

In the High Court of Judicature of Andhra Pradesh at Hyderabad

Dr.M.V.Nayudu, Forum for Better Hyderabad.

v.

Principle Secretary to Govt. of A.P.

Writ Petition No. 17940 of 2001

23.01.2002 dd.

Dr. AR. Lakshmanan C.J. & G. Yethirajulu J.

Judgement:

1. The Forum for Better Hyderabad represented by its Member is the petitioner in this writ petition.

The Writ Petition by way of Public Interest Litigation was filed for a declaration that Rule 13-A of Urban Development (Hyderabad) Rules, 1975 as unconstitutional and arbitrary and also for a further declaration that the draft notification issued by the 1st respondent-Government of Andhra Pradesh in G.O.Ms.No.363, M.A and Urban Development Department dated 23.8.1995 regarding the change of land use in T.S.No.5/2 (Part) Block No.B. Ward No.80 (Buddha Poornima Project Land) of Khairatabad village as unconstitutional, arbitrary and violative of the provisions of Environment (Protection) Act, 1986 and set aside the same declaring that no commercial activity and structures can come up in the area covered by the aforesaid G.O. and consequently direct the respondents to remove all the structures in the area covered by the G.O.

G.O. 363 dated 23.8.1995 issued by the Municipal Administration and Urban Development Department, Government of Andhra Pradesh reads thus:

NOTIFICATION

2. In exercise of the powers conferred by sub-section (2) of Section 12 of the A.P.U.A.

(Development) Act, 1975 (Act-1 of 1975), the Government hereby makes the following variation to the ZD Plan for Zone No.IV, Municipal area the same having been previously published in the Extra-Ordinary issue of Andhra Pradesh Gazette No.219 dated 22.5.1995 as required by sub-section (3) of the said section.

#### VARIATION

3. The site in T.S. No.5/2 (Part) Block No.B, Ward No.80 (Buddha Poornima Project land) of Khairtabad village to an extent of 4.00 hectares / 40,000.00 sq.mtrs., which is earmarked for water body use zone in the notified zonal development plan for zone No.IV of Municipal area is now designated as commercial use zone for the proposed construction of World Trade Centre in terms of G.O. Ms.No.393, dated 1.10.1994 of Industries and Commerce Department.

Subject to the following conditions:

- a) that the applicant should obtain specified clearance from the National Airport Authority and the Air Force Authorities of Begumpet Air Force Station for permitting such a high rise structure.
- b) That the applicant should obtain specific and express clearance from the Director of Fire Services as per Multi-Storey Building Regulations.
- c) That the HUDA/MCH should ensure while permitting the building keeping in view the overall circulation pattern and aspects like parking etc., since the site is strategically located at the junction of the proposed Necklace road at the tip of the Khairtabad Fly over bridge.
- d) That the applicant should provide the complete parking requirement for the proposed building should be accommodated within the 4 hectares proposed area.
- e) That the HUDA/MCH should obtain an environmental impact Assessment study/ Report of the proposed complex from the promoters before issue of building permission.

4. It is seen from the above G.O. that the draft variation to the zonal development plan for the zone No. IV of Municipal Area was issued in Government Memo dated 17.5.1995 and the same was published in the Extraordinary issue of the Andhra Pradesh Gazette dated 22.5.1995 calling for objections and suggestions from the public. As no objections and suggestions have been received from public within a period of 15 days, the Government by reason of the impugned G.O. Ms.No.363 dated 23.8.1995 confirmed the draft variation. The G.O. further directs that the appended notification will be published in the Andhra Pradesh Gazette. The appended Notification was issued in exercise of the powers conferred by sub section (2) of Section 12 of A.P. Urban Agglomeration Development Act,1975. In the said notification, the Government made the variations to the zonal development plan for zone No. IV municipal area. The same has been published in the extraordinary issue of A.P. Gazette No.219 dated 22.5.1995 as required

by sub-section (3) of the said Section. We have already extracted the variations in the above paragraphs.

5. As already noticed, the writ petitioners filed the writ petition praying to set aside the above G.O. 363 dated 23.8.1995 converting the water body into commercial use, setting up huge office complex in the name and style "World Trade Centre" issued by the Municipal Administration and Urban Development Department. The writ petition was filed also seeking directions to set aside Rule 13-A of the Rules. In order to maintain the prayer, the decision of this Court in FORUM FOR A BETTER HYDERABAD V. GOVT. OF A.P.1(W.P.No.26378 of 2000) was relied on in which the present petitioner's Organisation was the petitioner in that writ petition. According to the petitioner, the water body of Hussain Sagar maintains the ecological and microclimatic balance in the urban areas of Hyderabad and Secunderabad and any action of the Government which tampers with the water body area is liable to be declared as violative of Environment Protection Act and Article 48-A of the Constitution of India and that no action which tampers with water body and its surrounding area should be allowed to take place. It is further stated that the first respondent has decided to permit a World Trade Centre to come up in an area of 4 hectares of Water Body of Hussain Sagar lake in 1994. The multi-storeyed office complex was sought to be promoted by the Government in the name of industrial and economic development and the Industries and Commerce Department issued G.O. 392 dated 1.10.1994 and that the prime lands in the State were sought to be alienated in favour of Dunken Macnell Ltd., The said G.O. was challenged by one Capt. J. Rama Rao and the Society for Preservation of Environment and Quality of Life (SPEQL) in W.P.No.22307 of 1995 and this Court vide interim orders dated 29.9.1995 directed maintenance of status quo as on that day pertaining to four hectares of land in T.S.No.5/2, Part - Block B, Ward No.80, Khairatabad. Subsequently, the Government withdrew G.O.392 dated 1.10.1994. It is submitted that the road laid from Telugu Talli statute to Visweswarayya statute now known as NTR Marg separated the area covered under G.O.363 from the main water body of Hussain Sagar lake and this area continues to be shown as water body in zonal development plan vide HUDA Letter No.5179/HUDA/1995 dated 11.7.1994 and that several months after the four hectares of land was alienated to M/s Duncan Macnell Group, as an after thought, the Government issued Memo No.1/11/95-2 M.A., dated 17.5.1995 proposing to change the land use to commercial. The proposed change of land use was reported to have been published in extraordinary issue of A.P. Gazette No.219 Part I dated 22.5.1995 calling for objections and suggestions, but the petitioner could not get copy of the same. According to the petitioner, the Government declared its intention to take up 18 tourism projects in and around the Hussain Sagar lake in W.P.No.26378 of 2000 filed by the petitioner organisation. The said writ petition was disposed of with a clear direction that no further permanent structures including those involving commercial activities may be allowed to be raised on or near the water spread or catchment area of the Hussain Sagar lake. However, construction of an amusement park etc., were permitted subject to prior approval of the A.P. Pollution Control Board. The petitioner was under the impression that no further permanent structures would come around Hussain Sagar. It has now come to light that permanent structure in the name and style of Imax theatre is coming up. This Imax theatre is not a single structure but includes multiplexes, mini game parlour,

concern halls for live performances of fine arts etc., and that the Pollution Control Board did not seem to have cleared these projects but simply opined that environment impact assessment and environment management plans are to be furnished. The petitioner came to know that theatre is being constructed within the NTR garden area, but it has come to light that this is being constructed within the water body covered in G.O.363 dated 23.8.1995. According to the petitioner, such activity of permanent structures, theatres etc., should not be permitted in and around the lake and the present activity shows that concrete columns to the depth of 30 to 35 feet are being laid throughout day and night for the last several days and the commercial activity in the name of entertainment in the vicinity of lake is bound to affect the environment. According to the petitioner, the A.P. Pollution Control Board ought to have given the petitioner prior notice before proceeding with any application for any of the projects around the Hussain Sagar and that present activity in the area covered by the said G.O. is violative of Article 243 ZE of the Constitution of India and that the G.O. itself is against the protection and enhancement of environment. It is also submitted that the State Government by issuing G.O. 363, M.A. dated 23.8.1995 under the provisions of Section 12 (2) of the Urban Areas Act, 1975 has acted without any legal sanction and interfered with the Constitutional and Statutory power of the self Government and the Commissioner of Municipal Corporation of Hyderabad. Moreover, the State Government is also denying or restricting the public use of Buddha Purnima Project area by changing the land use and alienating or leasing out to private parties. According to the petitioner, it is only a Metropolitan Planning Committee, which shall be entitled to prepare a draft development plan for the Metropolitan area as a whole or modify, revise or alter any existing master plan. Therefore, the relevance of provisions of Urban Areas Act, 1975 in Chapter III relating to preparation, revision and modification of Master Plan and Zonal development plans and the Constitution of Special Area Development Authorities such as Buddha Purnima Project Authority, Cyberabad Development Authority etc., under the guise of the need for Special Planning Control will have to be reviewed in the light of Articles 243 ZE and ZF. It is further submitted that it is mandatory for the authority to publish the notification for change in land use in three major news papers, which will entitle the public to know the proposed change in land use and then submit the objections and suggestions to the competent authority. Rule 12-A requires the Government to publish the proposal in official gazette only. The Gazette will not be available to the concerned citizens and as in the present case, the G.O. was brought out and made public only in 2001 while hearing the case, the petitioner made representation for the information, but it was not furnished. It is submitted by the learned counsel that the Government and the authority cannot be classified into two different classes for the purpose of informing the citizens and thus, Rule 13 A is arbitrary and violative of Article 14 of the Constitution. The right to information is a derivative fundamental right and the concept of precautionary principle while dealing with environment matters will come to naught if the proposal of change in land use is not made known to public through publication in the newspapers. It is further submitted that the official gazette is not available like newspapers and the local body which is the planning authority is burdened with publication in local newspapers but the Government which is neither the nodal agency nor the planning authority is empowered with rushing through the change in land use by virtue of Rule 13-A and hence this is also under challenge. It is submitted by Mr.K.S.Murthy, the learned counsel that G.O.363 has

to be set-aside on the ground of lack of jurisdiction and as the purposes for which it has been issued has been given up. Any commercial activity in the vicinity of the lake would pollute the Urban Environment and there is no need for theatres or amusement parks coming up in the waterbody area. Concluding his argument, the learned counsel would submit that the site mentioned in the G.O. is water body forming part and parcel of Hussain Sagar as per the judgment in W.P.No.26378 of 2000 and no such commercial activity should be allowed to come up near the water body. A counter affidavit was filed by the Principal Secretary to the Government, Municipal Administration and Urban Development Department on behalf of the first respondent. A separate counter affidavit was filed by the respondents 2 and 3. A reply affidavit was filed to the counter affidavit filed by respondents 2 and 3. We heard Sri T.Anantababu, learned Advocate General on behalf of the first respondent and Sri S.V. Bhat, Sri N. Subba Reddy and Sri S. Ravi for the other respondents. We have perused G.O.363 dated 23.8.1995 which was issued converting the area adjacent to NTR park into a commercial area to an extent of 10 acres.

6. The said G.O. was issued by the Government in exercise of the powers under Rule 13 A framed under A.P. Urban Areas (Development) Act. As already noticed, G.O. 363 dated 23.8.1995 was challenged on two grounds:

1) Rule position

2) Environmental Angle.

#### RULE POSITION:

Mr.Murthy, learned counsel for the petitioner submitted that the original G.O. of 1994 is later withdrawn and the specific purpose is not available any more and therefore, the G.O. 363 is not valid any more now. He would further submit that after the 74th Constitutional amendment which came into force from 1.6.1993 and in the light of Article 242 W and 243 ZE and the 12th schedule, the Government cannot resort to change in land use. According to the petitioner, Rule 13-A of HUDA Rules is unconstitutional as it is violative of 74th Constitutional amendment as powers of the local body and the development authority duly constituted under Article 243 ZE are usurped. This rule is violative of Article 14 of Constitution of India and the classification as seen from Rule 13 and 13-A is not germane to the purpose to be achieved and hence arbitrary.

#### Environment angle

7. The quality of urban environment depends on land usage. The conversion is not in consonance with precautionary principle and sustainable development is not permitted. The Pollution Control Board has not cleared the project and no assessment done to see that such conversion will not adversely effect environment. The burden of proof lies with the pollutor. The law relating to usage of park space for commercial purpose and public trust doctrine is applicable.

8. The learned Advocate General in reply submitted that Hussain Sagar lake which once upon a time spread over a very large area gradually shrunk in its dimension for the past

several decades and that it is surrounded on all sides by regular roads. The old notifications which had notified a large area as water body were therefore superseded by the development of the city and large tracts which once upon a time constituted part of the water body are now pucca built up areas. Realising this fact and taking into account the necessities then prevailing of utilizing some part of the area, which had long ceased to be a part of the water body, the Government issued the impugned G.O.363, M.A., dated 23.8.1995 after following the procedure governing the issuance of the notification under the A.P. Urban Areas (Development) Act. It is seen from the records that the proposal was notified in the Gazette and objections were invited within the time allowed, but no objections were received and the amendment was duly notified in 1995. Neither the petitioner nor anybody else came forward to object to this change, which was motivated by public interest. At that time, it was contemplated that a World Trade Centre would be constructed in this area now shown as commercial area. As already noticed, the petitioner's only challenge to the change in the use of that area which is limited to 10 acres to the extent it is comprehensible, is based upon misunderstanding of the import of the judgments of this Court in W.P. No.25835 of 1996 and W.P.No.35 of 1997.

9. We have carefully read the judgment in W.P.No.25835 of 1996 as also the judgments rendered in W.P.No.26378 of 2000 and the C.C. Nos.1752 of 2001 and 1156 of 2001. A careful reading of those judgments clearly indicate that the water body of the Hussain Sagar lake can only be confined to that area which is presently covered by water and surrounded on all sides by roads. In our opinion, the power of the State to make subordinate legislation cannot be curtailed by vague pleas of adverse repercussions on environment. The observations in a particular judgment of the Court while dealing with other contentions unrelated to the exercise of statutory power under the A.P. Urban Areas (Development) Act cannot be relied upon to nullify the Rules or Notifications issued under the A.P. Urban Areas (Development) Act in accordance with the prescribed procedure.

10. We have already adverted to the argument of the learned counsel for the petitioner in regard to Article 243 ZF of the Constitution of India. According to the petitioner, the G.O. is violative of Article 243 ZE of the Constitution of India and also against the protection and enhancement of the environment and by virtue of the Article 243 ZE and ZF of the Constitution, it is only a Metropolitan Planning Committee which shall be entitled to prepare a draft development plan for the metropolitan area as a whole or modify, revise or alter any existing master plan. The argument that by virtue of Article 243 ZE and 243 ZF of the Constitution, the making or amending of Development plans for the metropolitan area is confined to the Metropolitan Planning Committee and the provisions of the Urban Areas Development Act, 1975 are not available, is misconceived. The provisions of the Constitution relied on by the petitioner form part of Part IX A of the Constitution are in the nature of guidelines to be followed by the State Legislatures as and when the legislatures frame laws relating to Municipalities. No law has been yet made providing for the constitution of Metropolitan Planning Committee and such a body does not exist. It is not the petitioner's case that the A.P. Urban Areas (Development) Act has ceased to exist after the 74th Amendment to the Constitution. The articles relied on are not self-contained or self operative and they became effective only when the State legislature makes a law dealing with the subject matter of the said provisions. The

contentions raised in this regard by the petitioner in the writ petition would therefore not valid. The safeguards to be introduced for purposes of subordinate legislation are within the discretion of the State legislature. Neither Rule 13 nor 13 A offend Article 14. The characterization of these rules as arbitrary is misconceived. The pattern of these provisions is not different from the innumerable provisions contained in a variety of statutes, which confer the power of subordinate legislation. The dangers in the rule to which the petitioner refers, are mere figments of imagination.

Our attention was drawn to the decision of this Court in *A.P.S.M.N.S. v STATE OF A.P.* wherein a larger Bench of five Judges upheld Rule 13 A of the said Rules.

11. Our attention was also drawn by the learned Advocate General to the order in C.C. No.1156 of 2001 filed inter alia complaining that the construction of Imax theatre was in the catchment area and not on or near the water spread. This Court in that case specifically gave a finding that the construction is outside the catchment area and not on or near the water spread. In view of the specific finding of this Court, the present complaint does not survive. It was also pointed out by the learned Advocate General that the present petitioner was the organization which filed W.P. No.26378 of 2000 and also C.C. No.1156 of 2000 in which this issue of Imax theatre was specifically considered.

12. For better appreciation of the case, it is useful to refer to certain passages in Para 3(a) to 3(c) in the counter affidavit filed by the respondents 2 and 3 wherein certain important facts have been clearly narrated, which are reproduced here under I submit that the Hussainsagar Lake lies between Secunderabad on the north and A.P. Government Secretariat in Saifabad, Hyderabad, on the South. Till the 1920s, Hussainsagar and Mir Alm Tank were the sources of water supply for the city. When the Osmansagar and Himayatnagar reservoirs came into being as new sources of supply, old sources of water supply i.e. Hussainsagar and Mir Alam Tank were discarded.

13. I submit that the Hussainsagar Lake and its surrounding areas now under Buddha Poornima Project originally formed part of the Nizam of Hyderabad's private property i.e. it was a Sarf-e-khas village. After merger of Sarf-e-khas land with Government under Sarf-e-khas Merger Regulation of 1358F, the entire property of Nizam became a part of the Indian Union. In 1324F, a survey was conducted in respect of the Khairatabad village under the Hyderabad Land Revenue Act of 1317F. S.NO.9 of the said village was registered as Hussainsagar Tank. At that time it was used partly for irrigation and partly for drinking purposes. There was litigation initiated by some Makthadars who laid claim to a portion of S.No.9 alleging that it form part of Nehematullah Shah Maktha and in connection therewith cases are still pending in the High Court .

14. The NTR memorial, the Amusement Park, the IMAX Theatre, locations are distinct and different from Hussain Sagar lake. For the purpose of writ petition and for convenience the lake may be divided into two parts. The NTR Marg Road from Telugu Tall State upto Khairatabad flyover bridge on the southern side of the road and the lake. Admittedly the land covered on the southern side of the road does not form part of the tank. Most of the land is covered by the park, including some houses also abutting the land which were constructed by the then City Improvement Trust Board prior to 1950.

Portion of the lands is vacant. There is long drawn litigation with reference to this land during Nizam's days and thereafter. Cases are pending before the High Court, City Civil Court and before the Special Court for Prevention of Land Grabbing.

15. Para 3 d deals with a suit filed by one A.S. Rao claiming the land in which electric power house was previously established as belonging to them. Now appeals are pending in this Court filed by the State Government as also the petitioner. Thus it is seen that this land is subject to litigation between the heirs of the Nizam and later the Government of A.P. The petitioner in this writ petition never questioned the establishment of power house and its operation either on the ground of ecological imbalance or environment. It is stated in para 3(d) that in view of the encroachments on all sides of the lake in the year 1980, the Government appointed a Committee under the Chairmanship of well known social worker Mrs. Roda Mistry to study and suggest measures for stopping encroachments and for beautification of the lake. Based on the recommendations of the said Committee, the then Bhagyanagar Urban Development Authority formulated a scheme called "Buddha Poornima Project" for development of the areas surrounding Hussain Sagar lake. The objectives of the scheme were:

- i) To save the lake from encroachments by stopping reclamation.
- ii) To provide recreational, public and semi-public outlets, commercial and communication;
- iii) Preservation of aesthetics of the lake by proper landscape treatment.
- iv) To make conservation of the lake a commercially viable proposal;
- v) To develop the lake as a center of activity for water sports.

This project was approved by the Government in G.O. 1047 (MA) dt.8.9.1991 and by reason of the said G.O.the Bhagyanagar Urban Development Authority (now known as HUDA) was directed to take various steps to carry out the above stated objectives.

16. In the instant case, the State Government has taken a policy decision to provide recreational facilities in and around Hussain Sagar lake for the citizens of twin cities to meet their aspirations. It is the duty of the State to meet their aspirations. The people's aspirations are many and the State is under an obligation to meet them for better living. Keeping in view various aspects, the State Government appointed Charles Correa Associates, an internationally reputed architect to have in depth study and after due consultations with HUDA, MCH etc. ,they prepared a master plan for the beautification of Hussain Sagarlake, keeping in view the ecological and environmental aspects. It is seen from the counter affidavit that Imax is a family recreational and entertainment project costing Rs.50 crores. The Government after inviting competent entrepreneurs in March, 2000, a developer has been selected and the project was awarded as early as in October, 2000 through G.O. 194 dt.19.10.2000. This project is located in a lane, which falls under commercial zone. In pursuance of the said G.O., necessary lease and

development and management agreements were executed. Site was handed over on 9.5.2001 and the entrepreneur has spent considerable amounts for import of machinery and equipment etc., and obtained necessary permission from the Police authorities under the Cinematography Act. We have already dealt with the main contention of the petitioner's counsel that Rule 13 A of the said Rules is in violation of the Constitution of India. In our opinion, there is distinction between Rule 13 and 13A of the HUDA Rules. For better appreciation, we extract both the Rules 13 and 13-A which read as follows

13. Modification to the Master Plan:-- In the case Authority desires to make any modification in the Land Use Map or Master Plan under sub section (1) of Sec.12 of the Act, a public notice shall be issued in a prominent place in atleast three local (Telugu, Urdu and English) newspapers by the Authority.

2) The Authority shall invite, in form No.III appended to these rules objections AND SUGGESTIONS TO BE GIVEN IN form No.IV appended to these rules from any person or local authority affected directly or indirectly with respect to the Master Plan land use map proposed to be modified.

3) Soon after the objections and suggestions are received by the Authority, the Authority shall conduct local enquiries and other hearings, if necessary and given an opportunity to the person affected (whether directly or otherwise) to be held on a specified date or dates before the modifications are finally approved.

13-A. Modifications to the master plan by the Government:-- 1) In case the Government desire to make any modification to the Master Plan under sub section (2) of the Act, a notification shall after consultation with the authority be published in the Andhra Pradesh Gazette in such form as the Government may deem fit inviting objections and suggestions from any person or local authority affected directly or indirectly with respect to the Master Plan proposed to be modified giving fifteen days time for the receipt of such objections and suggestions.

2) Soon after the objections and suggestions are received by the Government, the Government may, if necessary, have local enquiries conducted and give an opportunity to the persons affected to state their objections before the modifications are approved and published in the Andhra Pradesh Gazette.

The above rules are made under Section 12 of the A.P. Urban Areas Development Act, 1975. Section 12 (1) of the Act and Section 12(2) of the Act read as follows:

12. Modification to plan: (1) The Authority may make such modifications to the plan as it thinks fit, being modifications which, in its opinion, do not effect important alterations in the character of the plan and which do not relate to the extent of land uses or the standards of population density.

(2) The Government may suo motu or on a reference from the Authority make any modifications to the plan, whether such modifications are of the nature specified in sub-

section (1) or otherwise.

17. The Hyderabad Urban Development Authority (for short "HUDA") constituted under Section 3 of the said Act is the sole authority for preparation and notification of the master plan and zonal development plans subject to the prior approval of the Government. Similarly, it is also the authority to consider many applications for change of land use or modifications of Master Plan or Zonal Development plans. It is in this context that Rule 13 is made which is concerned with the proposals received for the HUDA for consideration of the Government to notify in the local newspapers for suggestions and objections of the public for the proposed modifications.

18. It was contended by the learned counsel for the petitioner that Rule 13 makes it mandatory for the authority to public the notification for the change in land use in three major news papers which will entitle the public to know the proposed change in land use and then submit the objections and the suggestions to the competent authority. Rule 13 A which is an amendment requires the Government to publish the proposal in official gazette only. There is no rationale behind the difference made out in rule 13 and 13A and there is no objective which is sought to be achieved by this classification and that Rule 13 A is violative of Article 14 of the Constitution.

19. We are unable to countenance the said submission. As already noticed, the HUDA is constituted under Section 3 of the A.P. Urban Areas Development Act, 1975. It has the authority for change of land use. Rule 13 is concerned with the proposals received for the HUDA for consideration of the Government to notify in the local newspapers for suggestions and objections of the public for the proposed modifications. Where the Government itself propose to make modifications and section 12 (2) of the said Act, the Government may suo moto or on a reference from the authority make any modifications to the plan. In this matter, the Government may consult the authority about the proposed modifications and then publish the draft variation in the A.P. Gazette inviting objections and suggestions from the public giving fifteen days time. The objections and suggestions so received will be examined by the Government and then the final notification will be published in the Gazette. In our opinion, Rule 13 A is intended for publication of the draft variation in the Gazette where the Government intends suo moto to modify the master plan or zonal development plans. It is under this Rule 13 A, the Government proposed to set up a World Trade Centre under Buddha Poornima Project concept and for this purpose, the area selected to an extent of 4 acres which was classified as Water Body under the Master Plan / zonal development plans was proposed to be modified for commercial use and accordingly a draft variation was notified in the A.P. Gazette No.219 part I dt.22.5.1995. We have already noticed that no objections and suggestions were received within 15 days. Therefore, the Government has confirmed the variation by publishing the same in the AP Gazette vide G.O. 363 dt.23.8.1995. We have already noticed that this rule was upheld by this Court on an earlier occasion. It is rather unfortunate that the said G.O. which was issued in August, 1995 is now being challenged after a lapse of six years for reasons best known to the petitioner.

20. The learned counsel for the petitioner contended that several months after the land was alienated, the Government as an after thought issued Memo No.1/11/95-2, M.A. dt.17.5.1995 proposing to change the land use to commercial and the proposed change was reported to have been published in extraordinary issue of the Gazette dt.22.5.1995 calling for objections and suggestions. As the petitioner could not get copy of the same, he could not submit these objections. However final decision converting the water body was taken by issuing the G.O. 363 confirming the change of land use on 23.8.1995. The HUDA in its letter dt.11.7.1995 confirmed that the site in question was ear marked for water body in spite of the fact that the proposed change of land use of the site was published in the Gazette dt.22.5.1995 which shows that the impugned G.O. was issued in colourable exercise of the power.

21. Per contra, it is submitted that the petitioner obtained a certificate from HUDA showing the land in question as water body and the draft variation was published in the gazette on 22.5.1995 while the final variation was confirmed by the said G.O. on 23.8.1995. Hence, we are of the opinion that this contention has no force. Likewise, the contention of the learned counsel that the change of land use is the function of MCH and therefore issuance of G.O. 363 lacks legal sanction is misconceived. The AP Urban Areas Development Act, 1975 repealed the provisions of Chapter XIII of the Hyderabad Municipal Corporation Act, 1955 and the Government or the HUDA as the case may be are the authorities for making modifications to the land use. Thus, the Government by virtue of the powers vested in it under Sec.12 (2) of the AP Urban Areas Development Act, 1975 and Rule 13 A of the HUDA Rules modified the master plan changing the land use to commercial use six years back and the proposals in our opinion are well in order.

22. Before parting with the case, we may observe that tourism is a socio-economic welfare sector, which provides for recreation and leisure spending worldwide. Tourism is the largest employment generating sector as well as a source of revenue to the Government. In fact many Governments live on Tourism only which is a major industry in many States. It provides employment to lakhs and lakhs of people all over the world. Government of A.P. is taking a number of measures to improve the socio economic standards of the people. As a long time measure, the AP Vision 2020 envisages improvement of standard of living and provision of comforts and amenities. On the tourism front, the Government has drawn an ambitious programme for overall development in the State including Buddha Poornima Project. The Government have utilized services of World Tourism Organisation, an inter governmental organization serving as a global forum for Tourism policy and issues consisting of 139 countries and territories and 350 affiliated members from public and private sectors. The said organisation in its report identified areas in the State for promotion and development of tourism. Based on its reports, reported consultants like KPMG, EDAW, Vastu Silpa including Charles Correa Associated were appointed for detailed study and recommendations for development of tourism in the State of Andhra Pradesh.

23. In the instant case, the Government has taken a policy decision to provide recreational facilities in and around HussainSagar lake for the citizens of the twin cities to

meet their aspirations. The State is under obligation to fulfil those aspirations for better living of the citizens. As argued by the learned Advocate General, the Project is already in progress and several crores of rupees have been spent and that therefore, the Government should be given liberty to make use of this property to profitable use. We see much force and substance in the contention of the learned Advocate General. Though the writ petition has been filed as a public interest litigation alleging certain irregularities against the Government in issuing the impugned G.O., we are of the opinion that no case has been made out by the petitioners to interfere with the action on the part of the Government, which in our opinion has been done in public interest. There is no threat to environment and the conversion of the land use into commercial one, in our opinion, will not adversely affect the environment.

24. Though several decisions have been cited on the environmental aspects of the matter, we do not propose to refer to the same, as in our opinion, it is unnecessary to advert to the same in the present facts and circumstances of the case and when a clear case is made out in the counter affidavits filed by the respondents. It is true that the petitioner has brought our attention to certain environmental issues which are relevant and deserve serious consideration. As already held in catena of decisions, the needs of the environment require to be balanced with the needs of the community at large and the needs of a developing State such as Andhra Pradesh. In the instant case, all possible environmental safeguards have been taken and the elaborate and extensive exercise by all the concerned including the environmentalists, have been undertaken. As already noticed, this writ petition filed by the petitioner in public interest is the third in series. The matter has already been concluded by the decisions of this Court. Endless arguments, endless review and endless litigation in a matter like this can carry one to no end and may as well turn counter-productive. While public interest litigation is a welcome development, there are nevertheless limits beyond which it may as well cease to be in public interest any further.

25. We have already noticed that the Government have already taken elaborate and extensive exercise. Necessary steps have already been taken as per the directions of this Court in W.P.No.26378 of 2000. The Pollution Control Board is seized of the matter and they have already issued interim guidelines like obtaining EIA-EPM and traffic studies. Already the studies are in progress and the recommendations that may be made by these study reports will be implemented, as undertaken by the learned Advocate General.

26. It is sufficient to observe that it is primarily for the Governments concerned to consider the importance of public projects for the betterment of the conditions of living of the people on the one hand and the necessity for preservation of social and ecological balances, avoidance of deforestation and maintenance of purity of the atmosphere and water free from pollution on the other in the light of the various factual, technical and other aspects that may be brought to its notice by various bodies of laymen, experts and public workers and strike a just balance between these two conflicting objectives. The Court's role is restricted to examine whether the Government has taken into account all relevant aspects and has neither ignored nor overlooked any material considerations nor been influenced by extraneous or immaterial considerations in arriving at its final decision. The Court has no expertise in large areas of Governmental activity, which involves technical and scientific knowledge. Therefore, the judicially evolved theory of

limited review has justification.

For all the aforesaid reasons, we are of the opinion, no case has been made out for interfering with the action of the Government. The writ petition fails and it is accordingly dismissed. However, there is no order as to costs.