the HMDA Act, dealing with preparation and contents of Metropolitan Development Plan and Investment Plan clearly, states that "*while the Development Authority shall prepare a Metropolitan Development Plan, it must have due regard to policies for preservation, conservation and development of areas of historic and archaeological interest*".

(Emphasis Added).

48. Section 12 of the HMDA Act further empowers the HMDA to "*prepare area level development plans or action plans for execution of projects and schemes for any sector or area of the metropolitan region*". These are referred to as "the Zonal Plan".

49. Once the Plan is ready, once the objections have been invited from the public at large, once the objections have been considered, and, if necessary, the Plan has been modified or revised, the HMDA is required to submit the

Plan for the sanction of the government under Section 13 of the HMDA Act.

50. Section 14 of the HMDA Act bestows the power to sanction the Plan upon the government. According to Section 14(2) of the HMDA Act, the Plan shall come into force from the date of its publication in the Gazette.

51. Section 15 of the HMDA Act dealing with the modifications to the Metropolitan Development Plan and Investment Plan, is as under:-

> *15. (1) The Metropolitan Development Authority or the Government, as the case may be, may make such modifications to the Metropolitan Development and Investment Plans as it may think fit and which in its opinion are necessary.*
>
> *(2) The Metropolitan Commissioner shall prepare a report together with necessary plan, any such modification and submit to the Government for approval.*
>
> *(3) Before making any modifications to the Metropolitan Development Plan and Investment Plan, the Metropolitan Development Authority, or the Government, as the case may be, shall publish a notice in at least two popular local newspapers and Telangana Gazette inviting objections and suggestions from the public specifying such date in the notice and for examining the proposals and report and shall consider all objections and suggestions that may be received by the Metropolitan Development Authority or Government.*
>
> *(4) Every modification made under the provisions of this section shall be published in the Telangana Gazette and newspapers and the modifications shall come into operation from the date of publication of such notification in the Telangana Gazette and newspapers.*

*(5) The Metropolitan Development Authority shall levy such fees and conversion charges from the owners as applicable and as may be prescribed in any such modification effected to the Metropolitan Development Plan and Investment Plan.*

52. Section 18 of the HMDA Act is as under:-

***18. All development powers of land to vest with Metropolitan Development Authority:-*** *(1) Notwithstanding anything contained in any other law, all development powers of land shall vest in Metropolitan Development Authority.*

*(2) After the coming into operation of the Metropolitan Development and Investment Plan, or any area development plan in an area, no person or body shall use or be permitted to use any land or carry out any development in that area unless the development is in conformity with the Metropolitan Development Plan and Metropolitan Investment Plan, area level development plans and notified schemes.*

53. The relevant portions of Section 19 of the HMDA Act, dealing with development permission which is mandatory for undertaking development, are as under:-

*19. Subject to the provisions of this Act, no development or institution of use or change of use of any land shall be undertaken or carried out in the metropolitan region,-*

*(1) without obtaining a Development Permission Order from the Metropolitan Development Authority:-*

*(i) certifying that the proposed development is in conformity with the metropolitan development plan and investment plan or area level development plan or where there is no such plan, such a scheme be integrated with the surrounding area and rules/regulations;*

*(ii) subject to development conditions that are applicable and required to be complied;*

*(iii) the development charges as leviable under this Act and other fees and charges leviable have been paid to the Metropolitan Development Authority.*

*(2) without obtaining a building permission from the local authority in case of developments involving civil construction in accordance with the relevant local body Act, rules, regulations, orders, bye-laws and which shall be in conformity with sub-section (1) and conditions therein:*

54. Moreover, even Section 29 of the Act, which deals with preparation of development scheme, further imposes a duty upon the HMDA to prepare a development scheme while "*making provision for preservation and protection of heritage sites and buildings*".

55. The relevant provisions of Section 57 of the HMDA Act is as under:-

*57. (1) The Metropolitan Development Authority may, with the previous approval of the Government, make regulations consistent with this Act and the rules made there-under, to carry out, the purposes of this Act and without prejudice to the generality of this power, such regulations may provide for:-*

*(i) xxx*

*(ii) the plan programmes of the Metropolitan Development Authority, stages of implementation of the Statutory Development Plan, the agencies and departments responsible for implementation of the Statutory Development Plan;*

*(iii) xxx*

*(iv) xxx*

*(v) xxx*

*(vi) xxx*

*(vii) xxx*
*(viii) xxx*
*(xi) any other matter which is required to be provided by regulations.*

56. A bare perusal of these provisions clearly reveals the following facets:-

Firstly, after constituting the HMDA under Section 4 of the HMDA Act, Section 6 bestows a duty upon the HMDA to prepare the Metropolitan Development Plan. Likewise, Section 12 of the HMDA Act empowers the Development Authority to "*undertake the preparation of area level development plans*". These plans are generally called the Zonal Plans.

Secondly, Section 18 of the HMDA Act invests "*all development power of land*" in the Development Authority.

Thirdly, while preparing the Master Plan, Section 11 of the HMDA Act requires the Development Authority to keep in mind the preservation, conservation and development of areas of "historic and archaeological interests". Similarly, while preparing the Zonal Plans, Section 29 of the HMDA Act, requires the HMDA to make provisions for "*preservation and protection of heritage sites and buildings*". Thus, the preservation and protection of heritage sites and buildings is an essential function of the HMDA.

Fourthly, once a Master Plan is approved by the government and is published in the Gazette, according to Section 14 (2) of the HMDA Act, "the plan shall come into force from the date of its publication in the Gazette."

Fifthly, although both HMDA and the government do have the power to modify the Master Plan, if any modification needs to be made, the procedure prescribed by Section 15 of the HMDA Act necessarily has to be followed. It is pertinent to note that Section 15(3) of the HMDA Act, dealing with modification of a development plan, uses the word "*shall publish a notice in at least two popular local newspapers and Telangana Gazette*." It further requires the Development Authority or the government, as the case may be, to consider "*all objections and suggestions that may be received*". The use of the word "shall" clearly indicates that the provision is a mandatory one.

Sixthly, Section 19 of the HMDA Act is also mandatory in nature. It requires certain procedure to be followed before the land use can be changed.

Seventhly, the power to frame regulations under Section 57 of the HMDA Act is similar to the power bestowed upon on the HUDA under Section 59 of the Urban Areas Act. Moreover, the power is bestowed only upon HMDA, and not upon the government. Since the

power to promulgate a regulation is only with the HMDA, *ipso facto* the power to repeal is only confined to the HMDA. Hence, the power to repeal is not bestowed upon the government.

57. As mentioned above, admittedly, the Master Plan, 2010 was prepared by the HMDA while invoking its powers under Section 11 of the Act. Once the Master Plan was sanctioned by the government, it immediately came into effect upon its publication. Meanwhile, by invoking its powers under Section 57 of the HMDA Act, the Zoning Regulations, 2010 was framed by HMDA.

58. Therefore, the contention raised by the learned Additional Advocate General that a Zoning Regulation, being a subordinate legislation, does not have the force of law, such a contention is highly misplaced. Such an argument ignores the fact that urban planning laws, including Zoning Regulations, emanate from certain provisions of the Constitution of India. Moreover, a Zoning Regulation is a statutory regulation. Therefore, a Zoning Regulation not only derives its legitimacy and legal forcibility from the parental Act, but equally derives its existence and authority from the constitutional provisions. It, indeed, has the force of law.

59. As mentioned above, HUDA had framed the Zonal Regulations, 1981 under Section 59 of the Urban Areas Act. However, it was noticed in 1985 that despite the enabling provision of Section 39 of the Urban Areas Act, which would enable the State to constitute an Urban Art Commission, the said Commission was never constituted by the State government. Moreover, in the regulations already formulated in 1981, there was no provision for protecting the "heritage buildings" and the "heritage sites", which were located within Hyderabad. Therefore, realizing the gap in the law, and in order to fill up the said lacunae, while invoking its power under Section 59 of the Urban Areas Act, on 18.08.1995 the HUDA formulated Regulation 13 of the Zoning Regulations, 1981. It sent the said regulation for approval to the government. By G. O. No. 542, dated 14.12.1995 the said regulation was notified only upon the approval of the government. However, it is essential to note that the regulation was formulated not by the government, but by HUDA, that too after invoking its power under Section 59 of the Urban Areas Act.

60. The essential provisions of Regulation 13 of the Zoning Regulations, 1981 are as under:-

*ANNEXURE*

*Under sub-section (1) of Section 59 of the Andhra Pradesh Urban Areas (Development) Act, 1975 (Act No.1 of 1975)*

*the Hyderabad Urban Development Authority with the previous approval of the Government hereby makes the following amendment to the Hyderabad Urban Development Authority Zoning Regulations 1981 by addition of a new regulation, for conservation of Historical areas and the buildings thereon in Hyderabad City with no financial commitment on the Government or Hyderabad Urban Development Authority.*

*AMENDMENT*

*In the said Zoning Regulations, after zoning regulation No.12, the following regulation shall be added namely:-*

*CONSERVATION OF LISTED BUILDINGS, AREAS, ARTEFACTS, STRUCTURES AND PRECINCTS OF HISTORICAL AND/OR AESTHETICAL AND/OR ARCHITECTURAL AND/OR CULTURAL VALUE (HERITAGE BUILDINGS AND HERITAGE PRECINCTS) INCLUDING ROCK FORMATIONS:*

*1. Applicability: This regulation will apply to those buildings, artefacts, structures and/or precincts of historical and/or aesthetical and/or architectural and/or cultural value (hereinafter referred to as Heritage buildings and Heritage Precincts) which will be listed in notification(s) to be issued by the Government.*

*The Authority shall invite public objections and suggestions in three local daily newspapers before finalizing the list. Restrictions on Heritage Buildings and Heritage Precincts shall be in force with effect on and from the date of first notification.*

*2. Restriction on Development/Redevelopment/ Repairs, etc:*
*(i) No Development or redevelopment or engineering operation or additions, alterations, repairs, renovation including the painting of buildings, replacement of special features or demolition of the whole or any part thereof or plastering of said Heritage buildings or Heritage Precincts shall be allowed except with the prior written permission of the Vice-Chairman, Hyderabad Urban Development Authority. The Vice-Chairman, Hyderabad Urban Development Authority shall act on the advice of/in consultation with the Heritage Conservation Committee to be appointed by Government (hereinafter called "the said Heritage Conservation Committee):*

*Provided that in exceptional cases, for reasons to be recorded in writing, the Vice-Chairman, Hyderabad Urban Development Authority may over rule the recommendation of the Heritage Conservation Committee.*

*Provided further that the power to overrule the recommendations of the Heritage Conservation Committee shall not be delegated by the Vice-Chairman, Hyderabad Urban Development Authority to any other officer.*

*(ii) XXXX*

*3. Preparation of list of Heritage buildings and Heritage Precincts: The said list of buildings, artefacts, structures and precincts of historical, and/or aesthetical, and/or architectural and/or cultural value including rock formations to which this regulation applies shall not form part of the Regulation for the purpose of Section 59 of the Andhra Pradesh Urban Areas (Development) Act, 1975. Modifications to the list shall not amount to modification to Zoning Regulations. This list may be supplemented, altered, deleted or modified from time to time by Government on receipt of proposals from the Vice-Chairman, Hyderabad Urban Development Authority or from the said Heritage Conservation Committee, or by Government sui motu, provided that before the list is supplemented, altered, deleted or modified, objections and suggestions from the public be invited and duly considered by the Vice-Chairman, Hyderabad Urban Development Authority and/or by Government.*

*4. Power to Alter, Modify or Relax Regulations: With the approval of Government and after consultation with the said Heritage Conservation Committee, the Vice-Chairman, Hyderabad Urban Development Authority shall have the power to alter, modify or relax the provisions of other Regulations of the Hyderabad Urban Development Authority Zoning Regulations, 1981 (hereinafter referred to as "the said Regulations") if it is needed for the conservation, preservation or retention of historical, aesthetical, cultural or architectural quality of any Heritage building or Heritage Precinct including rock formations.*

*5. Permission to demolish or to make major alterations to Heritage Buildings may be granted only in exceptional cases by the Vice-Chairman, Hyderabad Urban Development Authority after obtaining the opinion of Heritage Conservation Committee and after inviting public objections and suggestions in three local daily newspapers.*

61. Admittedly, after following the said provisions and upon the recommendations made by the Committee, by G.O.Ms.No.102, dated 23.03.1998, 137 buildings were declared as "protected heritage buildings". At serial No.47,

this list includes the Irrum Manzil. Eventually, fourteen more heritage buildings were added to this list. Thus, in total 151 buildings were classified as "protected heritage buildings".

62. Undoubtedly, in the Master Plan of 2010, Irrum Manzil is shown as falling within the Special Reservation Zone and as being a "protected heritage building".

63. The learned AAG has tried to justify the repeal of Regulation 13 of the Zoning Regulations, 1981 by G.O.Ms.No. 183, dated 07.12.2015 on three grounds:-

Firstly, the Regulation 13 of the Zoning Regulations, 1981 was inconsistent with, and contrary to the Urban Areas Act.

Secondly, the inconsistency emanated from the fact that the Urban Areas Act could not deal with other Entries of List-II. The Urban Areas Act emanated from Entry 5, List-II of the Seventh Schedule of the Constitution of India. Moreover, under Article 243-W, the municipality must confine itself to the fields enumerated in the Twelfth Schedule of the Constitution of India. Therefore, the Urban Development Authority could not have encroached upon Entry 12, List-II of the Seventh Schedule of the Constitution of India, which deals with "the ancient and historical monuments". Hence, in the garb of Regulation

13 of the Zoning Regulations, 1981, the Urban Areas Act could not have covered the field under Entry 12, List-II of the Seventh Schedule of the Constitution of India. Thus, the Urban Areas Act cannot cover two different Entries of List-II of the Seventh Schedule of the Constitution of India.

Thirdly, by letter dated 16.04.2015, HMDA had requested the government to repeal the Regulation 13 of the Zoning Regulations, 1981 as it was causing certain confusion. Therefore, on the request of HMDA, by G.O.Ms. No. 183, dated 07.12.2015 the government had repealed Regulation 13 of the Zoning Regulations, 1981 from its very inception.

64. It is, indeed, a misnomer that there is inconsistency between provisions of the Urban Areas Act, and Regulation 13 of the Zoning Regulations, 1981. While enacting the Urban Areas Act, the legislature was well aware of the fact that urban areas would contain "historical monuments" and "historical sites". Therefore, for their preservation, conservation and restoration, the legislature had enacted Section 39 of the Urban Areas Act, wherein it had prescribed the constitution of the Urban Art Commission, and had equally bestowed the duty upon the Commission to recommend for preservation and conservation of "historical buildings" and "historical sites"

lying within the urban areas. However, as no Urban Art Commission was ever constituted, Section 39 of the Urban Areas Act was never implemented. Instead, Regulation 13 of the Zonal Regulations, 1981 was framed under Section 59 of the Urban Areas Act. Hence, Regulation 13 of the Zonal Regulations, 1981 furthers one of the goals of the Urban Areas Act.

65. Much has been discussed and debated about the differences between a "historical monument" and a "heritage building" before this Court. The learned AAG has vehemently argued that "historical monuments" do not include "heritage buildings". Therefore, there is inconsistency between Section 39 of the Urban Areas Act, which deals with "historical monuments", and Regulation 13 of the Zonal Regulations, 1981, which deals with "heritage building". However, the said argument is fallacious. For, the word "historical monuments" is the genus, whereas "heritage buildings" is a species belonging to the said genus. It is not necessary that "historical monuments" should consist only of "buildings". For, even "pre-historical caves" or "cave temples", or the "ruined walls" of a fortress, or a "parapet" are "historical monuments", but are not necessarily "heritage buildings". However, in order for a building to be classified as a

"heritage building", it has to be "historical" in its existence, significance and value. For, a recently constructed shopping mall cannot be termed as a "heritage building". But, on the other hand, the ruins of "shops" still existing in the city of Hampi, the capital of Vijaynagar Empire, are both "heritage buildings" and "historical monuments". The very classification "heritage building" is a clear indication that the building is something that has been "inherited by the present generation from their ancestors". Therefore, the distinction made by learned AAG between a "historical monument" and a "heritage building" is highly artificial and misplaced.

66. Therefore, one of the areas being covered by the Urban Areas Act was to protect the "historical monuments/heritage buildings", which were part of the urban development area. Thus, Regulation 13 of the Zoning Regulations, 1981 is, in fact, in consonance with one of the aims of the Urban Areas Act.

67. Moreover, in the case of **Hari Kishan Bhargav** (supra), the Hon'ble Supreme Court has opined that "*it is not necessary that law must deal with only one Entry in the List. In fact, a law can deal with various Entries in a given List".* Hence, the learned AAG is not justified in claiming that since the Urban Areas Act originated from Entry 5,

List-II of the Seventh Schedule of the Constitution of India, it could not have dealt with a filed defined by Entry 12, List-II of the Seventh Schedule of the Constitution of India. It is, indeed, trite to state that many Entries in the List-II of the Seventh Schedule of the Constitution of India may be co-related to each other. And, an Act, which is almost like a Code, would necessarily have to cover various fields defined by different Entries in List II of the Seventh Schedule of the Constitution of India.

68. Since Entry 5, List II of the Constitution of India deals with Municipalities and their powers, since the preservation and conservation of historical monuments/heritage buildings are an integral part and parcel of urban planning, Urban Areas Act necessarily has to deal with preservation, conservation and restoration of "historical monuments/ heritage buildings". Therefore, the learned AAG is unjustified in claiming that the Urban Areas Act could not have "encroached" upon the field defined by Entry 12, List II of the Seventh Schedule of the Constitution of India in the garb of Regulation 13 of the Zoning Regulations, 1981. Thus, the argument raised by the learned AAG that there is an inconsistency between the Urban Areas Act and Regulation 13 of the Zonal Regulations, 1981 as both are covered by two different

Entries of List-II of the Seventh Schedule of the Constitution of India is also untenable.

69. Furthermore, the said contention is an after-thought. For, G.O. Ms. No. 183, dated 07.12.2015, while repealing Regulation 13 of the Zoning Regulations, 1981 does not mention the "constitutional mismatch". Therefore, it is a fresh plea which has suddenly mushroomed in order to defend the action of the respondents.

70. The learned AAG has also harped on the request made by the HMDA for repealing Regulation 13 of the Zoning Regulations, 1981 to the government in its letter dated 16.04.2015. The letter dated 16.04.2015 is reproduced as under:-

*Letter No.000336/CMO/Plg/HMDA/2015*

*Date:16.04.2015*

*To*
*The Principal Secretary to Government*
*MA & UD Department,*
*Government of Telangana,*
*Secretariat,*
*Hyderabad.*

*Sir,*

*Sub: HMDA – Planning Dept – HUDA Zoning Regulations 1981 – Reg.*
*Ref: Govt. Letter No.4824/1/2015-1 dt.15.4.2015*

***

*With reference to the Government letter cited above following is submitted.*

*Hyderabad Metropolitan Development Authority has been constituted on 25.8.2008 vide G.O.Ms. No. 570 MA & UD Department with an extent of 7,228 Sq.Kms. The*

*erstwhile Development Authorities which were merged in HMDA are:*

*1) Hyderabad Urban Development Authority*
*2) Hyderabad Airport Development Authority*
*3) Cyberabad Development Authority and*
*4) Buddha Poornima Project Authority*

*The Jurisdiction of H.M.D.A. extends to 55 Mandals and 5 Districts as given below:*

| S.No | Name of the District | No. of Mandals | No. of Villages |
|---|---|---|---|
| 1 | Medak | 10 Mandals | 254 |
| 2 | Ranga Reddy | 22 Mandals | 452 |
| 3 | Mahaboobnagar | 2 Mandals | 28 |
| 4 | Nalgonda | 5 Mandals | 115 |
| 5 | Hyderabad | All 16 Mandals | |

*The jurisdiction of H.M.D.A. also covers GHMC area, Bhongir & Sangareddy Municipalities and Badangpet, Ibrahimpatnam, Medchal, Pedda Amberpet, Shadnagar Nagar Panchayats. Over a period of time, Master Plans along with Zoning Regulations have been prepared for entire H.M.D.A. area and same have been approved by the Government as detailed below:*

*1) Master Plan for Cyberabad Development Authority Area approved vide G.O.Ms.No. 538 MA Dated 29.10.2001.*
*2) Master Plan for Non-Municipal Area of the erstwhile Hyderabad Urban Development Authority area (excluding the erstwhile MCH area and the newly extended area of HUDA) approved vide G.O.Ms. No.288 MA dated 30.4.2008.*
*3) Master Plan for Hyderabad Airport Development Authority area approved vide G.O.Ms. No.287 MA dated 30.4.2008.*
*4) Master Plan for Outer Ring Road Growth Corridor Area approved vide G.O.Ms. No.470 MA dated 9.7.2008.*
*5) Master Plan for erstwhile MCH area (Core area of GHMC) approved vide G.O.Ms. No.363 MA dated 21.8.2010.*
*6) Hyderabad Metropolitan Development Plan – 2031 for Hyderabad Metropolitan Region approved vide G.O.Ms. No.33 MA dated 24.1.2013.*

*As stated above, each Master Plan is having separate Zoning Regulations i.e. Land Use Zoning Regulations and Building Regulations. Land Use Zoning specifies the activities permissible in each zone and while considering any layout development permissions in the above areas the respective Zoning Regulations are being followed. Similarly Zoning Regulations also consists of Building*

*Regulations which specifies the Rules and Regulations to be followed while considering any building permission. However, after issue of Common Building Rules – 2012 in G.O.Ms. No.168 MA dated 7.4.2012, the Building Rules specified in Zoning Regulations have become in fructuous.*

*In this regard, it is submitted that prior to the approval of above 6 Master Plans and Zoning Regulations annexed to each Master Plan, Bhagyanagar (Hyderabad) Urban Development Authority Zoning Regulations, 1981 issued by the Government in G.O.Ms.No.916 MA dated 11.8.1981 and as amended from time to time were in force (which also consists of Land Use Zoning Regulations Building Regulations). However, after approval of the above 6 Master Plans along with Zoning Regulations annexed to each Master Plan, erstwhile HUDA Zoning Regulations 1981 as amended from time to time are not in operation except Regulation 13 of said Zoning Regulations which provides for Conservation of Historical Buildings and Areas in Hyderabad city. But the HUDA Zoning Regulations 1981 are not repealed so far. Therefore, to have better clarity and to avoid any discrepancy in interpretation of Zoning Regulations it would be appropriate to repeal the HUDA Zoning Regulations 1981 and its amendments issued from time to time including all the Government orders existing as on date issued under the said regulations.*

*For conservation of Historical Buildings / Areas / Heritage precincts and Areas of tourism importance in HMDA Area / entire Telangana State Government may consider to issue separate regulations, if necessary, by appointing a Committee for identification of Historical Buildings / Areas / Heritage precincts and Areas of tourism importance afresh in the entire State of Telangana.*

*The above is submitted to the Government for issue of fresh orders in this matter.*

*Yours faithfully*

*Metropolitan Commissioner, HMDA*

(Emphasis Added).

71. A bare perusal of the letter clearly reveals that HMDA has raised the following three points in the letter:-

Firstly, there are certain Master Plans and Regulations, which were brought into existence after the Zoning Regulations, 1981.

Secondly, "*except Regulation 13 of said Zoning Regulations*" the remaining part of Zoning Regulations, 1981 is non-operational. However, the existence of the said Zoning Regulations is causing confusion. Therefore, the said Zoning Regulations should be repealed. However, while recommending the repeal of Zoning Regulations, 1981, an exception has been carved out, namely Regulation 13 of the said Zoning Regulation.

Thirdly and most importantly, the HMDA has requested the government for "*appointing a Committee for identification of Historical Buildings / Areas / Heritage precincts...*". This request clearly proves that the intention of HMDA was, in fact, to strengthen Regulation 13 of the Zoning Regulations, 1981 and to make it more vibrant. For, without the existence of a Committee, Regulation 13 of the Zoning Regulations, 1981 was a toothless tiger. Moreover, the said request seems to have been made keeping in mind that in Writ Petition No. 6820 of 2008, by order dated 21.04.2014, a learned Single Judge of the former High Court of Andhra Pradesh, and Writ Petition (PIL) No. 360 of 2015, a learned Division Bench of the

former High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh had directed the government to reconstitute the Heritage Conservation Committee, as the Committee had stopped functioning from 16.03.2013. Therefore, the letter dated 16.04.2015 belies the claim made by learned Additional Advocate General that there was a "request from the HMDA to repeal Regulation 13 of the Zoning Regulations, 1981". On the contrary, the request was to strengthen and to make Regulation 13 of the Zoning Regulations, 1981 more functional, and to appoint a Committee, in order to add teeth to Regulation 13 of the Zonal Regulations 1981. Hence, there is no request to repeal Regulation 13 of the Zonal Regulations, 1981.

72. Furthermore, even the said argument is an imaginative one. For, G. O. Ms. No. 183, dated 07.12.2015, by which, Regulation 13 of the Zoning Regulations, 1981 was repealed by the government, nowhere mentions the letter dated 16.04.2015. Therefore, the arguments raised by the learned AAG are like feeble props to hold up a collapsing wall.

73. As stated above, the power to frame and the power to repeal a regulation, promulgated under Section 59 of the Urban Areas Act, is/was only with the Development

Authority, namely HUDA. The power to frame, and to repeal a regulation is not even vested with the government. Therefore, obviously, the government could not have repealed the regulation. It is only HUDA that could have done so. But, in the present case, it is the government which has repealed Regulation 13 of the Zoning Regulations, 1981. Thus, clearly the repeal of Regulation 13 of the Zoning Regulations, 1981 is legally unsustainable.

74. It is to be noted that in the present writ petitions, the repeal of Regulation 13 of the Zoning Regulations, 1981 is certainly not in question. But, as the learned AAG has vociferously defended the repeal of Regulation 13 of the Zoning Regulations, 1981, and has argued that once the said regulation is repealed, the protection thereunder quickly disappears, the petitioners are justified in orally questioning the validity of the said repeal. It is in these circumstances that the discussion made hereinabove is to be understood. It may also be pointed out, at this juncture, that the repeal of Regulation 13 of the Zoning Regulations, 1981 is already challenged before this Court in one of the PILs, namely W.P. (PIL) No. 80 of 2019, which is also filed for challenging the impugned decision of the

Cabinet as in the present cases. The said PIL is dealt with separately.

75. Mr. Nalin Kumar, the learned counsel, and Mr. D. Prakash Reddy, the learned Senior Counsel vehemently argued that the mentioning of Regulation 13 of the Zoning Regulations, 1981 in Regulation 9(A)(ii) of the Zoning Regulations, 2010 is "by incorporation", and not "by reference". A see-saw of arguments has been offered from both the sides. For, Mr. Ramachandra Rao, the learned AAG has strenuously pleaded that the mentioning of Regulation 13 of the Zoning Regulations, 1981 in Regulation 9(A)(ii) of the Zoning Regulations, 2010 is merely "by reference" and not "by incorporation".

76. In order to understand the difference between "legislation by incorporation", and "legislation by reference", it would be beneficial to refer to some of the judgments of the Hon'ble Supreme Court on these two doctrines.

77. In the case of **Maharashtra State Road Transport Corporation v. State of Maharashtra**[26], the Hon'ble Supreme Court has pointed out as under:-

> *"It is a well-established legislative practice to borrow the provisions of an earlier Act on a particular subject by making a broad reference to the earlier Act or some or most of its provisions therein so as to make them applicable to the relevant subject-matter dealt with by the later*

[26] (2003) 4 SCC 200

*statute. This is done primarily as a matter of convenience in order to avoid verbatim repetition of the provisions of the earlier Act".*

78. In the case of **Nagpur Improvement Trust** (supra), the Apex Court had opined that "*the law on the subject is well settled. When an earlier Act or certain of its provisions are incorporated by reference into a later Act, the provisions so incorporated become part and parcel of the later Act as if they had been bodily transposed into it*".

79. However, in the case of **Bharat Cooperative Bank (Mumbai)** (supra), the Apex Court had also expressed a doubt and had opined as under:

*However, the distinction between incorporation by reference and adoption of provisions by mere reference or citation is not too easy to highlight. The distinction is one of difference in degree and is often blurred. The fact that no clear-cut guidelines or distinguishing features have been spelt out to ascertain whether it belongs to one or the other category makes the task of identification difficult. The semantics associated with interpretation play their role to a limited extent. Ultimately, it is a matter of probe into legislative intention and/or taking an insight into the working of the enactment if one or the other view is adopted. Therefore, the kind of language used in the provision, the scheme and purpose of the Act assume significance in finding answer to the question. The doctrinaire approach to ascertain whether the legislation is by incorporation or reference is, on ultimate analysis, directed towards that end.*

80. Moreover, in the case of **Nagpur Improvement Trust** (supra), the Hon'ble Supreme Court further pointed out as under:-

> *The incorporation of an earlier Act into a later Act is a legislative device adopted for the sake of convenience in order to avoid verbatim reproduction of the provisions of the earlier Act into the later. But this must be distinguished from a referential legislation which merely contains a reference or the citation of the provisions of an earlier statute. In a case where a statute is incorporated, by reference, into a second statute, the repeal of the first statute by a third does not affect the second. The later Act along with the incorporated provisions of the earlier Act constitute an independent legislation which is not modified or repealed by a modification or repeal of the earlier Act. However, where in later Act there is a mere reference to an earlier Act, the modification, repeal or amendment of the statute that is referred, will also have an effect on the statute in which it is referred. It is equally well settled that the question whether a former statute is merely referred to or cited in a later statute, or whether it is wholly or partially incorporated therein, is a question of construction.*

81. Thus, in case of "legislation by incorporation" despite the death of the parent Act, its offspring survives in the incorporating Act. However, in "legislation by reference", the repeal of the parent Act automatically leads to the demise of the offspring.

82. Furthermore, in the case of **Madhavrao Damodar Patil** (supra), the Apex Court has further pointed out that "*ordinarily if an Act is referred to by its title, it is intended to refer to that Act with all the amendments made in it upto the date of reference*". (Emphasis added). Similar views have also been expressed in the case of **Mahindra and Mahindra Ltd.** (supra). In the said case, relying on the

observation made by Lord Esher, M.R. in **In re Wood's Estate**[27], and on Lord Justice Brett in the case of **Clarke v. Bradlaugh**[28], the Apex Court opined that "*Once the incorporation is made, the provision incorporated becomes an integral part of the statute in which it is transposed and thereafter there is no need to refer to the statute from which the incorporation is made and any subsequent amendment made in it has no effect on the incorporation statute*".

(Emphasis added)

83. Drawing a distinction between "legislation by reference" and "legislation by incorporation" in the case of **Mohan Singh** (supra), the Hon'ble Supreme Court has clearly pointed out the distinction as under:

> *A distinction has to be drawn between a mere reference or citation of one statute into another and incorporation. In the case of mere reference of citation, a modification, repeal or re-enactment of the statute that is referred will also have effect for the statute in which it is referred; but in the latter case any change in the incorporated statute by way of amendment or repeal has no repercussion on the incorporating statute.*

84. Lastly, in the case of **Maharashtra State Road Transport Corporation** (supra), the Apex Court has opined as under:-

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[27] **(1886) 31 Ch D 607**
[28] **(1881) 8 Q BD 63, 69**

*When such legislative device is adopted, the relevant provisions of the earlier Act will apply mutatis mutandis to the matters governed by the later Act. But, the difficulty in construction would arise when the earlier Act is repealed or amended/modified. The intricate question then would be whether the repeal or amendments should be ignored and the borrowed provisions should be read as they were at the time of enactment of later Act OR the provisions of earlier Act should be applied subject to subsequent amendments/modifications. If there is a definite indication in the later Act as to the applicability or otherwise of subsequent amendments in the Act referred to, no difficulty arises; but, the problem arises when there is no such indication. It is here that we come across two allied but qualitatively different concepts of statutory interpretation known as incorporation by reference and mere reference or citation of earlier statute in the later Act. In the former case, any change in the incorporated statute by way of amendment or repeal has no effect on the incorporating statute. In other words, the provisions of the incorporated statute as they stood at the relevant time when incorporating statute was enacted will ever continue to be read into that later statute unless the legislature takes a positive step to amend the later statute in tune with the amendments. However, the legal effect is otherwise in the case of a statute which merely makes a reference to the provisions of an earlier statute. In that case, the modification of the statute from time to time, will have its impact on the statute in which it is referred to. The provisions in the earlier statute with their amendments will have to be read into the later enactment in which they are referred to unless any such subsequent amendment is inconsistent with a specific provision already in existence.* (Emphasis added).

85. Therefore, while adjudicating on the issue whether the mentioning of Regulation 13 of the Zonal Regulations, 1981 in the Regulation 9 (A) (ii) of the Zonal Regulations, 2010 is by way of “incorporation” or by way of “reference”,

one would have to keep the principles aforementioned in mind.

86. Regulation 9(A) of the Zoning Regulations, 2010 is as under:-

> ***9. Special Reservation Use Zone***
>
> *A) Sites specifically earmarked as Heritage Sites*
>
> *i) In notified heritage buildings and heritage precincts, it is necessary to obtain specific clearance from HMDA after consultations by heritage conservation committee before undertaking certain kinds of development and redevelopment as specified by the government or issued as specific guidelines. Special exemption from land use controls is allowed subject to approval from the government in the interest of conservation of the heritage buildings and adaptive uses area allowed with concurrence from the heritage committee subject to mandated public safety requirements.*
>
> *ii) The heritage regulations issued vide G.O.Ms. No. 542, MA dated 14.12.1995 and other relevant orders/amendments issued by the government from time to time shall be applicable.*

87. A bare perusal of the above Regulation clearly reveals that Regulation 13 of the Zoning Regulations, 1981 has been referred to by its title, namely G.O.Ms. No. 542 MA, dated 14.12.1995. Thus, instead of repeating all the provisions of Regulation 13 of the Zoning Regulations, 1981, it has been referred to by its title. Hence, all the provisions of Regulation 13 of the Zoning Regulations, 1981 have been lifted and incorporated in Regulation 9(A)(ii) of

the Zoning Regulations, 2010 as though it were written by pen on paper.

88. Moreover, Regulation 9(A)(i) of the Zoning Regulations, 2010 retains the soul of Regulation 13 of the Zoning Regulations, 1981, when it paraphrases Regulation 13 (4) of the said Regulations. Both the provisions provide "*exemption from land use controls in the interest of conservation of the heritage buildings*". Thus, the intention to "incorporate" Regulation 13 of the Zoning Regulations, 1981 is crystal clear.

89. Furthermore, Regulation 9(A) of the Zoning Regulations, 2010 modifies Regulation 13(2)(i) of the Zoning Regulations, 1981. Juxtaposition of these two provisions clearly reveals that under the latter provision a prior written permission from the Vice-Chairman, HUDA was required before any development or redevelopment, alterations, repairs, renovation or demolition of a building could begin. The Vice-Chairman, HUDA, in turn, was duty bound to act on the advice of/in consultation with the Heritage Conservation Committee. Only in exceptional cases, the Vice-Chairman could over rule the recommendations of the Committee. However, in the former case, a specific clearance from HMDA is required to be obtained. The said clearance can be given "only after

consultation by Heritage Conservation Committee". Thus, the word used "in consultation" implies that the advice of the Heritage Conservation Committee is not binding upon the HMDA, whereas under Regulation 13(2) of the Zoning Regulations, 1981, the recommendation of the Committee was, indeed, binding on the HUDA, except in exceptional cases. Thus, Regulation 9(A)(i) of the Zoning Regulations, 2010 modifies Regulation 13 of the Zoning Regulations, 1981 to a limited extent. Thus, it is a case of "legislation by incorporation".

90. Moreover, G. O. Ms. No. 183, dated 07.12.2015 is as under:-

***ORDER:***

*1. Andhra Pradesh Urban Areas (Development) Act, 1975 (Act No.1 of 1975) was enacted to deal with urban areas development in the then existing State of Andhra Pradesh. Section 59 of the said Act provides for making regulations consistent with the Act and Rules made thereunder to carry out purposes of the Act. Subsequently, Regulation 13 was added by way of amendment to the Hyderabad Urban Development Authority Zoning Regulations vide G.O.Ms. No. 542, dated 14.12.1995. The said Regulation provides scheme of identification of conservation and heritage and historical buildings/precincts thereon. Subsequently, in terms of Regulation, the Government issued notification to the said effect by notifying certain buildings/precincts.*

*2. After formation of State of Telangana, the Government have considered the issue and felt that the Regulation 13 is inconsistent with the A.P. Act 1/1975, and decided to delete Regulation 13.*

*3. Accordingly, the matter was referred to the learned Advocate General. The Learned Advocate General also expressed his opinion that there is no substantive provision dealing with the heritage or historical precincts and conservation thereof in the A.P. Act 1/1975. Accordingly, Regulation 13 is inconsistent with the Act and Rules made thereunder. Therefore, no purpose will be served to carry out the provisions of A.P. Act 1/1975. Further the effect of Regulation notifying the buildings will also affect the property rights of the owners and accordingly the Regulation 13 itself is ultra vires of Section 59 of Act 1/1975.*

*4. In view of the above circumstances, after careful consideration of the matter, the Government have taken a decision to delete the Regulation 13 since the date of its inception and accordingly hereby delete the Regulation 13 since the date of its inception.*

*5. The Government also decided to take appropriate measures in respect of the subject matter after ascertaining the opinion of experts in the matter.*

91. A bare perusal of G.O.Ms. No. 183, dated 07.12.2015 clearly reveals that Regulation 13 of the Zoning Regulations, 1981 has been repealed on twin grounds: it is "inconsistent with the Act" (Urban Areas Act and Rules made thereunder); secondly, the said regulation adversely "affects the property rights of the owners". Therefore, Regulation 13 of the Zoning Regulations, 1981 is *ultra vires* to Section 59 of the Urban Areas Act.

92. However, while repealing Regulation 13 of the Zoning Regulations, 1981, the government was well aware of the fact that the said Regulation was mentioned in

Regulation 9(A)(ii) of the Zoning Regulations, 2010. Yet, there is nothing to indicate that there is any intention to delete the mentioning of Regulation 13 of the Zoning Regulations, 1981 from Regulation 9(A)(ii) of the Zoning Regulations, 2010 Although the G.O.Ms. No. 183 has used the words "accordingly hereby delete the Regulation 13 since the date of its inception", but nowhere does it indicate that any mentioning of the said regulation in Zoning Regulations would also stand automatically deleted.

93. In order to decide whether the mentioning of Regulation 13 of the Zoning Regulations, 1981 is by way of "incorporation" or by way of "reference", one would also have to deal with the reason why Regulation 13 of the Zoning Regulations, 1981 is mentioned in the Zoning Regulations of 2010. As mentioned hereinabove, the Development Authority not only has to formulate a policy for protection and conservation of "historical monuments/heritage buildings", but also has to conserve and protect the same. As pointed out above, already a Special Reservation Zone was demarcated in the Master Plans of 2010 clearly indicating the "heritage buildings", which were covered by Regulation 13 of the Zoning Regulations, 1981. Therefore, mentioning of Regulation 13 of the Zoning Regulations, 1981 in Regulation 9(A)(ii) of the

Zoning Regulations, 2010 is incorporated in the Zoning Regulations in order to give the Development Authority the power to deal with these "heritage buildings and heritage sites" which were falling in the Special Reservation Zones.

94. Moreover, the mentioning of Regulation 13 of the Zoning Regulations, 1981 is further strengthened by the procedure to be followed in case of any development or redevelopment needs to be carried out *vis-à-vis* heritage buildings/heritage precincts.

95. Furthermore, as pointed out above, the HMDA has been strengthened by permitting it to exempt from land use controls "in the interest of conservation of the heritage buildings". Thus, obviously, mentioning of Regulation 13 of the Zoning Regulations, 1981 is by way of "incorporation", and not by way of "reference".

96. Considering the fact that Regulation 13 of the Zoning Regulations, 1981 has been mentioned by way of "incorporation", obviously any amendment made in the Regulation 13 of the Zoning Regulations, 1981 post the date of its "incorporation", namely post 2010, or its subsequently repeal, would not adversely affect its existence in the incorporated Zoning Regulations. Thus, the repeal of Regulation 13 of the Zoning Regulations, 1981 by G.O.Ms. No. 183, dated 07.12.2015 would not adversely

affect the existence of Regulation 13 of the Zoning Regulations, 1981 in Regulation 9(A)(ii) of the Zoning Regulations, 2010. In short, Regulation 13 of the Zoning Regulations, 1981 would continue to survive even when the parental regulation has died. Regulation 13 of the Zoning Regulations, 1981, in its incorporated form, in the Zoning Regulations, 2010 will continue to thrive and will continue to bestow its protection on the "protected heritage buildings", which have been declared as "heritage buildings" by the government itself.

97. Of course, the learned AAG has repeatedly harped on the fact that Regulation 9(A) (ii) of the Zoning Regulations, 2010 further uses the words "*other relevant orders and amendments issued by the government from time to time shall be applicable*". Thus, according to the learned AAG once Regulation 13 of the Zoning Regulations, 1981 was repealed "from its very inception", Regulation 13 of the Zoning Regulations, 1981, as mentioned in Regulation 9(A)(ii) of the Zoning Regulations, 2010, would, too, stand automatically repealed.

98. However, such an interpretation ignores the fact that under Section 59 of the Urban Areas Act the power to frame and the power to repeal are vested only with the HUDA, and not with the government. Moreover, under

Regulation 13(3) of the Zoning Regulations, 1981, the only power which is given to the government is to modify the list of "heritage buildings and heritage precincts". Therefore, the words "*other relevant orders and amendments issued by the government from time to time*" necessarily refer to the modification of the list of "protected heritage buildings and heritage precincts", and not to the repeal of Regulation 13 of the Zoning Regulations, 1981.

99. Further, even if the government wants to delete or modify or supplement the list, even then the Vice-Chairman, Hyderabad Development Authority is required to invite objections and suggestions from the public and to duly consider the same. Hence, the learned counsel is unjustified in claiming that the words "*other relevant orders and amendments issued by the government from time to time*" also refer to G.O.Ms. No. 183, dated 07.12.2015.

100. Furthermore, as discussed above, since the government does not have the power to repeal Regulation 13 of the Zoning Regulations, 1981, its very repeal is of a doubtful vintage. But nonetheless, even if for the sake of argument it is accepted that the repeal was a valid one, even then such a repeal does not adversely affect the existence and operation of Regulation 13 of the Zoning Regulations, 1981 in Regulation 9(A)(ii) of the Zoning

Regulations, 2010. For, Regulation 13 of the Zoning Regulations, 1981 continues to thrive, prosper and exist within the capsule of Regulation 9(A)(ii) of the Zoning Regulations, 2010.

101. Moreover, if the contention of the learned AAG were to be accepted, for the sake of argument, that the mentioning of Regulation 13 of the Zoning Regulations, 1981 in Regulation 9(A)(ii) of the Zoning Regulations, 2010 is "legislation by reference", such an interpretation would lead to anomalous situations. For, the acceptance of the said argument would imply that the subsequent repeal of Regulation 13 of the Zoning Regulations, 1981 automatically deletes Regulation 13 of the Zoning Regulations, 1981 from Regulation 9(A)(ii) of the Zoning Regulations, 2010. It would further imply that the HMDA no longer has the power to deal with the "heritage buildings/heritage sites" falling within the Special Reservation Zone. Hence, HMDA would lose its control over the said Zone. Such an interpretation would be contrary to Section 15(3), Section 18 and Section 19 of the HMDA Act. Needless to say, that an interpretation which makes the provisions of law otiose or redundant should not be accepted. Therefore, the interpretation placed by the AAG is obviously unacceptable.

102. Further, the government would be able to achieve a modification of the Master Plan and Zonal Plan without following the requirements of Section 15 of the HMDA Act. Any interpretation, which would denude and delete the powers of the HMDA contrary to the provisions of the HMDA Act, perforce, has to be avoided by this Court.

103. Furthermore, it is a settled principle of law that what cannot be done directly, cannot be permitted to be done indirectly by an authority. Since the government cannot scuttle the authority of the HMDA directly, it cannot be permitted to do so indirectly in the garb of repealing of Regulation 13 of the Zoning Regulations, 1981. Thus, the learned AAG is unjustified in claiming that the mentioning of Regulation 13 of the Zoning Regulations, 1981 in Regulation 9(A)(ii) of the Zoning Regulations, 2010 also stands repealed. Therefore, the interpretation offered by the learned AAG is clearly unacceptable.

104. Once this Court has concluded that Regulation 13 of the Zoning Regulations, 1981 is, indeed, a "legislation by incorporation" in the Zoning Regulations, 2010 this Court need not address the issue whether the benefit of Section 8 of the Andhra Pradesh General Clauses Act is said to continue *qua* the Irrum Manzil even after the repeal of Regulation 13 of the Zoning Regulations, 1981 or not?

The said issue would be germane if this Court were to conclude that the repeal of Regulation 13 of the Zoning Regulations, 1981 would also obliterate the mentioning of Regulation 13 of the Zoning Regulations, 1981 in Zoning Regulations, 2010. Therefore, this Court refrains from expressing any opinion about the protection and the benefit of Section 8 of the Andhra Pradesh General Clauses Act being given to the Irrum Manzil. Moreover, this Court need not go into the controversy whether the right or protection has been subscribed to the Irrum Manzil as "an accrued right" or as "an abstract right".

105. The learned AAG has raised two further contentions: firstly, Regulation 13 of the Zoning Regulations, 1981 and provisions of Act, 2017 are inconsistent. Secondly, therefore, both the Act, 2017 and the Regulation 13 of the Zoning Regulations, 1981 cannot co-exist peacefully. However, even the said arguments are unsustainable. For, the Act, 2017 deals with heritage buildings, their preservation, conservation and restoration. Similarly, Regulation 13 of the Zoning Regulations, 1981 also deals with the preservation, conservation and restoration of heritage buildings within the Development Area of the Hyderabad city. Hence, the purpose and aim of both the laws is similar in nature, namely to protect,

preserve, and maintain "heritage buildings and heritage sites". Therefore, there is no conflict between Regulation 13 of the Zoning Regulations, 1981 and Act, 2017.

106. Furthermore, a distinction has to be made between "a general law", "a special law", and "a local law". In the case of **Justiniano Augusto De Piedade Barreto** (Supra), the Hon'ble Supreme Court has drawn a distinction between "a general law", "a special law" and "a local law". According to the Apex Court, "a special law" is a law relating to a particular subject and is applicable to a large area, while "a local law" is a law applicable to a particular area or territory. Since the Act, 2017 deals with protection of heritage buildings, heritage sites, natural heritage sites, historical sites, and museums for the entire State of Telangana, it is a "special law" dealing with the special topic. However, the Zoning Regulations, 2010 containing the Regulation 13 of the Zoning Regulations, 1981, is confined to the metropolitan development area of Hyderabad. Thus, it is, indeed, a "local law" being applied only to the territory defined as the "development area". Therefore, both the "special law" and the "local law" can peacefully co-exist.

107. Moreover, even if it were accepted, for the sake of argument that there is some inconsistency between the

Regulation 13 of the Zonal Regulations, 1981 and the Act, 2017, the former being a "local law" would take precedence over the "special law". Thus, even in such a scenario, both the provisions of law can continue to co-exist peacefully. Thus, the twin arguments raised by the learned AAG are unacceptable.

108. Countering the arguments raised by the learned counsel for the petitioner that before any land use can be changed by the government, it must seek the permission of the development authority as required under section 19 of the HMDA act, the learned AAG has pleaded that section 34 of the Urban Areas Act and section 49 of the HMDA Act permits the government to issue instructions to the development authority. Therefore, the government is not required to seek any permission from the development authority. The relevant portion of Section 34 of the Urban Areas Act reads as under:

> ***34. Control by Government:-*** *(1) The Authority shall carry out such directions as may be issued to it, from time to time, by the Government for the efficient administration of this Act.*
>
> *(2) xxx*
> *(3) xxx*
> *(4) xxx*
> *(a) xxx*
> *(b) xxx*
> *(c) xxx*

109. The relevant portion of Section 49 of the HMDA Act reads as under:

> ***49. Control by Government:-*** *(1) The Metropolitan Development Authority shall carry out such directions and guidelines as may be issued to it, from time to time, by the Government for the efficient discharge of its responsibilities and functions under this Act.*
>
> *(2) xxx*
>
> *(3) xxx*

110. A bare perusal of these provisions clearly reveals that they are similar in their content. Therefore, they can be read *mutatis mutandis*. Secondly, the said provision merely imposes a duty upon the development authority to carry out such directions and guidelines as may be issued by the government "for the efficient discharge of its responsibilities and functions under this Act". However, in the garb of issuing directions and guidelines, the government cannot scuttle the mandatory provisions off Sections 15 and section 19 of the HMDA Act. Therefore, prior to changing the land use, permission is required from the development authority. Hence, the contention raised by the AAG is clearly unacceptable.

111. The learned AAG has also emphasized that the scope of judicial review while examining a government policy decision is extremely limited one. Therefore, as the government has taken a policy decision, this Court should restrain itself from entering into the legality or illegality of

the policy decision. In order to buttress this plea, the learned counsel has relied upon the cases of **Kannadapara Sanghatanegala Okkuta & Kannadigara** (supra), and **Jal Mahal Resorts Private Limited** (supra).

112. While accepting the settled principle that the courts ordinarily should not interfere with policy decision, in the case of **Brij Mohan Lal v Union of India**[29], the Hon'ble Supreme Court also opined that "*this general rule is not free from exceptions.*" The Apex Court prescribed certain grounds where the court would be legally justified in interfering with a policy decision. The Apex Court observed as under:

> *Certain tests, whether this Court should or not interfere in the policy decisions of the State, as stated in other judgments, can be summed up as:*
>
> *(I) If the policy fails to satisfy the test of reasonableness, it would be unconstitutional.*
>
> *(II) The change in policy must be made fairly and should not give the impression that it was so done arbitrarily on any ulterior intention.*
>
> *(III) The policy can be faulted on grounds of mala fides, unreasonableness, arbitrariness or unfairness, etc.*
>
> *(IV) If the policy is found to be against any statute or the Constitution or runs counter to the philosophy behind these provisions.*
>
> *(V) It is dehors the provisions of the Act or legislations.*
>
> *(VI) If the delegate has acted beyond its power of delegation.*
>
> *Cases of this nature can be classified into two main classes: one class being the matters relating to*

[29] **(2012) 6 SCC 502**

*general policy decisions of the State and the second relating to fiscal policies of the State. In the former class of cases, the courts have expanded the scope of judicial review when the actions are arbitrary, mala fide or contrary to the law of the land; while in the latter class of cases, the scope of such judicial review is far narrower. Nevertheless, unreasonableness, arbitrariness, unfair actions or policies contrary to the letter, intent and philosophy of law and policies expanding beyond the permissible limits of delegated power will be instances where the courts will step in to interfere with government policy.*

(Emphasis added).

113. Therefore, although judicial review of the policy-decision is a limited one, although the Court cannot substitute its own decision for the decision of the government, but nonetheless, the Court can interfere with the decision provided that provisions of law and/or relevant factors have been ignored in the process of taking the decision. If provisions of law have been ignored in the process of taking decision, the decision is said to be an arbitrary one. Therefore, in this limited scope, the Court would be justified in interfering with the decision while exercising the power of judicial review. Hence, this Court is merely examining whether while taking the decision relevant provisions of law and/or relevant factors have been over looked by the State or not?

114. A bare perusal of the facts and laws mentioned hereinabove would clearly reveal that while taking the

decision, the government has ignored essential provisions of law and relevant factors:

(i) The government has ignored the legal position that the Regulation 13 of the Zonal Regulations, 1981 was framed under Section 59 of the Urban Areas Act by the Development Authority. The government has further ignored the legal position that it did not have the power to repeal the Regulation 13 of Zonal Regulations, 1981. For, the power to repeal is vested only with the Development Authority. Hence, the very repeal is *per se* illegal.

(ii) The government has overlooked the fact that under the Master Plan, 2010 certain areas of Hyderabad have been declared as Special Reservation Zones. These Special Reservation Zones incorporate "heritage buildings and heritage sites".

(iii) The government has ignored the scope and ambit of the HMDA Act. The government has ignored that under Section 18 of the HMDA Act, the power to develop the land is bestowed only on the Development Authority.

(iv) The government has ignored the fact that in case of any modification in the Master Plan legally requires a specific procedure to be followed as prescribed by Section 15 (3) of the HMDA Act. It has also ignored the fact that the said procedure is mandatory in nature. Therefore, in case

any modification or alteration needs to be made in the Special Reservation Zone of the Master Plan, it needs to follow the procedure prescribed by Section 15(3) of the HMDA Act.

(v) The government has ignored the existence of Section 19 of the HMDA Act. The said provision deals with the procedure to be followed in case of change of use of land. Since, the government proposes to change the use of land of Special Reservation Zone, it is required to adhere to the procedure prescribed by Section 19 of the HMDA Act. However, the government has ignored the said procedure.

(vi) Under the misimpression that since Regulation 13 of the Zoning Regulations, 1981 has been repealed in 2015, such "heritage buildings and heritage sites" have lost their status as "protected buildings", the government has ignored the "incorporation" of Regulation 13 of the Zoning Regulations, 1981 in Regulation 9(A)(ii) of the Zoning Regulations, 2010.

(vii) The government has ignored the legal position that once Regulation 13 of the Zoning Regulations, 1981 is "incorporated" in the Zoning Regulations, 2010, the said Regulation would continue to be alive even if the parental Regulation, namely Regulation 13 of the Zoning Regulations, 1981 were repealed.

(viii) The government has ignored the fact that since Regulation 13 of the Zoning Regulations, 1981 continues to exist, the protection given to the "protected heritage building" continues to be alive. In fact, since Irrum Manzil is shown in the Master Plan 2010 as falling in the Special Reservation Zone, the Irrum Manzil continues to enjoy the protection given to it under Regulation 13 of the Zoning Regulations, 1981 as incorporated under the Zoning Regulations, 2010.

(ix) The government has ignored the fact that if any modification, development, re-development or demolition of a heritage building is required, then the procedure prescribed under the Regulation 13(2) of the Zoning Regulations, 1981 necessarily has to be followed. Yet, the government have not taken any permission from the HMDA prior to taking the decision on 18.06.2019.

(x) The government has tried to achieve a goal indirectly, which it could not have achieved directly. Therefore, the government, while taking the decision, have violated the provisions of Section 15 of the HMDA Act, and acted contrary to Regulation 9 (A) (ii) of Zonal Regulations, 2010.

(xi) The government have also ignored that by order dated 18.04.2016, passed in Writ Petition (PIL) No. 360 of

2015, this Court had directed the government to seek its permission before modifying or demolishing or altering any structure declared as heritage, under Regulation 13 of the Zoning Regulations, 1981. Therefore, the decision of the government is in violation of the direction issued by the learned Division Bench of this Court in W.P. (PIL) No. 360 of 2015.

(xii) The government has equally ignored the relevant factor that identity of an individual is moulded by his/here culture, history and heritage. Therefore, preservation of heritage has been incorporated to be part of "life" enshrined in Article 21 of the Constitution of India. (Refer to **Ramsharan Autyanuprasi** (supra)).

(xiii) The government has also ignored the fact that the identity and character of a city is defined by its heritage and architecture. Therefore, it is imperative for the government to preserve, conserve and restore the heritage buildings of the cities. Considering the importance of heritage, the World Heritage Convention, 1972 imposes a duty to protect and conserve the cultural heritage of the country. Moreover, it imposes a duty upon the State to integrate the protection of heritage into comprehensive planning programmes. Therefore, it is an imperative duty of the State to preserve the heritage buildings which

contribute to the sense of culture and sense of identity of the city. The State cannot afford the luxury of forgetting that the destruction of heritage building will rob its people the essence of their identity, and will deprive the city its sense of uniqueness. While it is important to plan for the future, it is equally important to protect, to preserve and to promote the past.

115. Hence, in the process of taking the decision, the State has ignored various essential provisions of law, essential procedures established by law, the directions issued by this Court, and has overlooked important factors. The said decision is, therefore, clearly an arbitrary one. Thus, the Cabinet decision dated 18.06.2019 is legally unsustainable.

116. For the reasons stated above, both these writ petitions are hereby allowed. The decision of the Council of Ministers, dated 18.06.2019, is set aside. No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

**RAGHVENDRA SINGH CHAUHAN, CJ**

**Dr. SHAMEEM AKTHER, J**

16.09.2019
Note: LR copy be marked.
(By order) Tsr/Pln

**THE HON'BLE THE CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN**

**AND**

**THE HON'BLE DR. JUSTICE SHAMEEM AKTHER**

**WRIT PETITION (PIL) Nos. 79 OF 2019 AND 86 OF 2019**

(Per the Hon'ble the Chief Justice Raghvendra Singh Chauhan)

Dated: 16-09-2019

Tsr/Pln