

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

THE HON'BLE SRI JUSTICE SUDDALA CHALAPATHI RAO

WRIT PETITION No.2783 of 2012

(CNR.No.HBHC010150362012)

DATE:06.10.2026

Reserved on :06.07.2026

Pronounced on : 06.10.2026

Uploaded on : 07.10.2026

Between:

Association of the Apartment Owners of Mehata Towers

...Petitioner

AND

Greater Hyderabad Municipal Corporation,
Rep by its Commissioner, Near Tank Bund,
Hyderabad and others

...Respondents

ORDER:

Heard Mr. D.Jaipal Reddy, learned counsel for the petitioner, Mr.G.Madhusudhan Reddy, learned Standing Counsel for GHMC appearing for respondent No.1, Mr.B.Vamshidhar Reddy, learned counsel for respondent No.2, Mr.Lohith Konda, learned counsel representing Mr.B.Chandrasen Reddy, learned Senior Counsel for respondent No.4, Mr.Srinivas Reddy Balakisti, learned counsel for respondent No.5, and perused the record.

2. This Writ Petition is filed seeking the following relief:

“.....to issue a direction, order or a writ more in the nature of writ of Mandamus declaring the inaction of the respondent in removing the illegal constructions in the petitioners premises (Mehta towers, Ashoknagar) as illegal arbitrary and in gross violation of the orders passed by this Hon’ble Court from time to time and contrary to the MCH Act, rules, regulations and the Bye Laws of building constructions and to pass such other order or orders as the Hon’ble Court may deem fit and proper in the circumstances of the case.”

3. The brief facts of the case are that the petitioner is a registered association of the owners of the residential apartment complex known as “Mehta Towers”, Ashok Nagar, Hyderabad, registered under the Andhra Pradesh (Telangana Area) Public Societies Registration Act, 1350 F, vide Registration No.1178/88 dated 19.05.1988. Respondent No.2 is the promoter of the residential apartment complex and obtained building permission from respondent No.1 vide Permit No.120/72, Letter No.267/T.P./A3/78-81 dated 28.11.1981.

3. It is submitted that under the original sanctioned plan, the ground floor was earmarked for parking of vehicles for the use and benefit of the flat owners. At the time of submitting the plan, respondent No.2 had proposed certain constructions on the ground floor; however, such constructions were not accorded permission by respondent No.1 and permission was specifically denied in respect thereof. The sanctioned plan contemplated the ground floor for

parking and the construction of the residential flats on the upper floors.

4. It is submitted that respondent No.2 thereafter constructed the flats in accordance with the sanctioned plan and sold all the flats together with the respective undivided shares in the land to the individual flat owners. Upon such sale, respondent No.2 ceased to have any right or interest in the common areas and facilities, including the covered and uncovered parking areas. The sale deeds provide for the common enjoyment and maintenance of the common areas and facilities, including car parking, water, drainage and corridors, for the benefit of the owners and residents. The applicable law also prohibits the sale, lease or misuse of common areas and facilities contrary to the rights of the apartment owners.

5. It is nevertheless submitted that respondent No.2, having sold all the flats, allegedly dealt with portions of the parking area and sold the same to respondent Nos.3 to 6, who thereafter raised constructions thereon. The said constructions were not part of the original sanctioned plan and, are contrary to the sanctioned plan, the applicable statutory provisions, rules, regulations and building by-laws.

6. It is further submitted that respondent No.2 subsequently appears to have submitted a revised plan to respondent No.1 proposing construction of approximately 1320 square feet on the ground floor and a similar extent in the cellar portion. In relation thereto, respondent No.2 instituted O.S.No.2639 of 1987 on the file of the IX Assistant Judge, City Civil Court, Hyderabad, seeking a declaration that the construction under the revised plan had acquired statutory/deemed sanction and seeking an injunction restraining respondent No.1 and its officials from interfering with the proposed construction. In the said suit, respondent No.1, who was the sole defendant, remained *ex parte* and an *ex parte* decree was passed on 16.03.1987.

7. It is further stated that the said decree was obtained without impleading the Association, though the subject matter concerned is the common parking area and facilities of the flat owners, as such, the said decree cannot confer any right to undertake construction contrary to the sanctioned plan or the applicable statutory provisions, rules, regulations and bye-laws. The petitioner also alleges that the decree was obtained in collusion with respondent No.1 and by suppressing material facts.

8. It is further submitted that, under the guise of the revised plan and the alleged deemed sanction, respondent No.2 proceeded with constructions in the ground-floor parking area which, were refused under the original sanctioned plan. The petitioner contends that the revised plan could not lawfully be used to convert the area earmarked for parking and common use into unauthorized built-up structures.

9. It is further contended that the constructions raised in the parking/common area were subsequently occupied by respondent Nos.3 to 6, who allegedly interfered with the use of the said area by the flat owners and prevented the Association and its members from utilizing the ground floor for parking and other common purposes. In these circumstances, the petitioner Association instituted O.S.No.2752 of 1989 on the file of the II Assistant Judge, City Civil Court, Hyderabad, seeking perpetual injunction and also a declaration that the decree in O.S.No.2639 of 1987 was not binding upon the Association, as it was not a party to the said proceedings. The said suit, however, was not pursued further after the death of the President of the Association, who was representing the suit, and it was dismissed for non-prosecution.

10. It is further submitted that respondent No.3 subsequently instituted O.S.No.1762 of 1998 against the petitioner Association

seeking perpetual injunction restraining the Association from fixing letter boxes to the walls constructed in the common areas, which respondent No.3 claimed to have purchased. The said suit was decreed in favour of respondent No.3.

11. It is submitted that the petitioner had, even prior thereto, been seeking removal of the unauthorized constructions. Pursuant to the orders passed by this Hon'ble Court in C.C.No.101 of 1996 dated 28.02.1996 and W.P.No.4795 of 1996 dated 08.03.1996, respondent No.1 issued notices under Section 636 of the Hyderabad Municipal Corporation Act, 1955, in respect of the unauthorized constructions. However, no effective action for removal of the constructions followed thereafter.

12. It is submitted that the petitioner Association continued to approach respondent No.1 and submitted several representations, including representations made pursuant to the notice issued under Section 636 of the Hyderabad Municipal Corporation Act, 1955 dated 30.05.2006, and despite repeated representations and the admitted knowledge of the unauthorized constructions, respondent No.1 failed to take effective steps for their removal or alteration in accordance with law.

13. It is submitted that respondent No.1 is empowered under Section 636(2) of the Hyderabad Municipal Corporation Act, 1955 to take appropriate action for removal or alteration of unauthorized work. Further, Section 450 confers power upon the Commissioner to cancel permission on the ground of material misrepresentation, while Section 452 empowers the Commissioner to take proceedings in respect of buildings commenced or carried out contrary to the provisions of the Act or the bye-laws made thereunder. The petitioner therefore submits that the declaratory decree and consequential injunction cannot prevent the competent statutory authority, from exercising its powers in accordance with law.

14. It is submitted that the petitioner has approached the competent authority repeatedly and has no efficacious alternative remedy for securing performance of the statutory duty of respondent No.1. The petitioner is therefore constrained to invoke the extraordinary jurisdiction of this Hon'ble Court under Article 226 of the Constitution of India, seeking appropriate directions to respondent No.1 to consider the representations of the petitioner and take action in accordance with law against the unauthorized constructions existing in the common parking area of Mehta Towers.

15. Mr. D.Jaipal Reddy, learned counsel for the petitioner would contend that the original sanctioned plan and the endorsement specifically envisage the provision of parking area and require conversion of the ground-floor Flats A, B and C into covered parking, thereby clearly indicating that the ground floor was reserved for parking and not for any other use. It is further contended that, under the A.P. Apartments (Promotion of Construction and Ownership) Act, the common areas and facilities, including the parking area, are to be held in common for the benefit of all the flat owners and cannot be separately carved out or alienated by the promoter after conveyance of the flats along with the respective undivided shares. Consequently, no construction could lawfully be raised in the stilt/ground-floor parking area. It is therefore contended that any purported alienation of the parking area in favour of respondent Nos.3 to 6 is void and that the constructions raised therein are without any sanctioned plan. Learned counsel would further contend that the Civil Court could not have granted relief which has the effect of permitting or protecting construction, contrary to the statutory building regulations and the sanctioned plan, virtually preventing the authorities to perform their statutory duties.

16. Learned counsel would further contend that, though the decree in O.S.No.2639 of 1987, being an ex parte decree, is enforceable in

accordance with the provisions of the Code of Civil Procedure, 1908, the same cannot prevent the municipal authorities from exercising their statutory powers under the GHMC Act, 1955. It is contended that a Civil Court cannot interdict the competent statutory authority from discharging its obligations under the statute and that a declaratory relief cannot be granted so as to restrain the Corporation from taking action in accordance with the provisions of the GHMC Act.

17. It is further contended that the said decree is alleged to be collusive, particularly as respondent No.1 remained ex parte and did not contest the suit, while the petitioner Association, being an affected party having right in respect of the common parking area, was not impleaded, as such, the said decree cannot confer any independent right upon respondent No.2 or operate to prevent the competent authority from examining the legality of the construction.

18. Learned counsel relies upon the judgment of the Hon'ble Supreme Court in ***S.P.Chengalvaraya Naidu (dead) by LRs Vs. Jagannadh (dead) by LRs and Others***¹, wherein it was held that a judgment or decree obtained by playing fraud upon the Court is a nullity and non-est in the eye of law and can be challenged even in collateral proceedings. Relying upon the said principle, learned counsel would contend that a decree alleged to have been obtained by

¹ (1994) 1 SCC 1

suppression of material facts or fraud cannot be permitted to defeat the statutory powers of the competent authority or bind persons who were not parties to the proceedings.

19. It is further submitted that respondent No.1 had already issued notice dated 30.05.2006 under Section 636 of the GHMC Act, 1955, in respect of the unauthorized constructions in the ground-floor area of Mehta Towers. It is contended that, thereafter, respondent No.2 instituted the civil suit seeking declaratory relief on the basis of the alleged deemed permission and obtained an ex parte decree consequentially restraining respondent No.1 from interfering with the possession and enjoyment of the property. Learned counsel would contend that the said decree cannot prevent respondent No.1 from exercising its statutory powers in respect of unauthorized construction and that a Civil Court decree cannot, by invoking the concept of deemed permission, regularize construction for which there was no valid sanction under the applicable building laws.

20. Learned counsel also relies upon the judgment of the Hon'ble Supreme Court in ***Rajendra Kumar Barjatya & Anr v. U.P.Avas Evam Vikas Parishad & Ors.***,² wherein, in the context of prolonged inaction by the authorities despite repeated notices, it was held that

² CIVIL APPEAL NO. 14604 OF 2024

there can be no estoppel against law and that the lapses or inaction of officials cannot confer any legal right upon persons who have raised unauthorized constructions. Reliance is also placed upon ***M.I.Builders (P) Ltd v. Radhe Shyam Sahu***³; ***Dr.G.N.Khajuria v. DDA***⁴ and other similar judgments, wherein the Hon'ble Supreme Court has emphasized that unauthorized constructions which are illegal and incapable of being compounded "have to be demolished", and in the instant case, since construction is impermissible in the area earmarked for parking, respondent No.1 is under a statutory obligation to take appropriate action to demolish the same.

21. It is submitted that a writ of mandamus can be issued to respondent No.1 to perform its statutory obligations and to take appropriate action in respect of the unauthorized constructions notwithstanding the existence of the ex parte decree.

22. Learned counsel also relied upon the judgment of the Hon'ble Supreme Court in ***K.Ramadas Shenoy v. Chief Officers, Town Municipal Council***⁵, wherein, the Hon'ble Supreme Court held that an impugned resolution sanctioning plan for conversion of a building into a cinema, was in violation of the Town planning scheme, as, it had no legal foundation and contends that the said judgment squarely

³ (1999) 6 SCC 464

⁴ (1995) 5 SCC 762

⁵ (1974) 2 SCC 506

applies to the case on hand, as the constructions in question are alleged to be contrary to the sanctioned plan and the statutory requirements governing the use of the parking area.

23. Learned counsel would further contend that, in a catena of judgments, the Hon'ble Supreme Court has held that statutory provisions governing construction and town planning cannot be circumvented or interdicted by obtaining orders from a Civil Court which have the effect of permitting construction contrary to the statutory scheme. It is therefore contended that the alleged deemed permission relied upon by respondent No.2 cannot, in the absence of compliance with the applicable statutory requirements and the sanctioned plan, confer a right to continue the unauthorized construction.

24. Learned counsel also relies upon the judgment of the Hon'ble Supreme Court in *Nahalchand Laloochand Pvt. Ltd. v. Panchali Cooperative Housing Society Ltd.*, ***Nahalchand Lalooch and Private Limited V. Panchali Cooperative Housing Limited***⁶ wherein it was held that a promoter has no right to sell stilt parking spaces, as it is neither a flat nor appurtenant or attachment to a flat, and thus, in the present case also the promoter could not have separately alienated the parking area in favour of respondent Nos.3 to 6 after the flats and the

⁶ (2010) 9 SCC 536

corresponding undivided shares had been conveyed to the respective flat owners.

25. Learned counsel would further contend that there was admittedly no valid permission in favour of respondent No.2 for construction of any flat or structure in the stilt/ground-floor area, which was specifically earmarked for parking under the sanctioned plan. It is further submitted that respondent No.1 had already issued appropriate notices under Sections 450, 452 and 636 of the GHMC Act and had directed respondent Nos.2 to 6 to remove the unauthorized portion of the construction. It is contended that, instead of complying with the statutory action initiated by respondent No.1, respondent No.2 instituted the aforesaid civil suit seeking declaration and consequential injunction, and the respondent No.1 remained ex parte, ultimately resulted in the passing of the ex parte decree.

26. Learned counsel would therefore contend that the said decree cannot be construed as conferring statutory sanction upon the unauthorized constructions or as disabling respondent No.1 from exercising its powers under the GHMC Act, and prayed to allow the writ petition.

27. *Per contra*, learned Standing Counsel for GHMC, reiterating the contentions raised in the counter-affidavit, would contend that

respondent No.2 obtained permission vide Permit No.120/72, dated 28.04.1981, for construction of the ground floor, partly for parking, and four upper floors for flats. It is further contended that respondent No.1 granted permission for construction of three flats on the rear side of the ground floor, while the front side was meant for parking and the upper floors were meant for flats.

28. It is reiterated that a plan was approved for construction of a Cellar, Ground Floor and four upper floors. Respondent No.1-Corporation did not accord permission for the original plan and the proposed construction on the ground floor was refused. Thereafter, sanction was granted as per the corrected plan vide Permit No.120/72, Letter No.267/TP/A3/78-81, dated 28.04.1981.

29. It is further submitted that respondent No.2 filed O.S.No.2639 of 1987 on the file of the Hon'ble IX Assistant Judge, City Civil Court, seeking a declaration that respondent No.2 had acquired statutory deemed sanction in respect of the construction made by respondent No.2 and also obtained a restraint order against respondent No.1-Corporation and its staff from interfering with the construction made by respondent No.2 in the subject property, and therefore, respondent No.1 could not initiate any further steps.

30. It is submitted that respondent No.1 had initiated action against the illegal and unauthorized constructions made by respondent No.2, contrary to the sanctioned plan, and the officials of respondent No.1-Corporation issued the mandatory notices to respondent No.2 to remove the illegal and unauthorized constructions. A final notice of demolition under Section 636 of the GHMC Act, 1955, was also issued. However, as respondent No.2 obtained orders in the civil suit, respondent No.1 could not proceed further. It is specifically stated that respondent No.2 made illegal and unauthorized constructions on the ground floor/stilt area meant for parking, contrary to the sanctioned plan.

31. Insofar as respondent No.2, who is the promoter and builder, learned counsel, reiterating the contentions raised in the counter-affidavit, would contend that the petitioner approached this Court without filing the proper sanctioned plan and misled the Court by concealing the original sanctioned plan approved by respondent No.1. It is stated that the petitioner filed only a part of the sanctioned plan and an endorsement and did not file the complete sanctioned plan.

32. It is stated that, in fact, there are no unauthorized constructions existing on the ground floor of the apartment, particularly the structures stated as A, B and C. The flats bearing Nos.G-11, G-12 and

G-13 are authorized structures as per the sanctioned plan dated 28.04.1981, vide Permit No.120/72, Letter No.267/T.P./A3/78-81.

33. It is stated that respondent No.2 had proposed a plan with six flats on the ground floor, which was corrected by respondent No.1 by deleting the flats marked 'A', 'B' and 'C' and approving the remaining three flats, which were subsequently approved as G-11, G-12 and G-13.

34. It is further contended that respondent No.1, pursuant to the orders passed by this Court in W.P.No.4795 of 1996, dated 08.03.1996, and in C.C.No.101 of 1996, dated 28.02.1996, issued notice dated 30.05.2006 under Section 636 of the GHMC Act, 1955, to respondent No.5, giving 24 hours' time to remove the same, to which respondent No.5 submitted a reply dated 30.05.2006, enclosing the sanctioned plan, Permit No.120/72 of 1981, Letter No.267/T.P./A3/78-81, and tax assessment notices dated 17.08.1987 and 08.09.1987 in respect of flats G-11 and G-12 issued by the MCH, and requested respondent No.1 to verify the records with respondent No.2. It is stated that, being satisfied with the same, respondent No.1 did not proceed further with the notice issued under Section 636 of the Act.

35. It is further contended that the writ petition is devoid of merits and that the issue involved has already been adjudicated by the Civil Court in O.S.No.2639 of 1987, O.S.No.2752 of 1989 and O.S.No.1762 of 1998. It is further stated that respondent No.2, having submitted an application for sanction, which was neither rejected nor considered, proceeded with the construction and subsequently filed the suit seeking declaration under the deemed permission provision along with consequential injunction, which was decreed. Thus, it is contended that the said decree is binding on respondent No.1 and prayed to dismiss the writ petition.

36. The respondent No.5 filed counter contending that respondent No.5 is the owner and possessor of Flat No.G-11, respondent No.6 purchased Flat No.G-12 from respondent No.5 in the year 2007 and respondent No.7 is the owner and possessor of Flat No.G-13, and that the present writ petition has been filed only with a mala fide intention to harass respondent Nos.5 to 7 and is devoid of any cause of action. It is further contended that the petitioner has approached this Court by suppressing the original sanctioned plan and by producing only a part of the sanctioned plan along with an endorsement.

37. It is submitted that there are no unauthorized constructions on the ground floor and that Flat Nos.G-11, G-12 and G-13 are

authorized structures covered by the sanctioned plan dated 28.04.1981, issued vide Permit No.120/72, Letter No.267/T.P./A3/78-81. It is stated that the original proposal contained six flats on the ground floor, out of which the flats marked A, B and C were deleted by respondent No.1 and the remaining three flats were approved, which were subsequently identified as G-11, G-12 and G-13. It is therefore contended that the allegation that respondent No.2 constructed flats in the area earmarked for parking and thereafter sold the same to respondent Nos.3 to 7 is incorrect.

38. It is further stated that respondent No.1, pursuant to the orders passed by this Court in W.P.No.4795 of 1996, dated 08.03.1996, and C.C.No.101 of 1996, dated 28.02.1996, issued notice dated 30.05.2006 under Section 636 of the HMC Act to respondent No.5 alleging that the construction was not covered by the sanctioned plan, to which respondent No.5 submitted a reply dated 02.06.2006 enclosing the sanctioned plan, Permit No.120/72 of 1981, Letter No.267/T.P./A3/78-81 and the tax assessment notices relating to Flat Nos.G-11 and G-12 and requested respondent No.1 to verify the records, and after considering the said reply and documents, respondent No.1 did not proceed further with the notice under Section 636 of the Act.

39. It is further stated that the issue raised in the present writ petition has already been the subject matter of O.S.No.2639 of 1987, O.S.No.2752 of 1989 and O.S.No.1762 of 1998, and that the petitioner, having been aware of the said proceedings and the orders passed therein, cannot seek to reagitate the same issue in the present writ petition without placing the relevant proceedings and the alleged revised plan before this Court. It is therefore contended that the writ petition is devoid of merits and is liable to be dismissed.

40. ***Having given earnest consideration to the submissions made by the respective parties, perused the record.***

41. Evidently, the whole issue revolves around the construction made by respondent Nos.2 to 5 in the parking area of the apartment “Mehta Towers”.

42. Admittedly, as per the permission granted by respondent No.1 under Permit No.120/72, vide Letter No.267/T.P./A3/78-81 dated 28.04.1981, the area marked as A, B and C on the ground floor was required to be converted into covered parking space and the parking space was required to be formed with asphalt or cement concrete. The relevant portion of the permission is extracted for better understanding:

“Permit No.120/72, Letter No.267/T.P./A3/78-81 Dt. 28-11-1981

Sanction is accorded as per corrected plan.

- 1. Open type balconies are allowed.*
- 2. Flats marked 'A', 'B' and 'C' at G.F. may be converted into covered parking space.*
- 3. Parking space should be formed with the asphalt or cement concrete.*

Permission accorded does not bar the application of provisions of Urban Land (Ceiling & Regulation) Act, 1976."

43. Therefore, the questions that arise for consideration before this Court are:

- i) Whether the construction made by respondent No.5 in the parking area is in accordance with the sanctioned plan; and**
- ii) Whether the decree passed in O.S.No.2639 of 1987 can operate so as to prevent respondent No.1-Corporation from exercising its statutory powers under the GHMC Act, 1955.**

44. It is evident that respondent No.2 approached the Civil Court seeking a declaration and consequential injunction in respect of the subject property on the basis of the revised plan submitted by him, more particularly, under the deemed permission provision. The relevant provisions of Sections 437 of the GHMC Act, 1955, read as under:

"437-When building or work may be proceeded with: If within thirty days after receipt of any notice under section 428 or 433, or of the plan, section, description or further information, if any, called for under sections 429, 431 or 434 as the case may

be, the Commissioner fails to intimate in writing, to the person who has given the said notice, his disapproval of the building which the said person proposes to erect or of the work which he proposes to execute, or, if, within the said period the Commissioner signifies in writing to the said person his approval of the said building or work, the said person may, at any time within one year from the date of the delivery of the notice to the Commissioner, proceed with the said building or work in accordance with his intention as described in the notice or in any of the documents aforesaid, but not so as to contravene any of the provisions of this Act or any bye-law made thereunder.”

45. A reading of the above provision itself makes it clear that the deemed permission, even if attracted, is not an absolute or unrestricted permission to proceed with any kind of construction. The construction must still be in accordance with the provisions of the Act and the bye-laws made thereunder. Therefore, the mere assertion that the application submitted by respondent No.2 was not rejected within the prescribed period cannot, by itself, conclude the issue as to whether the construction subsequently raised was lawful.

46. In the present case, the sanctioned plan specifically contemplated the conversion of the areas marked as A, B and C into covered parking space. Therefore, the issue cannot be examined merely from the standpoint of whether respondent No.2 had submitted an application and whether the same was not rejected within the prescribed period. The nature of the construction actually raised and

its conformity with the sanctioned plan are equally required to be examined by the competent authority.

47. The said question assumes significance in view of the judgment relied upon by the learned counsel for the petitioner in ***Nahalchand Laloochand Pvt. Ltd.***'s case(supra) wherein the Hon'ble Supreme Court held that a promoter has no right to sell stilt parking spaces, as such spaces do not constitute a flat and are not capable of being separately dealt with in the manner of a flat. Though the facts of that case arose in the context of the applicable apartment ownership law, the principle that parking space forming part of the common areas cannot be treated as an independent unit for separate alienation is relevant while examining the claim of respondent Nos.2 to 5 in the present case.

48. It is also pertinent to note that respondent No.2 approached the Civil Court and obtained an ex parte decree in O.S.No.2639 of 1987 declaring that the constructions as per the revised plan had acquired statutory deemed sanction and that the conversion of the excess parking space in the ground floor and cellar portion was lawful and not violative of the statute, bye-laws or zoning regulations. The judgment and decree passed in the said suit reads as under:

“It is ordered that the plaintiff be and the same is hereby declared has acquired statutory deemed sanction in respect of the constructions as per revised plan and the said constructions of enclosing as converting the excess parking space in ground floor and cellar portion as shown in the revised plan submitted (a copy of which is filed along with this plaint) is lawful and is not violative of any provisions of the statute/bye laws or zoning regulations applicable to such constructions.”

49. The effect of the said decree has to be considered in the light of the statutory powers vested in respondent No.1. A Civil Court decree cannot be understood as taking away the jurisdiction conferred upon a statutory authority by the statute itself. The judgment of the Hon’ble Supreme Court in **K. Ramadas Shenoy’s case**(*supra*) supports the principle that where an action or sanction is contrary to the statutory planning requirements, it cannot acquire legal validity merely by virtue of an order which has no foundation in the applicable statutory scheme.

50. Further, the Hon’ble Supreme Court in **Rajendra Kumar Barjatya’s case**(*supra*) held that there can be no estoppel against law and that inaction or lapses on the part of the authorities cannot confer a legal right upon a person who has raised an unauthorized construction. The same principle has been reiterated in **M.I. Builders (P) Ltd.’s case**(*supra*) and **Dr.G.N.Khajuria’s case**(*supra*), wherein the

Hon'ble Supreme Court dealt with the consequences of unauthorized constructions and emphasized that constructions which are contrary to the statutory requirements cannot be permitted to remain merely on account of inaction or delay on the part of the authorities.

51. In view of the law laid down by the Hon'ble Supreme Court as noted hereinabove, the decree in O.S.No.2639 of 1987 cannot be construed as conferring an unrestricted right upon respondent No.5 to maintain a construction which is otherwise contrary to the sanctioned plan or the statutory provisions,

52. However, the question as to whether the construction in the present case is in fact covered by a valid deemed permission cannot be decided merely on the basis of the rival assertions, since respondent No.5 specifically contended that an application was submitted and that, as the same was not rejected within the prescribed period, the construction was proceeded with under deemed permission. If such a contention is to be accepted, the relevant application, the date of its submission, the documents accompanying the application, the period prescribed under the statute and the nature of the construction actually raised and notice of construction given to the Commissioner, are all matters which require examination by the competent authority,

before the benefit of deemed permission can be extended to respondent No.5.

53. Further, as per the sanctioned plan and the endorsement issued by respondent No.1, the ground-floor area was intended only for covered parking and that the construction subsequently raised was never sanctioned, but was made under the alleged deemed permission. Though the learned counsel for petitioner relied on the decision of the Hon'ble Supreme Court in **S.P. Chengalvaraya Naidu (Dead)**'s *case(supra)* to contend that the decree obtained by respondent No.2 in O.S.No.2639 of 1987 by suppression of material facts and collusion is a nullity and not binding the petitioners, however, in the present proceedings, it is not necessary for this Court to record a final finding of fraud or collusion, particularly when the legality of the construction and the claim of deemed permission are required to be examined by the statutory authority on the basis of the original records.

54. It is trite law that a decree, which is a nullity, as well as a document that is void, cannot, by itself, confer any right or title upon the person in whose favour such decree or document has been passed or executed. Where the requirements of a statutory enactment have not been duly considered and adjudicated upon by the Civil Court, any such decree is itself a nullity and cannot be given effect to.

Therefore, such a void decree or document, along with any consequential reliefs or actions arising therefrom, cannot interdict with the statutory powers of the authorities.

55. It is also relevant that respondent No.1 had itself initiated proceedings against the alleged unauthorized construction and had issued notice under Section 636 of the GHMC Act, 1955. Therefore, the Corporation cannot be said to be without jurisdiction to examine the legality of the construction merely because an ex parte decree came to be passed in O.S.No.2639 of 1987. The statutory authority is required to examine whether the construction is covered by a valid permission and whether the same confirms to the sanctioned plan and the applicable provisions of law.

56. In the circumstances, this Court is of the considered view that the judgment and decree passed in O.S.No.2639 of 1987 cannot, by itself, prevent respondent No.1 from exercising its statutory powers under the GHMC Act, 1955. At the same time, since respondent No.5 specifically relies upon the alleged deemed permission, the said contention cannot be brushed aside without examining the relevant records and the requirements of the statute.

57. Accordingly, respondent No.1 is directed to examine the entire issue with reference to the original sanctioned plan, the alleged revised

plan, the application stated to have been submitted by respondent No.2, the date of such application, the provisions relating to deemed permission and the construction actually raised in the ground-floor/stilt parking area. Respondent No.1 shall also consider the effect of the decree in O.S.No.2639 of 1987 in the light of its statutory powers under the GHMC Act, 1955 and pass a reasoned order in accordance with law.

58. The said exercise shall be completed within a period of eight (08) weeks from the date of receipt of a copy of this order. Before passing orders, respondent No.1 shall give an opportunity of hearing to respondent Nos.2 to 5 as well as the petitioner and shall thereafter take further recourse strictly in accordance with law.

59. With the above observations and directions, this Writ Petition is disposed of. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in this petition, shall stand closed.

SUDDALA CHALAPATHI RAO, J

Date: 06.10.2026

Bj/gra

THE HON'BLE SRI JUSTICE SUDDALA CHALAPATHI RAO

WRIT PETITION No.2783 of 2012

Date:06.10.2026

Bj