

HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE

AND

HON'BLE SRI JUSTICE S. RAVI KUMAR

PUBLIC INTEREST LITIGATION No. 334 OF 2015

24-11-2015

Between:

Omim Maneckshaw Debara

... Petitioner

And

State of Telangana, rep., by its Chief Secretary, Secretariat Buildings, Hyderabad
and others

... Respondents

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PC: (per the Hon'ble the Acting Chief Justice Dilip B. Bhosale)

By consent of learned counsel for the parties, the matter is heard for final disposal.

The petitioner, in the instant public interest litigation (PIL), seeks the following relief:

“For the reason stated in the accompanying affidavit, it is therefore prayed that this Hon'ble Court may issue Writ, order or direction in the nature of Mandamus or any other appropriate writ, order or direction declaring the action of the respondent state in deciding to sell lands belonging to the state for the sake of resource mobilization by issuing impugned orders vide., G.O.Ms.No.191 dated 07.10.2015, G.O.Ms.No.196 and 197 dated 30.10.2015” and the notification issued by the Respondent No.4 30-10-2015 published in news papers on 31-10-2015 inviting bids for sale of land parcels” for disposal of government lands as illegal, arbitrary and against the stated public policy of ‘Government land allotment policy’ and in violation of the Article 14, 21 of the Constitution of India and consequently set aside G.O.Ms.No.191 dated 07-10-2015 G.O.Ms.No.196 and 197 dated 30.10.2015” and the notification issued by the Respondent No.4 30-10-2015 published in news papers on 31-10-2015 inviting bids for sale of land parcels” while making it clear that the state government is duty bound not to alienate the immovable properties like land for resource mobilization but has to protect all the government/public lands and utilize them for providing basic civic amenities to the common people as per the accepted minimum standards.”

From perusal of the prayer, it is clear that the petitioner has challenged three Government Orders, namely G.O.Ms.No.191, dated 07-10-2015, G.O.Ms.Nos.196 and 197, dated 30-10-2015, whereby, according to the petitioner, the Government is resorting to sell/alienate government lands for resource mobilisation, in violation of land allotment policy of the Government and so also Articles 14 and 21 of the Constitution of India. The Government, by its decision to alienate land parcels is depriving common man in the State from public property and civic amenities. In short, the petitioner states that the proposed alienation is against the established basic principles of public policy and the concept of good governance.

We have perused G.O.Ms.Nos.191, 196 and 197. G.O.Ms.No.191, dated 07-10-2015 provides for disposal of government land parcels which are not required for any public purpose and cannot be kept idle exposing them for encroachments. This order provide procedural guidelines for disposal of the land parcels. G.O.Ms.No.196, dated 30-10-2015 was issued authorising Telangana State Industrial Infrastructure Corporation (TSIIC) for appointment of M/s. Metal Scrap Trading Corporation (for short 'M/s. MSTC') as service provider for effecting sale of land parcels through e-auction. M/s. MSTC is the Government of India undertaking which organizes auction. G.O.Ms.No.197, dated 30-10-2015 provides the procedure for approval of upset price for the land parcels proposed for open public auction in Hyderabad and Ranga Reddy Districts.

We have heard learned counsel for the parties and with their assistance gone through the entire materials placed before the Court. The submissions of Sri Murthy, learned counsel for the petitioner are three fold. Firstly, after inviting our attention to the government land allotment policy appended (annexure) to G.O.Ms.No.571, dated 14-09-2012, in particular sub-clauses (a) and (b) of Clause (g) of paragraph 3, he submitted that the Government for no valid/good reason has deviated from the allotment policy reflected therein. Secondly, he submitted that the Government has proceeded to issue the impugned Government Orders without amending the State policy in respect of allotment of government lands. Lastly, he submitted that the decision of the Government is arbitrary and cannot be sustained in law. In short, he submitted that there is no transparent and valid procedure outlined (implemented/followed) or finding of any study or report for declaring that the proposed land parcels are not required for any public purpose. He submitted that while taking decision and issuing government orders, every thing has been done in a secretive manner. He invited our attention to G.O.Ms.No.191, dated 07-10-2015, wherein G.O.Ms.No.82 has been referred and submitted that when he applied for copy of G.O.Ms.No.82 on 16-06-2015, online, he got reply indicating that the said Government Order is confidential document.

Sri Murthy in support placed reliance on the decisions in ***Ramana Dayaram Shetty v. The International Airport Authority of India; Indian Express Newspapers (Bombay) Private Ltd., vs. Union of India; M/s. Dwarkadas Marfatia and Sons v. Board of Trustees of the Port of Bombay; Somraj v. State of***

Haryana; Klayman Porcelains Limited vs. Superintending Engineer and Gulf Foans Hotels Co. Ltd., v. Union of India.

On the other hand, learned Advocate General submitted that the State Government has power to dispose of its lands or properties, including land parcels in question, by way of alienation or otherwise, for any purpose, under Article 298 of the Constitution of India. He then invited our attention to the Andhra Pradesh (Telangana Area) Alienation of State Lands and Land Revenue Rules, 1975 (for short 'the Rules') and submitted that the Rules were framed in exercise of the enabling power under Article 162 of the Constitution of India. Rule 10 of the Rules, he submitted, authorises the State to alienate any of its lands or other properties in Telangana area by following reasonable procedure including public auction where such alienation/sale is necessary. He submitted that the Government has taken decision for sale of lands by granting relaxation of Clause 3 (a) (v) of G.O.Ms.No.571, vide G.O.Ms.No.82, dated 17-06-2015. Thus, he submitted that there is absolutely no legal or constitutional impediment in selling the lands. He also submitted that though in G.O.Ms.No.82, dated 17-06-2015, reference is made to Clause 3 (a) (v) in G.O.Ms.No.571, dated 14-09-2012, it is clear from the very title of policy that it was in respect of allotment of land and not alienation of lands. In short, he submitted that government land allotment policy annexed to G.O.Ms.No.571, dated 14-09-2012 is not a government land alienation policy.

It would be advantageous to reproduce G.O.Ms.No.191 to understand and appreciate submissions made by learned counsel for the parties. The relevant portion of G.O.Ms.No.191 reads thus:

“GOVERNMENT LANDS – Disposal of Government land parcels which are not required for any public purpose and cannot be kept idle for encroachments located in various prime areas scattered throughout the State by open public auction – Procedural guidelines – Issued.

Revenue (Assignment-I) Department

G.O.Ms.No.191 Dated:07-10-2015.

Read the following:-

G.O.Ms.No.82, Rev (Assn.I) Dept., dated 16.06.2015.

ORDER:-

In continuation of the reference read above, the following procedural guidelines are hereby issued with regard to the disposal of Government land parcels by way of open auction:-

1. The land parcels identified by the respective District Collectors have to be auctioned by the TSIIC.
2. The Government will reimburse the expenditure incurred for auction of government land parcels to the TSIIC by way of administrative grant.
3. The TSIIC will propose the upset price to the Government for approval and Government will accord approval, duly consulting District Collectors, based on Registered sale transactions and suitable mark up there upon by TSIIC.
4. To follow e-auction cum e-tender model, only through Government agencies.
5. Bid conditions including the time frame for payment of amount and forfeiture of the EMD so received, if not paid within the stipulated period to be specified.
6. Phase-wise approval of the land parcels for auction will be given by Government from time to time.

2) The District Collectors and Managing Director, TSIIC shall take necessary further action accordingly.”

By G.O.Ms.No.196, the Government simply appointed an agency for conducting auction and by G.O.Ms.No.197, they approved the procedure for fixing upset price. From bare perusal of the three impugned Government Orders, it appears to us that they stipulate/prescribe the procedure for the purpose of open public auction of land parcels.

G.O.Ms.No.82, dated 17-06-2015 though, according to the petitioner, was not made available to him being confidential document, learned Advocate General for the State of Telangana has placed it on record and also furnished a copy thereof to learned counsel for the petitioner. After perusing the same, he made his submissions on the basis thereof. He submitted that his contention that the government land allotment policy applies to the facts of the present case stands supported in view of paragraph 4 of G.O.Ms.No.82.

We have perused G.O.Ms.No.82 carefully. It would be relevant to reproduce relevant portion of the Government Order, which reads thus:

“In the high level meeting held on 30.12.2014, the issue of management of many precious vacant parcels of Government land located in various prime areas scattered throughout the State particularly in urban areas and important High way junction was discussed. The land parcels are of various sizes and shapes and some of these land parcels are not required for any immediate public purposes and due to prime location of these parcels they are prone to encroachments and unauthorised possessions.

2. It was therefore proposed in the meeting that these land parcels should be disposed off by way of open public auctions duly notifying the same.

3. Whereas, as per the land allotment policy issued in the reference 1st read above and adapted as applicable to the State of Telangana vide reference 2nd read above, the Government lands should not be auctioned for resource mobilisation.

4. Government, after careful examination of the matter and to avoid possible encroachments, in relaxation of Clause 3(a)(v) of the policy guidelines in the reference 1st read above hereby permit for disposal of Government land parcels which are not required for any public purpose and cannot be kept idle for encroachments located in various prime areas scattered throughout the state by open public auction by notifying the same.

5. The Chief Commissioner of Land Administration, Telangana/all District Collectors shall take necessary action accordingly.”

By G.O.Ms.No.82, the Government decided to dispose of a few land parcels which are not required for any public purpose and cannot be kept idle, exposing them for encroachments, located in various prime areas scattered throughout the State by open public auction. G.O.Ms.No.82 was issued on 17-06-2015, whereas the petitioner had applied, online, for its copy on 16-06-2015. That seems to be the reason why he received reply showing that the said document is confidential. The petitioner did not make any effort to procure copy of the Government Order thereafter either online or personally. Learned Advocate General submits that this Government Order was and is available and it is not a confidential document at all. We would not like to enter into this controversy since learned counsel for the petitioner submitted that he would like to proceed with the matter and did not ask for time either to consider the relevancy of this Government Order or to challenge it in the instant PIL.

It is under these circumstances, we have perused the government land allotment

policy being an annexure to G.O.Ms.No.571. On the face of it, it appears to us that it is government land allotment policy and not government land alienation policy. Even if it is assumed that this allotment policy apply to the facts of the present case, it is clear from G.O.Ms.No.82 that the Government has relaxed Clause 3 (a) (v) of the policy. Clause 3 (a) (v) of the policy states that “the Government lands should not be auctioned for resource mobilization.”

In view thereof, the submission of Sri Murthy, in our opinion, loses its significance. Sub-clauses (a) and (b) of Clause (g) of paragraph 3 of the policy read thus:

“a. In case of government lands located within the Nagar Panchayats, Municipalities, Municipal Corporations, the lands shall not be alienated for any private purpose. The lands shall be exclusively used for public purpose such as recreational space, parks, open space, community structures including schools, hospitals etc.

b. The government lands owned by various departments and which are not being utilized to the full extent by the respective departments shall be proposed for allotment for public purpose.”

These sub-clauses also, in our opinion, will not apply to the facts of the present case for two reasons. Firstly, they are the part of government land allotment policy, and not government land alienation policy, and secondly, these clauses cannot take away the power of the State Government conferred under Article 298 of the Constitution read with the Rules. Article 298 of the Constitution deals with the power to carry on trade etc. It states that the executive power of the Union and of each State shall extend to the carrying on of any trade or business and to the acquisition, holding and ‘disposal of property’ and the making of contracts ‘for any purpose’.

The Rules were brought into force on 20-01-1975. The Rules were framed since there were no rules governing the alienation of State lands lying in the Telangana area of the State of erstwhile Andhra Pradesh and land revenue for public purposes, as in the case of the State lands situated in the Andhra area of the State. The Government found it expedient and necessary in the interest of public administration to have such rules for implementing expeditiously the provisions of Section 25 of the Andhra Pradesh (Telangana Area) Land Revenue Act, 1317 Fasli. The Government, therefore, in exercise of the powers under Section 172 of the State Land Revenue Act made the Rules. Rule 10 thereof reads thus:

“Notwithstanding anything contained in the foregoing rules, the Government may, if it desires to sell or otherwise alienate any of its lands or other property in Telangana Area, it may do so by following any reasonable procedure including public auction, where such alienation/sale is deemed necessary. (Added by G.O.Ms.No.12, Dated 11-1-2002).”

We find force in the submissions of learned Advocate General that the Rules were framed in exercise of the enabling power of the State Government under Article 162 of the Constitution. The Rules read with Article 298 of the Constitution, in our opinion, confer power on the Government to alienate its property as long as such decision is either not arbitrary or malafide. In view of this power and considering the facts of this case, it cannot be said that the Government deviated from its policy or the decision is arbitrary. A glance at the impugned Government Orders would show that they are all procedural in nature. We do find ourselves in agreement with the submission of the learned Advocate General that there is no constitutional impediment or statutory prohibition for alienation of the lands in question. It is common knowledge that the Government lands in cities like Hyderabad are always exposed to encroachment and if the Government in its wisdom has decided to alienate those properties since they are not required for any public purpose as such, the decision cannot be faulted.

In the circumstances, the PIL is dismissed.

Miscellaneous petitions, if any, also stand disposed of.

DILIP B. BHOSALE, ACJ

S. RAVI KUMAR, J

24-11-2015

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