

THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN

AND

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

TAKEN UP W.P (PIL).No.187 of 2019

ORDER: *(Per the Hon'ble the Chief Justice Ujjal Bhuyan)*

Heard Mr. Chalakani Venkat Yadav, learned Government Pleader for Social Welfare appearing for respondent No.1; Mr. S. Bhooma Goud, learned Government Pleader for Municipal Administration and Urban Development appearing for respondent No.2; Mr. Pasham Krishna Reddy, learned Standing Counsel for Greater Hyderabad Municipal Corporation (GHMC) appearing for respondents No.3 and 4; Mr. Abu Akram, learned counsel for respondent No.5; Mr. M.A.K.Mukheed, learned counsel for respondents No.6 and 7; Mr. Namavarapu Rajeshwar Rao, learned Assistant Solicitor General of India appearing for respondents No.8 and 9; Ms. Aarifa Imran Khan, learned counsel for respondents No.10 to 12; and Mr. Imran Khan, learned *Amicus Curiae*.

2. This *suo motu* writ petition was registered on the basis of a letter dated 04.11.2019 addressed by one Syed Azgar Hussain to the Chief Justice of this Court. The letter reads as under:

“Hon’ble Sir,

This is to submit that certain officials and representatives of **The Nizam Trust, GHMC and the TS Waqf board has colluded to illegitimately encroach and demolish a religious heritage Ashoorkhana (Peerla Chavadi)** namely “Niyaz Khana” situated at Plot No.22-2-725, Sy.No.4, Darulshifa, Hyderabad. As a prelude to the crime, the interested persons in collusion among themselves have filed a building application dated 21st May, 2019, File No-1/C9/09399/2019 at GHMC – Town Planning Section – Head Office – Circle 9, CHARMINAR CIRCLE, by misrepresenting the ownership and filing misconstrued information.

This Ashoorkhana including Azakhana Zohra and a Mosque are NOTIFIED WAQF INSTITUTION published in A.P.Gazette No.11-A, dated 16-03-1989, Sl.No.94, page No.25 (Shia Community). And is also governed by The Nizam’s Trust Deeds (Validation) Act, 1950 (A.P.Act XXIV of 1950), which was subsequently ratified under Telangana Adaptation of Laws (No.2) Order, 2016. Vide [G.O.Ms.No.46, LAW (F), 1st July, 2016.

Sir, the above mentioned illegitimate acts are a case of gross negligence on part of public authorities and government and calls for a *suo motu* action against all

the culprits and safeguard the legal rights of the community.”

3. On the basis of this letter, the proceedings were initiated. On 23.12.2019, GHMC and its Deputy Commissioner i.e., respondents No.3 and 4, were directed to ensure that neither any encroachment nor any construction was made in the subject property.

4. On 25.03.2021, Azakhana Zehra Trust was impleaded as a respondent. It was submitted on behalf of the Trust that the subject property is a private property and not a heritage property. Accordingly, this Court directed impleadment of Department of Archaeology, State of Telangana, for necessary clarification.

5. Later on, in the proceedings held on 10.11.2021, Archaeological Survey of India was also added as a respondent. It appears that Mr. Imran Khan, a learned counsel of this Court, was appointed as *Amicus Curiae*.

6. He submits that the buildings in question are of great historical importance and some of them are neglected

though those are neither ancient/protected monuments nor heritage buildings. On his submission, this Court passed an interim order on 10.11.2021 that none of the buildings in question should be demolished and no third party rights should be created till the next date of hearing.

7. In the proceedings held on 25.04.2022, the Muthawallis of Azakhana, Niazkhana and Shafakhana were impleaded as respondents and notices were directed to be issued to them.

8. Learned *Amicus Curiae* has submitted a brief note on 24.02.2020. The same reads as under:

- “1. The property in question is a quaint, old, single storied structure with country tile roof.
2. There is huge open space surrounding structure as well as towards its rear side.
3. The ownership of the premises does not vest with the trust known as “Aza Khana Zohra Trust”; the said trust was created for the purpose of the three buildings known as “Aza Khana”; “Niaz Khana” and “Shafa Khana”. It is reiterated that the said trust has not been created in respect of any immovable property but the same is only in respect of a sum of Rs.3,50,000/- (Rupees three lakhs fifty thousand only) out of which a

sum of Rs.2,00,000/- (Rupees two lakhs only) is in cash and Rs.1,50,000/- in the form of Government Securities and there is no mention of either the extent of the property, municipal numbers, area of construction or boundaries, etc.

4. There seems to be an attempt to change the nature of the property by way of demolition of the premises of “Niyaz Khana” and converting the same into an “OFFICE COMPLEX”.

5. The permission being sought for seeks sanction for construction of office spaces whereas the same could have been sought for “INSTITUTIONAL PURPOSES” “RELIGIOUS PURPOSE” or even “COMMUNITY HALL” purposes.

6. The letter dated 22-11-2019 filed by the respondents states at last few lines of page No.7 that “the main purpose of construction of new block is mainly for religious purpose only”; whereas the sanction is sought for construction of offices.

7. The structure in question i.e., premises bearing No.22-2-725, Darulshifa, Hyderabad is not at all a dilapidated structure but the same appears to be a highly neglected structure and on account of neglect and lack of regular maintenance appears to be in a run-down state; 19 (nineteen) photographs filed along with this brief note, with short descriptive particulars would bear ample testimony to the state of the premises in question.

8. The building in question is not listed under the Ancient Monuments-Central Act as well as the State Act i.e., Telangana Heritage (Protection, Preservation, Conservation and Maintenance) Act, 2017, as a heritage structure.

9. The building is a duly registered wakf, having been listed as Sl.No.94 of the A.P.Gazette, dated 16.03.1989, under the “List of Shia Wakfs situated in Hyderabad city” and the name of the Mutawalli recorded is NAWAB MIR BARKAT ALI KHAN BAHADUR.

10. The Trust Deed of Aza Khana Zhora Trust specifically empowers the trustees to manage and maintain the said Azakhana, Niazkhana and Shafakhana in such manner as the trustees way in their absolute discretion best and also directs them to appoint a committee of three persons for the day to day management of the said Azakhana, Niyazkhana and Shafakhana.

11. There is ample open space surrounding the structure and constructions can be made in the said open space even retaining the structure as it is in the centre.

Hence is this brief note.”

9. Learned *Amicus Curiae* has stated that the structure in question is not in a dilapidated stage, though it is a neglected structure and appears to be in a run-down

condition. However, he has stated that the structure is not a heritage structure under the Telangana Heritage (Protection, Preservation, Conservation and Maintenance) Act, 2017; but, the building is a duly registered wakf property and the name of the recorded Mutawalli is Nawab Mir Barkat Ali Khan Bahadur.

10. Mr. Namavarapu Rajeshwar Rao, learned Assistant Solicitor General of India, submits on instruction that the structure in question is not included in the list of protected monuments under the Archaeological Survey of India.

11. Mr. Abu Akram, learned counsel appearing for Telangana State Wakf Board, submits that the structure in question belongs to the Wakf Board though managed by Mutawalli.

12. Mr. M.A.K.Mukheed, learned counsel for respondents No.6 and 7 - Trusts, submits that the above Trusts are entitled to carry out renovations etc., of the structure in question.

13. Ms. Aarifa Imran Khan, learned counsel for Mutawalli, submits that the Mutawalli was completely kept in the dark while taking steps for renovation/reconstruction.

14. After hearing learned counsel for the parties and on due consideration, it is evident that the structure in question is neither a heritage property nor an ancient monument protected either under the State Act or under the Central Act. That apart, there is a dispute between the Trust, the Wakf Board and the Mutawalli regarding repair of the subject structure or construction of new building.

15. These are highly disputed and contentious issues which in our considered opinion, the Court should not get entangled into, that too, in a *suo motu* proceeding. As it has been clarified that the subject property is neither a heritage property nor a protected monument, we feel that continuance of the present proceeding would no longer subserve any public interest.

16. However, parties are at liberty to ventilate their grievances, if any, before the appropriate forum in accordance with law. Interim order, granted by this Court, would stand vacated.

17. We place on record our appreciation for the assistance rendered by the learned *Amicus Curiae*.

18. Public Interest Litigation is disposed of.

19. Miscellaneous applications pending, if any, shall stand closed. However, there shall be no order as to costs.

UJJAL BHUYAN, CJ

SUREPALLI NANDA, J

05.07.2022

vs