

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI**

Writ Appeal No.514 OF 2018

JUDGMENT: {Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan}

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the Learned Single Judge in W.P.No.23712 of 2015 dated 06.03.2018. The appellants herein filed the said writ petition seeking a writ of mandamus to declare the action of the respondents, in not allotting Acs.5.00 in Survey No.39 of Mangalagiri Village and Town, Guntur District for house sites in their favour, as per G.O.Ms.No.1241 dated 27.10.2008 on payment of market value, in tune with the representations dated 31.05.2015 and 26.06.2015, as illegal, arbitrary and violative of Articles 14 and 21 of the Constitution of India.

In the order under appeal the Learned Single Judge observed that, after verifying the particulars in the counter-affidavit, the learned Government Pleader was directed to submit the present ground position in respect of the lands situated in Survey Nos.39 and 49; he had submitted information which showed that, over an extent of Ac.16.90 cents of land, housing under the Prime Minister Awas Yojana (PMAY) was being taken up; there was no vacant land available for allotment to the appellants-writ petitioners; the District Collector, Guntur had earlier issued proceedings dated 05.05.2015, while returning the proposals submitted by the Revenue Divisional officer, Guntur, to identify other suitable land and to submit alternate proposals for allotment of house sites in favour of the appellants-writ petitioners; now that the land in Survey Nos.39 and 49 was not available, it was for the Revenue Divisional Officer, Guntur to submit a proposal for identifying other suitable land pursuant to the proceedings of the District Collector, Guntur dated 05.05.2015; in view thereof, the

appellants-writ petitioners were given liberty to submit a representation to the Revenue Divisional Officer, Guntur for identification of suitable land; and, if suitable land was available, it was for the Revenue divisional Officer, Guntur to take appropriate steps, in accordance with law, considering the request of the appellants-writ petitioners.

Sri M.V.S.Suresh Kumar, learned Senior Counsel appearing on behalf of the appellants-writ petitioners, would draw our attention to the counter-affidavit filed by the Tahsildar, Mangalagiri wherein it is asserted that Mangalagiri Mandal is under the jurisdiction of the Andhra Pradesh Capital Region Development Authority; there are many State level Government offices which are being shifted from Hyderabad to the newly proposed capital area of Andhra Pradesh; they are to be accommodated in the available Government lands; and, in view of the need for Government land to establish various offices in the area, the Government had taken a decision not to allot any Government land to any individual/person in view of larger public interest; and, hence, it was not possible to allot any land to the appellants-writ petitioners within the area of Mangalagiri Mandal in view of public interest.

According to Sri M.V.S.Suresh Kumar, learned Senior Counsel, the Government, having earlier decided not to allot this extent of Ac.16.90 cents of land to anyone else, on the ground that it was required to accommodate State level Government offices which were being shifted from Hyderabad, is now not entitled to allot this extent of Ac.16.90 cents of land for housing under the PMAY scheme; they ought to have placed all these facts, by way of an affidavit, before this Court; and since they failed to do so, their action in allotting this Ac.16.90 cents of land to the PMAY scheme, instead of allotting it for providing house sites for deserving ex-servicemen, is arbitrary and illegal. Learned Senior Counsel would submit that, in case this Court is not

inclined to interfere with the order under appeal, the respondents be directed to allot alternate lands to the appellants-writ petitioners within a fixed time frame in terms of G.O.Ms.No.1241 dated 27.10.2008.

By G.O.Ms.No.1241 dated 27.10.2008 the earlier G.O.Ms.No.243 dated 28.02.2005, wherein guidelines were issued for creation of a Land Bank to meet the housing and other institutional requirements of various sections of society, was amended as under:-

“Categories of ex-Servicemen and Widows for the allotment of land for the purpose of house sites on payment of basic value of the land is hereby incorporated as (ix) item of the Categorisation for Pricing guidelines”.

While G.O.Ms.No.243 dated 28.02.2005 contained eight categories, the category of ex-servicemen and widows was included thereunder as the ninth category. The said G.O does not prioritise these nine categories, and only requires a Land Bank to be created to meet the housing and other institutional requirements of all these nine categories. Members of weaker sections of society are also included under category seven among these nine categories. While the stand of the State Government earlier was to retain the subject land to meet the housing requirements of Government offices, on their relocation from Hyderabad, this decision appears to have been given a go-bye, and a decision appears to have been taken to earmark this land for construction of houses to weaker sections under the PMAY scheme. It is always open to the State Government to change its earlier policy, of earmarking this land to house Government offices, to a policy to provide housing to weaker sections in terms of the PMAY scheme. This Court, in proceedings under Article 226 of the Constitution of India, would not sit in judgment over the policy decisions of the State Government in this regard, or over their decision to change their earlier policy decisions.

While it would have been in the fitness of things, if the State Government had filed an additional counter-affidavit explaining the change in its earlier decision, learned Government Pleader for Revenue would point out that it is because the Learned Single Judge had directed this information to be furnished, was a memo filed furnishing all this information. It is wholly unnecessary for us to dwell on this aspect any further as we are satisfied that allotment of land, hitherto earmarked for housing Government offices, for providing houses to weaker sections, under the PMAY scheme, does not violate Part III of the Constitution of India.

While G.O.Ms.No.1241 dated 27.10.2008 includes ex-servicemen and widows as among the categories to whom land should be allotted as house sites, it is not open to the appellants-writ petitioners to claim that they should be allotted land in a particular area or at a particular place. Their entitlement, in terms of G.O.Ms.No.1241 dated 27.10.2008, is only for being considered for allotment of land as house sites on payment of the basic value of the land, along with all the other eight categories specified in G.O.Ms.No.243 dated 28.02.2005.

While we see no reason to interfere with the order under appeal, to the extent the action of the respondents in allotting this land for construction of houses under the PMAY scheme was upheld, the fact remains that the claim, of deserving ex-servicemen for allotment of house sites, cannot also be ignored. While the Learned Single Judge had given liberty to the appellants-writ petitioners to submit a representation to the Revenue Divisional Officer, Guntur for identification of suitable land, and has observed that, if suitable land was available, the Revenue Divisional Officer, Guntur should take appropriate steps in accordance with law, suffice it to direct the respondents to take a decision on the request of the appellants-writ

petitioners, for allotment of house-sites, within a specified time frame.

The appellants-writ petitioners are, therefore, permitted to make a representation to the Revenue Divisional Officer, Guntur within three weeks from the date of receipt of a copy of this order. The Revenue Divisional Officer, Guntur shall, within two months from the date of receipt of the said representation, identify suitable land to be provided as house sites to ex-servicemen and widows in terms of G.O.Ms.No.1241 dated 27.10.2008 and, if suitable land is available, to then submit a proposal to the District Collector, Guntur who shall, within two months from the date of receipt of the proposal from the Revenue Divisional Officer, Guntur, and in case suitable land is available and has been identified for allotment to ex-servicemen and widows in terms of G.O.Ms.No.1241 dated 27.10.2008, consider the said proposal, take a decision thereupon in accordance with law and communicate the same to the appellant-writ petitioners.

The Writ Appeal is, accordingly, disposed of. Miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(KONGARA VIJAYA LAKSHMI, J)

28th March, 2018
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Writ Appeal No.514 OF 2018

Date: 28.03.2018

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