

HON'BLE SRI JUSTICE RAJA ELANGO

WRIT PETITIONS NO.18981 OF 2007 AND 32861 OF 2011

COMMON ORDER:

1. Since the issue involved in both the writ petitions is inter related, these writ petitions are heard together and are being disposed of by this common order.

2. Writ Petition No.18981 of 2007 is filed seeking to declare the action of respondents Nos.2 to 4 in not executing the sale deed in favour of the 1st petitioner-P. Purushothama Rao by collecting the amount at the rate of Rs.350/- per sq. yard as per the rate quoted by the District Collector, Visakhapatnam, basing on the report of the Sub-Registrar, Anakapalli, for the land admeasuring Ac.2.36 cents situated at Sy.No.621, Kothavuru village, Anakapalli Taluk, Visakhapatnam District in compliance with the directions given by the 1st respondent-Government in G.O.Rt.No.375, Industries and Commerce (SSI) Department, dated 25.6.2007, as illegal and arbitrary, and consequently, to direct respondents Nos.2 to 4 to execute the sale deed in favour of the 1st petitioner-P. Purushothama Rao, whereas Writ Petition No.32861 of 2011 is filed against the son of the 1st petitioner and the other official respondents in Writ Petition No.18981 of 2007 seeking to declare G.O.Rt.No.375, Industries & Commerce (SSI) Department, dated 25.6.2007 as illegal and arbitrary, and to regularize the lands in favour of the petitioners in W.P.No.32861 of 2011.

3. For the sake of convenience, the status of the parties shown in W.P.No.18981 of 2007 is hereinafter referred to adjudicate the issue.

4. Brief facts of the case are as follows:

The 1st petitioner-P. Purushothama Rao purchased stoneware and earthenware products unit located at Anakapalli in terms of G.O.Ms.No.994 Industries and Commerce (G) Department, dated 11.11.1969 at the value of Rs.73,442.72 ps., The 1st petitioner immediately paid an amount of Rs.45,901.88 ps., against Rs.73,442.72 ps., and he could not pay the balance bid amount of Rs.27,540.84 ps., as per the above G.O. due to various reasons. He also paid Rs.26,441/- towards balance amount along with an amount of Rs.31,083/- towards interest and cleared all the dues except penal interest. Thereafter, the Government in G.O.Ms.No.614 dated 2.12.1986 issued orders to write off the outstanding penal interest of Rs.47,045.74 ps., as on 31.7.1986 and further directed the Commissioner of Industries to hand over the Unit to the 1st petitioner subject to condition that the 1st petitioner runs the unit at the same place as stipulated in the G.O., and the 1st petitioner will withdraw the suit. Pursuant to the orders of the Government, the official respondents-authorities handed over possession of the unit to the 1st petitioner. The second appeal filed by the State against the 1st petitioner was disposed off in terms of the above said G.O. The 1st petitioner made a representation to the Government to issue title deeds for the stoneware and earthenware products unit located at Anakapalli. The Government examined the matter and decided to collect a lumpsum amount against the property handed over to the 1st petitioner as per the rate quoted by the Collector, Visakhapatnam. The Government directed the Commissioner of Industries, Hyderabad to take necessary action. The Commissioner of Industries vide letter dated 21.9.2001 informed that he directed the General Manager, Industries Centre, Visakhapatnam to take action for remittance of lumpsum amount as fixed by the Government in G.O.Rt.No.644, dated 29.8.2001. The Government after careful examination of the matter,

accorded permission to the Commissioner of Industries to collect the amount at the rate of Rs.350/- per sq. yard as per the rate quoted by the District Collector, Visakhapatnam from the 1st petitioner for the land in question and execute the sale deed in his favour. But respondents Nos.2 to 4 are not executing the sale deed. Hence, the 1st petitioner filed W.P.No.18981 of 2007. During the pendency of this writ petition, the 1st petitioner died and his son came on record as 2nd petitioner.

5. The Deputy Director of Industries filed a counter-affidavit on behalf of the 2nd respondent as follows:

(i) The State Government vide G.O.Ms.No.994, Industries and Commerce (G) Department, dated 11.11.1969 issued orders for disposal of stoneware and earthenware Production-cum-Training centre situated in an area of 2.36 acres at Sy.No.621 Kothavuru village, Anakapally, Visakhapatnam to the 1st petitioner-Purushothama Rao, Hyderabad as he was the tenderer for Rs.73,442.72 ps., subject to the following conditions:

- (i) The party should pay 25% of the tender amount immediately and the balance in 10 equal half yearly instalments. After payment of 25% of tender amount by the party, an agreement shall be entered into with the party before handing over the unit;
- (ii) The ownership of the unit shall remain with the Government till the last instalment is paid after which the registration of the unit will be done in favour of the party;
- (iii) The party shall pay an interest at the rate of 8% p.a., on the balance amount due to Government or as modified by the Government from time to time;
- (iv) The Government will have a right to levy penal interest in case the payment of instalment is delayed;
- (v) The unit should be run at the present place and building only;

Out of ten half-yearly instalments, the 1st petitioner remitted five instalments of Rs.27,541.20 ps., together with interest and thereafter failed

to pay balance instalments. As per clause 7 of the agreement if the purchaser fails to get the transaction completed within the stipulated time, he shall forfeit the advance amount paid and he has no claim whatsoever on the unit. The 1st petitioner borrowed loans from various private parties for the reasons best known to him. As he failed to repay the same, there were four recovery suits filed against him out of which two were disposed of and E.Ps were also filed. In E.Ps, the Decree holders got the unit attached under the orders of the Civil Court. On coming to know about the same, the District Collector filed a petition opposing the attachment. Subsequently, the 1st petitioner filed O.S.No.37 of 1980 on the file of the Principal District Munsif, Anakapally for perpetual injunction against the State Government. The 1st petitioner paid a sum of Rs.26,541.20 ps., towards balance bid amount on 6.5.1983 and Rs.31,083/- on 20.10.1983 towards interest as called upon by the 4th respondent. The 1st petitioner paid the entire sum except the penal interest. On the basis of representation made by the 1st petitioner, the Government issued G.O.Ms.No.614, dated 2.12.1986 waiving the outstanding penal interest. In the said G.O. two conditions were imposed viz., (1) the purchaser should run the unit on the same place as stipulated in G.O.Ms.No.994, dated 11.11.1969 and (2) the purchaser should withdraw the suit filed in the Principal District Magistrate Court, Anakapally. The 1st petitioner instead of withdrawing the suit as mentioned in G.O.Ms.No.614, proceeded with the suit and the civil Court granted perpetual injunction in favour of the 1st petitioner. In the second appeal filed by the State, the said appeal was disposed of in terms of G.O.Ms.No.614.

(ii) The 1st petitioner instead of running the unit made the land into various plots and sold the same through registered sale deeds in favour of

T. Gunamamba and 8 others even before the judgment in the suit as well as in the appeal. The Government vide Memo dated 26.9.2007 issued orders to take action for execution of sale deed in favour of the 1st petitioner-Purushothama Rao for the land in question after collecting an amount of Rs.350/- per sq. yard. Meanwhile, the 1st petitioner-Purushottama Rao died and his son Suri Babu was added as 2nd petitioner.

6. The 5th respondent viz., Smt. T. Gunamamba, submitted that the petitioner has executed a registered sale deed in favour of this respondent in respect of the land in question and she is in possession of the same. On coming to know about the issuance of G.O. by the Government, a representation was made to the Government requesting to register the land in her favour on the ground that the property was purchased by her in the year 1987. A suit has been filed by the 6th respondent against the Government and the writ petitioners and the same is pending. The writ petition filed by the 1st petitioner-Purushothamaraao, is not maintainable.

7. In the affidavit filed in W.P.No.32861 of 2011, it is stated as follows:

The State Government vide G.O.Ms.No.994, dated 11.11.1969 issued orders for disposal of stoneware and earthenware production-cum-training centre admeasuring Ac.2.36 guntas in Sy.No.621 of Kothavuru village, Anakapalli Mandal in favour of one Purushothama Rao. Subsequently, when the Government tried to resume the land, the allottee filed an injunction suit. Thereafter, on the representation made by the allottee, the Government in G.O.Ms.No.614 Industries & Commerce Department, dated 2.12.1986 issued orders to write off the outstanding penal interest. Pursuant to the orders passed by the Government, the official respondents-authorities handed over the possession of the unit to the allottee. After

obtaining the orders under G.O.Ms.No.614, dated 2.12.1986 the said allottee converted the total area into various plots and sold the same to various persons viz., the vendor of the 1st petitioner and the mother of the 2nd petitioner in W.P.No.32861 2011. The 2nd petitioner had acquired title from her mother T. Gunamamba having acquired the same from P. Purushothamarao. Suppressing all the facts, the said Purushothama Rao applied to the Government to issue title deeds. Subsequently, the Government issued orders in G.O.Ms.No.644, dated 29.8.2001 directing the 2nd respondent to hand over the property to the allottee by collecting lumpsum amount at the rate of Rs.350/- per sq. yard.

8. Heard and perused the material available on record.

9. It is contended by the learned Counsel for the petitioners in W.P.No.18981 of 2007 that P. Purushothama Rao purchased stoneware and earthenware products unit located at Anakapalli in terms of G.O.Ms.No.994 Industries and Commerce (G) Department, dated 11.11.1969 at the value of Rs.73,442.72 ps., that he immediately paid an amount of Rs.45,901.88 ps., against Rs.73,442.72 ps., and he could not pay the balance bid amount of Rs.27,540.84 ps., as per the above G.O. due to various reasons. Thereafter, the Government in G.O.Ms.No.614 dated 2.12.1986 issued orders to write off the outstanding penal interest of Rs.47,045.74 ps., as on 31.7.1986 and subsequently, the Government issued G.O.Rt.No:375, dated 25.6.2007 directing to hand over the land in question to the 1st petitioner-Purushothamarao after collecting the stipulated amount. In spite of the same, the official respondents Nos.2 to 4 did not comply with the above G.O.Rt.No:375 issued by the Government and therefore, the action of respondents-2 to 4 is illegal and arbitrary and in contravention of the orders of the Government.

10. On the other hand, the learned Government Pleader for Industries did not dispute as to the allocation of the land in question to the 1st petitioner-Purushothamarao as per G.O.Ms.No:994, dated 11.11.1969, as to the waiving of penal outstanding interest by virtue of G.O.Ms.No:614, dated 2.12.1986 and as to the issuance of G.O.Rt.No.375, dated 25.6.2007 issued by the Government to execute the sale deed in favour of the 1st petitioner-Purushothamarao. However, the main thrust of the argument of the learned Government Pleader for Industries that the 1st petitioner-Purushothamarao failed to adhere to the conditions stipulated in the G.O.Ms.No:994, dated 11.11.1969 and apart from that, instead of running the unit in the land in question, the said land was made into plots for the purpose of selling the same to the third parties and therefore, the 1st petitioner-Purushothamarao cannot seek for the execution of the sale deed in his favour in respect of the land in question.

11. The material on record goes to show that the 1st petitioner-Purushothamarao purchased stoneware and earthenware products unit located at Anakapalli in terms of G.O.Ms.No.994 Industries and Commerce (G) Department, dated 11.11.1969 at the value of Rs.73,442.72 ps. Subsequently, he fell in arrears of instalments with penal interest. Thereafter, the Government in G.O.Ms.No.614 dated 2.12.1986 issued orders to write off the outstanding penal interest of Rs.47,045.74 ps., as on 31.7.1986 and further directed the Commissioner of Industries to hand over the Unit to the 1st petitioner subject to condition that the 1st petitioner runs the unit at the same place as stipulated in the G.O and he shall withdraw the suit filed by him for permanent injunction. But the 1st petitioner did not withdraw the same. The said suit was decreed in favour of the 1st petitioner. Pursuant to the orders of the Government, the official

respondents handed over possession of the unit to the 1st petitioner. The second appeal filed by the State against the 1st petitioner was disposed of in terms of the above said G.O. The 1st petitioner made a representation to the Government to issue title deeds for the stoneware and earthenware products unit located at Anakapalli. The Government examined the matter and decided to collect a lumpsum amount against the property handed over to the 1st petitioner as per the rate quoted by the Collector, Visakhapatnam. The Government directed the Commissioner of Industries, Hyderabad to take necessary action. The Commissioner of Industries vide letter dated 21.9.2001 informed that he directed the General Manager, Industries Centre, Visakhapatnam to take action for remittance of lumpsum amount as fixed by the Government in G.O.Rt.No.644. The Government after careful examination of the matter, accorded permission to the 2nd respondent-Commissioner of Industries to collect the amount at the rate of Rs.350/- per sq. yard as per the rate quoted by the District Collector, Visakhapatnam from the 1st petitioner for the land in question and execute the sale deed in his favour.

12. It was also admitted by the 2nd respondent in the counter that the Government vide Memo dated 26.9.2007 issued orders to take action for execution of sale deed in favour of the 1st petitioner-Purushothama Rao for the land in question after collecting an amount of Rs.350/- per sq. yard.

13. Originally, the 1st petitioner purchased the unit about 48 years back in terms of G.O.Ms.No.994, dated 11.11.1969 and ever since, the 1st petitioner-Purushothamarao was approaching the Government from time to time, during which the Government issued G.O.Ms.No:614, dated 2.12.1986 waiving the outstanding penal interest due by the 1st petitioner-Purushothamarao and also Memo, dated 26.9.2007 directing the 2nd

respondent to execute the sale deed in favour of the 1st petitioner-Purushothamarao after complying with the conditions stipulated thereunder.

14. It is also to be noted that during the pendency of this lis, the 1st petitioner-Purushothamarao died and his son one P.Suribabu came on record.

15. In view of the foregoing reasons coupled with the orders of the Government issued from time to time in G.O.Ms.No:994, Industries and Commerce Department, dated 11.11.1969, G.O.Ms.No:614, Industries and Commerce Department, dated 2.12.1986 and G.O.Rt.No:375, Industries and Commerce Department, dated 25.6.2007 and Memo dated 26.9.2007 issued to execute the sale deed in favour of the 1st petitioner-Purushothamarao and in view of the pendency of the issue between the Government and the 1st petitioner since 48 years, this Court is of the opinion that the action of respondents-2 to 4 in not complying with the directions issued by the 1st respondent in G.O.Rt.No:375, Industries and Commerce (SSI), Department, dated 25.6.2007, is illegal and arbitrary and in contravention of the orders issued by the Government.

16. Accordingly, W.P.18931 of 2007 is allowed as prayed for directing respondents Nos.2 to 4 to execute the sale deed in respect of the land in question in favour of the 2nd petitioner, who is the legal heir of the 1st petitioner-Purushothama Rao, after collecting the amount from the 2nd petitioner as per G.O.Rt.No.375 dated 25.6.2007. The amount, if any already paid by the petitioners, shall be deducted.

17. Insofar as W.P.No:32861 of 2011 filed by one M.Subrahmanyam and Smt.Potla Kameswari is concerned, it is their case that the 1st petitioner

is the owner of land admeasuring 293.33 square yards having purchased the same by way of registered sale deed dated 2.9.2008 from the vendor of the 1st petitioner, and the 2nd petitioner is the owner of the land admeasuring 274 square yards having got the same by way of registered gift deed from her mother, who purchased the same from the 1st petitioner- Purushothama Rao. Further, it is their case that the order issued in G.O.Rt.No:375, Industries and Commerce (SSI) Department, dated 25.6.2007 issued by the 1st respondent in favour of Purushothamarao, is illegal and arbitrary and if their case is not considered, it would cause great hardship and financial loss to them.

18. In W.P.No.32861 of 2011, it is the case of the petitioners that the said Purushothama Rao sold away the property to the vendors of the petitioners herein under registered sale deeds. Therefore, the said Purushothama Rao and his son are not entitled to seek registration of the land in question in their favour relying on G.O.Rt.No.375 dated 25.6.2007, which is illegal and arbitrary, and consequently, a direction may be given to regularize the land directly in favour of the present petitioners in W.P.No.32861 of 2011.

19. The question as to whether the petitioners in W.P.No.32861 of 2011 acquired better title by virtue of the sale deeds executed by Purushothamarao, is a matter to be adjudicated before the Civil Court, so that, this Court cannot entertain the claim of those petitioners particularly on the ground that the scope of Article 226 of the Constitution of India, is very much limited insofar as the disputes pertaining to the Civil in nature.

20. For all these reasons, this Court is of the opinion that W.P.No:32861 of 2011 filed by the petitioners, is not maintainable and consequently, the same is liable to be dismissed.

21. In the result, W.P.No.18981 of 2007 is allowed with the above directions and W.P.No:32861 of 2011 is dismissed. No costs. Consequently, miscellaneous petitions pending, if any, shall stand closed.

Justice Raja Elango

Dated: 18.9.2017

Nn.



HON'BLE SRI JUSTICE RAJA ELANGO

WRIT PETITIONS NO.18981 OF 2007 AND 32861 OF 2011



18.9.2017

Nn.